

THE EFFECTIVENESS OF THE EUROPEAN UNION AS A NORMATIVE
POWER:
HUMAN RIGHTS CONDITIONALITY IN THE CASE OF TURKEY

A THESIS SUBMITTED TO
THE GRADUATE SCHOOL OF SOCIAL SCIENCES
OF
MIDDLE EAST TECHNICAL UNIVERSITY

BY

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IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR
THE DEGREE OF MASTER OF SCIENCE
IN
THE DEPARTMENT INTERNATIONAL RELATIONS

AUGUST 2008

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ABSTRACT

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August 2008, 128 pages

In this thesis it is attempted to shed some light upon the limits and effectiveness of the role of the European Union (EU) as a normative power has played in the transformation of Turkish politics especially in the case of human rights issues. First of all, this study reviews the original and current debates over the civilian and normative power Europe ideas, searches to find common elements underlying those accounts and assesses to what extent they offer an adequate categorization of the EU's international significance. One of the main arguments of this thesis is that the EU is generally considered as the catalyst or the anchor of the reform process in the candidate countries to become members. With this in mind, an account of the development of the EU's human rights conditionality vis-à-vis the third countries and the typology of the EU's human rights conditionality within the framework of enlargement are also examined. The massive wave of transformation with regard to human rights issues undertaken in Turkey during its pre-accession relations with the Union is a case point in this thesis. Within the scope of the study, it is attempted to analyze the impact of the EU's human rights conditionality upon the related state of affairs in Turkey with a view to exploring to what extent and under what conditions it could be regarded as the independent variable of the domestic reform process in the country.

Keywords: Civilian and Normative Power, Conditionality, Human Rights Conditionality, Turkey-EU Relations

ÖZ

NORMATİF BİR GÜÇ OLARAK AVRUPA BİRLİĞİ'NİN ETKİNLİĞİ: TÜRKİYE ÖRNEĞİNDE İNSAN HAKLARI KOŞULLULUĞU

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Tez Yöneticisi: Doç. Dr. Sevilay Kahraman,

Ağustos 2008, 128 sayfa

Bu tezde Avrupa Birliği'nin (AB) normatif bir güç olarak Türk siyasetinin özellikle insan hakları konusunda yaşadığı dönüşümde oynadığı rolün sınırlarına ve etkilerine ışık tutulmaya çalışılmıştır. Öncelikle bu çalışma, sivil ve normatif bir güç olarak Avrupa düşüncesi üzerine orijinal ve güncel olan tartışmaları incelemekte, bunların altında yatan ortak unsurları bulmaya ve bunların AB'nin uluslararası alandaki öneminin sınıflandırılmasına hangi ölçüde katkıda bulunduğunu tespit etmeye çalışmaktadır. Bu tezin temel argümanlarından biri, AB'nin genellikle aday ülkelerin üyelik süreçlerinde yaşadıkları reformlarda bir katalizör ya da dayanak noktası olarak görüldüğüdür. Bu açıdan üçüncü dünya ülkelerine AB'nin sunduğu insan hakları koşulluluğunun gelişimi ve genişleme çerçevesinde, AB'nin insan hakları koşulluluğunun türleri de değerlendirilmektedir. Türkiye'de AB'ye katılım öncesi insan hakları hususunda yaşanan büyük dönüşüm dalgası, bu tezde ele alınan temel hususlardan biridir. Bu çalışmanın kapsamı içerisinde, AB'nin insan hakları koşulluluğunun Türkiye'deki söz konusu durum üzerindeki etkisi; bu şartların ülkede yaşanan reform sürecinde hangi ölçüde ve hangi koşullar altında bağımsız bir etken olarak ele alınabileceği incelenerek analiz edilecektir.

Anahtar Kelimeler: Sivil ve Normatif Güç, Koşulluluk, İnsan Hakları Koşulluluğu, Türkiye-AB İlişkileri

To me...

ACKNOWLEDGEMENTS

First of all, I have to admit that the long and stressful process that involved the completion of this thesis would not have been successfully completed without encouragement, support and patience of a number of great people. I would like to express my deepest gratitude to my supervisor Assoc. Prof. Dr. Sevilay Kahraman for her patience, understanding, extant support, invaluable comments and suggestions throughout this process. Not only her immense scope of knowledge but also her personality and worldview have deeply impressed me. I wish in particular to express my appreciation to the Examining Committee Members Assoc. Prof. Dr. Aylin Özman Erkman and Assist. Prof. Dr. Şule Güneş for their invaluable comments and suggestions necessary for the final shape of this thesis. I am also grateful to all academicians in the Department of Political Science and Public Administration at Hacettepe University and in the Department of International Relations at METU provided me very important insights particularly for my studies. I especially would like to express my thanks to Prof. Dr. Ali Çağlar who always believed in and supported me from the beginning of my academic life.

I owe much to my mother Zahire and my father Şinasi, my sister Tülay and my deary nephew Berke who gave their love, constant support and patience not only throughout this research but also all moment in my life. As for Esma, my sister, it is not easy for me to explain my feelings about your support and encouragement. My life will be meaningless if you were not in it.

Pınar Aşan, my dearest friend, I thank God for the day I met you. This study would not have been completed if you were not my friend. My special and deepest appreciation goes to you for your support and invaluable friendship.

I am also thankful to a number of people and my friends for their understanding and making me feel never alone: Didem Arıkan, Ali İhsan Cingiz, Tuğba Gülsün, Sibel Akıl, Nurcan Önen, Necla Altekin, Talat-Safiye-Tunahan Sağır, Hakan and Ayşegül Cicioğlu, Nazife Özbek, Kübra Burcu Ayan, Güneş Özlem Öner, Yeşim Güvezne, Emrah Bank and Müge Cündoğlu.

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CHAPTER 1

INTRODUCTION

The incrementally evolving project of European foreign policy cooperation is a hard case for those observers wishing to elaborate on its implications for the growing immanence of the Union in international affairs. This appears to be the case because foreign policy analysis, in the sense we understand it conventionally, is inextricably linked to a state-centric approach, considering the realm of high politics to be the most important bastion of the notion of sovereignty. The term “foreign policy” itself, on a reflexive basis, implies a systematized and coordinated attempt to further the national interest of one’s own state in dealings with the outsiders. However, the European integration project is by no means initiated as a state building enterprise; its initial source of inspiration was to keep down the exigencies of unbridled nationalism pinpointed as the culprit of the horrors of the two World Wars. It represents something much more than an institutionalized cooperation among a group of states acting merely in accordance with their self-interests. It is unprecedented form of regional integration, an hybrid polity involving supranational and international forms of governance with the end of promoting the “commonality of interest” at sight.

As far as its external relations is concerned, the European Union (EU) foreign policy is generally alleged to be a normative, value-driven policy and the preeminence of those ideational dynamics is posited to be key to the EU’s distinctiveness as an international actor¹. Hence, the Union is generally conceptualized as a sui generis political entity, comprising idiosyncratic features embedded in its very constitution. For some observers, the constellation of those

¹ Richard Youngs, “Normative Dynamics and Strategic Interests in the EU’s External Identity”, *Journal of Common Market Studies*, Vol. 42, No. 2, 2004, p. 415.

peculiar constitutive attributes, also reflected in the external relations of the EU, necessitate new conceptual tools to analyze the EU as an international actor.

On the other hand, it took approximately three decades for a shared consensus to emerge over influence that the Union is capable of exerting in the international scene via its system of foreign policy making. As the lingering debate over the existence of a European foreign policy has predominantly pervaded the analysis of the EU's external relations until very recently, attention has been primarily devoted to the specific policy failures of the Union, its institutional and procedural set-up hindering the achievement of timely consensus on foreign policy issues. Although those skeptical approaches are not completely without their repercussions still voiced today, academic literature on this field is being more and more concentrated on the issue of what characterizes the EU's foreign policy-making and its peculiar significance in the international system. Consequently, moving a step forward from the rather simplistic assertions discarding the existence of a European foreign policy has opened new avenues for the development of novel conceptualizations of the EU's international role entwined with the way in which it projects itself externally.

From this point of view, through this process of self-reflection, of which European foreign policy cooperation constitutes a significant element, the EU seems to create a distinctive international identity as an institutional repository and diffuser of universally valid ethical norms such as respect for and protection of human rights, the primacy of the rule of law, promoting multilateralism and regional cooperation in international affairs, etc. To use Arnold Wolfers' famous concept, those ideational elements are primarily milieu goals "which aim to shape the environment, in which the state, or the EU in our case operates" and as they speak for themselves, they are predominantly civilian in character. They are inspired by an overarching motivation to stabilize the external milieu of the EU in a way conducive to accomplishment of its long-term self-interests (possession goals). Thus, it appears as if the EU's pursuit of the above mentioned milieu goals which is generally adduced to back up the Normative Power Europe idea, is inherently linked to the promotion of its possession

goals. Nonetheless, while pursuing those civilian ends, the EU, more than often, relies on non-military measures and its depository of soft power as distinct from most of the major powers. Originally, it was the intermingling of these two factors, civilian ends pursued through civilian means, that laid the ground for development of a novel conceptual category describing EU's international role (Civilian Power Europe idea).

Civilian and normative power ideas are commonly built on the "premise that the EU is sui generis and requires the construction of new conceptual categorizations to fit the case of the EU and to explain its international role"². These accounts' primary concern is to accentuate the distinctiveness of the EU's posture in international affairs by means of depicting the primarily ideational essence of its external behavior. Whereas during the Cold War years Europe was generally be considered to be civilian out of necessity insofar as it was lacking the military instruments to wield its influence and was dependent on the United States (US) and North Atlantic Treaty Organization (NATO) for its security and defence. Current supporters of the notion have a tendency to stand for a Europe civilian / normative by design. From the perspective of the latter point, the inherent qualities of the European Union provide the broad contours of its foreign policy behavior not the international context within which it operates.

It is widely accepted that issues of human rights, liberty, democracy promotion and minority rights have begun to be discussed in international politics and also become of international concern after the end of cold war. Several bodies of legal norms as well as political instruments were emerged to regulate the governments' treatment of their citizens³. In connection with the desire of the EU to transform itself from a purely economic entity to an international actor with a credible political dimension, promoting human rights and democratization in the third countries commenced to constitute a significant place in its external relations especially since the early 1990s. During 1990s, the EU has embarked on a major

² Richard Withman, "The Fall, and Rise of Civilian Power Europe", Australian National University, National Europe Centre, Paper No. 16, 2002, p. 3.

³ Saban Kardaş, "Human Rights and Democracy Promotion: The Case of Turkey-EU Relations", *Alternatives*, Vol. 1, No. 3, Fall 2002, p. 1.

effort at 'value export' that tries to systematically incorporate the promotion of a specific European version democracy into its external relations with the rest of the world. In this regard, the EU is surprisingly explicit about promoting a particular democratic self-understanding and identity. As to democracy promotion, the EU appears to distinguish itself from similar US efforts by focusing more strongly on the formation of political associations including party systems and civil society. Concerning regional cooperation, the EU tries to promote its own model of regional integration, i.e., including strong supranational institutions and going beyond mere free trade areas.

The Central and Eastern European Countries (CEECs), one of the group of countries which separated from communist bloc and the EU exported its norms after the end of Cold War via its enlargement policy, is the most successful case where the EU diffused its values clearly, directly and successfully. While doing this, the EU used its 'membership carrot' as the vital incentive towards these countries to realise an efficient reform process in CEECs. The relations between Turkey and the EU, as a sui-generis case that the EU export its norms, may be analyzed in the light of the EU's enlargement policy implemented towards CEECs.

The relations between Turkey and the EU have evolved to a situation of such an important development in the international politics. This example indicates the transformation of the Turkish political system, which has mainly directed by the growing prospect of the EU membership especially after the 1999 Helsinki decision as a turning point in relations between Turkey and the EU. Within this general framework, this thesis strives to initiate an attempt to analyse the dynamics of the notion of democratization from outside by focusing on the case study of Turkey – EU relations. Accepting that the nature of the issue is too wide to analyse; reviewing the all theoretical explanations and practical implementations is not the main point of this thesis and knowing the fact that the notion of democratization is multi-dimensional in nature, the thesis applies the theoretical tool of membership conditionality, as one of the ways for democracy promotion by an external actor, to the relations between the EU and Turkey. Dealing with more specific terms, the thesis analyzes the issue of membership conditionality with a special emphasis on the human rights as it has

become sine qua non for the membership. Therefore, the central objective in this thesis is to understand the dynamics human rights conditionality in the relations of the EU and Turkey of transformation in Turkish human rights regime with reference to the theoretical tool of membership conditionality, which has evolved within the EU's enlargement history⁴.

The second chapter of this thesis strives to explore whether the civilian/normative connotation read into the EU's international actorness still retain its validity and of explanatory, to what extent it would be possible for the Union to endure its distinctive posture while exporting its norms⁵. With these main questions in mind, the second chapter of this thesis reviews and analyses the original and current debates over the civilian, normative power Europe ideas and searches to find general elements underlying those accounts. It also manages to specify the difference between the often interchangeably used concepts of civilian and normative power and assesses to what extent they offer an adequate categorization of the EU's international significance. Finally, the EU's normative identity constructed through discourse is also explored.

Although disentangling other democratization –inducing factors from the EU's human rights and democratic conditionality appears to be a quite intractable task, the EU is generally considered as the catalyst or the anchor of the reform process in the candidate countries aspiring to become members. In order to come about with a complete picture of the ability of the EU's conditionality to procure fundamental policy changes in the candidates, it appears to be crucial to analyse the types of EU conditionality and detect the real catalyst behind the democratization process in the third/candidate countries. Thus, in the third chapter, this thesis tries to answer the question of what the conditionality means by focusing especially on the EU's conditionality mechanisms applied towards the third countries in the framework of its enlargement policy; how conditionality has been put into different

⁴ Çağlar Dölek, “ Human Rights Conditionality In the Relations of the EU and Turkey”, Research Paper, 2007, pp. 1-38, available at, <http://www.turkishweekly.net/pdf/CaglarDolek-HR-FrameworkAnalysis.pdf>.

⁵ The first chapter is allocated to Introduction part of the study.

categorizations; what the main aspects of ex-post and ex-ante conditionality are and finally how the EU's human rights conditionality developed throughout historical and theoretical perspective.

The massive wave of democratization undertaken in Turkey during its pre-accession relations with the Union is a case in point in this thesis. With this in mind, the fourth chapter of thesis attempts to shed some light upon the impact of the EU's human rights and democratic conditionality upon the related state of affairs in the Turkey with a view to exploring to what extent and under what conditions it could be the regarded as the independent variable of the domestic reform process in the country. When applied to the Turkish case, Nathalie Tocci asks the relevant question: "Does the EU "trigger the reforms as an external force driving internal change; or has domestic change been spearheaded by domestic actors that have used and been strengthened by the external EU anchor?"⁶. The fourth chapter of the thesis directly focuses on this question and its possible answers. By doing so, the main objective is to explain recent democratization process in Turkey with reference to the efforts of the country to fulfil the Copenhagen political criteria.

Despite its seemingly unadorned internal logic in theory, the effective functioning of the EU's human rights and democratic conditionality towards any third country hinges upon a complex scheme of country-specific intervening variables as well as a host of other general factors that are deemed to be relevant in determining its success in practice. Obviously, the recent transformation of the Turkish democracy has provided that "the positive conditionality model, based on the anchor capacity of the EU and on the credibility of Turkey, can serve as an important tool to understand the essence of the transformation itself"⁷. Since 1999 democratization has risen to the forefront of the country's political agenda. Many issues that were previously not discussed or considered out of bounds politically have been in recent years have begun to be discussed in the Turkish media. With this in mind, the fifth chapter of thesis attempts to enumerate the conditions of conditionality that are at play in Turkish democratization process. What has been the

⁶ Nathalie Tocci, "Europeanization in Turkey: Trigger or Anchor for Reform?", *South European Society & Politics*, Vol. 10, No. 1, April 2005, p. 73.

⁷ Dölek, *Op.cit.*, p. 35.

public's reaction? Do Turks support the broad demands (rights for minorities, greater freedom of expression, and abolition of the death penalty) put forward by the EU as a prerequisite for accession? Are the EU conditions tapping into demands "from below?" Is it accurate, as one study argues, that the recent reforms in Turkey are a "natural outcome of public support for further democratization?"⁸ Does the EU play its role as an anchor and a normative power? Does the normative power EU's human rights conditionality work effectively in the case of Turkey? The fifth chapter – concluding chapter – focuses on the answers of these core questions. Within the scope of this chapter, the deficiencies of the EU's human rights conditionality approach towards Turkey are also explored.

⁸ Paul Kubicek, "The European Union and Grassroots Democratization in Turkey", *Turkish Studies*, Vol. 6, No. 3, September 2005, p. 370.

CHAPTER II

2. A SUI-GENERIS ENTITY IN THE INTERNATIONAL SYSTEM: THE EUROPEAN UNION AS A CIVILIAN AND NORMATIVE POWER

Several academicians, scholars and thinkers argue that the European Union (EU) is a sui generis entity in the international system. The EU's distinctive role has been described and named over the years such as a civilian⁹, a soft¹⁰ and a normative power¹¹. Before analyzing the descriptions in the first chapter of this thesis, it is vital to mention that the EU cannot be described in classical terms and actor understanding of international relations. The EU is not a state which is defined in classical terms and also it has quite different characteristics when it is described against these classical criteria. The 'classical' in here represents the Realist understanding of state. For Realists, "the state is the main actor in international relations and the sovereignty is its distinguishing trait". In the external environment of a state, on the outside, "in the relations among independent sovereign states, insecurities, dangers, and threats to the very existence of the state loom large". Realists claim that in the "anarchical environment", states always compete with each other for security, markets, influence and so on. International politics is a struggle for power and the ultimate concern of states is for security. "Survival" is held to be a precondition for attaining all other goals. Moreover, Classical Realism argues that

⁹ François Duchêne, "The European Community and the Uncertainties of Interdependence", in Max Kohnstamand Wolfgang Hager, (ed.), *A Nation Writ Large? Foreign Policy Problems Before the European Community*, London, Macmillan, 1973, p. 19.

¹⁰ Christopher Hill, "Capability-Expectations Gap, or Conceptualizing Europe's International Role", *Journal of Common Market Studies*, 3, 1993, pp. 305-328.

¹¹ Ian Manners, "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies*, Vol. 40, No 2, pp. 235- 258.

“one state’s quest for security is often another’s source of insecurity”. So it is accepted that there can be no community beyond borders¹².

State, on the other hand, according to Realists, is “a unitary, centralized entity that hierarchically structures domestic political forces and is able to formulate and implement coherent policy”. So it is clear that the EU does not explicitly matches to picture of unitary actor with fixed preferences; rather its interests, institutional setting and actors vary with the respect to different policy areas. The EU is also rather different when it is compared to the above mentioned state understanding. The EU is a kind of international organization including several member states in it. These member states have dominance but this dominance is limited in scope by the actors at the EU level and by institutional rules that vary across pillars. “EU’s uniqueness derives from the fact that it is complex multi level governance”¹³ with “distinctive institutional setting and policy making procedures”¹⁴. The EU “comprises together sovereignty of member states and supranational institutions, constraining member states’ exclusive right to authoritative allocation and including them into multilevel decision-making process”¹⁵. Policy system of the EU is “split into multiple, overlapping and loosely related policy areas under the three pillars”. Moreover, the EU is based on “the consensual policy making that depends on the interaction between member states and supranational institutions”¹⁶.

The above mentioned arguments generally refer to the neo-liberal institutionalists such as Mitrany and Haas who argue that “the positive benefits from transnational cooperation is one which provided an important impetus to closer cooperation between European states, initially through the creation of the European Coal and Steel Community in 1952”¹⁷. They also ignored and rejected “the state

¹² Hans Morghentau, “A Realist Theory of International Politics”, *Politics Among Nations: The Struggle for Power and Peace*, Knopf, New York, 1960, Chaps. 1-3.

¹³ Michele Knodt and Sebastiaan Princen, *Understanding the European Union’s External Relations*, Routledge Taylor and Francis Group, 2003, p. 204.

¹⁴ Karen Smith, *European Union Foreign Policy in a Changing World*, Cambridge, Polity Press, 2003, p. 17.

¹⁵ Knodt and Princen, *Op cit.*, p. 204.

¹⁶ *Ibid.*, p. 204.

¹⁷ John Baylis and Steve Smith, *The Globalization of World Politics An Introduction to International Relations*, Oxford University Press, 4th edition, New York, 2008, p. 169.

centric view of the world adopted by both traditional realists and behavioralists”. World politics, according to Liberal and Neo-Liberal Institutionalists, “were no longer an exclusive arena for states, interest groups, transnational corporations and international organizations, had to taken into consideration (international relations has began to be seen as a cobweb of diverse actors linked through multiple channels of interaction)”¹⁸. This understanding was also the catalyst for integration theory in Europe.

Although the EU does not fit into traditional categorization of international actors, it is significantly in international politics. How can we categorize it in international system and how can we obtain its distinctive role? Bretherton and Vogler differentiate between presence and actorness in explaining the EU participation in international arena. According to them, *Presence* “relates to the capability of the EU to project influence in external relations, as an unintended consequence of internal policy making”¹⁹. For instance, the fact that the EU has been widely imitated as a model of regional co-operation is a sign of its presence in the international arena. Presence is a precondition for the actorness, being the capacity to take on the purposive action in the international system²⁰. *Actorness*, on the other hand, derives from internal capabilities as well as opportunities offered in the external environment. However, presence is not equal to the actorness and does not predetermine it. The interplay between the presence and the actorness is important for the construction of roles that are on the EU disposal in the international system. The fulfillment of these roles depends on the capacity of the EU to act²¹.

To be an actor in the external relations, EU has to fulfill five conditions, according to Bretherton and Vogler²²:

- be committed to shared norms and values
- be capable of structuring policy priorities and produce coherent policies
- be effective negotiator

¹⁸ Ibid., p. 169.

¹⁹ Charlotte Bretherton and John Vogler, *The European Union as a Global Actor*, New York, Routledge, 2003, p. 5.

²⁰ Ibid., p. 35.

²¹ Ibid., p. 33.

²² Ibid., p. 35.

- be capable of policy implementation
- obtain democratic legitimacy for external policies

Evidence points that despite the EU's significant presence in the international arena, it has been only partially realized as an actor²³. Nevertheless, the EU has proved itself as capable of taking purposive action in some areas of foreign policy, having impact on external actors²⁴. It can be claimed that by projecting internal practices to the external relations, EU opens up the space for the assertion of the role as an effective and important international player. However, Princen and Knodt argue that effective export of models is possible under the two conditions that to a degree correspond to Bretherton and Vogler's requirements for actorness.

First of all, the EU has to manage to formulate coherent policy based on internal consensus, underpinned by common interests and values. Moreover, the EU has to be capable of implementing policy. That may be proven difficult in military issues where the EU lacks resources, meaning that clear and coherent policy is even more so important in influencing international arena²⁵. On the contrary, the EU is more effective and recognized as the international actor when acting like a "soft power"; using economic means for political ends; e.g. exporting norms and values through economic co-operation with the third countries²⁶.

"Soft power" is one of the terms, alongside notions of civilian power and normative power, used to describe EU's unique international identity. These terms reflect the distinctiveness of the EU diplomacy: emphasis on the international law, multilateralism and non-military instruments in pursuing foreign policy goal²⁷. Thus, notion of the EU as the civilian power will be discussed next. So the pertinent questions that need to be asked here are: Does the civilian or normative connotation read into the EU's international actorness still retain its validity and of explanatory?

²³ Roy Ginsberg, *The European Union in International Politics*, Oxford, 2001, p. 9.

²⁴ Ibid., p. 48.

²⁵ Knodt and Princen, *Op.cit.*, p. 201.

²⁶ Frank Petiteville, "Exporting 'values'? EU External Co-operation as a 'soft' diplomacy", in Knodt and Princen, *Understanding the European Union's External Relations*, London, Routledge, 2003, p. 134.

²⁷ Smith, K., (2003), *Op.cit.*, p. 15.

To what extent would it be possible for the Union to endure its distinctive posture while exporting its norms? With these core questions in mind, the second chapter of this thesis reviews the original and current debates over the civilian, normative power Europe ideas and searches to find common elements underlying those accounts. It also strives to specify the difference between the often interchangeably used concepts of civilian and normative power and assesses to what extent they offer an adequate categorization of the EU's international significance. Thereafter, the second chapter explores how the EU's normative identity is constructed through discourse.

2.1. The EU's International Role as Civilian and Normative

2.1.1. François Duchené's Description of the EU as a Civilian Power

Civilian and normative power ideas are commonly built on the “premise that the EU is *sui generis* and requires the construction of new conceptual categorizations to fit the case of the EU and to explain its international role”²⁸. These accounts' primary concern is to accentuate the distinctiveness of the EU's posture in international affairs by means of depicting the primarily ideational essence of its external behavior. The pioneering example of this general observation is François Duchené's description of the then European Community (EC) as “a group of countries long on economic power and relatively short on armed force (whose primary interest) is as far as possible to domesticate relations between states, including those of its own member states and those with states outside its frontiers”²⁹. The main characteristic of a civilian power underlined in his definition is the primacy of the economic and financial means of influence over military capabilities. From Duchené's point of view, it was fundamentally this descriptive element that constituted the then EC's strength and novelty as an international actor.

²⁸ Richard Withman, “The Fall, and Rise of Civilian Power Europe”, Australian National University, National Europe Centre, Paper No. 16, 2002, p. 3.

²⁹ Duchéne, *Ibid.*, pp. 19-20.

On the other hand, in the second part of his observation Duchené attaches a normative dimension to the EC's international role as an *idée force* committed to "the international diffusion of civilian and democratic standards". He further urges the community "to bring to international problems the sense of common responsibility and structures of contractual politics which have in the past been associated exclusively with home and not foreign, that is alien affairs"³⁰. The inference to be drawn from the above quoted brief excerpts is that, Duchené's civilian power notion rested upon two basic elements:

- a descriptive element specifying the form of influence that the member states, in a built-in sense of collective action, could and ought to utilize and
- a relatively under stressed normative element charging the Community with the mission of civilizing or domesticating international relations.

Writing in the springtime of detente, Duchené's primary goal was to speculate about the future role that the then EC would play on the international scene. Specifically, he predicted that the declining immanence of power politics and the growing importance of economic interdependence would give much more room to the EU "to make most of its opportunities if it remains true to its inner characteristics. These are primarily civilian ends and means, which in turn express, however imperfectly, social values of equality, justice and tolerance"³¹. In that context, the EU's ability to diffuse its own model of governance to the rest of the world through economic and political means would be the hallmark of its distinctiveness as an international actor.

Although Duchené stressed some actor-based attributes in attempting to corroborate his conceptualization of the then EC as a civilian power, he nonetheless appears to prioritize the prevailing parameters of the international context that rendered, from his perspective, any alternative international role for the EC a remote prospect. His Cold War mindset not only conditioned his assumptions about the

³⁰ Ibid., p. 20.

³¹ Ibid., p. 20.

European security architecture but also his assessments regarding the prospective role that the then EC could and ought to play in this framework. For instance, Duchené considered another conceptualization of the EU's international role as a "super power in the making" an impracticable alternative since this would have entailed a level of nuclear capability for the EC commensurate, at least, with that of the United States (US). Given that Britain and France were the only nuclear powers in the community of the time, their capacity whether in aggregate or isolated terms to challenge US superiority in this field was out of question. In that context, what the EC could do was only to remain as a civilian power.

2.1.2. Hedley Bulls' Critique of Duchené's Civilian Power Europe Idea

A vigorous critique of Duchené's civilian power Europe idea was provided, after a decade, by a prominent figure of the English school of International relations, Hedley Bull. In his renowned words, this notion was a contradiction in terms because "the power or influence exerted by the European Community and other such civilian actors was conditional upon a strategic environment provided by the military power of states, which they did not control"³². According to Bull it was the Western European countries reliance on the US security umbrella that countenanced the then EC's posture as a civilian actor in the international scene. "To put it bluntly, the European Community was a classic example of a free rider, benefiting from the security provided by others"³³.

Bull further implied that the civilian power Europe notion, as first advanced by Duchené, was a child of the impulses of the detente period and therefore bore relevance only in that specific context. From his point of view, the slackening of the superpower rivalry in the early 1970, prompted some wishful thinkers to argue for

³² Hedley Bull, "Civilian Power Europe: A Contradiction in Terms?", in Tsoukalis, L.(ed.), *The European Community –Past, Present & Future*, Oxford, Basil Blackwell, 1983, p. 151.

³³ Adrian Hyde Price, "From Civilian to Military Power: The European Union at Crossroads?", CIDEL Workshop Papers, Oslo 22-23 October 2004, p. 5.

the declining utility of military force compared to the economic and civilian forms of influence as a currency of a power. These mistaken views, according to Bull, were the extensions of neo-idealist and neo-progressivist interpretations of International Relations that experienced a renewed lease of life in early 1970s. However, the onset of the second Cold War and return to power politics have undermined the underlying assumptions upon which such optimistic views were constructed. To substantiate his contention, Bull enumerates a number of cases where the use of military force was still dramatically important, i.e., to counter the enduring Soviet threat, and urges the European Community to become self-sufficient in matters pertaining to its security and defence. As a pretext of his latter point, Bull enunciates the mounting divergent interests between the US and its European allies as well as the slippery foundation upon which the security of the Western Europe rested, namely the period of detente.

Hedley Bull's cogently articulated criticism has resonated, throughout the 1980s, the discussions over the role that the then EC could play on the international arena. In those years, it was widely argued that the EC appeared to be a civilian actor in the early 1970s because the prevailing conditions of the international system allowed it to be so. In other words, it was civilian by default. From this point of view, the return to power politics, with the onset of the Second Cold War has discredited the very foundation of this notion together with the posited preeminence of the civilian forms of influence over military force.

As it seems quite explicit in the above mentioned arguments, "it is disagreements over the nature of the international environment within which the Union operates which have led to different assessments of its international significance or not"³⁴. For instance, Duchené assertions about "the EU's potential civilizing influence is linked to his view of the international system as characterized by interdependence, joint problem solving and a multitude of state and non state actors"³⁵. Likewise, Bull's realist reading of international relations have urged him to conclude that without a self-sufficient military capability, the EC would unlikely be an international actor. In that regard, the post Cold War era which has witnessed the proliferation of the arguments that devalued the forms of hard power in the

³⁴ Withman (2002), *Op.cit.*, p. 10.

³⁵ Helene Sjursen, "The EU as a Normative Power: How Can This Be?", available at, http://aei.pitt.edu/3169/01/EUSA_Conference_2005_Sjursen.pdf, p. 6.

broadened conduct of international relations provided a fruitful avenue for some commentators to advocate the lasting applicability of the civilian power Europe idea. Specifically, “arguments were rehearsed about a change in the structure and substance of international relations that suggested a changing landscape in which civilian forms of power were more appropriate”³⁶. Hence, an opportunity was born for the reincarnation of the EU’s representation as an ideational force in international affairs.

However, the initial formulation of the Civilian Power Europe concept in the early 1970s appears to be, in some ways, different from its version(s) advocated in the post Cold War period. As has been stated above, the historical and international context within which it was originally devised has undergone a profound transformation process during this 30 years time. Amidst this development, the European integration project has not remained static but evolved incrementally (albeit in a disjointed manner) to comprise the realm of “high politics”. Thus, the notion has been reinvented by some commentators in a manner more in tune with the changing landscape of the 21st century.

2.2. Determining an International Actor as Civilian: Assessing the Civilian Connotation of the EU against these Criteria

After evaluating the historical development of the civilian Europe idea, at this part of the thesis the basic question “what qualifies an international actor as civilian” is tried to be answered in the lights of important scholars’ theoretical perspectives and criteria developed by and also the civilian connotation of the EU is tried to be assessed against these criteria.

What is a civilian power? The basic features of a civilian power may be summarized from Karen Smith’s perspective. According to her, “*being* a civilian power, has been most frequently defined to entail not just the means that an actor uses, but also the ends that it pursues and – less frequently – the way those means are

³⁶ Withman (2002), Op.cit., p. 8.

used, and the process by which foreign policy is made”³⁷. She emphasizes the importance of ends and the other factors which are not been attached importance in the literature. She enumerates four elements to be a civilian power³⁸:

- means;
- ends;
- use of persuasion;
- and civilian control over foreign (and defence) policymaking.

In the literature only two features of the civilian power are focused. The most classical definition of civilian power refers really to only two of the four critical elements. For Hanns Maull, being a civilian power implies³⁹:

- a) the acceptance of the necessity of cooperation with others in the pursuit of international objectives;
- b) the concentration on non-military, primarily economic, means to secure national goals, with military power left as a residual instrument serving essentially to safeguard other means of international interaction; and
- c) a willingness to develop supranational structures to address critical issues of international management. Maull’s definition emphasised primarily civilian means and an inclination to cooperate with others, which is more a case of how the means are used rather than what they are used for (in fact he merely refers to ‘national goals’ above).

As for the civilian ends’ cited (or rather, preferred) by Maull and Duchêne are, “international cooperation, solidarity, domestication of international relations (or strengthening the rule of law in international relations), responsibility for the global environment, and the diffusion of equality, justice and tolerance”⁴⁰.

³⁷ Karen E. Smith, “Still Civilian Power EU?”, European Foreign Policy Unit Working Paper, 2005/1, p. 2.

³⁸ Ibid., p. 2.

³⁹ Hanns Maull, “Germany and Japan: The New Civilian Powers”, *Foreign Affairs*, Vol. 69, No. 5, 1990, pp. 92-93.

⁴⁰ Ibid., p. 3.

But the missing points to define the civilian power are the ends that a civilian power pursues and the way those means are used, and the process by which foreign policy is made namely civilian control over foreign (and defence) policymaking.

Persuasion is an important element must be used to qualify an international actor as a civilian power. But the main question is how and to what conditions it is used. Foreign policy instruments can be used in different ways: for instance “the ‘stick’ is not just military, nor is ‘the carrot’ solely economic”⁴¹. There is a variety of instruments range from “economic instruments that encompass the promise of aid, aid itself, sanctions, and so forth; likewise, military instruments range from the actual use of force to compel or deter an enemy to training and aiding militaries in other countries to ensuring defence of the national territory against a military invasion”⁴². Nonetheless, though a clear break between persuasion and coercion is not easy to establish. So identifying an international actor as a civilian power due to the fact that it uses only persuasion in its international relations is not sufficient and also the reverse is true when a military power is relevant.

The final element of the definition of civilian power “civilian control over foreign (and defence) policymaking” is discussed more rarely in the literature. For Hill, civilian models are willing “to envisage open diplomacy and to encourage a more sophisticated public discussion of foreign policy matters”⁴³ and Stavridis, also asserts that “democratic control over foreign policy-making is an important element in civilian power, though he does not develop this further”⁴⁴.

Smith thinks that “exactly what is meant by ‘democratic control’ is difficult to establish” in international relations. There are several questions may be asked when qualifying an international actor’s ‘decision making mechanism’ and ‘actions’ as democratic. In the case of the EU, “Does this mean the European Parliament

⁴¹ Ibid., p. 4.

⁴² Ibid., p. 4.

⁴³ Christopher Hill, “European Foreign Policy: Power Bloc, Civilian Model – or Flop?”, in Reinhardt Rummel, ed., *The Evolution of an International Actor*, Boulder, Westview Press, 1990.

⁴⁴ Stelios Stavridis, “Why the ‘Militarising’ of the European Union is Strengthening the Concept of a ‘Civilian Power Europe’”, Robert Schuman Centre Working Paper No. 2001/17, European University Institute, Florence, 2001, p. 9.

should have veto power over EU foreign policy initiatives? Or that national parliaments should? Or that all Foreign Affairs Council meetings should be public, or their minutes published? But again, a spectrum from open to secretive decision-making processes can be envisaged, as can the extent to which such processes are subject to civilian, democratic control or not”⁴⁵.

In short, by combining the four elements from Smith’s perspective, we can construct an ‘ideal type’: “a civilian power is an actor which uses civilian means for persuasion, to pursue civilian ends, and whose foreign policy-making process is subject to democratic control or public scrutiny. *All four elements are important*”⁴⁶.

2.2.1. Is the EU (still) a Civilian Power?

An important question whether a civilian power can use military means or acquiring or using a bit of military means still qualifies an actor as a civilian power leads to the inevitable question of how much military: where is the cut-off point? “It is much easier and more coherent to maintain a distinction between purely civilian means and military means. And so why keep up the pretence that EU is still civilian?”⁴⁷.

According to Smith⁴⁸:

Arguably, its passing should have occasioned more thought than it has – for the strengths of the EU civilian model were powerful and revolutionary in the long run. Law should replace power politics, thus fundamentally transforming the practice of international relations. Member states didn’t need military instruments – even in ‘reserve’ – in their dealings with each other. Now they have been converted to a vision in which a larger territorial unit must have military instruments to deal with others. Robert Cooper, for example, argues that the EU cannot protect its post-modern paradise much less spread its postmodern message if it is not prepared to play by the rules of the jungle outside it.

⁴⁵ Smith K. (2005), *Opcit.*, p. 5.

⁴⁶ *Ibid.*, p. 5.

⁴⁷ *Ibid.*, p. 10.

⁴⁸ *Ibid.*, p. 12.

But the promotion or dissemination of values and norms should not be, in principle, in contradiction with the development of military instruments or with the idea of civilian power concept. The EU would use military power and also military intervention would be required and sometimes is inevitable for the EU to act as a promoter of fundamental human rights and democracy. From this point of view it may be said that a normative power would use *primarily* civilian instruments (economic and diplomatic), and only as *a last resort*, military ones. The last resort argument is frequently used in literature to support the idea that using military instruments does not necessarily have to hamper the civilian and normative nature of the EU. The last resort argument means that the use of force will be only legitimate in exceptional cases. That is: “when all peaceful alternatives have been exhausted; when it is considered to be the only effective mean to achieve or protect civilian ends (that is, the casualties expected with the military intervention will be more reduced than if the intervention will not happen); when it is internationally legitimate, i.e. it is exerted under the mandate of a United Nations (UN) Security Council Resolution and with a broad international consensus”⁴⁹.

So if the EU is not a civilian power, how can we characterise it? And judge it? To an extent, the concept of ‘good international citizenship’ is helpful according to Smith⁵⁰:

In December 1988, the (then) Australian foreign minister, Gareth Evans, proclaimed that Australia aimed to contribute to the cause of ‘good international citizenship’. The concept has since been developed by Andrew Linklater, and, particularly with reference to British foreign policy, Tim Dunne and Nick Wheeler. For Linklater, liberal-cum-social democratic states ‘are obliged not only to comply with their basic moral and political principles by placing real constraints on self-interest; they are also obliged to promote,

⁴⁹ Ana E Juncos, “An effective Normative Power? The EU’s activities in Bosnia and Herzegovina (1991-2004)”, available at, www.lse.ac.uk/Depts/intrel/EFPC/Papers/JUNCOS-GARCIA.pdf.

⁵⁰ Smith K. (2005), *Op.Cit.*, p. 13.

For more information about the concept of good international citizenship see, Andrew Linklater, “What is a Good International Citizen”, in Keal, ed., *Ethics and Foreign Policy*; Nicholas J. Wheeler and Tim Dunne, “Good International Citizenship: A Third Way for British Foreign Policy”, *International Affairs*, Vol. 74, No. 4, 1998; and Tim Dunne and Nicholas J. Wheeler, “Blair’s Britain: A Force for Good in the World?”, in Karen E Smith and Margot Light, (ed.), *Ethics and Foreign Policy*, Cambridge, Cambridge University Press, 2001.

where circumstances permit, liberal-cum-social democratic principles in other societies and in the conduct of international relations more generally’.

But this kind of unrestricted and excessive demand of intervention may create risk of cultural imperialism. But, according to Smith, this can be reduced if “the emphasis is placed on proceeding where there is international consensus and if the exponents of good international citizenship are sensitive to issues of unwarranted exclusion” so “UN Security Council authorisation for humanitarian intervention is desirable but not required (and therefore, the Kosovo war was justifiable for good international citizens). We can easily take these conceptions of good international citizenship and apply them to particular EU foreign policies or EU foreign relations overall”⁵¹.

2.3. The EU as a Normative Power

2.3.1. Ian Manner’s Definition of the EU as a Normative Power

Whereas during the Cold War years Europe was generally be considered to be civilian out of necessity insofar as it was lacking the military instruments to wield its influence and was dependent on the US and North Atlantic Treaty Organization (NATO) for its security and defence , current supporters of the notion have a tendency to stand for a Europe civilian / normative by design. From the perspective of the latter point, the inherent qualities of the European Union provide the broad contours of its foreign policy behavior not the international context within which it operates.

Ian Mannings’s recent contribution to the debate is a convincing example of this sort of argument. From his point of view, the EU is a distinctive international actor, best encapsulated as a normative power which “has the ability to shape the conceptions of normal in international relations” through diffusing its own model abroad. In that sense, a normative power strives to impose on other actors what it considers as the appropriate way of behavior in international relations by relying

⁵¹ Ibid., p. 13.

basically on the power of norms not on economic or military instruments. To substantiate his point Manners cites the EU's international pursuit of the abolition of death penalty as a case study which according to him clearly illustrates the EU's potential to redefine international norms in its own image. Taking this example as a frame of reference, his presentation of the EU as a normative power "has an ontological quality to it- that the EU can be conceptualized as a changer of norms in the international system; a positivist quantity to it that the EU acts to change norms in the international system; and a normative quality to it that the EU should act to extend its norms into the international system"⁵².

"The central component of this normative power is that it exists as being different to pre-existing political forms and that this particular difference pre-disposes it to act in a normative way"⁵³. According to Manners, the normative difference of the EU stems from its historical context, hybrid polity, and political-legal constitution which distinguish it from contemporary global powers also diffusing their own norms and values. To put it bluntly, Manners attributes the basis of the EU's peculiar normative power to its "ontological distinctiveness" transcending traditional Westphalian conventions. Thus, from his point of view, "the most important factor shaping the international role of the EU is not what it does or what it says but what it is"⁵⁴.

Despite such assertive contentions, for Manners, his normative power concept supplements the inherently state-centric role representations of the EU as civilian or military power. Specifically, he argues that such traditional conceptualizations of the EU's international significance are imbued with references to similarities or differences between the Union and Westphalian nation states and are bound up with empirical assessments of the Union's material capabilities (military or non- military). In that regard, what seems innovative about the normative power Europe idea is its attempt to augment the above mentioned categorizations by underlining the

⁵² Ian Manners, "Normative Power Europe: A Contradiction in Terms", *Journal of Common Market Studies*, Vol. 40, No.2, 2002, p. 252.

⁵³ Ibid., p. 242.

⁵⁴ Ibid., p. 252.

overlooked ideational determinants of the EU's international behavior . From his point of view, the construction of EU on basis of some normative values is the primary source of its normatively textured system of external action. Thus, it also seems as if the normative power concept adds to the repertoire of EU's foreign policy instruments the force of opinions and values.

In one of his later works, Manners also specifies a typology of criterion underlying the three main conceptualizations of the EU's external action as civilian ,military and normative power. When picked in pairs, the main feature differentiating the traditional role representations of the EU as civilian and military is the emphasis on different practical **capabilities**; whereas the former relies exclusively on civilian means, the latter basically resorts to its military potency to exert its influence. As far as the civilian and normative power concepts are concerned, they could be differentiated from each other in terms of Westphalian **culturation** urging us to understand "the way in which the EU's normative power role breaks down the conventions and culture of the Westphalian system which continue to underpin the understandings of a civilian power role"⁵⁵. For Manners ,discussions on civilian power Europe take their point of departure the traditional interstate system built on Westphalian conventions but they ignore the crucial point of EU's potential to challenge this framework through its peculiar normativity. Finally, the normative and military powers are differentiated from each other in terms of their conflict **conciliation** techniques. Whereas a normative power opts to introduce a longer term conciliation of the parties by changing the norm of the conflict, a military power resorts to short term interventions to change the conflict itself⁵⁶. For a normative power, the underlying reasons of physical violence are rooted in structural conditions that could only be eliminated through entrenching norms which would render resort to force unthinkable for the parties concerned.

However Manners' conceptual category describing EU's international role does not seem to be devoid of problems. First of all, it argues that discussions on

⁵⁵ Manners (2002), Op.Cit., p. 390.

⁵⁶ Ian Manners, "Normative Power Europe Reconsidered" CIDEL Workshop Papers, Oslo, 22-23 October, 2004, p. 4.

civilian power Europe are embedded in an unhealthy concentration on capabilities used by the EU. However, this does not seem to be the case insofar as the quality of the ends pursued are also underlined repeatedly as a core feature by the current advocates of the notion. Secondly, it appears to exaggerate the EU's potential to challenge traditional Westphalian conventions by basing its argument upon a single case study (EU's international pursuit of the abolition of death penalty). Furthermore, although he maintains that the concept of normative power "is an attempt to refocus analysis away from the empirical emphasis on the EU's institutions and or policies, and towards including cognitive processes, with both substantive and symbolic components"⁵⁷, what he does in order to substantiate his whole argument is to scrutinize empirically a **human rights protection policy** pursued by the EU. Another problematic side of his formulation seems to be that, although the protection of human rights in other regions might impinge on the notion of sovereignty in some cases, the EU does not seem to be able to undertake and endure such a venture in those countries not having a direct link with it (Such as association and trade agreements, accession partnerships ect...). This brings us to the point that "the EU is only able to shape or change normative values when the target state is seeking to acquire some economic or political advantage from good relations with the EU"⁵⁸. So its normative power seems to be linked to its hard power in the shape of economic carrots and sticks not to its ontological distinctiveness⁵⁹.

After these discussions about the borrowing of the normative Europe idea, it is helpful to analyse the basic arguments of Sjursen about the nature of the EU and assessment standards for examining the EU's international role. According to Sjursen, "the EU is not only a "*civilian*" power but that it is (also) a "*normative*" or "*civilising*" power in the international system – promoting values and norms in the international system".⁶⁰ But it is not sufficient to support the idea of normative power EU, we need to establish criteria and assessment standards for examining the EU's

⁵⁷ Manners (2002), Op.cit., p. 239

⁵⁸ Price (2004), Op.cit., p. 8.

⁵⁹ Ibid., p. 8.

⁶⁰ Sjursen (2005), Op.Cit., p. 2.

international role and its putative normative dimension by analysing Sjursen's perspective.

What are the particular features of a "normative" or "civilising" power and how can we know that it is a "positive force" in international affairs. To answer these questions we may look at three dimensions which the EU tends to⁶¹:

- Firstly, it contains a claim about the EU being a different and thus novel kind of power in the international system.
- Secondly, this difference or novelty consists in the EU's pursuit of the spread of norms and values.
- Thirdly, this characteristic of the EU is seen as linked to the type of organisation or polity that the EU is. The EU is a "force for the good" needs to be further specified, scrutinised and accounted for. The main aim is to develop a clearer hypothesis of what might be the core features of such a "normative" power

We can say that the developing military means, ability to use military force or to threaten to do so would not be contrary to a "civilising" or "normative" power. Furthermore, civilian instruments, although often defined and seen as "soft" instruments, are not always benign and neither are they always non-coercive. As Sjursen clarifies⁶²:

we know from the very recent example of Iraq that economic sanctions can cause serious harm, and that their effects are often indiscriminate. They may hit civilians and in particular children very hard. So the use of non-military instruments can not on their own be enough to identify a polity as a "normative" power. But the main problem is, with or without military capabilities, how we can know that "a "civilian power" is actually "doing good" as this concept seems to imply".

⁶¹ Ibid., p. 3.

⁶² Sjursen (2005), Op.Cit., pp. 7-8

2.3.2. Self-binding through law, Universalization and Multilateralism

The principle of universalisation may lead us to make the necessary distinctions that make it possible to evaluate the legitimacy of initiatives in particular cases. However, it is not a sufficiently strong indicator of ‘normative power’. A stronger indicator might be “what kind of legal principles the EU relies on in its external initiatives.” There is always a risk that actors will follow their own interests as Young demonstrated, even if they know that this may harm others, In order to avoid such risks, common rules are necessary: “The law functions as a system of action that makes it possible to implement moral duties or commitments. At the same time it alleviates suspicions of hypocrisy and ensures consistency in the application and pursuit of norms. To “act in a normative way” would then be to act in accordance with international law”⁶³.

The EU’s main aim is thus described to be to develop a stronger international society, as well as well functioning international institutions and a rule-based international order. Membership in key international institutions is to be encouraged and regional organisations are considered important in the effort to strengthen global governance: “an emphasis on multilateralism appears to fit with the concept of “normative” or “civilising” power and to give us an indicator of what a “normative” power might be”⁶⁴.

But arbitrariness is also visible in the EU’s foreign and security policy. In order to overcome this problem “all international relations would have to be subordinated to a common judicial order that would transform the parameters of power politics and redefine the concept of sovereignty”⁶⁵.

⁶³ Ibid., p. 17.

⁶⁴ Ibid., p. 18.

⁶⁵ Ibid., p. 19.

The other problem is that vulnerability of multilateral arrangement. The vulnerability is linked to “the absence of the possibility of sanctions within a multilateral system—the absence of the mutual commitment of all the member states to be legally bound by the principles of multilateralism”⁶⁶. So it is clear that solely focusing upon promoting multilateralism might not be sufficient to define “normative power Europe”. The core feature of a “normative” or “civilising” power would be that “it acts in order to transform the parameters of power politics through a focus on the international legal system, rather than to write itself into the existing international system through an emphasis on multilateralism”⁶⁷.

2.4. Empirical Evidences Substantiating the Categorization of the EU as a Normative Power

In order to define and categorize the EU as a normative power, empirical evidences which reflect its coherence from decision making mechanisms to actions-relationship and harmony between the means and ends- must be analysed to substantiate its validity. Without empirical analysis this categorization and definition may be incomplete and insufficient. Because of that reasons three empirical evidences will be analysed in this part of the thesis. These cases are Bosnia and Herzegovina, The Euro-Mediterranean Partnership

The EU in Bosnia and Herzegovina and its role may be summarised as “from failure to success; from civilian to normative power” and scrutinised under three main periods: The first period (1991-1995): The EU, an ineffective civilian power; the second period (1996-1999): a civilian (economic) power without strategy and the third period (1999-2005): an effective normative power?

The first period (1991-1995) was “the first test for the embryonic Common Foreign and Security Policy (CFSP)” so “the first stages of the crisis in former Yugoslavia showed the limitations of the newly-created CFSP”. And it is important

⁶⁶ Ibid., p. 19.

⁶⁷ Ibid., p. 22.

that traditional instruments of the EC (economic assistance, prospects of association and membership) were initiated too late, when the crisis in former Yugoslavia was inevitable. And also together with the creation of the Contact Group (1994), the role of the EU was completely diminished (not to say completely absent) from the table of negotiations and it was put in a secondary place and importance. But the main role of the EU will come after the Peace Agreement, in the process to assist post-conflict reconstruction. At the Madrid European Council (December 1995), the EU expressed its commitment to contribute to the implementation of the civilian aspects of the peace agreement⁶⁸.

Of the lessons of the Bosnian conflict was that “ ‘real wars’ did not disappear from the continent and that they could erupt at two-hour flight from Brussels and civilian instruments would not be enough if an effective action was to be achieved”⁶⁹.

In the second period (1996-1999) the EU demonstrated for the first time in the region “political and economic conditionality”. That is to say, the economic assistance under the initiatives was accorded under the terms of the respect of human rights, democracy and the rule of law. “The objective would be to encourage cooperation in the region, providing a long-term structural solution to the conflicts in the Balkans”. But still the EU was not in a position of leadership in the region. “The US intervention during the war had displaced the EU to a secondary role. NATO’s intervention had reinforced its leadership as the major actor in the security field in Europe”⁷⁰.

Third period (1999-2005) may be a case study to answer the question that did the EU act as an effective normative power in the region? Since St. Malo (1998), the approach within the EU would start to change when the United Kingdom (UK) and France firstly agreed on the need to develop EU’s military capabilities, and with the events in Kosovo. The EU decided to launch the Stabilisation and Association

⁶⁸ Juncos (2005), Op.Cit., pp. 8-9.

⁶⁹ Ibid., p. 10.

⁷⁰ Ibid., pp. 10-11.

Process (SAP), which still today continues to be the main EU's strategy in the region. But the main lesson from this period was that "if the EU wanted to be a credible and effective international actor and a promoter of norms in its neighbouring area, it needed to be able to back up its diplomacy with military coercion".⁷¹

To sum up, the effectiveness of the EU in Bosnia and Herzegovina case may be evaluated as⁷²:

Bosnia and Herzegovina allow us to test how effective has been the EU in promoting democratic principles. The EU is aware of the power of its "membership carrot" in order to promote EU's norms. The prospect of becoming EU member has served as an incentive/plea to achieve agreement among local politicians. There are still inconsistencies and problems of "double standards" in pursuing the objectives of democracy, human rights and rule of law, what can affect the effectiveness of its external action. The effectiveness of the EU in the country is also determined by the perceptions of the EU among the local population and politicians and depends on domestic variables (receptiveness from domestic political forces, strength of civil society, degree of decentralisation...). If the EU does not send clear messages supporting the next enlargement, this could also reduce the effectiveness of the EU and the pace of reforms in the Western Balkans region.

The Euro-Mediterranean Partnership may be analysed whether it is as an instance of normative power Europe or not. "The Barcelona Declaration of 1995 itself divides the Partnership into three 'baskets', titled 'political and security partnership: establishing a common area of peace and stability', 'economic and financial partnership: creating an area of shared prosperity', and 'partnership in social, cultural and human affairs: developing human resources, promoting understanding between cultures and exchanges between civil societies'". All of these baskets are clearly reflect the civilian nature and aspect of the EU, and declaration was an attempt "to civilise relationships between the countries around the Mediterranean". The baskets are also "infused with normative power in particular in that they bind the signatories (all EU member states and states bordering the Mediterranean except Libya) to the rule of law, democracy, human rights and

⁷¹ Ibid., pp. 11-13.

⁷² Ibid., pp. 14-16.

fundamental freedoms, societal diversity and pluralism – to name only a few”⁷³. Despite of its character binding EU’s own norms and values to the other Mediterranean countries, it is still debated that without an absolute carrot of membership, implementation and internalisation of these norms and values by these target countries are hard to imagine.

And also Diez saw the Barcelona Declaration as a solely practice of othering (in the sense of imposing standards regarded as universal and representing others as violating those standards)⁷⁴:

Since, on the basis of the Copenhagen Criteria, the EU member states see themselves as having fulfilled the principles written into the Declaration, the principles’ explicit incorporation makes sense primarily as a means to exert influence on a set of others that do not stick to them. The direction of the Declaration finally gets into the open when the issue of migration is addressed: ‘the partners, aware of their responsibility for readmission, agree do adopt the relevant provisions and measures . . . in order to readmit their nationals who are in an illegal situation’.

2.5. Constructing the EU’s Normative Identity through Discourse

Some would argue that multilateralism has several problems and implications in itself. Why? “Due to profound cultural differences that make it impossible to come to a rational agreement on universally acceptable norms or create an cosmopolitan law”. Consequently, the best option is “recognition of the other as different – and non-interference is the logical, and only acceptable, corollary”. This is preferable according to Diez because “it reduces the possibility to legitimise harmful interference with the other”⁷⁵.

The discussion of Young’s contribution to the normative power debate illustrates that normative power is not an objective category. Instead, it is a practice of discursive representation. But the main question is “how it is constructed?”. So

⁷³ Thomas Diez, “Constructing the Self and Changing Others: Reconsidering ‘Normative Power Europe’”, *Millennium: Journal of International Studies*, 33/3, 2005, pp. 613-636.

⁷⁴ *Ibid.*, p. 20.

⁷⁵ Sjursen (2005), *Op.Cit.*, pp. 20-21.

“this shifts the focus of the analysis from a discussion of normative power as an empirical phenomenon to a second-order analysis of the power inherent in the representation of ‘normative power Europe’”⁷⁶.

Before analysing the construction of the EU’s normative identity through discourse, it is helpful to summarise some of the strategies of constructing ‘self’ and ‘other’ in international politics in order to trace them in articulations of normative power Europe⁷⁷:

- Representation of the other as an existential threat (‘securitisation’). This practice has been highlighted and analysed by the Copenhagen School of security studies.
- Representation of the other as inferior. In this weaker version of ‘othering’, the self is simply constructed as superior to the other. In practices of Orientalism, for instance, the other becomes the exotic; as such the other is feted, but at the same time looked down upon.
- Representation of the other as violating universal principles. This is a stronger variation of the second strategy. Here, however, the standards of the self are not simply seen as superior, but of universal validity, with the consequence that the other should be convinced or otherwise brought to accept the principles of the self.
- Representation of the other as different. This fourth strategy of othering differs from the previous three in that it does not place an obvious value-judgement on the other

It may be supported that the EU chooses the third strategy “representation of the other as violating universal principles” while it is constructing its own identity. If we analyse the Copenhagen criteria – the criteria setting the political, economic and administrative standards for the EU membership applicants, will be discussed in detail in the following chapter of this thesis– they are a prominent example for this in

⁷⁶ Diez, *Op.Cit.*, pp. 613-636.

⁷⁷ *Ibid.*, p. 17.

that they “spelled out what the EU is (or is supposed to be) and therefore what candidate countries should become”. This is particularly evident “in the case of minority rights; part of the political criteria which had not previously been accepted as a matter of core European principles, but which through the insertion into the Copenhagen Criteria became part of the representation of European – or rather EU – identity”⁷⁸. And again as it is mentioned above in Turkish case, Turkey’s position ‘in-between’ allows the EU now on the one hand to wield its influence over Turkey, on the other hand to construct its difference.

At this point it is helpful to look at Diez’s core arguments and some specific claims. According to him first of all “the concept of ‘normative power’, rather than being distinct from ‘civilian power’, is already embedded in the latter (although ‘civilian power’ also specifies a particular kind of ‘normative power’)” and also he emphasised that “the discourse on ‘normative power Europe’ is an important practice of European identity construction”.⁷⁹ In the case of ‘normative power Europe’, he suggests some political implications. According to him “if those norms however are projected without self-reflection, the identity construction that they entail allows the continued violation of the norms within the EU, as the paradoxes pointed out in the discussion of the Barcelona Declaration indicate”. It is clear that such an “unreflexive projection of norms and construction of European identity risks being undermined by military power”⁸⁰.

2.5.1. European Security Strategy Paper

When we consider the EU’s Security Strategy (ESS) of December 2003 (European Council 2003) to make a discourse analysis about the civilian or normative nature of the EU and to see if there is any strong emphasis on military power or ability to use it, it may be said that in the ESS the so-called “new threats” to European security are reviewed and analysed, but it is clear that the use of military force is still not considered the first option. Rather the security strategy seems to

⁷⁸ Ibid., pp. 18-19.

⁷⁹ Ibid., p. 25.

⁸⁰ Ibid., p. 21.

continue the tradition of “civilian power” in the sense that it argues not only that the “new threats” are not purely military, as they were considered to be during the Cold War, but also that most of them can not be tackled by military means⁸¹.

Economic instruments are stressed as important to ensure reconstruction and so is civilian crisis management. Trade and development policies are highlighted as powerful tools to promote reform and ensure stability. And assistance programmes, conditionality and targeted trade measures are underlined as important elements in the EU's security strategy. Such initiatives are part of what the ESS defines as “pre-emptive engagement” – aimed at ensuring “a world which is seen as offering justice and opportunity for everyone” (European Council 2003). Consequently, the EU does not seem to have abandoned the belief in civilian instruments even though its potential ability to do so if it wishes to is increasing⁸².

Multilateralism is at the core of the ESS, which commits the EU to work for “an effective multilateral system” (European Council 2003). The EU's objective is thus described to be to develop a stronger international society, as well as well functioning international institutions and a rule-based international order. “Membership in key international institutions is to be encouraged and regional organisations are considered important in the effort to strengthen global governance. The cornerstone of a law based international order is according to the ESS the UN. Its role must be strengthened; it must be equipped to fulfil its responsibilities and to act effectively”.⁸³ But Robert Kagan argues forcefully that “the Europeans are hypocritical because they insisted on UN Security Council approval of the Iraq war but were willing to bypass the UN Security Council when they wanted action in Kosovo”.⁸⁴ The European Security Strategy declares that the UN Security Council has the primary responsibility for maintaining peace and security, but it is not clear how crucial UN Security Council authorisation is for the EU's enforcement of ‘effective multilateralism’. Yet this thorny issue could determine whether the rest of

⁸¹ Sjursen (2005), *Op.Cit.*, p. 6-7.

⁸² *Ibid.*, p. 7.

⁸³ *Ibid.*, p. 17.

⁸⁴ Smith K. (2005), *Op.Cit.*, p. 16.

the world sees the EU as a relatively benign power or one inclined to break international rules when it sees fit (or even to try to reshape those rules, along with other northern/rich countries, to suit its own interests). Again, EU behaviour in this respect might be considered to be quite far from that of an ideal-type civilian power⁸⁵.

2.6. Analyzing the EU's Distinctive Identity through Realist Perspective

The discourse on the Normative Power Europe idea is basically built on the premises of liberal-idealist interpretations of international relations emphasizing the prominence of soft power as a means of influence in world politics. It also borrows some elements from constructivist school in its attempt to stress the ideational determinants of the EU's international behavior. Such accounts' approach to EU's international role is largely shaped by their actor-based ontologies which are dismissed as being reductionist in neorealist understanding. Because of their emphasis on the role of values and norms in the external relations of the Union, they are amenable to some normatively biased assessments of EU's international significance. In contrast, Price, in his article argues that system level analysis thoroughly embraced by neo-realism could provide considerable insights into the analysis of EU's foreign policy by emphasizing the underestimated systemic determinants of the phenomena. For instance, in accounting for the origins and development of the EC, he contends that the crucial permissive condition that made the European integration process succeed in the post 1945 period was bipolarity⁸⁶. From a neo-realist perspective, this was the case because, in bipolar configurations, cooperation between states is easier to achieve as the concerns over relative gains are relaxed and security competition between them are waned⁸⁷. Thus in the post second World War period, there appeared an hospitable environment for the development of a common approach to milieu shaping among the members of the EC under the framework of EPC. Since security related issues of the western Europe were tackled

⁸⁵ Ibid., p. 16.

⁸⁶ Adrian Hyde Price, "Normative Power Europe Idea: A Realist Critique", *Journal of European Public Policy*, Vol.13, No.2, 2006, pp. 224-225.

⁸⁷ Ibid., p. 224.

in other fora during that period, the EC captured an opportunity for concentrating on second order concerns and hence maintained a predominantly civilian posture in the international scene.

However, the end of the Cold War marked the transformation of the structure of the international system from one of bipolarity to unipolarity. The US was left as the only superpower commanding a huge portion of the world's power resources and it started to exercise its hegemonic power over the Western hemisphere. According to Price, its main concern was not become a global hegemon but to perpetuate its relative superiority over the other great powers of the time. "This largely accounts for the ambivalence found in Washington towards the European integration process: While the US would welcome a more cohesive and effective ally with which to burden-share, there is concern that a more integrated Europe would be less willing to acquiescence to US leadership"⁸⁸.

Unipolarity also had some consequences for the transatlantic relations. The US started to devote more of its energy and resources to further its narrowly defined national interests and pay less attention to the concerns of its European allies, as the events in the Balkans in early 1990s testify to. Among the Western Europeans, including even the traditional Atlanticist countries, there arose serious doubts about the reliability of the US support in crisis situations erupting in their immediate vicinity. According to Price, this constituted the external stimulus for the launch of the European Security and Defense Policy (ESDP) which from the perspective of the Europeans would provide them with the wherewithal to address their security concerns rather autonomously.

Although the ambivalence over transatlantic relations engendered by (global) bipolarity acted as the catalyst for the emergence of ESDP, what eased security and defence cooperation in Western Europe in the post Cold War period was regional balanced multipolarity. According to Price, in a balanced multipolar Europe, characterized by the symmetrical distribution of power among the great powers,

⁸⁸ Ibid., p. 228.

military cooperation between the members of the Union became easier to achieve since none of them has had the capacity to make a credible bid for regional hegemony. In that context, ESDP was “established as an institutional and procedural framework for limited security cooperation in order to collectively shape the Union’s external milieu, using military coercion to back up its diplomacy”⁸⁹. For Price, its development is testimony to the inaptitude of the purely civilian power Europe to intervene in crisis situations emanating from its backyard. Nonetheless he predicts that , ESDP would reinforce the civilianizing role of the EU by adding to its armoury of foreign policy instruments a limited martial potency.

2.7. Before Moving on the Next Chapter: Why Turkey is a Vital Case to test the Effectiveness of the EU’s Exporting its Norms as a Normative Power?

As summary it may be said that the EU is not only a “civilian” power (in the sense that it does not possess military capabilities) but that it is (also) a “civilising” or “normative” power in the international system needs to be further specified⁹⁰:

In fact, it could look as if much of the argument about the EU as a “civilian” or “normative” power actually originated in a desire to demonstrate that the EU did/does play a relevant role in the international system despite the fact that a) it is not a state; and b) it does not have all the traditional foreign policy tools of a state, and in particular military capabilities.

The EU is one of the first of any Western state or international organisation that introduced human rights, democracy and the rule of law clauses into its international agreements with the third countries. The EU has also classified these external partners into groups while trying to export its own values. During this process the instruments, strategies and also the policies were similar across these groups of countries but the mechanisms and incentives to promote compliance differ with type of the third country. Börzel and Risse analyze such a kind of classification

⁸⁹ Ibid., p. 231.

⁹⁰ Sjursen (2005), Op.Cit., p. 23.

of countries which the EU deals with and also the strategies and policies the EU follows and implements. According to them the EU's instruments' most remarkable feature is its similarity across regions. They stress that the EU tries to implement one single cultural script that it uses to promote democracy, human rights and the rule of law across the globe. They mainly explain their thesis in the article named as "One Size Fits All: EU Policies for the Promotional Human Rights, Democracy and the Rule of Law." According to them the EU created a coherent approach towards different types of countries (group of countries) and implemented its policies with the help of 'learning by doing' understanding. They also believe that the approach of the EU's promotional democracy, rule of law and human rights represents its distinctive role in international relations. It uses soft security and soft power instruments while promoting its own democracy model to the third countries and also to the whole globe⁹¹.

It will be useful to analyze that 'the grouping of countries' while 'exporting its norms as a normative power' with the instruments and mechanisms which were created and developed. During this 'learning by doing' process such a kind of analyze will give opportunity us to see how the EU shaped and developed its own policies and mechanisms about human rights issues and finally how they implemented against third countries. Before moving on the next chapter of thesis Turkey's place will be obtained among these groups and why only human rights conditionality preferred to analyze in this thesis will be explained.

As has been noted in the previous part of this chapter; the EU as a normative power which asserts being an efficient and distinctive actor in the international arena, preferred placing the countries into groups while exporting its own norms and values. The EU has a complex and several programs for democracy promotion in place managing all its external relations with third countries. This includes the so-called 'circle of friends' and the 'neighborhood policies' towards Russia, the so-called

⁹¹ Tanja A. Börzel and Thomas Risse, "One Size Fits All: EU Policies for the Promotional Human Rights, Democracy and the Rule of Law", Prepared for the Workshop on Democracy Promotion, Oct. 4-5, 2004, Center for Development, Democracy, and the Rule of Law, Stanford University, available at, http://www.atasp.de/downloads/tandt_stanford_final.pdf.

Newly Independent States (NIS = former Soviet Republics, minus the new EU members in the Baltics, of course), the Balkans, the Southern Mediterranean countries, but also EU relations with Africa, Latin America and Asia. The instruments and mechanisms used and developed by the EU to promote human rights, democracy, the rule of law and ‘good governance’ look interestingly similar across the world. In addition to this, “countries with an accession perspective have to comply with the Copenhagen criteria of 1993 focusing on democracy, the rule of law, human rights and the protection of minorities *before* they are entitled to enter accession negotiations”. So, “the strategies and policies to promote democracy are similar, and the mechanisms and incentives to promote compliance vary only slightly with type of third country (accession, association, partner, ‘circle of friends’, other third world countries). In fact, the EU follows quite clearly a specific cultural script”⁹².

It is argued that one of the reasons of the EU export its norms to the third countries is the belief that the world can be shaped according to the EU’s own norms and values. The EU’s democracy model and welfare state understanding can be exported to the world. The initial formulation of this policy is regarded as a kind of ‘top-down approach’⁹³. It means that the EU developed some policies and instruments and also diffused and exported them by imposing on the third countries’ governments to regulate and reshape their local policies and legislations according to the EU’s ones. But it is clear that the success of the implementation of these policies depends on the recipient countries intention which is triggered by a full of support coming from the Non-Governmental Organizations (NGOs), civil society and the private sector. In other words reforms must be implemented and wholeheartedly supported by the all layers of the society. The socialisation of the reforms in the recipient country speed up the implementation of reforms. Such a kind of process began with putting some clauses related to human rights, rule of law and democracy promotion into trade agreements to a whole economic, political and social transformation of recipient country.

⁹² Ibid., p. 2.

⁹³ Ibid., p. 3.

In sum, this process is the name of the result of the EU's 'learning by doing' process. Börzel and Risse indicate that the policies, regulations and strategies developed through an incremental process of 'learning by doing' rather than a great master plan. The instruments and mechanisms adopted were developed for concurrently to the Eastern enlargement process, to Russia, the NIS countries, the Mediterranean etc. However, governing these programs turned out to be extremely difficult because of the lack of human and financial resources provided by the member states to the EU. As a result, the EU has recently decentralized the administration and management of the several programs and has managed to delegate administrative tasks to the local 'EU delegations' on the ground (EU jargon for 'EU embassies' in member states and third countries)⁹⁴.

According to Börzel and Risse, the EU as a normative power used three instruments while diffusing its norms⁹⁵:

These instruments differ mainly with regard to the steering mechanisms by which democracy and human rights are being diffused. First, 'political dialogues' use persuasion and learning strategies. Second, political conditionality clauses try to manipulate cost-benefit calculations through creating incentive structures (positive and negative). Finally, there are various programs in place geared toward capacity-building for institutionalizing democracy, human rights and the rule of law.

During 1990s, the EU has embarked on a major effort at 'value export' that tries to systematically incorporate the promotion of a specific European version democracy into its external relations with the rest of the world. In this regard, the EU is surprisingly explicit about promoting a particular democratic self-understanding and identity distinguishing itself from, e.g., the US version of democracy and capitalism. Examples for such identity markers in the human rights area include the opposition to the death penalty and an emphasis on social and economic rights. As to democracy promotion, the EU appears to distinguish itself from similar US efforts by focusing more strongly on the formation of political associations including party systems and civil society. Concerning regional cooperation, the EU tries to promote

⁹⁴ Ibid., p. 3.

⁹⁵ Ibid., pp. 26-28

its own model of regional integration, i.e., including strong supranational institutions and going beyond mere free trade areas. In Latin America, for example, the US and the EU seem to compete in advertising their preferred models of regional integration.

Central and Eastern European Countries (CEECs), one of the group of countries which the EU exported its norms after the end of Cold War via its enlargement policy, is the most successful case where the EU diffused its values clearly, directly and successfully. While doing this, the EU used its ‘membership carrot’ as the vital incentive towards these countries to realise an efficient reform process in CEECs. The relations between Turkey and the EU, as a sui-generis case that the EU export its norms, may be analyzed in the light of the EU’s enlargement policy implemented towards CEECs.

The relations between Turkey and the EU have evolved to a situation of showing such an important development in the international politics. This example indicates the transformation of the Turkish political system, which has mainly directed by the growing prospect of the EU membership especially after the 1999 Helsinki decision as a turning point in relations between Turkey and the EU. The developments in the post-Helsinki era have proved that the monist structure of the nation-state is more open than ever since to the influences coming from the international arena. In essential, with the help of these evaluations, the transformation is occurring not only in the sovereignty conception of the nation-state directed to outside, but also within the internal political structure of the state by forcing it towards a more transparent and pluralist type of governance.

Following the same method of Dölek, within this general framework, this thesis tries to develop an attempt to analyse the dynamics of the notion of democratization from outside by concentrating on the case study of Turkey – EU relations. Accepting that the nature of the issue is too wide to analyse and knowing the fact that the notion of democratization is multi-dimensional in nature, the thesis applies the theoretical tool of membership conditionality, as one of the ways for democracy promotion by an external actor, to the relations between the EU and

Turkey. Dealing with more specific terms, the thesis analyzes the issue of membership conditionality with a special emphasis on the human rights as it has become *sine qua non* for the membership. Therefore, the central objective in this thesis is to understand the dynamics human rights conditionality in the relations of the EU and Turkey of transformation in Turkish human rights regime with reference to the theoretical tool of membership conditionality, which has evolved within the EU's enlargement history⁹⁶.

⁹⁶ Çağlar Dölek, “ Human Rights Conditionality In the Relations of the EU and Turkey”, Research Paper, 2007, pp. 1-38, available at, <http://www.turkishweekly.net/pdf/CaglarDolek-HR-FrameworkAnalysis.pdf>.

CHAPTER III

3. THE THEORETICAL FRAMEWORK OF THE EU'S HUMAN RIGHTS CONDITIONALITY

It is widely accepted that issues of human rights, liberty, democracy promotion and minority rights have begun to be discussed in international politics and also become of international concern after the end of cold war. Several bodies of legal norms as well as political instruments were emerged to regulate the governments' treatment of their citizens⁹⁷. In connection with the desire of the European Union (EU) to transform itself from a purely economic entity to an international actor with a credible political dimension, as it is discussed in detail previous chapter of this thesis, promoting human rights and democratization in the third countries commenced to constitute a significant place in its external relations especially since the early 1990s.

Although disentangling other democratization –inducing factors from the EU's human rights and democratic conditionality appears to be a quite intractable task, the EU is generally considered as the catalyst or the anchor of the reform process in the candidate countries aspiring to become members. In the third chapter of this thesis, a brief account of the development of the EU's human rights conditionality vis-à-vis the third countries and the typology of the EU's human rights conditionality within the framework of enlargement will be given.

⁹⁷ Saban Kardaş, "Human Rights and Democracy Promotion: The Case of Turkey-EU Relations", *Alternatives*, Vol. 1, No. 3, Fall 2002, p. 1.

3.1. The Conditions of Conditionality (Ex Post and Ex Ante Conditionality): Typology of the EU's Human Rights Conditionality within the Framework of Enlargement

“Conditionality” as a generally used term especially after the end of cold war, has begun to be used by several international actors and in their policy tools. Conditionality, in general terms, is “a tool used by especially international financial institutions such as International Monetary Fund (IMF) and World Bank, to ensure the effective use of loans”⁹⁸. But this term today is widely known as the main concept of the EU’s “membership” in the area of the EU enlargement.

Conditionality may be defined as a kind of tool which generally “refers to the linking of perceived benefits (e.g. political support, economic aid , membership in an organization) to the fulfillment of a certain program”⁹⁹. When we analyze the term from the EU’s perspective, it is seen that, through exploiting its power of attraction, the Union induces, urges, and threatens to coerce the applicants to bring about a desired policy change in a range of issue areas including the promotion of human rights and democratic principles.

By attempting to do so, the basic *mechanisms* that it has at its disposal are simply designated as the **carrots** and **sticks**. Whereas the former is an instrument of **ex ante conditionality** or the **positive conditionality** referring to the fulfillment of stipulated promises by the Union as soon as the candidate honors its pre-determined obligations. The later is basically an element of **ex post** or the **negative conditionality** providing the Union with the wherewithal to withhold or suspend the rewards should the applicant falls short of complying with its stated commitments. That is “the relationship based on ex post conditionality indicates a situation where

⁹⁸ İhsan İkizer, “Does the EU Conditionality Still Have an Incentive Power over Turkey?”, available at, http://www.universite-toplum.org/pdf/pdf_UT_333.pdf

⁹⁹ Karen Smith, “The Evolution and Application of EU Membership Conditionality” in M. Cremona (ed), *The Future of Europe : Integration and Enlargement*, Routledge, 2004, p. 108.

conditions appear once the parties have concluded a treaty agreement or any other contractual relationship”¹⁰⁰.

In negative or ex post conditionality relationship, the parties (actors and recipients) are behaving according to the rules or conditions which were previously existed within an agreement. The basic point of this relationship indicates that the ‘leverage of stick’ is the vital tool shaping the relations between the actor and the recipient. That is, the actor is entitled to punish the recipient under the basis of the agreement if the latter does not comply with the existing rules. The punishment might vary from the reduction of benefits to the totally suspension of them¹⁰¹. In essential since 1980s, the European Community (EC)/EU has been putting ‘human rights clauses’ in those agreements concluded with third countries in order to create legal grounds for suspension of the agreement on the basis of systematic violations of human rights by the recipient state¹⁰².

The ex ante conditionality works on the basis of “the actor country’s promise of benefits- development aid, international recognition, commercial links, etc. - which are to be distributed when the recipient country meets the stipulated conditions”¹⁰³.

On the other hand, the ex ante conditionality or positive conditionality, the relationship works on the model of “reinforcement by reward”. Within this kind of relationship defined under the framework of positive conditionality, “the cost-benefit calculations of the target state are not changed by the intervention of the actor state, either with coercive means or with the supportive ones. Therefore, this kind of

¹⁰⁰ Elena Fierro, *The EU’s Approach to Human Rights Conditionality in Practice*, The Hague, Martinus Nijhoff, 2003, p. 8.

¹⁰¹ Çağlar Dölek, “Human Rights Conditionality In the Relations of the EU and Turkey”, Research Paper, 2007, pp. 4-5, available at, <http://www.turkishweekly.net/pdf/CaglarDolek-HR-FrameworkAnalysis.pdf>.

¹⁰² Ibid. p. 5.

There are many examples of the treaties that were bilaterally terminated by the EU because of the violations of minority rights (the Republic of Moldova;1995), of women’s rights (Pakistan;2003), of aboriginal land rights (Australia;1998), of indigenous rights (Chile;2003), of the right to travel, freedom of speech and to be politically active (Tunisia;1999) etc.

¹⁰³ Piotri Zalewski, “Sticks, Carrots and Great Expectations: Human Rights Conditionality and Turkey’s Path Towards Membership of the EU”, *Center for International Relations*, Warsaw, 09/04, p. 3.

relationship does not contain extra-costs on the recipient ('reinforcement by punishment') or unconditional assistance ('reinforcement by support')"¹⁰⁴.

With this said, it should be pointed out that the Union has a penchant for employing carrots while exercising its democratic conditionality vis-a-vis the candidates insofar as the carrots, especially *the golden carrot of membership*, prove to be far more hospitable to spur a positive development in the related state of affairs of the candidate. On the whole, "the EU's democratic conditionality can generally be characterized as **reactive reinforcement** whereby the Union merely reacts to the fulfillment or non-fulfillment of its conditions by granting or withholding rewards but does not proactively punish or support non-compliant states"¹⁰⁵.

While exercising its political conditionality towards the target countries (in our case, a state aspiring to become a member of the Union), the EU makes use of **intergovernmental** and **trans-governmental channels** to foster their democratization processes. Through the intergovernmental channel, the Union, directly contacts with the government of the state in question which in turn weighs the costs of convergence with the Unions human rights and democratic conditions against the rewards offered. If the overall balance favors compliance with the Union's stipulations, it is assumed that the target government simply succumbs to the demands of the Union in this realm. This simple **cost benefit analysis** constitutes the underlying **logic of the material bargaining mechanism of the Union's conditionality**. On the other hand, via the trans-governmental channel, the Union basically targets the societal actors, elites and Non-Governmental Organizations (NGOs) in the country in question that are seemingly more receptive to the social influence mechanism of the Unions's human rights conditionality. In this case "the rewards offered are social, such as international recognition and legitimacy, a high status , or a positive image"¹⁰⁶.

¹⁰⁴ Frank Schimmelfennig, Stefan Engert and Heiko Knobel, "Costs, Commitment and Compliance: The Impact of the EU Democratic Conditionality on Latvia, Slovakia and Turkey", *JCMS*, Vol. 41, No. 2, 2003, p. 497.

¹⁰⁵ Frank Schimmelfennig, "The Conditions of Conditionality: The Impact of the EU on Democracy and Human Rights in European Non-member States", Workshop 4, "Enlargement and European Governance", ECPR, March 2002, p. 4.

¹⁰⁶ *Ibid.*, p. 6.

To the extent that these societal actors identify themselves with the Union's norms values and practices, their propensity to induce their governments to comply with the human rights and democratic conditions of the organization increase. Although, it seems as if the governmental actors are more involved and interested in the material bargaining element of the Union's conditionality, the social influence mechanism is also considered as a relevant factor in their relationship.

The above mentioned material bargaining mechanism of the EU's human rights and democratic conditionality seems to reinforce the **“logic of consequentiality”** (do x to get y) as the driving factor behind the reform process in the candidate countries. In such a case, the target state merely fulfils the conditions of the Union to get the benefits but does not attempt to internalize the core values and norms that should underpin the reform process. On the other side of the coin, the social influence mechanism of the EU's democratic conditionality appear to be in an intimate connection with the **“logic of appropriateness”** (do x because it is the right thing to do) which “stress a genuine change in values and beliefs, fostered by socialization, (re)education and learning”¹⁰⁷ that should constitute the backbone of the reform process in the candidate countries. Since the effectiveness of the social influence mechanism tend to increase when the societal actors and the government of the targeted state start to identify themselves with the Union's state-hood ,the logic of appropriateness sets the stage for the accomplishment of this goal by urging an approximation between the core values and norms of the EU with that of the candidate. Eventually, “one might see societal or political Europeanization (of the candidate coming out of this scheme),meaning that policy changes primarily as a response to altered domestic political conditions conducive to reform”¹⁰⁸.

In short, if a candidate country acts merely according to logic of consequentiality the nature of its reform process would be *instrumental* and thus it would *not be deeply entrenched* (the reform process in this case is labeled as policy Europeanization). On the other hand, if it opts to take the logic of appropriateness as the guideline of its democratization process, than it could be claimed the reforms

¹⁰⁷ Paul Kubicek, “The European Union and Grassroots Democratization in Turkey”, *Turkish Studies*, Vol. 6, No. 3, September 2005, p. 364.

¹⁰⁸ Ibid., p. 364.

that it will undertake would be deeply rooted and engrained inasmuch as they would be driven less by external pressure of an out-group but more by endogenous factors that were internalized through the medium of the Union's social influence mechanisms¹⁰⁹.

Thus, in order to come about with a complete picture of the ability of the EU's conditionality to procure fundamental policy changes in the candidates, it appears to be crucial to detect *the real catalyst* behind the democratization process in these countries. When applied to the Turkish case, Nathelie Tocci asks the relevant question: "Does the EU "trigger the reforms as an external force driving internal change; or has domestic change been spearheaded by domestic actors that have used and been strengthened by the external EU anchor?"¹¹⁰ The next chapter of the thesis will directly focus on this question and its possible answers.

3.2. An Account of the Development of the EU's Human Rights Conditionality vis-à-vis the Third Countries.

The civilian power Europe idea has not been repudiated but rather invoked frequently as an adequate formulation reifying the ontological distinctiveness of the EU in the international arena. In a way, it accorded some sort of informal legitimacy to the Union in its dealings with the outside world, and culminated in some normative assessments of its very essence such as "Europe as a force for good", committed to civilizing international relations. "It has also transmogrified into literature that explores the particular impact that the EU has on international relations as a consequence of its role as a norm generator"¹¹¹.

¹⁰⁹ EU sponsored aid, training programs, twinning projects exchanges are considered to provide the Union with a social influence over the candidate.

¹¹⁰ Nathalie Tocci, "Europeanization in Turkey: Trigger or Anchor for Reform?", *South European Society & Politics*, Vol. 10, No. 1, April 2005, p. 73.

¹¹¹ Richard Withman, "Road Map for a Route March? '(De-)civilianizing Through the EU's Security Strategy'", *European Foreign Affairs Review*, Vol. 11, 2006, p. 4.

The EU tried to put the political conditional clauses in its economic and cooperation agreements with the third countries so that it desires to be a global actor which promotes democracy and plays its role as an anchor effectively. “This offers a kind of express legal bases to take restrictive measures against the third countries concerned, in case of violations of human rights and democratic principals¹¹². The other area where the conditionality was used as an important tool has been the enlargements strategy of the Union.

Even though the founding treaties of the Union -1959 Rome Treaty- originally do not include respect for democracy, the rule of law and human rights as a prerequisite for membership but observance of such preconditions has always been a vital factor for qualification. In general terms, the entry to the Community was never ‘unconditional’¹¹³. It means that not only economical requirements but also political ones for being a member of the Union go back as early as the 1970s. The 1973 the document of European Identity and the 1978 the Declaration of Democracy include some important elements and clauses which emphasis the importance of human rights and democracy issues and the performance of the candidate countries about these issues. For instance “through the Declaration of Democracy, Heads of States or Government solemnly declared that ‘respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities’¹¹⁴.

Conditioning membership into the Communities/Union on some political criteria reached its climax in the 1990s, and was centered on a clearly-articulated strategy¹¹⁵. Until this time, it may be said that the EC did not (or could not) created a clear framework for the relations with the applicant states to further the democratization in those countries. In other words, “the rules of the game between the actor (the EU) and the recipient (the applicant states) were not based on a well

¹¹² Kardaş, *Op.Cit.*, p.1

¹¹³ Andrew Williams, *EU Human Rights Policies A Study in Irony*, New York, Oxford University Press, 2004, p. 54.

¹¹⁴ *Declaration on Democracy*, Copenhagen European Council, 8 April 1978, Bulletin EC3-1978, pp. 5-6.

¹¹⁵ Kardaş, *Op.cit.*, p. 2.

defined political conditionality”¹¹⁶. Specifically, in the Maastricht Treaty (1991), respect for human rights and fundamental freedoms was endorsed to be one of the basic objectives of the Common Foreign and Security Policy (CFSP). This treaty is vital for the debate at this part of thesis due to the fact that “it strengthened the EU’s foreign policy dimension based on human rights conditionality by stating that the development and consolidation of human rights and fundamental freedoms is an objective for both CFSP and EU development cooperation”¹¹⁷ and it became a precondition for accession to the EU with the promulgation of the Copenhagen political criteria in 1993. That is to say, “the CFSP formally set the values of democracy, the rule of law and the respect for human rights and fundamental freedoms as the guiding principles of the foreign policy of the Union”¹¹⁸. If it is analysed from a broad perspective, as Smith examines, it is important to argue: “EU’s post-Maastricht philosophy of international relations has coalesced around the broad idea of human rights, even if specific policies and practices have left much to be desired or, as in the case of former Yugoslavia, have failed spectacularly”¹¹⁹. Subsequently, since the mid 1990s, every agreement concluded between the EU and a third country comprises a human rights clause which makes it incumbent on the latter to adhere to the principle of respect for human rights, should it wishes to ensure the durability and effective implementation of the agreement.

In the run-up to the promulgation of Copenhagen membership criteria, it seems obvious that the policy of conditionality which generally “refers to the linking of perceived benefits (e.g. political support, economic aid, membership in an organization) to the fulfillment of a certain program, provided the Union with an effective leverage over the course of domestic political reforms in the candidate countries. “As the queue of applicant countries has grown, it became a very powerful, if not the most powerful, foreign policy instrument of the EU”¹²⁰.

¹¹⁶ Dölek, *Op.cit.*, p. 11.

¹¹⁷ Karen E. Smith, *European Union Foreign Policy in a Changing World*, Cambridge, Polity Press, 2003, p. 99.

¹¹⁸ Kardaş, *Op.cit.*, p. 2.

¹¹⁹ Thomas W. Smith, “The Politics of Conditionality: The European Union and Human Rights Reforms in Turkey”, in Paul J. Kubicek (ed.) *The European Union and Democratization*, London, Routledge, 2003, p. 116.

¹²⁰ Smith K. (2004), p. 108.

In 1993, at the Copenhagen European Council, the Union took a vital step towards the fifth enlargement, agreeing that “the associated countries in Central and Eastern Europe that so desire shall become members of the European Union.” The Copenhagen Criteria can be seen as an example to the ex ante conditionality. These criteria functioned as a “reform-driving force not only in Central and Eastern Countries (CEECs), but also in Turkey”¹²¹. That is, just like the internal policies, the external policies of the Union has changed, and the democratic or political conditionality has become the core strategy of the EU in its enlargement policies towards the applicant states¹²². In other words, “the positive conditionality, based on the rules and principles framed by the 1993 European Council Copenhagen Summit, has become the most important tool in the hands of the EU to shape its relations with the applicant states after early 1990s”¹²³. “The most important outcome of the summit was the fact that ‘...to be European’ or ‘...to share the same ideals’, as stated in the Rome Treaty 1957, was not sufficient to achieve the membership status”¹²⁴. The document reflects the spirit and environment of the end of cold war and set the criteris for the EU membership¹²⁵:

Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

The third criterion obliges applicants to enact the full *acquis communautaire*, that is the body of Community legislation and judgments of the European Court of Justice by which all EU member states are bound. The results of the Commission's further elaboration was first presented in the ‘Agenda 2000’ document adopted in

¹²¹ İkizer, *Op.Cit.*, p.1

¹²² Schmmelfenning *Et. Al.*, *Op.Cit.*, p. 495.

¹²³ Dölek, *Op.cit.*, p. 8.

¹²⁴ *Ibid.*, p. 15.

¹²⁵ http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm

1997. This document also set out 'good neighbourliness' as a fourth criterion for membership¹²⁶.

Eventually, the Amsterdam Treaty of 1997 seems to mark a watershed in this incrementally proceeding process inasmuch as it defined the Union along the principles of respect for human rights and fundamental freedoms, democracy, liberty and the rule of law with the added stipulation that only a European state which respects these principles may apply to become a member of the Union. Consequently "Amsterdam Treaty closed the circle and provided an explicit treaty-bases for the membership conditionality, as well¹²⁷.

To sum up, the European Union Membership criteria are defined by the three documents:

- The 1991 Treaty of Maastricht (Article 49) — geographical criteria and general policy criteria
- The declaration of the June 1993 European Council in Copenhagen, i.e. Copenhagen criteria — describing the general policy in more details
 - political
 - economic
 - legislative
- Framework for negotiations with a particular candidate state
 - specific and detailed conditions
 - statement stressing that the new member can not take its place in the Union until it is considered that the EU itself has enough "absorption capacity" for this to happen.

¹²⁶ Agenda 2000, available at, http://ec.europa.eu/agenda2000/index_en.htm, accessed on 12.09.2008. p. 56.

¹²⁷ Kardaş, *Op.cit.*, p. 2.

As such on the one hand “the conditionality clauses may be seen as the materialization of the developing concern for human rights throughout the world”¹²⁸. On the other hand all these regulations for an encouraging environment in which possibilities for taking a stronger and firmer posture for the respect for human rights and democratic values both with the EU members and towards the candidate states with which the EU is engaging is higher than before¹²⁹. However, ambiguities about the scope of human rights in European law and practice make the application of these principals problematic¹³⁰.

First, even though the Copenhagen Criteria and the 1997 Amsterdam Treaty added a new open clause to Art.6 of the Treaty on European Union (TEU) both refer to “liberty, democracy, respect for human rights and etc., they differ in one crucial respect”. Where the 1993 criteria demand “respect for and protection of minority rights” this clause is fully omitted in the TEU. The European Union seems to be involved in imposing human rights externally, whereas it fails to enforce them internally¹³¹.

Second, the scope of human rights in art.6 is not defined. The most human rights standards in Europe are not adhered to by all current members, some of whom have not still ratified certain of its protocols. Even though all member states of the EU signed the Council of Europe’s European Social Charter of 1961, current member states have not yet put fundamental social right in their own constitutions. “Thus, although it is clear that the EU membership is conditional on respect for human rights, it is not clear precisely which rights, or according to what definitions.

But of course there are some sources for optimism for the EU-aspirant countries. Iavor Rangelov expresses his idea clearly in regard with the above mentioned optimism¹³²:

¹²⁸ Ruby Gropas, “Is a Human Rights Foreign Policy Possible? The Case of the European Union”, ELIAMEP Occasional Papers, OP99.02, 1998, p. 18.

¹²⁹ Kardaş, *Op.cit.*, p. 2.

¹³⁰ Iavor Rangelov, “Bulgaria’s Struggle to Make Sense of EU Human Rights Criteria”, p. 1, available at, <http://www.eumap.org/journal/features/2001/oct/bulgariastr>

¹³¹ Ibid.

¹³² Rangelov, *Op.cit.*, p. 1.

These lie in the recently-adopted Charter of Fundamental Rights of the European Union, and the European Court of Justice. The Charter constitutes a comprehensive "Bill of Rights", and offers a first indication of what is perceived to be "fundamental rights" in the European Union. The Charter provides some basis for definition of the "human rights" clause of TEU Art. 6 - and by extension, the criteria for accession, despite lacking binding legal power. Unfortunately, the Charter makes no reference to minority rights.

Second, the potential for intervention of the European Court of Justice (ECJ) in human rights matters generally is significantly increased, since the entry into force of the Amsterdam amendments to the TEU. As yet there is no jurisprudence relating to Article 6. The ECJ could choose to enhance its involvement in judicial review of human rights "conditionality" in the accession process, as well as supplying definitions of both "human rights and fundamental freedoms" and the accession "conditionality," through its jurisprudence.

The enlargement process could thus contribute to clearer delineation of human rights in both the Union and applicant countries. Alternatively, the term "human rights" risks becoming an empty piece of Euro-slang, designating a deliberately ill-defined concept, useful only in political obfuscation.

In conclusion, this section of thesis has tried to analyse the historical evolution of the political or democratic conditionality of the European Union in its enlargement policy towards the applicant states. From a more general perspective, theoretical analyse of the conditions of conditionality with its two types, ex post and ex ante conditionality, endeavoured to be given. And then, the enlargement history of the EU, regarding the principles of human rights and democracy, were examined in order to give an explanatory framework for the membership conditionality. The conclusion was that "the EU has gradually become an international agent for democracy promotion in its enlargement strategy towards the third countries"¹³³.

From this perspective, the main argument in this thesis is that "the recent democratization process of Turkey, fuelled by the improving relations with the EU, can be understood with reference to this theoretical framework and to the historical evolution of the membership conditionality"¹³⁴. It is argued that the relations after

¹³³ Dölek, *Op.cit.*, p. 16.

¹³⁴ *Ibid.*, p. 16.

Helsinki 1999, a turning point in the relations between the EU and Turkey, it is considered that the relations between the EU (actor) and Turkey (the recipient) had found the main grounds for a relationship based on ex ante or positive conditionality. In other words, “the main lacking part of the relations was a ‘definite kind of framework’ on which the two parts would base their actions and calculate the results of those actions”¹³⁵. So, in the next section, thesis will try to test the theoretical model of positive conditionality in the relations of Turkey and the EU. By doing so, the main objective will be to explain recent democratization process in Turkey with reference to the efforts of the country to fulfil the Copenhagen political criteria.

¹³⁵ Ibid., p. 16.

CHAPTER IV

4. THE IMPLEMENTATION OF THE EU'S HUMAN RIGHTS CONDITIONALITY: TURKEY AS A SUI-GENERIS CASE

Turkey, right from the outset of its relations with the European community has been branded as a “reluctant democratizer”¹³⁶. By maintaining an adamant standing in the face of the European Union (EU) encouragement to rectify the deficiencies in its human rights regime especially till the Helsinki summit of 1999, Turkish case, seem to substantiate the presupposition that the lack of a credible promise of membership hinders the effectiveness of the EU leverage to precipitate a positive development in the related state of affairs of the candidate.

In the last times of the Ottoman Empire (even dates back to Tanzimat era) and just after the dismantling of Ottoman Empire, Turks drew their way o the West and insistentlly desired international recognition as a member of the Western community of nations and share the same values of it. In the first half of the 1830s, the Ottoman elites, being aware of the declining power of the Empire, tried to espouse Western values and norms with the intention of empowering the state¹³⁷. Afterwards, in the first half of the 20th century, the young Turkish Republic built a process of nation building in the name of the *project of modernity* which was based

¹³⁶ Paul Kubicek, “The European Union and Grassroots Democratization in Turkey”, *Turkish Studies*, Vol. 6, No. 3, September 2005, p. 363.

¹³⁷ Feroz Ahmad, *The Making of Modern Turkey*, London, Routledge, 1993, p. 3.

on the ‘will to civilization’¹³⁸. Despite the Republic built after an independence war against the Western imperialism, the way of that ‘will’ was always towards the Western world¹³⁹. During Ataturk presidency and until 1950s, this claim had not changed. “The radical reforms in the era of Kemalist single party rule were all reflected the fact that the newly emerged nation state perceived the Westernization as a synonym of modernization”¹⁴⁰.

Despite this strong commitment to Western values and years of service as a loyal North Atlantic Treaty Organization (NATO) ally, Turkey had not been fully regarded as an equal partner and that the West made no effort to understand the Turkish side and its western-oriented policies, as well. Successive military coups (1960, 1970 and 1980) did not help Turkey’s image in the West, nor did a new Kurdish insurgency, which led many in the West to focus on the country’s civil and human rights problems¹⁴¹. The political situation after the September 12 regime created several problems related to the human rights and democracy; and so seriously affected the relations with the EU thereafter¹⁴². Except the most important violations of human rights and abolishment of democratic institutions under the military regime, the vital legacy of the 1980 *coup* was “the creation of the 1982 constitution, which particularly caused many human rights problems from the beginning”¹⁴³. Çakmak also considers that “the universal interpretation of the concepts of democracy, human rights and secularism was abandoned and replaced by the ‘national’ ones”¹⁴⁴.

¹³⁸ Sanem Aydin and Fuat Keyman, “European Integration and the Transformation of Turkish Democracy”, CEPS EU – Turkey Working Papers, No. 2, Brussels, August 2004, p. 13, available at, <http://www.ceps.be>.

¹³⁹ Çağlar Dölek, “Human Rights Conditionality In the Relations of the EU and Turkey”, Research Paper, 2007, p. 17, available at, <http://www.turkishweekly.net/pdf/CaglarDolek-HR-FrameworkAnalysis.pdf>.

¹⁴⁰ Ibid., p. 17.

¹⁴¹ Paul Kubicek, “Turkish European Relations: At a New Crossroads?”, *Middle East Policy*, Vol. 6, No. 4, 1999, p. 163.

¹⁴² Çağlar Dölek, “Human Rights Conditionality In the Relations of the EU and Turkey”, Research Paper, 2007, pp. 19, available at, <http://www.turkishweekly.net/pdf/CaglarDolek-HR-FrameworkAnalysis.pdf>.

¹⁴³ Ibid., p. 19.

¹⁴⁴ Cenan Cakmak, “Human Rights, the European Union and Turkey”, *Alternatives Turkish Journal of International Affairs*, Vol. 2, No. 3&4, Fall & Winter 2003, p. 75.

The EU is generally considered as the catalyst or the anchor of the reform process in the candidate countries aspiring to become members. The massive wave of democratization undertaken in Turkey during its pre-accession relations with the Union is a case in point. With this in mind, the fourth chapter of thesis attempts to shed some light upon the impact of the EU's human rights and democratic conditionality upon the related state of affairs in the Turkey with a view to exploring to what extent and under what conditions it could be regarded as the independent variable of the domestic reform process in the country.

4.1. The Implementation of the Human Rights Conditionality of the EU towards Turkey during Pre-Helsinki Period

The first step of above mentioned voyage began with Turkey's making a bid to join the European Economic Community following Greece application in June 1959 after the Treaty of Rome was signed in 1957. Joining the community as an associate member, this status was granted by the 1963 Ankara Treaty. Closer cooperation and an eventual customs union were envisioned by this accord. Most important perhaps was the fact that Turkey's eligibility for eventual membership (albeit at an unspecified date) was confirmed. Walter Hallstein, then president of the European Commission, declared, "Turkey is part of Europe".

The Association Agreement came to force as of 1 December 1964. The Agreement aimed at establishing a customs union between the Community and Turkey and preparing Turkey for the final membership to the Community. The Agreement has three stages¹⁴⁵:

¹⁴⁵ Ahmet Sözen, "Democratization in Turkey: Copenhagen Criteria for the EU Membership and Reflections on Turkish Foreign Policy" Paper prepared for presentation at the 2002 Annual Conference of the International Studies Association in New Orleans, Louisiana, March 24-27, p. 3.

1. *Preliminary Stage*: During this stage, which was to be from 1964 to 1973, the EEC would give some direct financial aid to Turkey and establish preferential trade conditions with Turkey.
2. *Transition Stage*: This stage was to cover 22 years where the Community and Turkey would eliminate all tariffs and trade barriers in order to establish a customs union between Turkey and the Community.
3. *Final Stage*: If necessary progress were to be observed, the Community would examine the possibility of Turkey's accession to the Community as a full member.

In addition to codified law, the practice of torture and ill-treatment of the Kurdish minority marred Turkey's human rights record throughout the 1980s and 1990s. Despite some reforms in the 1990s (e.g. changes to the anti-terror law, amendments to expand freedom of association, ratification of UN and European conventions prohibiting torture), Turkey's democratic shortcomings would be consistently noted by the EU and thwarted its aspirations to join the organization. In the political science lexicon, the "costs of compliance" –especially on issues such as rights for the Kurdish minority and limiting the military's political role – were deemed intolerably high by the Turkish elite, especially when the EU was not putting the highly valued carrot of membership on the table for Turkey¹⁴⁶.

The *coup d'état* of 12 September 1980, the mass abuse of human rights and abolishment of democracy bring about the suspension of the relations with the Community in 1982. Though, in the early months of the military intervention, the Community could not develop a firm and consistent policy against the military regime in Ankara, and had to wait for 15 months to suspend the relations¹⁴⁷. The Community, instead of reacting immediately against the military rule as in the case of Greece in 1967, followed the policy of 'wait and see'¹⁴⁸. Conversely, "the only institution which severely criticized Turkey, because of the mass violations of human rights, the claims of wide-spread torture, the abolishment of democratic institutions

¹⁴⁶ Kubicek (2005), *Op.cit.*, p. 365.

¹⁴⁷ Dölek, *Op.cit.*, p. 19.

¹⁴⁸ *Ibid.*, p. 19.

and the pro-longing rule of the military, was the European parliament”¹⁴⁹. Just before 1982 when the transition period to democracy was believed to be “too long”, the pressures coming from the Community boosted and in January 1982, the Community agreed to suspend the relations as well as to stop the economic aids that were decided to be distributed to Turkey within the framework of the 4th Financial Protocol¹⁵⁰.

Turgut Özal who elected as the prime minister of Turkey after 3 years military-oriented governing process and launched market-reform policies in Turkey, also initiated a Turkish bid for full membership in the EC in 1987. The Turkish application was rejected. This was a kind of premature application. However, the Community did not intend to alienate Turkey. Due to this reason, the Commission prepared its official Opinion and issued it in December 1989. “In essence, the Commission’s Opinion was a polite rebuff of the Turkish application”¹⁵¹:

The Opinion report is divided into four parts. The first part is about the Community’s difficulties in the integration process due to the Single European Act. The following two parts were about Turkey’s problematic economic and political contexts that pose difficulties for the EC to open negotiations for accession with Turkey. The last part of the report suggests areas of focus in the relations between Turkey and the Community. The Commission’s opinion on Turkey’s membership of the EC was clear that Turkey was not ready economically for the accession to the EC, although Turkey had many sectors, which were ready to compete with the European products, such as textile and agricultural products.

According to Smith, “the decision provided little guidance for improvement, instead pointing to the Customs Union as an alternative form of association”¹⁵². From this point of view, the main problem in the relations between the EU and Turkey indicates itself. “Not forgetting the internal dilemma of the reforms between security paradigm and the need for improvements in human rights, Ugur argues that the EU

¹⁴⁹ Mehmet Ali Birand, *Türkiye’nin Avrupa Macerası 1959 – 1999*, İstanbul, Doğan Kitapçılık, 2000, p. 395 – 398.

¹⁵⁰ Dölek, *Op.cit.*, p. 20.

¹⁵¹ Sözen, *Op.cit.*, p. 4.

¹⁵² Thomas W. Smith, “The Politics of Conditionality: The European Union and Human Rights Reforms in Turkey”, in Paul J. Kubicek (ed.) *The European Union and Democratization*, London, Routledge, 2003, p. 118.

did not play its role as the anchor or at least the triggering party behind the reforms in that decision”¹⁵³. It is because of the two-fold policy of the EU: “On the one hand, the Community was insisting on the necessity of the reforms for the improvements of the relations with Turkey. On the other hand, it was not acting to encourage Turkey in the efforts of the country for further improvements”¹⁵⁴.

Unfortunately, with the disappointment of this decision, it is not seen any important democratic development in Turkey in the period between 1987 and 1999. It might be said that if the certain criteria with a strongly-worded membership idea had been set before Turkey after rejection, a kind of incentive, Turkey may have spent more efforts on political issues as it did in the case of Customs Union¹⁵⁵.

In essential, believing that the human rights and democracy related issues have become indispensable problems to be solved, the government made crucial legal reforms. First, Turkey invalidated the 1964 decree which had frozen the assets of the Greek minority since 1963. Furthermore, the right to individual petition of Turkish citizens to the European Court of Human Rights (ECHR) was granted, and for the supervision of the developments in the field of human rights a Parliamentary Committee was established. Then, Turkey signed and ratified the European and United Nations (UN) agreements prohibiting torture in 1988. Lastly, about 200 verdicts of capital punishment that had been waiting the approval of the National Assembly were not approved and thus not exercised¹⁵⁶.

With the introduction of the consent procedure in the 1987 Single European Act, the Parliament had been agreed on the legal means necessary to exercise significant leverage in the association relationships between Turkey and the EU. As early as 1987, immediately on the heels of Turkey’s official request for membership, the EP declared that respect for minorities ought to be prerequisite for Turkey’s accession. Soon thereafter, in response to the arrest of a number of opposition

¹⁵³ Mehmet Uğur, *Avrupa Birliği ve Türkiye: Bir Dayanak / İnandırıcılık İkilemi*, İstanbul, Everest, 2000, p. 283.

¹⁵⁴ Dölek, *Op.cit.*, p. 21.

¹⁵⁵ İkizer, *Op.cit.*, p. 3.

¹⁵⁶ Dölek, *Op.cit.*, p. 21.

politicians, it delayed its assent to two protocols concluded within the association agreement¹⁵⁷.

In summary, when the developments in 1980s and 1990s analysed, it is seen that the relations between the EU and Turkey could not be argued without any reference to the issues of human rights, the rights of minorities, the problem of judiciary and later the place of army in the political scene¹⁵⁸. From Kubicek's perspective, the relations of 1980s and 1990s can only be characterized by a term called 'mutually unsuccessful relationship'¹⁵⁹. The fundamental reason of such an argument is "the absence of a clearly defined framework, on which the two parties could base their actions, in the relations"¹⁶⁰. While the EU was failing in its foreign policy goal to promote democracy in Turkey, "Turkey could not succeed in the problem of consolidating the roots of democracy and creating a democratic state based on the principles of the rule of law and respect for fundamental rights and freedoms"¹⁶¹. Kubicek explains this mutually unsuccessful relationship by arguing that "in the 1990s instead of performing the role of 'anchor' behind the reform process in Turkey, the EU used only the *declaratory diplomacy* to criticize the deficiencies of human rights and democracy in the country"¹⁶². Öniş also argues that, "the EU did not create an appropriate mechanism which would include the necessary conditions to be complied with and incentive to be delivered in 1990s"¹⁶³. Without creating such a mechanism, all the institutions of the Union preferred the way to severely criticize the mass violations of human rights, weaknesses of democratic institutions in Turkey. In other words, "the Union used the *declaratory diplomacy*, which was not successful to initiate reforms in Turkey, therefore, the EU fundamentally failed to induce a major transformation in Turkish domestic politics and social life"¹⁶⁴.

¹⁵⁷ Piotri Zalewski, "Sticks, Carrots and Great Expectations: Human Rights Conditionality and Turkey's Path Towards Membership of the EU", *Center for International Relations*, Warsaw, 09/04, p. 7.

¹⁵⁸ Dölek, *Op.cit.*, p. 23.

¹⁵⁹ Kubicek (2005), *Op.cit.*, p. 363.

¹⁶⁰ Dölek, *Op.cit.*, p. 23.

¹⁶¹ *Ibid.*, p. 24.

¹⁶² Kubicek (2005), *Op.cit.*, p. 363.

¹⁶³ Ziya Öniş, "Domestic Politics, International Norms, and Challenges to the State: Turkey – EU Relations in the Post – Helsinki Era", *Turkish Studies*, Vol. 4, No. 1, 2003, p. 3.

¹⁶⁴ Dölek, *Op.cit.*, p. 24.

4.2. Ex ante Human Rights Conditionality: The Copenhagen Criteria and Beyond

Ex ante conditionality for being a member of the European Union, as explained in the previous section of thesis, founded upon the notion that “the introduction of far-reaching conditions for EU membership would induce would be member states to bring their policies into line with Union standards, found a tangible expression in the conclusions of the 1993 Copenhagen European Council”¹⁶⁵. The 1997 Luxemburg Council elaborated this formula further by stating that “compliance with the Copenhagen political criteria is a prerequisite not only for membership but also for the opening of any accession negotiations”¹⁶⁶.

The Copenhagen human rights criteria are defined by the Union as a means of reiterating the candidate states’ responsibility to respect and promote universal values-a responsibility not towards the Union as such but towards the entire international community¹⁶⁷. The fulfillment of the political criteria is a sine qua non condition for membership; whether the systems for evaluating any such fulfillment are flawless or not is still another matter¹⁶⁸.

After promulgation of Copenhagen Criteria, an opportunity for eventual membership were re-existed in 1995, when Turkey joined a Customs Union with the European Union. Full membership now did not seem so far away. As one Turkish official explained, “Turkey is the only EU applicant that is a North Atlantic Treaty

¹⁶⁵ Zalewski, Op.Cit., p. 9.

¹⁶⁶ Ibid.

¹⁶⁷ Due to the fact that the details of criteria were analysed in the previous chapter, enumerating the criteria is sufficient;

Stability of institutions guaranteeing democracy ,the rule of law ,human rights and respect for and protection of minorities

The existence of a functioning market economy ,as well as the capacity to cope with competitive pressure and market forces within the Union.

The ability to take on the obligations of membership ,including adherence to the aims of political, economic and monetary union.

¹⁶⁸ Ibid., p. 7.

Organization (NATO) member; it has the longest-standing association agreement with the EU; and it is the only would be member in a Customs Union”¹⁶⁹.

With negotiations on the Customs Union agreement in full swing, the European Parliament (EP) stepped into the Turkish- EU political arena in September 1994 by passing a resolution strongly condemning Turkey’s decision to suspended the parliamentary immunity of several Kurdish MPs. To emphasize its profile as a power broker to be reckoned with inside the EU institutional framework, the EP pointed out that such practices, if perpetuated repeatedly, would threaten any pending agreement on the Customs Union¹⁷⁰.

“The parliamentary prelude to the actual work on the Customs Union dossier” as Krauss describes it, “was quite dramatic”. Any and all discussion on whether or not to include a human rights clause was superseded by “a heated debate on whether to give assent to the Customs Union in light of Turkey’s human rights record”. When the same Kurdish MPs whose arrest had already provoked such indignation in September were sentenced to jail in December- in the middle of the last round of negotiations- the EP responded immediately by suspending its cooperation with Turkey in the mixed parliamentary committee and requested in the Council to suspend negotiations on the Customs Union. Parliament’s capacity to reduce the entire Customs Union project to rubble was made clear¹⁷¹.

In effort to appease the Parliament- and as evidence of the fact that the EP was putting conditionality politics to effective use- the Turkish National Assembly, meeting on July 23rd 1995, approved a set of constitutional reforms called the “package for democracy”. Nonetheless, having been the first constitutional reforms carried out by the parliament rather than the army, they did leave quite a bit of room for hope.

Though with a heavy heart, and under immense pressure from the Member States, the Parliament assented to the Customs Union by 343 votes to 149. In its accompanying resolution on the human rights situation in Turkey, however, the

¹⁶⁹ Ibid.

¹⁷⁰ Ibid., p. 7.

¹⁷¹ Ibid., p. 7.

Parliament emphasized that it was linking its assent to several conditions to be met by Ankara, namely:

- to the application of human rights standards comparable to those of Europe;
- to the improvement of democratic standards by means of constitutional reform¹⁷²;
- to a non-violent, non-military solution of the Kurdish question by means of a recognition of the Kurds as a minority in the Western sense of the word;
- to a solution to the Cyprus problem as a basis for improving its relations with Greece and for reducing the potential for a crisis.

Tansu Çiller, the prime minister of Turkey during Customs Union negotiations process, was a bit “obsessed with the customs union with the EU”¹⁷³. She wanted to sign a customs union with the EU no matter what. In that regard, Turkey under Tansu Çiller’s premiership Turkey established a customs union with the EU which came into effect on 1 January 1996. However, owing to weakness of the Turkish hand in the customs union negotiations, Turkey had to give up a little important concessions which later became a heavy burden for Turkey in its relations with the EU¹⁷⁴:

1. Turkey remained silent to the start of the accession negotiations of the EU with (Greek) republic of Cyprus.
2. Turkey accepted a customs union without receiving financial aid which was Turkey’s right deriving from the Association Agreement.
3. Turkey agreed to take the conflicting issues of the Aegean with Greece to the ICJ.
4. Turkey accepted the EU’s demand that there would be no free movement of Turkish workers in EU (which was Turkey’s right deriving from the Association Agreement).

¹⁷² Ibid., p. 8.

¹⁷³ Sözen, Op.cit., p. 7.

¹⁷⁴ Ibid.

According to the EU, the Customs Union did not automatically mean a guaranteed future membership for Turkey. “As a matter of fact, the EU was very keen on proceeding with the customs union through an association relationship. In that regard, the EU had never provided a perspective for full membership to Turkey during the customs union negotiations”¹⁷⁵. Although the above example points to the fact that ex post human rights conditionality is not altogether absent from the relationship between Brussels and Ankara, it must be said that real or speculative potential is far weaker and far less visible than the goal-intensive dynamic of ex ante conditionality, as created by the carrot of EU membership.

4.3. The Luxembourg European Council: The Name of Disappointment?

In 1997, in the European Council of Luxembourg, Turkey was not granted a candidate status whereas eleven applicant countries, ten of which were former communist countries, were announced as candidate countries. Luxemburg’s Prime Minister, Jean-Claude Juncker, then the EU’s president, said “Turkish membership was decades away and that at the moment Turkey, because of its human rights record, was not worthy to sit at the EU table”. Wilifried Martens, chairman of the Belgian Christian Democratic party, went even further, claiming that “Europe is a “civilizational project” and that Turkey’s candidacy for membership is “unacceptable”¹⁷⁶.

What is notable as well is that European objections to Turkish membership in the EU are no longer couched primarily in economic terms. Political particularly cultural dimensions have assumed more importance. In its 1997 decision, the EU cited several issues that must be resolved, before Turkey can achieve full

¹⁷⁵ Ibid.

¹⁷⁶ Kubicek (1999), Op.cit., pp. 163-167.

membership: the on-going Kurdish conflict and attendant human rights problems, shortcomings in Turkish democracy, and failure to resolve the Cyprus dispute¹⁷⁷.

The repercussions of the summit were dramatic and assertive in Turkey. The statement issued the day after the Luxembourg Summit, the Turkish government criticized the EU's attitude and stated that ¹⁷⁸:

Turkey's goal of full membership and association would nevertheless be maintained, but that the development of bilateral relations depended on the EU's honouring its commitments, and that it would not discuss with the EU issues remaining outside the contractual context of the bilateral relations as long as the EU did not change its attitude.

The most important reflection came from Mesut Yılmaz, the prime minister of Turkey during this period. He declared that, "there will not be a political dialogue between Turkey and the European Union" at the end of a cabinet meeting Sunday in Ankara. After The EU declared that it wants to open talks with the Cyprus, listed as a candidate after the summit, but if Turkey or the Turkish Cypriots prevent the occupied northern sector from joining, it will negotiate with the Greek Cypriots alone, Mesut Yılmaz stated its famous words; "if it opened talks with Cyprus, "the EU will be responsible for all possible negative developments; in January, Turkey and the Turkish-Cypriot state, which is recognized only by Ankara, we would integrate our state structures if the EU-Cyprus accession talks went ahead".

Turkey also did not participate the meeting of the European Conference which was invited after the summit. According to İnkizer, the roles of Turkey and the EU were changed after this summit. He considers that "The one who set the condition of "honoring the commitments" was Turkey in return for the incentive of "normalization" of the relations"¹⁷⁹. All in all, the EU lost its positive conditionality tool against Turkey until the European Council of Helsinki in 1999.

¹⁷⁷ Ibid., p. 164.

¹⁷⁸ İnkizer, Op.cit., p. 3.

¹⁷⁹ Ibid.

4.4. The EU's Human Rights Conditionality in the post-Helsinki Period: A Turning Point in the Relations?

Although Turkey's shortcomings on some issues had been insistently noted by the EU in the pre-Helsinki period, a whole-hearted reform effort had not been observed in return¹⁸⁰. The Helsinki summit of 1999 which recognized the candidate status of Turkey as a country destined to join the Union on the basis of the same criteria as applied to other candidates is a turning point in EU –Turkey conditionality defined relationship. From a theoretical point of view, as has been implied above, it marks the beginning of a new stage in the EU's conditionality approach towards the country which has hitherto been imbued with ambiguity, and excessive discretion.

According to Öniş, Helsinki decision also represents a clever u-turn on the part of the European political elites, in sense that they have effectively shielded themselves from arguments basing Turkey's exclusion on purely cultural grounds. After Helsinki the ball is firmly in Turkey's court in the sense that it has to undertake the radical reforms in the domestic sphere both in the areas of democratization and economic policy reforms in order to qualify for full membership¹⁸¹.

More precisely, up until the year 1999, Turkey had been simply subjected to the EU's ex post conditionality as embedded in the Association Agreement, Additional Protocol and the Customs Union concluded with the country whereby the obligations incumbent upon Turkey appeared once it had ratified these documents. The provisions of these contractual documents were vaguely articulated since they neither specified, in a credible manner the rewards to be granted in case of compliance with the conditions, nor provided Turkey with a clear guideline of its obligations to be fulfilled within a specific time frame.

¹⁸⁰ Kubicek (2005), *Op.cit.*, p. 366.

¹⁸¹ Ziya Öniş, "Luxembourg, Helsinki and Beyond: Toward an Interpretation of Recent Turkey-EU Relations" *Government & Opposition*, Vol. 35, No. 4, Fall 2000, p. 476.

The Helsinki summit mitigated this immature contact between the Union and Turkey by clearly stipulating the obligations of the former to become eligible for obtaining the rewards in return. More specifically, “it made it clear for Turkey that not the eventual membership but even the start of negotiations depends on meeting the Copenhagen political criteria calling for democracy, human rights, the rule of law and respect for minorities”¹⁸². As Kubicek argues, the ‘costs of compliance’ with the requirements were considered to be too high especially when the EU was not providing a clear prospect of full membership for Turkey¹⁸³. Thus, arguably, prior to the Helsinki summit of 1999, authoritarian-oriented state elite had little, if any, incentive for democratization.

On the whole, the Helsinki Summit decisions represent a qualitative leap towards addressing the uncertain nature of the conditionality -defined relationship between the Union and Turkey by “making it more difficult for Turkey to avoid its compliance with its obligations and by leaving not much room for the EU to exercise discretion with respect to Turkey’s membership”¹⁸⁴. As Tezcan argues, this decision created much more stable grounds for the relations between the two parties, and thus fuelled the reform process in Turkey¹⁸⁵. As a result of Helsinki decision, “the prospect of EU membership became more ‘real’, and thus there emerged a more effective model of relationship, which can be characterized by the positive or *ex ante* conditionality”¹⁸⁶. The impact and importance of Helsinki Decision will be analysed in detail in the final chapter of thesis.

¹⁸² İhsan D. Dağı, “Transformation of Turkish Politics and the European Union: Dimensions of Human Rights and Democratization”, in Bülent Gökay (ed.), *Turkey, Greece and Cyprus: Security Across the Boundries of a New Europe*, Keele European Research Center, 2004, p. 141.

¹⁸³ Kubicek (2005), *Op.cit.*, p. 366.

¹⁸⁴ Mehmet Uğur, “Testing Times in EU-Turkey Relations: The Road to Copenhagen and Beyond”, *Journal of Southern Europe and the Balkans*, Vol. 5, No. 2, August 2003, pp. 167-168.

¹⁸⁵ Ercüment Tezcan, “Müzakerelere Giden Sürecin Dünü, Bugünü, Yarını”, *Avrasya Dosyası*, Vol. 11, No. 1, 2005, p. 15.

¹⁸⁶ Aydın and Keyman, *Op.cit.*, p. 16.

4.5. Juxtaposing the Demands of the EU from Turkey with the Implementation of Human Rights Reforms and The Most Important Changes in the Turkish Human Rights Regime

As such, since 1999 Turkey became a recognized subject of the EU's ex ante conditionality whereby the Union presents the conditions to be fulfilled prior to the conclusion of an agreement with a third country. In our case, the eventual prospect of membership for Turkey became predicated upon its aptitude to reform its domestic political architecture along the demands of the Union with a view to meeting the Copenhagen political criteria. Moreover, within the framework of the pre-accession strategy Turkey was promised to be granted financial assistance which seemingly demonstrates the goodwill from the side of the Union to share the burden of convergence (towards EU standards) with Turkey. As a logical corollary to the recognition of the candidate status of the country, the first Accession Partnership Document (APD) enumerating in a more detailed fashion the short and medium term priorities inter alia in the field of democracy and human rights that should be addressed by Turkey was devised in March 2001. Taking into account the related developments achieved in Turkey as has been presented in the Regular Progress reports of 2001 and 2002, the original AP was revised in March 2003. National Programme (NP) which demonstrates how a candidate deals with the Accession Partnership, the time table for the implementation of the Partnership's priorities, and the necessary human and financial resources was unveiled by the Turkish government in March 2001 and it was also revised in July 2003 on the basis of progress made hitherto and new priorities identified by the Union.

4.5.1. Accession Partnership Document and National Programme

Once adopted by the Commission and the EU Council of Ministers in late 2000, the Accession Partnership Document, which includes economic and

institutional requirements, became the E.U.'s formal list of tasks that Turkey must complete in order to accede to the union. The Accession Partnership Document was a kind of “road map” for Turkey which shows the requirements to be implemented for being official member of the EU. Turkey then produced a National Program for accession that mirrors the Accession Partnership, and progress began to be monitored by means of the annual 'Regular Report from the European Commission on progress towards accession' on the basis of the Copenhagen criteria, as is done for all applicant states.

The first Accession Partnership Document for Turkey was adopted by the Council on 8 March 2001. The National Program that contains the program and timetable with regard to the priorities stated in the Accession Partnership Document was adopted by our Government on 19 March 2001 and it was extended to the Commission on 26 March 2001. The Accession Partnership Document and the National Program both have been in 2003 and 2005 consecutively.

The crucial question here is “*How close is the Turkish NP to the EU’s APD?*” or, in other words, “*To what extent does the Turkish NP satisfy the demands put forward in the APD?*” The above question can be answered via the following table which gives a summary of the EU’s political demands in the APD and whether the NP is compatible with the APD¹⁸⁷:

SHORT TERM	
APD	NP
1. In accordance with the Helsinki conclusions, in the context of the political dialogue, strongly support the UN Secretary General's efforts to bring to a successful conclusion the process of finding a comprehensive settlement of the Cyprus problem, as referred to in point 9(a) of the Helsinki conclusions.	Partly compatible in the short term. Conditional support is given in the introduction of the NP, but not within the political criteria.

¹⁸⁷ Accession Partnership Document with Turkey (Council Decision of 8 March 2001 – OJ L 85 of 24. 3. 2001); Turkey’s National Program (Turkish Prime Ministry EU General Secretariat of 19 March 2001); Baskın Oran, Türk Dış Politikası, Cilt II, İletişim Yayınları, 2001, p. 363.

2. Strengthen legal and constitutional guarantees for the right to freedom of expression in line with Article 10 of the European Convention of Human Rights. Address in that context the situation of those persons in prison sentenced for expressing non-violent opinions.	Compatible in the short term.
3. Strengthen legal and constitutional guarantees of the right to freedom of association and peaceful assembly and encourage development of civil society.	Compatible in the short term.
4. Strengthen legal provisions and undertake all necessary measures to reinforce the fight against torture practices, and ensure compliance with the European Convention for the Prevention of Torture.	Compatible in the short term/medium term.
5. Further align legal procedures concerning pre-trial detention with the provisions of the European Convention on Human Rights and with recommendations of the Committee for the Prevention of Torture.	Compatible in the medium term.
6. Strengthen opportunities for legal redress against all violations of human rights.	Compatible in the medium term.
7. Intensify training on human rights issues for law enforcement officials in mutual cooperation with individual countries and international organizations.	Compatible in the short term.
8. Improve the functioning and efficiency of the judiciary, including the State security court in line with inter-national standards. Strengthen in particular training of judges and prosecutors on European Union legislation, including in the field of human rights.	Compatible in the short term.
9. Maintain the de facto moratorium on capital punishment.	Compatible in the short term. The Turkish Parliament's decisions would be respected.
10. Remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio	Not compatible.

broadcasting.	
11. Develop a comprehensive approach to reduce regional disparities, and in particular to improve the situation in the south-east, with a view to enhancing economic, social and cultural opportunities for all citizens.	Compatible in the medium term.

MEDIUM TERM	
APD	NP
1. In accordance with the Helsinki conclusions, in the context of the political dialogue, under the principle of peaceful settlement of disputes in accordance with the UN Charter, make every effort to resolve any outstanding border disputes and other related issues, as referred to in point 4 of the Helsinki conclusions.	Partly compatible. NP stresses resolution of conflicts through political dialogue.
2. Guarantee full enjoyment by all individuals without any discrimination and irrespective of their language, race, color, sex, political opinion, philosophical belief or religion of all human rights and fundamental freedoms. Further develop conditions for the enjoyment of freedom of thought, conscience and religion.	Compatible in the short term/medium term.

3. Review of the Turkish Constitution and other relevant legislation with a view to guaranteeing rights and freedoms of all Turkish citizens as set forth in the European Convention for the Protection of Human Rights; ensure the implementation of such legal reforms and conformity with practices in EU Member States.	Compatible in the short term/medium term.
4. Abolish the death penalty, sign and ratify Protocol 6 of the European Convention of Human Rights.	Partly compatible. The Turkish Parliament will discuss the issue.
5. Ratify the International Covenant on Civil and Political Rights and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights.	Compatible. No time frame has been indicated in the NP.
6. Adjust detention conditions in prisons to bring them into line with the UN Standard Minimum Rules for the Treatment of Prisoners and other international norms.	Compatible in the short term.
7. Align the constitutional role of the National Security Council as an advisory body to the Government in accordance with the practice of EU Member States.	Compatible in the medium term.
8. Lift the remaining state of emergency in the south- east.	Compatible in the medium term.

9. Ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin. Any legal provisions preventing the enjoyment of these rights should be abolished, including in the field of education.	Not compatible.
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Although the APD is very detailed including areas ranging from human rights to fishery, the Turkish politics has been indexed to only a very small portion of the APD: Cyprus issue, Greek - Turkish disputes and the rights of the Kurdish population. The APD, in addition to the Copenhagen criteria, included these issues as conditions in front of Turkey's accession talks with the EU.

The priorities given within the Accession Partnership Document mean that the Turkish state had to make radical reforms to satisfy the Copenhagen political criteria¹⁸⁸. These radical reforms mean an important transformation process of Turkey. Onis argues that: "the reforms proposed, involving a more liberal and pluralistic political order, presented a major challenge to the principles associated with 'hard-core Republicanism', underlying the highly centralized Turkish state"¹⁸⁹. "It was a major challenge to the monist structure of the Turkish nation state because it brought many requirements such as amending the constitution, ratifying the international covenants, curbing the role of military in the political arena, building up the grounds for independent judiciary and strengthening the liberal political culture"¹⁹⁰.

The Turkish government responded to the APD by declaring its own National Program in March 2001. The preparation of the NP has been the most important progress that the Turkish Government has made since the EU's Helsinki Summit.

¹⁸⁸ Dölek, *Op.cit.*, p. 30.

¹⁸⁹ Öniş, *Op.cit.*, p. 6-7.

¹⁹⁰ Dölek, *Op.cit.*, p. 30.

Following the Helsinki Summit, the Turkish Government established an institution called the European Union General Secretariat (EUGS), which has been regulating the EU affairs in coordination with the Ministry of Foreign Affairs. It was also the EUGS who prepared the NP. Here, it is very important to note that the EUGS had been headed by Volkan Vural under the deputy-Prime-Ministry of Mesut Yilmaz who has been a vocal pro-EU politician.

The actual NP is about 500 pages. Together with the addendums, it reaches to around 1000 pages. The political and economic criteria occupy about 20 pages, while the remaining 500 pages occupy articles that would be harmonized with the EU's *acquis communautaire*. According to the NP, Turkey would implement 4000 administrative changes, modify 94 laws and pass 89 new laws in order to be in harmony with the EU's *acquis communautaire*. In the National Program of Turkey, the Turkish authorities recommended a reform plan which contained the legal and constitutional changes and amendments on the areas of freedom of expression, freedom of peaceful assembly and association, fights against torture and ill-treatment, training of the state officials on the human rights-related issues, the functionality and the efficiency of the judiciary, improvement of the prison conditions, enjoyment of the fundamental rights and freedoms by all individuals regardless of difference on any grounds¹⁹¹.

In summary, these two documents were the essential tools to draw the borders of the relationship between the EU and Turkey. The emergence of them means that the relations between the two parties would rely on the specific model of "positive conditionality". After examining the general characteristics of that model, the following section will provide a general overview of the reform period in Turkey.

¹⁹¹ Ibid., p. 31.

4.6. The Opening up of Accession Negotiations: What Does It Portend for the Prospective Human Rights Record of Turkey?

In December 2004, the EU agreed to open accession talks with Turkey and in October 2005, the negotiations opened with Turkey. The EU's decision was a real breakthrough for many reasons, not the least of which is that it is stated that Turkey had met the political aspects of the Copenhagen criteria for membership. This was in sharp contrast to EU pronouncements in 1997, when the Turkish membership bid was rejected because of the shortcomings of democracy in Turkey. No doubt, the EU provided a necessary push for reforms, creating a supportive international environment and a "virtuous" as opposed to a "vicious" circle in which half-hearted reforms failed to generate momentum for broad democratic consolidation¹⁹².

As the Regular Reports, especially prior to the year 2000 contain little in the way of evaluation-if anything, they are broadly descriptive rather than analytical-one must resort to analyzing the tone of conditionality contained within them for any indication as to the level of confidence which the EU places in particular reforms introduced by Ankara. Even so, blurry drafted phrases like "gives cause for concern," "constitutes another important step forward," "remains worrying," or "represents an encouraging measure" give few clues as to exactly how the Commission is assessing developments in Turkey-or as to what sort of changes it is expecting. Although the quality of the Regular Reports in this particular respect has steadily and significantly improved ever since December 11th 1999 Helsinki decision to accept Turkey as a candidate for accession, the practice is still for the Commission's conditionality to be reactive, rather than proactive or prescriptive¹⁹³.

The Commission, for its part, keeps track of developments in the area of human rights in Turkey by drawing from all types of sources, from government reports (or government answers to the Commission's queries), to press sources, academic sources, Council of Europe and The Organization for Security and Co-

¹⁹² Kubicek (2005), *Op.cit.*, p. 367.

¹⁹³ Zalewski, *Op.cit.*, p. 10.

operation in Europe (OSCE) reports, and NGO sources (international, national or local). In all likelihood, it also relies on confidential regular reports drafted by the Member States' embassies in Ankara on developments relating to Turkey's human rights record. Criticisms in the 2004 Commission Report against Turkish legal regime in the Area of human rights may be summarized as below¹⁹⁴:

- the Turkish government has not signed the Framework Convention for the Protection of National Minorities or the Revised European Social Charter;
- although the Constitution has been amended to enable Turkey to accede to the Statue of the International Criminal Court, the government has not yet done so;
- Turkey is yet to implement a significant number of decisions of the European Court of Human Rights, especially in the area of freedom of expression (it has allowed, however, for the re-trials of Kurdish human rights activist Leyla Zana and of a number of other Party for Democracy politicians-accused of being members of a terrorist organization-following judgements of the Court). On the whole, the Court found that Turkey had violated the European Convention for Human Rights on 132 occasions;
- provisions enabling retrial still do not apply to cases that were pending before the Court prior to 4 February 2003;
- Additional Protocol No. 12 to the ECHR on the general prohibition of discrimination by public authorities has not been ratified;
- despite the adoption of a new Labor Law in 2003, Turkey still lacks legislation against discrimination on the basis of all prohibited grounds, such as racial and ethnic origin, religion or belief, age, sexual orientation and disability;
- the current Law on Association restricts the establishment of an association on the basis of race, ethnicity, religion, sect, region or any other minority group;
- endowed with a 10% threshold for entry into Parliament, the electoral system makes it difficult for minorities to be represented in the National Assembly;
- a significant number of cases where non-violent expression of opinion is being prosecuted and punished still exist. Moreover when convictions are overturned in line with the amended legislation, full legal redress, such as the restoration of civil and political rights and the deletion of criminal records, is not always guaranteed;

¹⁹⁴ Ibid., p. 16.

- repealed or amended articles of the Penal Code and Anti-Terror Law, as well as other provisions, are still used to prosecute and convict those who exercise their freedom of expression;
- revised article 159 of the Penal Code (“insulting the state and insulting the state institutions”) continues to be used to prosecute those who criticize the state institutions in a way that is not in line with the approach of the European Court of Human Rights; Article 159 and a provision criminalizing religious personnel for criticizing state, appear virtually unaltered in the new Code;
- the regularity with which cases are filled against members of the press-on the basis of Articles 159, 169 (“adding and abetting terrorist organizations”) and 312 (“incitement to racial, ethnic or religious enmity”) of the Penal Code-represents a significant deterrent to freedom of expression through the media;
- journalists, writers and publishers continue to be sentenced for reasons that contravene the standards of the ECHR-for example, a journalist was sent to prison in May 2004 on the basis of the 1952 Law on Crimes Against Atatürk;
- a new regulation (published in January 2004) establishing the possibility for private national television and radio channels, in addition to the state broadcaster TRT, to broadcasts in languages other than Turkish is still rather restrictive, setting narrow time limits for broadcasts in other languages, (for television, four hours per week, not exceeding 45 minutes per day and for radio, five hours per week, not exceeding 60 minutes per day). The new regulation does, however, remove the quaint requirement that television presenters wear ‘modern’ clothing;
- restrictions imposed on broadcasters, including the requirement to respect the principle of “the indivisible unity of the state”, remain unchanged;
- according to a May 2004 circular-issued by the Directorate General for Foundation-all foundations, including religious foundations, are obliged to seek permission prior to submitting applications to participate in projects funded by international organizations, including the European Commission;
- non-Muslim religious communities continue to lack legal personality and are subject to a ban on the training of non-Muslim clergy; a number of them-including the Catholic and Protestant communities –are not entitled to establish foundations and are thus deprived of the right to register, acquire and dispose of property; those allowed to establish foundations face interference by the Directorate General for Foundations, which is able to dissolve the foundations, seize their properties, dismiss their trustees without a judicial decision and intervene in the management of their assets and accountancy;
- not officially recognized as a religious community, Turkish Alevis often experience difficulties in opening places of worship- compulsory religious instructions in schools still fails to acknowledge non-Sunni identities;

- although the new Penal Code foresees a prison sentence for those ordering and conducting virginity tests in the absence of a court order, the consent of the woman on whom the test is to be conducted is still not required;
- Turkey has not yet accepted Article 8 of the European Social Charter on the right of employed women to the protection of maternity;
- Turkey has still not accepted Article 7 (“the right of children and young persons to protection”), Article 15 (“on the rights of disabled persons”), and Article 17 (“the right of mothers and children to social and economic protection”) of the European Social Charter;
- Trade unions face restrictions on the right to organize and the right to collective bargaining, including the right to strike;
- Turkey has not yet accepted Article 5 (“right to organize”) and Article 6 (“right to bargain collectively” including the right to strike) of the European Social Charter;
- Turkey has not signed the European Charter for Regional and Minority languages;
- Turkey has not yet ratified the Additional Protocol No. 12 to the ECHR on the general prohibition of discrimination by public authorities;
- non-Muslim minorities not usually associated by the authorities with the Treaty of Lausanne, such as the Syriacs, are still not permitted to establish schools;
- legislation preventing Roma from entering Turkey as immigrants is still in force.

Turkish governments have pushed through several reforms in some sensitive areas (education and broadcasting in the Kurdish language, circumscribing the power of the military) that could have been unthinkable just a few years before. A remarkable example of this situation is the reform package of August 2002, which was defined as “miracle” by the Eurocrats. As it was stated in the progress report of 2002, Turkey was undergoing a difficult period. The leader of the PKK, Abdullah Öcalan, was arrested and there was severe domestic pressure over the government concerning the death penalty to be applied to the terrorist leader. However, as Bülent Ecevit, the Prime Minister of the 57th Government, stated after the general election of 3 November 2002, by adopting this reform package, the government committed

suicide¹⁹⁵. The three political parties, constituting the 57th government, paid the cost of domestic reforms by winning no seat at the Parliament in the general elections, which were held only two months later. “This picture also proves the power of the EU conditionality, which was equipped with clear and credible incentive of membership”¹⁹⁶.

One Turkish observer noted that the EU had sparked a “period of profound and momentous change in Turkish history... [that] would have been impossible in the absence of a powerful and highly institutionalized EU anchor in the direction of full membership”¹⁹⁷.

Nonetheless, substantial reforms would occur, as by the end of 2004 nine reform or “harmonization” packages made their way through the Turkish National Assembly. Three of these would be under the left-right coalition government (2000-02) and six under the government of the AKP (Adalet ve Kalkınma Partisi-Justice and Development Party), elected in November 2002. These reforms would dramatically alter the Turkish political landscape, and would include 34 constitutional amendments in 2001 and ten more 2004. Highlights of the reform include narrowing the basis for which the state could restrict the freedom of rights and liberties (Article 13 and 14 of the Constitution), more liberal provisions for freedom of assembly (Article 34), limiting punishment for insulting state institutions (Article 159), elimination of the death penalty (finally abolished for all crimes in 2004). For the sake of thesis, it would be more beneficial to make a comprehensive and detailed legal analysis of all these constitutional and legal changes. However, all those reforms and amendments are too many to examine and not directly related to the main argument of thesis. Thus, it will be practical to look at the list below which enumerates the most important changes between 2001-2004 in the Turkish human rights record may be enumerated as below¹⁹⁸:

¹⁹⁵ Turkish Daily Newspaper *Radikal*, 06/11/2002, available at, <http://www.radikal.com.tr/haber.php?haberno=55652&tarih=06/11/2002>

¹⁹⁶ İkizer, *Op.cit.*, p. 5.

¹⁹⁷ Kubicek (2005), *Op.cit.*, p. 362.

¹⁹⁸ Zalewski, *Op.cit.*, p. 15.

- the abolition of death penalty in all circumstances (under Protocol No. 13 to the ECHR) and the eradication of all remaining death penalty provisions in the Constitution;
- the introduction of life imprisonment of crimes against life that are motivated by “tradition and customs” (to be applied, as it appears, in cases of so-called “honour killings”) under the Penal Code;
- alignment of the judiciary with European standards; the reduction of the jurisdiction of the State Security Courts;
- the inclusion in domestic legislation of the principle that evidence obtained through torture would be inadmissible in court;
- the restriction of the role of the National Security Council to that of an advisory body;
- the abolition of the state of emergency in the South-east;
- the ban on discrimination on the basis of race, religion, gender, language, ethnicity, philosophical belief, or religion in school text books;
- provisions on the usage of the mother tongue in Turkey;
- Constitutional amendments enshrining the supremacy of international and European treaties ratified by Turkey in the area of fundamental freedoms over internal legislation;
- amendments strengthening gender equality;
- amendments to bring legislation in line with the rulings of the European Court of Human Rights;
- amendments to narrow the scope of judicial interpretation of “separatist propaganda” and “acts insulting the state”;
- laws broadening freedom of the press;
- laws aimed to strengthen the prevention of, and the prosecution against, acts of torture and other cruel, inhuman or degrading treatment;
- laws limiting the possibility for parties dissolved;
- and provisions for the compensation of torture victims and the implication of personal responsibility of State officers involved in such crimes.

It is essential to remind that the Commission's Regular Reports on Turkey's progress towards the accession are the most important tools to understand the specific criteria used by the EU to measure the performance of the country in the field of human rights. It is due to the fact that neither the 1993 Copenhagen European Council nor the entire body of EU law provides the adequate definition of the concept of human rights¹⁹⁹. When one looks at the reports of the Commission, the issues regarding fundamental rights and freedoms are dealt with in a section named as 'human rights and protection of minorities'. In that section, there are three subheadings, each of which concerns specific human rights problems in Turkey. The first one is headed as *civil and political rights*, which includes death penalty, torture and ill-treatment, prison conditions, pre-trial detention, freedom of expression freedom of media and freedom of association and peaceful assembly. The second one is named as *economic, social and cultural rights* which deals with the issues like gender equality (or the right to equal opportunity), children's rights and child labor, the role of the trade unions and cultural rights. The last subheading, called as *minority rights and protection of minorities*, include the issues and problems related to the non-Muslim minorities and the Kurdish issue²⁰⁰.

All these regulations indicate a vital and crucial point: They are the signals of the democratization of Turkish political and legal system. According to YAZICI, "the legal and political transformation of the monist structure of Turkish nation state has opened the ways to "... liberalisation and democratisation and the eventual establishment of a consolidated democracy"²⁰¹.

However, the most important point, perhaps, is that they have been adopted despite lack of support from the mass public. One might suggest that this reaffirms what Schimmelfenning and others have noted, that Turkish society is fundamentally weak. While one might be tempted to argue that this means that reforms will not be consolidated or could be possibly repealed, the fact that the AKP overwhelmingly

¹⁹⁹ Serap YAZICI, "The Impact of the EU on the Liberalization and Democratization Process in Turkey", in R. Griffiths and D. Ozdemir (ed.) *Turkey and the EU Enlargement*, Istanbul, Istanbul Bilgi University Press, 2004, p. 92.

²⁰⁰ European Commission, *Regular Reports from the Commission on Turkey's progress towards Accession*, available at, <http://europa.eu.int/comm/enlargement>

²⁰¹ Yazıcı, *Op.Cit.*, p. 92.

won in local elections in 2004, retains high support among the public at large, and that there are no serious calls for Turkey to pull out of the accession process, suggests that the broader of public is at least resigned to the fact that the reforms are in place.

Obviously, the recent transformation of the Turkish democracy has provided that “the positive conditionality model, based on the anchor capacity of the EU and on the credibility of Turkey, can serve as an important tool to understand the essence of the transformation itself”²⁰². Since 1999 democratization has risen to the forefront of the country’s political agenda. Many issues that were previously not discussed or considered out of bounds politically have been in recent years have begun to be discussed in the Turkish media. What has been the public’s reaction? Do Turks support the broad demands (rights for minorities, greater freedom of expression, and abolition of the death penalty) put forward by the EU as a prerequisite for accession? Are EU conditions tapping into demands “from below?” Is it accurate, as one study argues, that the recent reforms in Turkey are a “natural outcome of public support for further democratization?”²⁰³ Does the EU plays its role as an anchor and a normative power? Is the normative power EU’s human rights conditionality works effectively in the case of Turkey? The next chapter – concluding chapter – will focus on the answers of these core questions.

²⁰² Dölek, *Op.cit.*, p. 35.

²⁰³ *Ibid.*, p. 370.

CHAPTER V

5. THE EU AS A NORMATIVE POWER: THE EVALUATION OF ITS EFFECTIVENESS IN THE LIGHT OF HUMAN RIGHTS CONDITIONALITY IN THE CASE OF TURKEY

In 30 years time after its initial formulation, the civilian and normative power Europe idea has not been repudiated but rather invoked frequently as an adequate formulation reifying the ontological distinctiveness of the European Union (EU) in the international arena. In a way, it accorded some sort of informal legitimacy to the Union in its dealings with the outside world, and culminated in some normative assessments of its very essence such as “Europe as a force for good”, committed to civilizing international relations. “It has also transmogrified into literature that explores the particular impact that the EU has on international relations as a consequence of its role as a norm generator”²⁰⁴. The fifth chapter of this thesis, analyses the effectiveness of the normative power EU in the case of Turkey while applying its positive conditionality paying attention to the EU’s human rights conditionality.

²⁰⁴ Richard Withman, “Road Map for a Route March?: ‘(De-)civilianizing through the EU’s Security Strategy’”, *European Foreign Affairs Review*, Vol. 11 ,2006, p. 4.

5.1. The European Union as a Normative Power: The Key Actor in Promoting further Democratization in Turkey?

Despite its seemingly unadorned internal logic in theory, the effective functioning of the EU's human rights and democratic conditionality towards any third country hinges upon a complex scheme of country-specific intervening variables as well as a host of other general factors that are deemed to be relevant in determining its success in practice. With this in mind, the fifth chapter of thesis attempts to enumerate the conditions of conditionality that are at play in the third countries' democratization process, especially focusing on Turkish case and will try to test the effectiveness of the normative power EU's human rights conditionality -in the light of ex ante conditionality- in the case of Turkey. The deficiencies of the EU's human rights conditionality approach towards Turkey are also explored.

5.1.1. Costs of Compliance

The success of the Union's Human rights and democratic conditionality towards a third country, in the first place, is predicated upon a domestic balance sheet favoring net benefits to be reaped as a result of compliance with the Union's conditions over the political and economic costs to be incurred. On the one side of the coin, it could be claimed that the eventual EU membership is generally deemed to be the last terminus of any candidate country's vocation towards westernization and thus a credible re-assertion of its European identity legitimated before the eyes of the international community. As regards the material bargaining mechanism, it is speculated that, the eventual EU membership would grant the candidate country the credibility to attract a significant portion of foreign direct investment which would in turn reinvigorate her economy by providing new job opportunities accompanied by the modernization of the existing infrastructure. For instance, ancillary to this presuppositions, it is suggested that, "Turkey's net gains under the Union's common

agricultural policy and EU structural funds would be immense nearing 30 billion euro per year - crucial facilitating factor for a buoyant economy”²⁰⁵.

On the other side of the coin, some commentators point out that the Kemalist legacy of a secular, unitary nation state as well as the traditional role of the military establishment in Turkish politics as the guardian of Kemalist principles including republicanism, nationalism, secularism, populism statism and reformism hinder the feasibility of the EU’s leverage to procure fundamental human rights and democratic reforms in the country. For instance, the Union’s demands from Turkey to grant minority rights to Kurdish population residing in the county had been regarded as a security threat to the territorial integrity of the Republic and unleashed in an uneasy sense of foreboding and a widespread skepticism among both the pro-Western elite and some prominent figures of the military towards EU membership.

According to some commentators, much of the deficiencies in the human rights regime and democratic performance of Turkey seem to be related to the political culture of the country. According to Kubicek, this political culture is generally regarded to be nationalistic and authoritarian with a preference for order over individual rights²⁰⁶. Moreover as Öniş claims, Turkish political system stresses a deep sense of commitment to secularism and unitary nation-state²⁰⁷. Internal and external “threats” to these fundamental principles are interpreted as a challenge to the survival of the state. For instance, the Union’s demands from Turkey to grant minority rights to Kurdish population residing in the country had been regarded as ‘a security threat to the territorial integrity of the Republic’ and unleashed in an uneasy sense of foreboding and a widespread skepticism among both the pro-Western elite and some prominent figures of the military towards EU membership.

According to this line of understanding, supporters of this idea also claim that, the rights of the citizens would be sacrificed in order to protect the state, and also state’s rights come first before its citizens. At the same time, security and

²⁰⁵ Ibid., p. 13.

²⁰⁶ Paul Kubicek, “The European Union and Grassroots Democratization in Turkey”, *Turkish Studies*, Vol. 6, No. 3, September 2005, p. 370.

²⁰⁷ Ziya Öniş, “Luxembourg, Helsinki and Beyond: Toward an Interpretation of Recent Turkey-EU Relations” *Government & Opposition*, Vol. 35, No. 4, Fall 2000, p. 477.

survival of the state are considered as not only being threatened by the other nations and states but also by the citizens themselves in Turkey—ethnic or religious. Such a kind of state understanding tried to develop a homogeneous state and exclude the “other” elements except Turkish identity to eliminate the threats to its entity. This kind of antagonism and ethnic nationalism based on Turkishness denied different ethnic groups and incorporated a nationalist ideology of Jacobean inspiration that emphasized the unity and indivisibility of nation state territory and people²⁰⁸.

The central concern, in this established culture, is the protection of the state from these threats and for this purpose the rights of the citizens could be overlooked. To some extent, the following argument by Gündüz seems to be in line with this understanding. For him, because Turkish state has grappled with virtually every kind of terrorism and also Islamic fundamentalism, it confronted considerable difficulties in meeting its obligations in the field of human rights²⁰⁹. After all, both the rise of Islamism and Kurdish separatism are reactions against the secular and civic character of the Turkish nation. Hence for Gündüz “...continued liberalization in Turkey is contingent upon alleviating these concerns”²¹⁰. In that regard, some of the EU’s complaints on violations of human rights in Turkey seem to stem from the measures taken to eradicate these threats.

According to some commentators who believe that the main obstacle in front of Turkey to be a more democratic country is its authoritarian state structure, as mentioned before. After the dismantling of the Ottoman Empire, the founders of Turkish Republic have engaged themselves in creating a homogeneous Turkish identity through alienating the Islamic and Kurdish identities. This exclusivist understanding of identity has taken its end form when the Kemalist ideology had stepped into fill in the ideological vacuum that had emerged in the aftermath of the revolution process. This process resulted in the isolation of some groups from politics and after criticized by the Europeans as the most important problem for developing of

²⁰⁸ Chris Rumsford, “Placing Democratization Within the Global Frame: Sociological Approaches to Universalism, and Democratic Contestation in Turkey”, *Sociological Review*, Vol. 50, No. 2, May 2002, p. 262.

²⁰⁹ Aslan Gündüz, “Human Rights and Turkey’s Future in Europe”, *Orbis*, Vol. 45, No. 1, Winter 2001, p. 16.

²¹⁰ *Ibid.*, p. 30.

human rights and democratization in Turkey. They also believe that, expected process could not be prevented and the “Kurd” and “Islam” elements came to be open to discussion through the EU membership process and the Islamic movements that started to spread after 1980s.

Concerning the Kurdish problem, for Europeans, the issue is clear: “the Kurds are an ethnic minority that deserves protection of its distinct identity, Turkish politicians should recognize that Kurds are different from Turks and that forced assimilation will not work”²¹¹. Turks, however, see the matter quite differently: Ankara’s commonsense policy is to recognize no minorities except those (non-Muslims) whose status was established by the treaty of Lausanne and also it refused to extend any part of its Muslim population which included the Kurds²¹². Most Turks also agree that the only solution to the conflict is ‘to stop terrorism’. The Turkish state is unitary; it must be strong; concessions under the Ottomans (forced upon it by Europe) led to the dismemberment of the state, and Kurds do not constitute an ethnic minority, as they too are Muslims. This last point has begun to waver, but the idea of tinkering with state institutions to satisfy the Kurds remains impolitic.

In general, the governments in the first half of the 1990s and today’s AKP (Adalet ve Kalkınma Partisi-Justice and Development Party) faced the dilemma of creating reforms and fighting against terrorism. Whenever they tried to make improvements in the field of human rights, the reforms could not be reflected in the social lives because of the provisions put in the legal system to fight against the PKK terrorism. Especially after 1985 and 2007 the governments intended to improve the human rights record of the country. However, the rising problem of terrorism caused by PKK constituted the most important obstacle preventing the government to initiate reforms for improving human rights conditions and creating a democratic transformation in the country²¹³. In spite of such a big dilemma, the Özal government was insisting on improving relations with the Community. The most important signal

²¹¹ Paul Kubicek, “Turkish European Relations: At a New Crossroads?”, *Middle East Policy*, Vol. 6, No. 4, 1999, p. 163.

²¹² Gündüz, *Op.cit.*, p. 2.

²¹³ Çağlar Dölek, “Human Rights Conditionality In the Relations of the EU and Turkey”, Research Paper, 2007, p. 20, available at, <http://www.turkishweekly.net/pdf/CaglarDolek-HR-FrameworkAnalysis.pdf>.

for that was the application of membership in 1987. In a way, as Dağı discusses, the human rights problems of Turkey were mostly locked to the PKK terrorism²¹⁴. For example, in 1991, Turkey introduced a number of reforms including the permission to use Kurdish language in publications, the annulment of Articles 141, 142 and 163 of the Penal Code, the commutation of the death sentences to 20 years and life sentences to 15 years, and early conditional release of the large number of political prisoners. Furthermore, in the same year, a ministry was established to specifically deal with the problems of human rights, and later the human rights organizations were permitted to operate across the country²¹⁵. In fact, these were important improvements in the field and showed the commitment of the governments to address the problems of human rights. However, the country was consistently experiencing the dilemma between improving human rights and fighting against terrorism. To exemplify such a dilemma, the Anti-Terror Law in the same year of those reforms, was enacted²¹⁶.

As for the Islamic identity seen as the second excluded element from Turkish political structure and identity by the above mentioned thinkers, beginning in the 1950s and through the 1990s, Islamic discourse began to enter Turkish politics and compete with Atatürk's secularism. After the 1980 *coup d'état*, Islam became integrated into the nationalist ideology especially together with Özal. In 1990s, there was a resurgence of political Islam under the banner of the Refah and Fazilet parties. But without losing any time Kemalist elite took measures against this 'internal threat to its secular republic'. In 1998, as a result of Turkish Military's intervention called as "postmodern coup d'état", Refah Party was banned as illegal for threatening the constitutionally mandated secular order, although the party has been resurrected as Fazilet Party.

After these attempts by Kemalist elites and bureaucrats, Islamicists began to realize that if they want to survive in political life in Turkey, they must use European Union discourse and redefine their policies in line with the the EU's more democratic

²¹⁴ İhsan D. Dağı, "İnsan Hakları ve Demokratikleşme: Türkiye – Avrupa Birliği İlişkilerinde Siyasal Boyut", in Atila Eralp, *Türkiye ve Avrupa*, İmge Yayınları, Ankara, 1997, p. 160.

²¹⁵ Haydar Çakmak, *Avrupa Birliği Türkiye İlişkileri*, Ankara, Platin, 2005, p. 79.

²¹⁶ Dölek, *Op.cit.*, p. 22.

and liberal demands from Turkey to meet. According to Dağı, thanks to these developments, the EU as a rights-bearing institution began to exist as valuable political resource for suppressed and marginalized groups in Turkey²¹⁷.

Turkish democracy is also criticized by many as being institutionally weak and too limited due to the role of the military in politics. According to them, in modern European democracies, militaries are under strict civilian control and do not interfere in political life. This is not the case in Turkey, where there have been three overt military coups since 1960, and institutions such as the National Security Council give the military a direct say in policy making.

As Gündüz suggests, military has had a strong influence over the government of the country and it has viewed itself as the protector of Atatürk's secular modernizing agenda²¹⁸. The military sees itself as a guardian of his legacy, the protector of democracy from internal threats. Turkish military is also a key player in the EU accession process due to its critical role in founding modern Turkey and continued popularity within Turkish society²¹⁹. Additionally successive waves of military intervention in politics provided ammunition to those who regard Turkish democracy as a sham. On the other hand, it should be pointed out that the EU's discomfort with military's involvement in Turkish politics is not alien to Kemalist doctrine. While Atatürk proclaimed that 'the Turkish nation considers its army the guardian of its ideals, he simultaneously chose to limit the powers of the military'²²⁰ as enshrined in the 1924 constitution. The sporadic involvement of the military in Turkish politics, in essence was inspired by the overarching hesitation for ensuring the survival of the state and the regime not to confiscate an administrative power. Thus, in the run-up to each military intervention after 1960, the civilian administration was restored peacefully without encountering resistance from the

²¹⁷ İhsan D. Dağı, "Transformation of Turkish Politics and the European Union: Dimensions of Human Rights and Democratization", in Bülent Gökay (ed.), *Turkey, Greece and Cyprus: Security Across the Boundries of a New Europe*, Keele European Research Center, 2004, p. 141.

²¹⁸ Gündüz, *Op.cit.*, p. 21.

²¹⁸ Aydınli Ersel, Nihat Ali Özcan, and Doğan Akyaz. "The Turkish Military's March Toward Europe", *Foreign Affairs*, January/February 2006, p. 1.

²¹⁹ *Ibid.*, p. 1.

²²⁰ Pınar Tank, "Turkey as a Special Case for the EU: Will the Generals Retreat from Politics?", *Security Dialogue*, Vol. 32, No. 2, 2001, p. 219.

guardians of the Kemalist principles. At the same time, Turkey's long-standing fear of invasions, and wars helped elevate the military and its statue of Turkey's all-around protector from both external and internal threats. According to Aydınli, for Turkish public, the military is inseparable from the idea of the nation. Many Turks still think of Turkey as "asker millet", "an army nation", reflecting their perception that army founded the state and will protect it²²¹.

As for the EU demands from Turkey about military's role in politics, they have mostly centered on giving civilian authorities greater control over the military. The EU reforms have called for a virtual revolution of the military's mindset, requiring that the military's traditional role and mission be redefined in a much more narrow way: "it means that the military will eventually have to open its ranks to religious, ethnic and sectarian diversity, threatening the cohesion it has perfected over the years"²²².

Last but not least, the prospect of membership in the Union also had a positive impact on the attitude of the military towards the EU-triggered reform process in the country. According to Aydınli, Turkish military began to change its position towards the EU demands due to several reasons. First of all, the military began to see the EU membership as the final stage of a modernization process²²³ and Turkish generals have adopted the requirements of the Brussels because they believe that accession to the EU would provide solutions to Turkey's main problems such as Islamism and Kurdish separatism²²⁴. These two are considered by the army to be the major internal threats that it had long fought with but failed to eradicate. In fact, with Turkey's entry into the EU, Military will have been relieved of its major concerns and there will remain no justification for its claim to be the guardian of the Republic. As such, the EU came to be regarded as a new source of guarantee for Turkey's stability. Thus since 1999, Turkish military have started to give more or less tacit acceptance to political reforms demanded by the EU, including substantial limitations of its influence on civilian institutions. As the country's ultimate guardian, the military will carefully balance the EU's demands for reform, especially those regarding cultural diversity with national

²²¹ Aydınli *Et. al.*, Op.cit., p. 2.

²²² *Ibid.*, pp. 4-5.

²²³ *Ibid.*, p. 1.

²²⁴ *Ibid.*, p. 6.

security: the military representatives on the boards of the Council of Higher Education and the Radio and Television High Council were removed. The Kurds were granted broadcasting rights, in 2003, the ratio of civilians to military officers on the National Security Council (NSC) was increased, and the civilian was elected to head the NSC's secretariat. However, for Aydın, Turkish armed forces may need to see more evidence that Turkey's march toward membership in the EU is irreversible before it gives up more of its traditional prerogatives²²⁵. Thus the credibility of EU's commitment to Turkey's accession has a major role to play in the democratization of the country. Prospect EU membership would galvanize Turkish elites and society around a great opportunity, creating a grand consensus that might transcend the nations deep fractures²²⁶.

Reforms undertaken to decrease the influence of the military in politics may be summarised as below²²⁷:

National Security Council

- With the October 2001 constitutional amendments, the 'advisory' nature of the NSC was enshrined in the constitution and the number of civilians in the NSC was increased.
- With the July 2003 (sixth) harmonisation package, the representative of the NSC on the Supervision Board of Cinema, Video and Music was removed.
- With the August 2003 (seventh) harmonisation package, the extended executive and supervisory powers of the secretary-general of the NSC were abolished and other provisions authorising unlimited access of the NSC to any civilian agency were abrogated. The post of secretary-general was no longer confined to a military person and a civilian could be appointed upon the proposal of the prime minister. The frequency of NSC meetings was modified to convene every two months instead of once a month. With this package, the provision to obtain the views of the NSC when determining the languages to be taught in Turkey was also abrogated.
- With the May 2004 constitutional amendments, the military representative in the Higher Education Council (YÖK) was removed.

²²⁵ Ibid., p. 7.

²²⁶ Ibid., p. 5.

²²⁷ Senem Aydın and Fuat Keyman, "European Integration and the Transformation of Turkish Democracy", Center for European Policy Studies, EU-Turkey Working Papers, No. 2, August 2004, p. 22.

- The eighth harmonisation package repealed the provision allowing for the nomination of a member of the High Audio-Visual Board (RTÜK) by the Secretariat General of the NSC.

Defence expenditures

- With the August 2003 (seventh) package and the May 2004 constitutional amendments, new provisions have been adopted with a view to enhancing the transparency of defence expenditures. The seventh package allows the Court of Auditors, upon request of parliament, to audit accounts and transactions of all types of organisations including those concerning the state properties owned by the armed forces. The May 2004 constitutional amendments removed the items exempt from auditing under the secrecy clause.
- The Public Finance Ruling and Controlling Law adopted on 10 December 2003, which will enter into force in 1 January 2005, brings extra-budgetary funds into the overall state budget. The law requires more detailed information and documents to be provided in the budget proposals to be submitted to the parliamentary committees and parliament. It also requires longer periods of debate on the defence budget proposals.
- The Public Finance Ruling and Controlling Law establishes a method of budgeting based on performance, by requiring performance reports to be submitted to the parliament and related institutions, enhancing parliamentary control on military spending. The law also enables the Court of Auditors to undertake ‘value-for-money’ inquiries and improves the mechanisms of internal control.

In summary, according to some commentators since Turkey has failed to internalize the core values that should underwrite the reform process, EU’s demands in this field has been conceived as an imposition of foreigners “using human rights discourse to threaten Turkey’s security”²²⁸. This line of thought suggests that such concerns could be dissipated and the perceived costs of compliance could be mitigated only if Turkey genuinely adopts a right-based justification for its democratization process. The reluctance of Turkey emerged in an environment where the rising terrorism of PKK blocked the hopes for further improvements in the fields of human rights and democracy. Thus, the *cost of compliance* with those conditions as stated in the Copenhagen Criteria was much higher than the incentive of membership which was not even explicitly expressed by the Union. Furthermore, those reforms emerged in the crisis periods were just to silence or to appease the harsh criticism coming from the institutions of the EU, most importantly from the European Parliament. Therefore, in the 1990s, the limited scope of reforms was not

²²⁸ Nathalie Tocci, “Europeanization in Turkey: Trigger or Anchor for Reform?”, *South European Society & Politics*, Vol. 10, No. 1, April 2005, p. 76.

successful to consolidate democracy and to strengthen the human rights regime of Turkey.

Despite such concerns the overall balance of pros and cons for joining the Union has been perceived as positive from the side of the Turkish government and thus it is considered as one of the basic objectives of the Turkish foreign policy.

5.1.2. Carrots must be Perceived as a Sizeable Benefit and the Sticks must be Real

Generally speaking the conditionality that the EU applies with remarkable success towards the countries aspiring to become members is based upon an *asymmetrical relationship* between the conditionality recipient and the Union whereby the latter dictates not much negotiates the conditions to be fulfilled by the candidate and thereafter grants the rewards upon compliance. Such an unequal relationship could be sustained legitimately only if both of the partners perceive the benefits to be obtained at the end as sizeable enough and the costs to be incurred tolerable. “One should note that the prospect of receiving the reward must be real, that is, there must be certainty that political change would be rewarded.”²²⁹ From the side of the conditionality recipient, in our case a candidate state, the ultimate reward is “EU membership which is dangled as a carrot to encourage political liberalization”²³⁰. In the Turkish case, as it would be elaborated in the preceding sections, the impetus of the domestic reform process after the Helsinki summit of 1999, appear to substantiate the presupposition that the prospect of membership proves to be an important incentive for the candidates to improve their human rights practices along the demands of the Union.

²²⁹ Pual Kubicek, “International Norms, The European Union, and Democratization: Tentative Theory and Evidence”, in Kubicek (ed), *The European Union and Democratization*, Routledge, 2003, p. 17.

²³⁰ Ibid, p. 2.

On the other hand, in any type conditionality relationship between a recipient and an actor, the former should be provided with the reassuring knowledge and the deterring conviction that, the rewards it wishes to obtain would be suspended should it defers or reneges on its pre-determined commitments and obligations. In other words, just like the carrots, the sticks must be real too. On the other hand, the EU hitherto has proved to be reluctant in citing human rights violations as a pretext for suspending an agreement with a third country. In fact only rarely did the EU invoke human rights clauses to revoke an agreement, albeit temporarily (Romania 1989, Yugoslavia 1991) or to delay its conclusion with a third country (Romania, Bulgaria and Slovakia in 1997)²³¹. This appears to jeopardize the Union's genuine commitment to human rights promotion activities in the third countries and subjects it to accusations of being equivocal in the face of violations because of other more important concerns.

5.1.3. Conditionality Should be Applied Coherently and Consistently:

The coherent and consistent application of the EU's human rights and democratic conditionality across the queue of applicants is of utmost importance for ensuring the credibility of the Union as an objective supervisor in this realm. At this point Smith argues that Turkey as well as the other candidates of the last round of enlargement has been subjected to tougher membership conditions.²³² Moreover, although the Copenhagen Political Criteria of 1993 refer to the respect for and protection of minority rights as a precondition for accession to the EU, the omission of this clause in the Amsterdam Treaty might have undermined the sincerity of the Union in terms of its genuine commitment to this principle. At this point, it is

²³¹See, Frank Schimmelfennig, "The Conditions of Conditionality: The Impact of the EU on Democracy and Human Rights in European Non-member States", Workshop 4, "Enlargement and European Governance", ECPR, March 2002, p. 5. and Pual Kubicek, "International Norms, The European Union, and Democratization: Tentative Theory and Evidence", in *European Union and Democratization*, Routledge, 2003, p. 18.

²³² Karen Smith, "The Evolution and Application of EU Membership Conditionality" in M. Cremona (ed), *The Future of Europe : Integration and Enlargement*, Routledge, 2004, pp. 113-115.

commonly argued that “minority rights lack a basis in EU law and unlike the principle of non-discrimination does not directly translate into *acquis communautaire*”²³³. In practice, there is also significant discrepancy among the minority policies of different member states. Most notably, France and Greece does not recognize the existence of minorities within its borders”²³⁴.

Moreover, ambiguities about the scope of human rights in European law and practice make the application of these principals problematic²³⁵.

First, even though the Copenhagen Criteria and the 1997 Amsterdam Treaty added a new open clause to Art.6 of the Treaty on European Union (TEU) both refer to “liberty, democracy, respect for human rights and etc., they differ in one crucial respect”. Where the 1993 criteria demand “respect for and protection of minority rights” this clause is fully omitted in the TEU. The European Union seems to be involved in imposing human rights externally, whereas it fails to enforce them internally²³⁶.

Second, the scope of human rights in art.6 is not defined. The most human rights standards in Europe are not adhered to by all current members, some of whom have not still ratified certain of its protocols. Even though all member states of the EU signed the Council of Europe’s European Social Charter of 1961, current member states have not yet put fundamental social right in their own constitutions. “Thus, although it is clear that the EU membership is conditional on respect for human rights, it is not clear precisely which rights, or according to what definitions.

Thus on the whole , it could be claimed that, due to the lack of a formally and clearly laid down benchmark in the framework of the EU with which the situation of the rights of minorities in the candidate states (in this case Turkey)could be

²³³ Gwendolyn Sasse, “Minority Rights and the EU: Before ,During and After Enlargement” *Halki International Seminar on Forging Regional Cooperation, Working Paper*, 2004, p. 4.

²³⁴ Tocci, *Op.cit.*, p. 79.

²³⁵ Iavor Rangelov, “Bulgaria’s Struggle to Make Sense of EU Human Rights Criteria”, p. 1., available at, <http://www.eumap.org/journal/features/2001/oct/bulgariastr>

²³⁶ *Ibid.*, p. 1.

compared, the human rights conditionality principle has an unclear impact on this specific issue area.

But of course there are some sources for optimism for the EU-aspirant countries. Iavor Rangelov expresses his idea clearly in regard with the above mentioned optimism²³⁷:

These lie in the recently-adopted Charter of Fundamental Rights of the European Union, and the European Court of Justice. The Charter constitutes a comprehensive "Bill of Rights", and offers a first indication of what is perceived to be "fundamental rights" in the European Union. The Charter provides some basis for definition of the "human rights" clause of TEU Art. 6 - and by extension, the criteria for accession, despite lacking binding legal power. Unfortunately, the Charter makes no reference to minority rights.

Second, the potential for intervention of the European Court of Justice (ECJ) in human rights matters generally is significantly increased, since the entry into force of the Amsterdam amendments to the TEU. As yet there is no jurisprudence relating to Article 6. The ECJ could choose to enhance its involvement in judicial review of human rights "conditionality" in the accession process, as well as supplying definitions of both "human rights and fundamental freedoms" and the accession "conditionality," through its jurisprudence.

The enlargement process could thus contribute to clearer delineation of human rights in both the Union and applicant countries. Alternatively, the term "human rights" risks becoming an empty piece of Euro-slang, designating a deliberately ill-defined concept, useful only in political obfuscation.

5.1.4. Conditionality would be more Effective in the Existence of Credible Domestic Allies:

Conditionality would be more effective if the Union captures the opportunity to forge alliances with the governmental elites and other domestic actors potent enough to induce compliance with the Unions human rights and democratic conditions. In the case of Turkey, establishing trans-governmental networks with the

²³⁷ Ibid.

societal actors proved to be not so much fruitful for spreading the core norms and values that should underpin the reform process. On the other hand, with the inauguration of the AKP (Adalet ve Kalkınma Partisi-Justice and Development Party) government in 2002 and in 2007 whose political ideology revolves around commitment to further reform and EU membership, the Union seized the chance to re-align itself with the domestic political establishment of Turkey. Indeed the pace, scope and character of the reforms undertaken since 2002 seem to corroborate this assertion.

In 2002 there also rised a strong popular opinion, generally exceeding 60%, in regard with a future accession to the Union. In generally, moderate political reform came with multiple layers of rewards: “Firstly, it mirrored the conditions set from Brussels; secondly, it was in line with popular opinion, and thirdly; it provided a possible path out of the domestic economic crisis”²³⁸.

AKP (Adalet ve Kalkınma Partisi-Justice and Development Party): After the rise of the AKP to power in 2002, The EU-induced political reform process in Turkey certainly gained additional impetus. The current government is committed to the EU accession process and the promotion of democratization as well as the extension of civic freedoms. Yalçın Akdoğan, the advisor of Prime Minister Recep Tayyip Erdoğan reviews the political ideology of the AKP as contained in a booklet, *Muhafazakar Demokrasi*. The document champions democracy as a regime characterized by dialogue and forbearance and, contrary to expectations, does not talk much about Islam or conservative values²³⁹. On the whole, the political program of the current government, to a great extent, overlaps with the human rights and democracy promotion activities recommended by the EU for Turkey. For instance, government officials have often claimed that the Copenhagen criteria could be dubbed as Ankara criteria. Another example, on April 17, 2007, the Turkish government adopted a 400-page road map for its EU accession preparations. The EU Commission had not requested such kind of a road map from Turkey and it was

²³⁸ Ali Çarkoğlu, “Who Wants Full Membership? Characteristics of Turkish Public Support for EU Membership”, *Turkish Studies*, 4:1, 2003, pp. 171 – 194.

²³⁹ Yalçın Akdoğan, *AK Parti ve Muhafazakar Demokrasi*, İstanbul, Alfa Yayınları, 2004.

prepared with Turkey's own will. Turkey's Foreign Minister Abdullah Gül confirmed on 17 April 2007 that reforms would be carried out regardless of the eventual entry to the bloc and added that "If we start debating that now, we'll only lose time, the important thing is to bring about Turkey's transformation"²⁴⁰. These two approaches seem to indicate a strong political determination to sustain Turkey's reform efforts.

According to İkizer the reaction of Turkey to the suspension of 8 chapters in 2006 indicated that for Turkey, democratization was a more important target than the EU membership. He explains his idea by analysing Foreign Affairs Minister Gül's and Prime Minister Erdoğan's reactions. Gül states as follows: "We want to make sure that Turkey will become more and more democratic and meet all the criteria that have been set by the EU." On the other hand, Prime Minister Erdoğan accused the EU for not having a future vision and not calculating the benefits of Turkey's membership. He also added that Turkey would continue to its reform process. According to İkizer, under normal conditions, the EU conditionality is expected to function in a way that the EU asks the relevant country to conform to certain standards and criteria in return for an incentive. However we see that, Turkey has started not to concentrate on the incentive and "extra-ordinary" conditions²⁴¹.

Avcı suggests that AKP has pushed through reforms not just for instrumentalist reasons but as part of a moral imperative, with Prime Minister Erdoğan declaring in July 2004 that Turkey would push ahead with reforms even if the EU failed to open accession talks with Turkey²⁴². True, one might argue that by 2005 Turks were more supportive of reforms, supportive of the AKP's Europeanization programs, and, despite outbursts of Turkish nationalism in April 2005, the Turkish bid to join the EU is not jeopardized by public opinion. However, the point made here is that there is some evidence to suggest that the Turkish public supported the reforms *as a response to EU conditionality when they were adopted*. In other words, there is little to suggest that some of the most basic reforms demanded by Europe- and this would include provisions for the Kurdish language, as minority

²⁴⁰ İkizer, Op.cit., p. 8.

²⁴¹ Ibid., p. 8.

²⁴² Kubicek (2005), Op.cit., p. 366.

rights are integral to the Copenhagen criteria- were driven by grassroots forces. Without pressure from the outside, with its highly doubtful that such reforms would have been adopted²⁴³.

AKP came to power in 2002 by winning the 34% of the general votes and became the single party in the parliament. AKP asserted that “they have changed”; their main concern is not taking the Islamic discourse at the top of the agenda and as a conservative but at the same time a liberal party, their political ideology revolves around commitment to further reform and EU membership. Although all these critical decisions and approaches following by the party, the main discussion points are still pervaded in Turkey: Is AKP still a fundamentalist party and will Turkey be an “Iran” under their rule?

In the light of these questions and the recent developments of AKP’s decisions to lift the headscarf (turban) ban in Turkish Universities; On 31 March 2008, Turkey’s Constitutional Court decided to hear the case filed by Public Prosecutor Abdurrahman Yalcinkaya for the closure of the current ruling AKP. When the indictment filed with the court on March 14 has been analyzed, it is seen that “Yalcinkaya had asked for the AKP to be outlawed on the grounds that it had become a center of anti-secular activity in Turkey”. He also called for seventy-one members of the AKP -thirty-eight of them are currently Members of Parliament- to be banned from political activity. The list included Prime Minister Recep Tayyip Erdogan and President Abdullah Gul, who served as AKP Foreign Minister from 2003 to 2007²⁴⁴. The AKP prepared its initial defense to submit the court. Yalcinkaya will then be asked to present the case for the prosecution. The entire process is expected to last at least eight months and possibly up to a year, with a final verdict not expected until December 2008 or early 2009. The main defense mechanism of the AKP that due to the Constitutional Court rejected the application of the AKP to lift the headscarf ban in Turkish universities²⁴⁵, which Yalcinkaya said was his main reason for filing the case, there is no reason to close up the party.

²⁴³ Ibid., p. 372.

²⁴⁴ see EDM, March 17.

²⁴⁵ see EDM, February 11 and 25.

Most of the leading people in the AKP, including Erdogan, are former members of Islamist parties that were closed down by the Constitutional Court, as mentioned before they are Refah and Fazilet Parties. Yet, since it came to power in November 2002, the AKP has not attempted to amend the constitution to make closures of political parties impossible. On November 16, 2007, Yalcinkaya filed an application to the close pro-Kurdish Democratic Society Party (DTP). The AKP expressed its opposition to the application but did nothing (see EDM, November 19, 2007), instead focusing on trying to lift the headscarf ban in Turkish universities, which prevents many pious Sunni women from receiving a higher education. According to the AKP, the headscarf ban was a violation of the women's rights.

Just after Yalcinkaya submitted his application for the AKP's closure, party members initiated several meetings to talk about amending the constitution to make it impossible to ban political parties. The AKP's failure to introduce such amendments when the Constitutional Court decided to begin hearing the case against the DTP (Demokratik Toplum Partisi-Democratic Society Party), however, makes it very difficult for the AKP to argue that it is motivated by anything but self-interest. Nor does the electoral process appear to offer a way out. In May 2007, when the Turkish military intervened to try to block the AKP's attempts to appoint Gul to the presidency²⁴⁶, the government was able to call early elections five months ahead of schedule and secure a fresh mandate; but doing so again, less than a year after its landslide victory in July 2007, would be unlikely to provide a solution, not least because the AKP would have to decide whether to run under its own name—and thus risk being dissolved if the Constitutional Court decides in Yalcinkaya's favor—or go through the time-consuming process of establishing an entirely new party.

The EU's reaction to decision of the Constitutional Court about closing up the AKP has developed in expected terms. The EU declared that closing up a party which currently in the power being as a single party after winning the last two elections is not a democratic attempt. A senior member of the European Parliament

²⁴⁶ This kind of intervention is called as e-coup by several people due to the fact that Turkey's overbearing generals warned the government in 27 April 2008, not to nominate Foreign Minister Abdullah Gül as President of the Republic (whose wife wears the headscarf) via broadcasting a kind of warning letter at the official site of Turkish General Staff.

said “a legal bid to ban Turkey's ruling party would tarnish the country's image abroad and strengthen the hands of opponents to Ankara's European Union aspirations”²⁴⁷. “It is bad for Turkey's image abroad,” Joost Lagendijk, co-chairman of a joint Turkey-EU parliamentary commission, told reporters on the sidelines of a conference here on Ankara's bid to become an EU member²⁴⁸:

“I'm sure that those people in Europe who are against Turkey's accession will be very happy because they will have an extra argument to say 'why should we negotiate with a country whose governing party runs the risk of being closed down?’”.

Lagendijk was speaking a day after Turkey's constitutional court voted unanimously to hear a case aimed at outlawing the Justice and Development Party (AKP) for anti-secular activity. He also said that the case threatened to slow down the reform process needed to boost Ankara's troubled EU bid at a time when the government is already under fire for having lost steam on the road to full membership²⁴⁹.

EU Enlargement Commissioner Olli Rehn has also signalled that banning the AKP could hit Turkey's accession talks, saying he saw no justification for outlawing the party²⁵⁰.

Turkish society was deeply divided between supporters and opponents of the AKP and the views of the EU, both of whom apparently believe that their trial of strength can only end when the other is completely vanquished. Unless the two sides display an as yet undemonstrated desire for compromise, victory for either will have a devastating impact on the social fabric of the country (Hurriyet, Dunya, Referans, Milliyet, Yeni Safak, Zaman, Aksam, Sabah, April 1)²⁵¹.

²⁴⁷ “Party closure case hits Turkey's image in Europe: MEP”, available at, <http://www.eubusiness.com/news-eu/1207068767.04/>

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Headlines of Hurriyet, Dunya, Referans, Milliyet, Yeni Safak, Zaman, Aksam, Sabah, April 1.

At the end of this long process, AKP was not closed up by the Constitutional Court contrary to the general expectations. But in Turkey it is still discussed that whether AKP is a threat to the secular state or not.

One of the most important critics coming from the EU is the problems of freedom of expression in Turkey, which AKP has consistently managed to revive the issue. More than 50 people were indicated for statements, articles or speeches that related to controversial issues such as the life's work of Mustafa Kemal Atatürk, the army's political influence or the Armenian Genocide. This may be seen by the destiny of Hrant Dink, editor of the Armenian weekly newspaper *Agos*. He received a six months suspended sentence in 2005 for portraying Turkish "blood" as "dirty"²⁵². The sentence was imposed under the article 301 of the Turkish Criminal Code, which refers²⁵³:

1. Public denigration of Turkishness, the Republic or the Grand National Assembly of Turkey shall be punishable by imprisonment of between six months and three years.
2. Public denigration of the Government of the Republic of Turkey, the judicial institutions of the State, the military or security structures shall be punishable by imprisonment of between six months and two years.
3. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.
4. Expressions of thought intended to criticize shall not constitute a crime.

Beside Hrant Dink suspended sentence, he received many death threats from ultranationalists, one of which was realized in January 19, 2007. It is still discussed in Turkey that who or which groups resulted in this assassination and how the effects of the event changed the viewpoint about Turkish human rights record in the eye of not only in Europe but also in the world.

²⁵² Linde Lindkvist, "Punching Below Its Weight? The European Union's use of Human Rights Conditionality in the Enlargement and the European Neighbourhood Policy", Lund University Human Rights Studies, MRS200, Spring 2007, Supervisor: Olof Beckman, p. 14.

²⁵³ See SEC (2004) 1202.

Olli Rehn, said that he expected ‘the government to take the initiative to change (Article 301) without delay’. The first EU Accession Partnership held as a short-term priority for Turkey to²⁵⁴:

Strengthen legal and constitutional guarantees for the right to freedom of expression in line with Article 10 of the European Convention of Human Rights. Address in that context the situation of those persons in prison sentenced for expressing non-violent opinions.

From Ankara, the response to Brussels and Strasbourg has been conforming, at least in words. The leading AKP party claims that²⁵⁵:

The freedoms of thought and expression shall be built up on the basis of international standards, thoughts shall be freely expressed, and differences shall be regarded as an asset.

Prime Minister Recep Tayyip Erdogan and Foreign Minister Abdullah Gül promised to reconsider the wording of the Turkish Criminal Code. Representatives of Turkish civil society have also been invited to discussions regarding the wording of a future law, which would be more in harmony with Turkey’s international obligations. But, it is uncertain whether or not these efforts will have any effect in practice or if they are but plain lip service²⁵⁶.

The Importance of Civil Society: Beside looking at the issue only from official political activities, however, the most important point, perhaps, is that all the reforms and regulations mentioned above have been adopted despite lack of support from the mass public. One might suggest that this reaffirms what Schimmelfenning and others have noted that *Turkish society is fundamentally weak*. Some questions emerge regarding the EU-induced democratization in Turkey. For some observers, it was, in its entirety, an externally- driven process, imposed from outside. According to this belief, Turkey was merely adapting to the political conditions demanded by

²⁵⁴ Olli Rehn, *Turkey's Accession Process to the EU*, Lecture at Helsinki University, Helsinki, 27 November 2006, speech/06/747.

²⁵⁵ Turkish Justice and Development Party (AK PARTİ) Party Programme, 2007.

²⁵⁶ Lindkvist, *Op.cit.*, p. 15.

the EU to get some rewards in return²⁵⁷. In such a case, one could expect that the reform process in the country would not be sustainable because it was not based upon **the internalization of core democratic norms and lacked domestic constituency and support**.²⁵⁸ Öniş also makes a similar point. According to him, “external influences cannot guarantee that a democratic order will be consolidated unless there exist groups within the domestic sphere which actively push in the direction of democratization”.²⁵⁹ Relating this observation to the Turkish case, it seems as if the EU not only acted as a trigger for democratization but also empowered democratically-oriented groups within the Turkish society and hence created a domestic environment more conducive to reform. While one might be tempted to argue that this means that reforms will not be consolidated or could be possibly repealed, the fact that the AKP overwhelmingly won in local elections in 2004 and 2007, retains high support among the public at large, and that there are no serious calls for Turkey to pull out of the accession process, suggests that the broader of public is at least resigned to the fact that the reforms are in place.

In essence, the issue is the development of civil society, which is generally assumed to be an invaluable force for democratization in much of the literature. To the extent that outside agents can bolster a state’s civil society, the prospects for democratization improve²⁶⁰. Turkish civil society has traditionally been portrayed as weak, passive and controlled or channeled by the state through corporatist structures. But by the 1990s, after a period of substantial economic liberalization, Turkish civil society had become more visible and vocal, often demanding greater political liberalization. NGOs can play a role in “supporting initiatives aimed at the consolidation and further development of democratic practices, the rule of law, human rights, equality for women and men and the protection of minorities”²⁶¹. Without question, there has been a real effort by the EU to engage NGOs in the Turkish reform process²⁶². Obviously, since 1999 democratization has risen to the forefront of the country’s political agenda. Many issues that were previously not

²⁵⁷ Kubicek, *Op.Cit.*, p.362.

²⁵⁸ Ibid.

²⁵⁹ Öniş, *Op.cit.*, p. 481.

²⁶⁰ Kubicek (2005), *Op.cit.*, p. 363.

²⁶¹ Ibid., p. 368.

²⁶² Ibid.

discussed or considered out of bounds politically have been in recent years staples in the Turkish media.

The activation of civil society groups with the launch of the EU accession process occupies a central place in that respect. These domestic forces have been lobbying for Turkey's membership in the EU and were also pushing for democratization in the country for years. Consequently, Turkish governments came under pressure for change both from outside (the EU) and from inside (the civil society). The reform process also acquired greater legitimacy by the involvement of this domestic component²⁶³. Furthermore, the support of the EU has bolstered the credibility of Turkish NGOs some of which were looked upon by suspicion in the past. Particularly, they were accused of trying to undermine Turkey by lobbying for some controversial measures such as Kurdish rights. Nonetheless, these groups now have an upper hand in their arguments that they are indeed striving to strengthen Turkey by helping her gain accession into the EU²⁶⁴. Eventually as Gündüz argues, Turkish NGOs have started to cooperate with the state elite in the interest of human rights.²⁶⁵ Thus, although the EU was the initial trigger of political reform in Turkey, central components of the civil society are now acquiring the ability to push the process forward by themselves. This, in turn, this raises expectations for the consolidation of democracy in the country.

Finally, it is understood from above argument that, as Öniş suggests, favorable external environment can provide a strong impetus to the process of democratic consolidation in countries with fragile or newly emerging democracies²⁶⁶. In this respect, chunk of the thanks go to the European Union which emerged as a powerful external agent for the promotion of human rights and democratization in Turkey. The political reform process that the country has undergone since 1999, would have been unthinkable without the encouragement provided by the acceptance of her candidacy for full membership in the EU. Turkey could be democratic in the full sense of the term, if she continues to go along on this path with resolute political leadership

²⁶³ Ibid., pp. 366-370.

²⁶⁴ Ibid., p. 374.

²⁶⁵ Gündüz, *Op.Cit.*, p. 25.

²⁶⁶ Öniş, *Op.Cit.*, p. 481.

focused on the goal of eventual entry into the Union. Yet, this process would likely to be painful for the certain segments of the bureaucracy, military and some political parties. In that regard, reformist elements of the Turkish society in cooperation with the EU would hopefully see the job through, that is the formation of a liberal democracy in Turkey.

5.2. The Deficiencies of the EU's Human Rights Conditionality Approach towards Turkey

It is argued that deficiencies that prevent the EU conditionality as a more powerful anchor for human rights progress in Turkey must be analyzed. Zalewski puts these deficiencies five main sub-categories²⁶⁷:

- a lack of credible material commitment to Turkish accession;
- imprecisely defined criteria for evaluation;
- vulnerability to accusation of double standards;
- the diffusion of mixed signals;
- and the threat of politicizing the human rights criteria, whether in the context of an evaluation, a decision to open negotiations, or a decision to admit new members.

Lack of material commitment to Turkish accession: Zalewski argues that, from the beginning of its relationship with Ankara, the EU has triggering reform in Turkey without an adequate material commitment. With the Customs Union Agreement, five financial instruments were scheduled for Turkey, including a special measure of €375 million over five years, in addition to €750 million worth of loans from the European Investment Bank. However since its introduction, a large part of this aid package has been blocked by either the Parliament or by Greece. It is clear

²⁶⁷ Zalewski, Op.cit., pp. 21-22.

that without such an assistance, as Avcı warns, “implementation of the reform effort will slow down significantly”²⁶⁸.

The criteria for evaluation: The criteria for evaluation of human rights reform efforts in candidate countries never reflected a coherent and objective understanding. Especially in Turkey, As Zalewski argues, “vagueness of the Union’s approach is descriptive rather than analytical or evaluative, they provide little more than a copy-and-paste approach to relating human rights developments in Turkey”. This descriptive approach may be seen in the Accession Partnership Documents and Regular Reports. “It was only after the Helsinki decision that the Commission’s Reports began to refer regularly and explicitly to Turkey’s progress towards meeting the Copenhagen criteria”²⁶⁹.

Turkey consistently desired a concrete and precise demands of what EU expecting of Turkey. As Zalewski mentions, the Accession Partnership Documents started to assist Turkey to fulfill the conditions of Copenhagen criteria and also helped to reduce the uncertainty about obligations of Turkey.

Unfortunately, it is in precisely in testing the implementation of human rights reforms and analyzing “the situation on the ground” that the Union’s criteria are at their most inadequate, to this extent that the conditions are unclear, so is their evaluation²⁷⁰. According to Zalewski, their lack of transparency and vulnerability to flexible interpretation make the human rights criteria quite unpopular with Ankara. So, “Brussels would need to negotiate any attempt to make its conditions more detailed with considerable care, since the demand from the candidates for more specific and objectively measurable accession criteria about the imposition of external criteria”²⁷¹. But of course it does not mean that EU conditionality have been applied “unfairly”. It is to say, as Uğur suggests, “instead that its general *liability* to subjective interpretation leads to suspicion of uneven application. Such liability

²⁶⁸ Ibid., p. 22.

²⁶⁹ Ibid., p. 23.

²⁷⁰ Ibid., p. 27.

²⁷¹ Ibid., p. 28.

could be resolved by means of the contractual principles governing EU-Turkey relations on transparent rules that provide for effective monitoring of Turkey's convergence towards EU standards”²⁷².

Perceptions of double standard: Therefore, the relationship, in principle, relies on the assumption of its being mutually advantageous for the both parties. However, for the success of the relationship, the actor should not intervene into the relationship; either by creating extra-costs or by providing unconditional assistance. Otherwise, both the level of credibility of the recipient and the capacity of the actor to act as an ‘anchor’ can reduce²⁷³.

According to Zalewski, the EU human rights conditionality has been implemented by the Union as a whole, their “compliance pull” is said to be strong. Alternately, if double standards become perceptible in the actor state-target state relationships, conditions will fail to exert the same leverage. Zalewski also adds that since the beginning of the EU-Turkey relations, “Turks generally sense double standard in the EU’s evaluations of Turkey’s eligibility for membership”²⁷⁴.

1997 Luxembourg Summit decision directly effected Turks’ perceptions of double standard, and also it may be said that it was nearly an ‘endgame of flirtation’. For example, in the summit the candidate status was given Slovakia shown to fall short of meeting the Copenhagen political criteria when it is compared to Turkey. The other example, Turkey will manage to solve minority problems mainly about Kurdish people which France, Spain or Greece have never been pressured to recognize despite of their minority problems in some regions in those countries. After all, due to security implications, Kurdish nationalism has more far-reaching implications than, for instance, Basque, Walloon or Scottish nationalism²⁷⁵. “As it tends to identify the double standards, of which it accuses Brussels, as expressions of “Islamophobia” and exclusionism on the part of the Union, a large section of the

²⁷² Ibid., p. 29.

²⁷³ Mehmet Uğur, *Avrupa Birliği ve Türkiye: Bir Dayanak / İnandiricilik İkilemi*, İstanbul, Everest, 2000, p. 283.

²⁷⁴ Zalewski, *Op.cit.*, p. 29.

²⁷⁵ Ibid., p. 30.

Turkish political elite have their doubts as to Turkey's prospective EU vocation, so it reduces Ankara's incentives to comply with EU human rights criteria"²⁷⁶.

Contradictory signals: For Zalewski, Despite the fact that the Helsinki decision of 1993 may have minimalized the uncertainty about the reward of the EU membership for Turkey, it did not eliminate it. But unlike the CEECs were assured of prospective membership in the EU, Turkey has reason to feel uncertain about its prospective membership. According to Zalewski, "Erdoğan, for example, well aware that without any prospects of EU membership, the government's investment of massive political and economic assets into human rights reform would have been practically unfeasible"²⁷⁷.

Despite the fact that negotiations opened in October 3, there are still contradictory signals from the EU and uncertainty about final destination of the negotiations. And also Turkish officers are still doubted for probable "extra criteria" for Turkey which have never been imposed to prior candidate states.

Politicization of the human rights criteria: As Zalewski mentions that, the EU's human rights criteria in the framework of enlargement, whether included in the Copenhagen Conclusions, the Commission's Regular Reports or in the Accession Partnership possesses "political, not legal value and such criteria are intrinsically vulnerable to subjective understanding or evaluation". "As some researchers have observed, the lack of detailed accession conditions raises the Union's flexibility "both to use its leverage to respond to new problems in the candidate states, and to weigh factors other than fulfillment of accession conditions in its enlargement decision making"²⁷⁸.

For Turkish politicians and bureaucrats "threats of subjugating the interpretation and evaluation of the Copenhagen criteria to political interests is very real". To address the problem, Novak argues that, "the implementation of human

²⁷⁶ Ibid., p. 31.

²⁷⁷ Ibid.

²⁷⁸ Ibid., p. 33.

rights conditionality needs to be based on legal and judicial rather than on economic and political criteria”²⁷⁹. The Union should establish more independent and impartial fact-finding bodies to monitor and evaluate human rights conditions in all candidate countries. “Without such an upgrade, Turkey-EU relations “run the risk of becoming a vicious circle, in which the lack of EU commitment to membership will give rise to Turkey’s lack of commitment to reform, which will give rise to negative EU evaluations, which will give rise to Turkish resentment... and so on and so forth”²⁸⁰.

5.3. As a Final Question: Does the Normative Power EU play its Role as an Anchor in Turkish Case

The above mentioned deficiencies have ameliorated an omnipresent deficiency plaguing the contractual relationship between the Union and Turkey since the conclusion of the Association Agreement. Uğur’s anchor/credibility dilemma examines that there are two more main rules to be observed especially in the ongoing process of the relationship between the EU and Turkey. The first one is the “responsibility of the actor party to act as an ‘anchor’ or a ‘leverage’ to force the recipient party to comply with the conditions, or to prevent it from violating them”²⁸¹. The second main rule is related to the recipient party in the relationship. According to this rule, the recipient should show its credibility to comply with the conditions for the sake of the success of this particular relationship. The argument here was that “Turkey’s European Orientation has been a non-credible commitment and that the EU has failed to emerge as an effective anchor for Turkey’s policy reform”²⁸². The broad picture drawn regarding the relationship between the actor and the recipient shows “a kind of game played by rational actors”. Mainly, the main point of the conditionality relies on the argument that “these rational actors are able to make rational calculations about the costs and benefits of the game”. On the one

²⁷⁹ Ibid., p. 35.

²⁸⁰ Ibid.

²⁸¹ Mehmet Uğur, “Testing Times in Turkey-EU relations: The Road to Copenhagen and Beyond”, *Journal of Southern Europe and Balkans*, Vol. 5, No. 2, 2003, p. 165.

²⁸² Ibid.

hand, “the recipient seeks to receive a clearly defined ‘carrot’ or reward in order to create legitimacy in its own society while complying with the conditions”. Besides this, not to lose such a kind of legitimacy, “it wants the benefits of compliance to be higher than the cost of adjustment”. And also, “the actor always insists on the credibility of the recipient in order to act as an ‘anchor’ behind the efforts of the latter to comply with the conditions”²⁸³.

From this point of view, however, the linkage politics that the EU employs with regard to Turkey’s prospective membership on the one hand and the resolution of Greco-Turkish dispute and the Cyprus issue on the other hand has irritated the country so much that it detracted attention away from Turkey’s commitment to become an EU member. Therefore, as long as Turkey capitalizes on the risks associated with the EU’s demands to resolve its outstanding bilateral disputes in accordance with the international law rather than on the benefits of becoming an EU member, anchor /credibility dilemma would continue to haunt the conditionality-defined relationship between the EU and Turkey. In that sense, the Helsinki Summit conclusions by recognizing the candidate status to Turkey and opening up the negotiations in 2004, fall short of eliminating the negative connotations of the EU’s human rights and democratic conditionality from the vantage point of the Turkish elite.

Nonetheless, the run-up to Helsinki Summit unleashed in a period of great incentives for the Turkish government to accelerate convergence with the Union’s human rights and democratic conditions by engaging in a massive wave of democratization. Indeed “the accession process itself created a virtuous circle where the possibility of membership provided the much more needed discipline or the external anchor required to legitimize the reform process”²⁸⁴. That is, from Uğur’s perspective, anchor-credibility dilemma would be conquered by metarialising the membership criteria in Helsinki and standing the EU as a more coherent and consistent policy maker.

²⁸³ Dölek, *Op.cit.*, p. 7.

²⁸⁴ Thomas W. Smith, “The Politics of Conditionality: ‘The European Union and Human Rights Reform in Turkey’”in *European Union and Democratization*, Routledge, 2003, p. 127.

On the other hand, for some other commentators, the EU has provided a platform of socialization and learning which in turn contributed to redefinition and reinterpretation of the reform process in Turkey²⁸⁵. As opposed to the logic of consequentiality arguments, this line of interpretation maintains that the logic of appropriateness become the key factor in promoting further democratization in Turkey. In other words, the overall objective of the reform process in the country is not to fulfill a constellation of minimum standards posed by the EU to get some rewards in return , but rather to honor its obligations and duties of being a genuine European country. “Prime Minister Erdoğan reconfirmed this more recently stating ‘Turkey will adopt the Copenhagen political criteria and considers them as the Ankara political criteria.’”²⁸⁶

This discussion should not amount to suggesting that a straight forward causal relationship exists between Union’s conditionality and its material bargaining mechanism on the one hand, and the course and speed of Turkish reform process on the other hand. More precisely, it appears to be quite debatable to what extent and under what conditions the external encouragement that the EU exerts on Turkey via its human rights and democratic conditionality acts as an independent variable spurring a positive domestic change in this specific issue area.

The issue of implementation is one of the biggest problems in the reform process of Turkey. If the most recent reports of the European Commission on Turkey’s path to accession are analysed, it can be understood that “the Commission is quite satisfied with the efforts of the Turkish authorities in bringing the EU standards to the Turkish legal and political structure”²⁸⁷. So, the most important problem in the human rights reforms of the country is not the adoption of new legal changes. To the contrary, as the Commission always emphasized, “the problem in

²⁸⁵ Gamze Avcı, “Turkey’s Eu Politics: What Justifies Reform?”, in Helende Sjursen (ed), *Enlargement in Perspective*, ARENA, University of Oslo, pp. 141-145.

²⁸⁶ Ibid., p. 142.

²⁸⁷ Çağlar Dölek, “ Human Rights Conditionality in the relations of the EU and Turkey”, Research Paper, 2007, p. 36, available at, <http://www.turkishweekly.net/pdf/CaglarDolek-HR-FrameworkAnalysis.pdf>.

Turkey in terms of the issue of human rights is the implementation of those reforms”²⁸⁸. For instance, in the 2004 Regular Report, the Commission was stating:

“Turkey has achieved significant legislative progress in many areas, through further reform packages, constitutional changes and the adoption of a new Penal Code, and in particular in those identified as priorities in last year’s report and in the Accession Partnership. Important progress was made in the implementation of political reforms, but these need to be further consolidated and broadened. This applies to the strengthening and full implementation of provisions related to the respect of fundamental freedoms and protection of human rights, including women’s rights, trade union rights, minority rights and problems faced by non- Muslim religious communities...”²⁸⁹.

There is a continuing problem in Turkey on the implementation of human rights in the wider social lives. Firstly, Ugur argues that the problem of implementation is mainly caused by the ‘top-down’ nature of the legal change²⁹⁰. He implies that the recent transformation of the Turkish political and legal structure was mainly created by the carrot of membership of the EU. Therefore, the state officials have taken the initiative of creating reforms in the country. However, some thinkers, such as Dağı, thinks that the ‘Westernization’ in the process of accession to the Union has firstly become to be ‘socialized’ by relying on the social and economic dynamics of the society itself²⁹¹. If one considers the nature of the theoretical model as established in the first part, there can be found some explanations to the problem. The argument here is that the theory of costbenefit calculation might help to understand the issue. That is to say, “the cost and benefit calculations of the officials in the recipient country is the most important determinants of the success of the implementation of the reforms”²⁹².

In that sense, Zalewski argues ‘...the problem with Turkey’s weak and inconsistent implementation of the human rights norms owes its existence in part to the fact that different power players – especially the military, judiciary and the

²⁸⁸ Ibid., p. 36.

²⁸⁹ European Commission, 2004 Regular Report from the Commission on Turkey’s progress towards accession, available at, <http://europa.eu.int/comm/enlargement>

²⁹⁰ Ugur (2003), *Op.Cit.*, p. 165-183.

²⁹¹ Dölek, *Op.cit.*, p. 37.

²⁹² Ibid.

regional administrators- are not wholeheartedly prepared to bear the costs of complete convergence with the Union's human rights criteria"²⁹³. Here, the argument is that the insufficient effort of Turkish authorities can only be understood with reference to the recent local and regional developments occurring in the country. The resurgence of the PKK terrorism in 2007 and 2008 and the election atmosphere in the last one year has prevented the state officials from taking further measures about implementation. Furthermore, "the re-emergence of the security paradigm of the country mainly due to the PKK terrorism has increased the cost of compliance and thus implementation"²⁹⁴. In addition to these local developments, "the global 'war against terrorism', and Turkey's concern on the Northern Iraq have all contributed to the weak implementation experiences in the country"²⁹⁵.

Turkey will probably seek to accommodate the legitimate needs and aspirations of its citizens of Kurdish origin by promoting democracy and individual human rights. Although Turkey's history and fears of separatism will not allow for a fully pledged institutionalization of minorities along racial lines, individuals will be able to realize their aspirations within the democratic system²⁹⁶. Ethnic or religious parties should be allowed to function and a state may tolerate such parties as long as they do not have the potential to endanger public safety and national security²⁹⁷. But it is clear that, especially in the case of PKK, due to 30.000 death it is difficult to persuade the majority that a separatist party whose goal is not a threat to the state²⁹⁸. PKK used artillery and heavy weapons not only against the Turkish police and soldiers but also against civilians. The PKK bombed schools and the infrastructure of the region, as well as executed people (civilians) by shooting (sometimes Kurdish people). Turks continue to harbor deep rooted fears about the future of their democracy and territorial unity after decades of relentless blows from terrorism and fundamentalism. In order to fulfill its obligations to the EU, it must still make some difficult decisions and tackle some

²⁹³ Zalewski, *Op.cit.*, p. 20.

²⁹⁴ Dölek, *Op.cit.*, p. 38.

²⁹⁵ *Ibid.*, p. 38.

²⁹⁶ Gündüz, *Op.cit.*, p. 27.

²⁹⁷ *Ibid.*, p. 23.

²⁹⁸ *Ibid.*, p. 24.

chronic political, structural, and legal questions. Insofar as EU norms and Turkish aspirations foster such change, they have a vital role to play in the future²⁹⁹.

²⁹⁹ Ibid., p. 30.

CHAPTER X

CONCLUSION

The main argument of this thesis is that “the recent democratization process of Turkey, fuelled by the improving relations with the EU, can be understood with reference to the theoretical framework and to the historical evolution of the membership conditionality”³⁰⁰. It is argued that the relations after Helsinki 1999, a turning point in the relations between the EU (actor) and Turkey (the recipient), had found the main grounds for a relationship based on ex ante or positive conditionality. In other words, “the main lacking part of the relations was ‘a definite kind of framework’ on which the two parts would base their actions and calculate the results of those actions”³⁰¹.

Turkey’s vocation to become an EU member has, from the scratch, been considered as the culmination point of its Westernization project initiated by Mustafa Kemal Atatürk. However, it seems quite debatable to what extent Turkey, on the path of EU membership, has been undergoing a process of Europeanization which is about the “construction and the spread of what come to be regarded as ‘European’ norms regarding particular policies, political procedures and societal self-definitions”³⁰². As the pages of this thesis have insistently dwelled on, although the EU has proved to be a normative power and a powerful anchor catalyzing a massive reform process in the country, it does not seem to be much effective in mobilizing and subsidizing the reformist elements of the Turkish society with the intention of creating an environment more hospitable to further political liberalization. Generally

³⁰⁰ Çağlar Dölek, “ Human Rights Conditionality In the Relations of the EU and Turkey”, Research Paper, 2007, p. 16, available at, <http://www.turkishweekly.net/pdf/CaglarDolek-HR-FrameworkAnalysis.pdf>.

³⁰¹ Ibid., p. 16.

³⁰² Nathalie Tocci, “Europeanization in Turkey: Trigger or Anchor for Reform?”, *South European Society & Politics*, Vol. 10, No. 1, April 2005, p. 74..

speaking, the democratization promotion activities that the EU pursues as an external force towards the candidate countries via its conditionality mechanism, has not been much successful in aligning itself with the domestic reform-inducing factors in the Turkish case. Indeed a genuine change in the practice of upholding human rights and democratic principles in Turkey even in the face of such a powerful incentive could be procured when the top-down adoption of domestic political reforms give way to a bottom-up approach. If accomplished, this would render the modernization and democratization of Turkey a self-sustaining process that has been triggered initially by an exogenous encouragement.

As has been noted throughout this study, although a linear casual relationship could not be conjured between the external encouragement that the EU exerts on Turkey via its human rights and democratic conditionality on the one hand, and the reform agenda that the country has been pursuing on the other, **it could be claimed that in the absence of such a powerful external anchor, the road to further political liberalization would be much difficult for Turkey.** The Helsinki summit decisions and the opening up the negotiations in 2004, in that sense, by both emboldening the government to go ahead with policy reform along the demands of the EU, and by empowering the reformist elements in the society, gave the democratization process in Turkey an irreversible momentum.

On the whole, the Helsinki Summit decisions represent a qualitative leap towards addressing the uncertain nature of the conditionality -defined relationship between the Union and Turkey- by “making it more difficult for Turkey to avoid its compliance with its obligations and by leaving not much room for the EU to exercise discretion with respect to Turkey’s membership”³⁰³. As Tezcan argues, this decision created much more stable grounds for the relations between the two parties, and thus fuelled the reform process in Turkey³⁰⁴. As a result of Helsinki decision, “the prospect of EU membership became more ‘real’, and thus there emerged a more

³⁰³ Mehmet Uğur, “Testing Times in EU-Turkey Relations: The Road to Copenhagen and Beyond”, *Journal of Southern Europe and the Balkans*, Vol. 5, No. 2, August 2003, pp. 167-168.

³⁰⁴ Ercüment Tezcan, “Müzakerelere Giden Sürecin Dünü, Bugünü, Yarını”, *Avrasya Dosyası*, Vol. 11, No. 1, 2005, p. 15.

effective model of relationship, which can be characterized by the positive or *ex ante* conditionality”³⁰⁵.

The developments in the post-Helsinki era have proved that the monist structure of the nation-state is more open than ever since to the influences coming from the international arena. In essential, with the help of these evaluations, the transformation is occurring not only in the sovereignty conception of the nation-state directed to outside, but also within the internal political structure of the state by forcing it towards a more transparent and pluralist type of governance.

On the other hand, although the regular progress reports disclosed after 1999, praise Turkey’s attempt to close the gap between its human rights regime and that of the EU by drafting new legislation, in practice a number of deficiencies appear to spoil the related record of the country ‘on the verge of accession’. More precisely, even if Turkey has been striving to address the problems associated with its poor state of affairs as regards upholding respect for human rights and democratic principles, enduring change in the practice could in fact be procured if and only if “the push for socialization of human rights could go far beyond proving that it is worth for the sake of EU membership”³⁰⁶. In other words, when the logic of appropriateness starts supplant the logic of consequentiality as the key engine for further democratization in Turkey, the reforms that would be undertaken thereafter would be deeply rooted inasmuch as they would sincerely be embraced by the Turkish society at large. That is, it is fairly said that Turkey’s post-99 democratization opened a way for further policy Europeanization.

However, for some commentators this massive wave of democratization in the country is merely an outcome of the material bargaining mechanism of the EU’s conditionality whose effectiveness has exponentially risen as a result of the promise granted to Turkey at Helsinki. According to this line of interpretation, Turkey has

³⁰⁵ Sanem Aydin and Fuat Keyman, “European Integration and the Transformation of Turkish Democracy”, CEPS EU – Turkey Working Papers, No. 2, Brussels, August 2004, p. 16, available at, <http://www.ceps.be>.

³⁰⁶ Piotri Zalewski, “Sticks, Carrots and Great Expectations: Human Rights Conditionality and Turkey’s Path Towards Membership of the EU”, *Center for International Relations*, Warsaw, 09/04, p. 21.

been accused of adopting a *potemkin human rights regime* meaning that, the country ostensibly strives to alleviate the systemic human rights violations by passing the relevant laws and by overhauling the institutions deputed to monitor compliance with this new framework, but fails absorb the related core values and norms that should underpin the reform process. The “logic of consequentially” is deemed to be the leitmotif of the country’s attempt to elevate its human rights record up to a level commensurate with that of Europe. In short, such an exogenously driven process is accompanied by a top-down adoption of the human rights reforms by the government without much hesitation for cementing and enduring their effective implementation in practice.

Although Turkish governmental elites are increasingly using right-based arguments to justify the reform process in the country, it seems as if the policy Europeanization is proceeding with an ever accelerating pace when compared with that of political Europeanization. Moreover, the Union appears to pay much lip-service to the role of the civil society in fostering the democratization process in Turkey but “it has been intimately involved in the reform process at the intergovernmental level and that Turks appear to be focused on satisfying Europe –as opposed to launching an independent reform course”³⁰⁷. Therefore it seems quite dubious whether or not the Union has been successful in forging trans-governmental networks with the domestic actors in Turkey with a view to facilitating them in spreading the democratic values and norms that should lay the ground for the reform process in the country. On the contrary “there is some evidence to suggest that the Turkish public supported these reforms as a response to EU conditionality when they are adapted”³⁰⁸. In such a case the EU’s social influence mechanism seem to have played a marginal if any role in the democratization and modernization of Turkey on the path of membership.

Today, Turkey is still criticized by the EU due to the fact that the reform process in Turkey has been slow down despite initiating the negotiations. According to Lindkvist, one explanation could lie in the approach from EU leaders while

³⁰⁷ Paul Kubicek, “The European Union and Grassroots Democratization in Turkey”, *Turkish Studies*, Vol. 6, No. 3, September 2005, p. 372.

³⁰⁸ *Ibid.*, p. 372.

eventually deciding to open up negotiations in Paris 2004. The Turkish Prime Minister Recep Tayyip Erdogan did not exactly understand why the EU did not greet Turkey with open arms. He was evidently disappointed after the summit, especially owing to the clause labelling the negotiations as ‘open-ended’ and the tough conditions set on the Turkey in solving the issue of Cyprus. European leaders also began stressing the painful history of the Armenian Genocide. Paradoxically, the grave between Europe and Turkey appeared deeper and wider than ever, turning up the costs for building bridges to an unprecedented level. From the Turkish point of view, the official direction is still towards Brussels, but in 2005 political reform ‘became luxurious items on the Agenda’. Clashes with Kurdish guerrilla PKK, the neighbouring war in Iraq and domestic politics, not least concerning the 2007 elections, took precedence before efforts to meet the Copenhagen criteria³⁰⁹. The later scepticism in Europe characterised by the ‘open ended clause’ in the 2005 negotiation framework, and articulated in the French election campaign 2007 has severely shaken the trustworthiness of what EU really offers Turkey in exchange for human rights compliance. This is also reflected in the decline of popular support in Turkey. One could wonder if the ‘fear of the Turk’ is in line with European self-interest³¹⁰.

On the other hand, the political transition of Turkey during its pre-accession relations with the Union seem to corroborate the influence (both in tangible and psychological terms) that the EU is capable of exerting upon the would-be members. Although the conditionality mechanism which is devised to serve this goal is not devoid of imperfections and sometimes flies in the face of specific domestic practices and variables (as in the case of Turkey), in the case of its absence, the path to further modernization in the targeted countries would not have proceeded with such an accelerating pace. Put it differently, in spite of the widespread image of the EU as a normative power, a moving target and the negative connotations attached to

³⁰⁹ Suat Kırkoğlu, *Turkey's Impending Disorientation*, Turkish Daily News, 7 February 2006.

³¹⁰ Linde Lindkvist, “Punching Below Its Weight? The European Union’s use of Human Rights Conditionality in the Enlargement and the European Neighbourhood Policy”, Lund University Human Rights Studies, MRS200, Spring 2007, Supervisor: Olof Beckman, p. 23.

its human rights and democratic conditionality, the political liberalization of Turkey undertaken to meet the standards stipulated by the Union is quite impressive.

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