TURKEY AND INTERNATIONAL SOCIETY FROM A CRITICAL LEGAL PERSPECTIVE

BY

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TO THE MEMORY OF MY MOTHER,
AND TO MY FATHER

ABSTRACT

Contrary to the pretentions of liberal jurists, positive international law does not represent a 'scientific' and 'universal' system of law. Instead, it is largely marked by ambiguity, fragmentation and legal lacunae. For instance, international law still lacks supranational mechanisms for resolving inter-state disputes. Furthermore, there is no agreed definition among states of what constitutes 'law' and how it should be applied. If this is the case, then, international jurists should seek to understand the subjective context in which a particular legal discourse takes place, instead of proposing 'correct' formulae on the basis of 'objective' legal norms.

The deficiency of present international law is most visible in the sphere of the law of territory. Under international law, territory is still treated as an exclusive preserve of the state irrespective of the wishes of the 'people'. It will be argued that the state-centric nature of international law still persists despite the inclusion of other legal personalities and categories of rights into its ambit. Since the autonomy of states is the starting point of international law, practical implementation of the right of 'peoples' to self-determination or the international protection of human rights and minority rights are severely prejudiced.

This conceptual framework informs the mode of analysis pursued here to examine Turkish conceptions and practices of international law. By attempting to understand Turkey's international outlook from *within*, this study is intended to demonstrate, in the context of various test-cases, the need for the international legal discipline to open itself to other social disciplines, instead of confining itself to the parochial boundaries of 'law' as such.

The second chapter, following the Introduction, introduces the critical hermeneutical paradigm adopted in this study. It argues that the analysis of international law requires a multidimensional and multilayered understanding of legal pheneomenon and behaviour which does not proceed on the basis of a single theory, be it positivism, naturalism or postmodernism. Chapter three focuses on the theories of state and nationalism as explanatory frameworks for the international legal behaviour of individual states. This theoretical framework is then deployed for an exposition and explanation of Turkish conceptions of international society. It will be argued that the Turkish view of international society is largely shaped by Eurocentric assumptions and perspectives, while Turkish nationalism is deeply suspicious of the outside world, including the west.

Chapter four focuses on the role played by Turkey's academic establishment in the dissemination of a particular view of international society and its legal framework. Having examined some prominent textbooks of international law and, to a far more limited degree, of international relations, this study concludes that they are largely modelled on western positivistic scholarship, and tend to ignore the 'progressive' dimensions of international law and politics.

The second section of this thesis draws on the practical implications of the conceptual analyses made previously. This is done through an investigation of Turkey's legal behaviour in the context of some disputes and questions with which it has been involved. Chapter five focuses on the Cyprus dispute over which Turkey and Greece hold contradictory views. This is also the case with the Aegean dispute which will be examined in Chapter six. Chapter seven focuses on the problems faced by the Turkish minorities in Bulgaria and Greece. In its turn, Chapter eight deals with the question of the Kurdish minority in Turkey. Chapter nine focuses on Turkey's voting pattern in the UN General Assembly with regard to some of the 'progressive' issues of international law, namely the principle of self-determination, human rights and the search for a new international economic order. The concluding chapter, on the basis of the preceding analyses, draws on the limits of positive international law in securing a peaceful and egalitarian international order. The same chapter also asserts that Turkey's largely anachronistic view of international law, and its failure to play an active role in international relations is, by and large, a function of its problematic identity.

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TABLE OF CASES AND REPORTS

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Charter of the United Nations (1945).

Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948).

The European Convention on Human Rights and Fundamental Freedoms (4 November 1950).

Convention relating to Status of Refugees (28 July 1951).

Convention relating to the Status of Stateless Persons (28 September 1954).

Convention relating to Standard Minimum Rules for the Treatment of Prisoners (30 August 1955).

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Convention No.111 Concerning Discrimination in Respect of Employment and Occupation (25 June 1958).

The Treaty Concerning the Establishment of the Republic of Cyprus (1959).

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International Covenant on Economic, Social and Cultural Rights (16 December 1966).

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Final Act of the Helsinki Conference on Security and Co-operation in Europe (1975).

Berne Agreement on the Procedure to be followed for the Delimitation of the Continental Shelf by Greece and Turkey (11 November 1976).

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The United Nations Convention on the Law of the Sea (7 October 1982).

Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (10 December 1987).

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LIST OF ABBREVIATIONS

A.J.I.L. : American Journal of International Law

A.U.S.B.F.D. : Ankara Universitesi Siyasal Bilgiler Fakultesi Dergisi

CENTO : Central Treaty Organization

CSCE : Conference on Security and Cooperation in Europe

EC : European Community/Communities

ECHR : European Court of Human Rights

ECOSOC : UN Economic and Social Council

Ed. : Editor

I.C.L.Q. : International and Comparative Law Quarterly

ILO : International Labour Organization

NATO : North Atlantic Treaty Organization

NIEO : New International Economic Order

NSC : National Security Council

OECD : Organization for Economic Cooperation and Development

OPEC : Organization of Petroleum Exporting Countries

TRNC : Turkish Republic of Northern Cyprus

T.R.Q.D. : Turkish Review Quarterly Digest

UK : United Kingdom

UN : United Nations

UNESCO : United Nations Educational, Scientific and Cultural Organization

USA : United States of America

CHAPTER 1

INTRODUCTION

This study is an inquiry into some of the problematic areas of international law, with special reference to sovereignty and statehood. The extent to which states are held to be sovereign, both internally and externally, has long been an important preoccupation of polititical and legal theorists. A brief introductory remark on the origins of the international law of territory may be useful here. Under the Eurocentric international law of the nineteenth century, the state was sanctified as the sole actor of international society. Accordingly, this system of law was premised upon an absolutist concept of statehood according to which the state was the supreme overlord of the territory under its jurisdiction. International law was solely assigned the task of delimiting state competences. Therefore, it was not entitled to interfere in the domestic jurisdiction of states which meant that the relationship of a state with its people was a matter for domestic law. International law could only become involved in this process in so far as a given state had delegated certain powers to international law (1). The non-western states, for their part, acceded to this system of law from the mid-nineteenth century onwards on the basis of western positivistic doctrine. The principle of the 'sovereign equality of states', coupled with the principle of 'non-intervention in the internal affairs of other states', in their view, granted them the legal right to defend themselves against western colonialism and imperialism (2). In other words, theirs was a pragmatic response to the crude realities of an international system dominated by western states.

International law is, for the most part, still governed by an absolutist concept of state sovereignty. This is perhaps not surprising given that international law is *not* based on an actual consent among states. Instead positivist legal language is used by states to justify their claims upon others "as if it were a universally accepted legal discourse" (3).

If this is so, the international jurist is bound to resist the temptation of engaging in an exclusively formalistic debate when analysing the international legal behaviour of states. This implies that, for instance, facts about inter-state disputes have to be related to the ideological beliefs of the contending parties. States tend to have a particular vision of themselves, and perceive international law in accordance with their official ideology, the modality of their international relations, their peculiar

history and so forth. This has to be taken into account when attempting to expose the actual behaviour of states in the larger international community. In other words, the legal jurist has to recognize the fact that states are autonomous centres of political and legal culture, and not simply internationally recognized sovereigns, with identical values and images, of a geographical space.

This requires that distinct approaches to international law be studied. However, the problem is that western international jurists are too conservative to admit any role for non-western systems and perceptions. As has been argued above, despite its claim to universality, international law is still based on western notions as to what law is and how it should operate in practice. One can, however, witness the emergence of a trend towards greater recognition of different legal cultures in the understanding of international law. Socialist and Third World perspectives (4) are prominent among such contributions. There is also a growing body of writing on the Islamic approach to international law (5). By the same token, scholarly treatment of case studies dealing with individual states explain a great deal about the ways in which the individual actors perceive international society and its legal framework (6). For its part, this study is intended to make a modest contribution to the final category of area studies.

These are some of the considerations which inform the methodological and substantive analysis pursued in this thesis. Hence, although focusing on the theoretical and empirical dimensions of Turkey's legal behaviour in international society, this study does not treat the Turkish state as an all-encompassing, immutable organism with a life of its own. Instead, it develops theoretically an explanation of Turkey's legal behaviour as integral to political, economic and social framework within which it takes place. An understanding of Turkish nationalism has a key place in such an analysis, since 'national objectives' and 'claims' often define the boundaries within which foreign policy-makers have to operate. This is not, however, to deny the fact that the ideological disposition of the political elites themselves has an important bearing in the formulation and execution of policies towards international society. The 'nation' and 'political elites' constantly interact with varying degrees of influence towards one another. In order to establish this linkage in a methodical way, a hitherto neglected concept, 'national identity', will be employed as an analytical tool to explain the foreign policy process in Turkey. Bloom defines national identity as :

> ".....that condition in which a mass of people have made the same identification with national symbols so that they may act as one psychological group when there is a threat to, or the possibility of enhancement of, these symbols of national identity" (7).

In this context, 'national identity dynamic', a derivative of the concept of national identity, will be utilized to explain the interaction between three distinct categories and processes: the formation of Turkish national identity - politics - international relations of Turkey.

It is hoped that by exceeding the parochial boundaries of a formalistic discourse, it will be possible to shed light on the empirical findings relating to Turkey's actual legal behaviour in international society. Why, for instance, does Turkey claim that the Kurds of Turkey do not constitute a minority under international law? How can one make sense of Turkey's relative indifference to the newly evolving rules and principles of international law, such as the international law of development, the new law of the sea, the principle of self-determination? And why is it that, although a developing country in economic terms and a Middle Eastern country by geography, religion and culture, Turkey has chosen to establish military, economic and politico-cultural alignments with the western group of states -such as NATO, OECD, Council of Europe, and the EC (as associate member)? These issues, as is believed, cannot properly be addressed without focusing on the specific political and legal culture in Turkey.

Hence, in this dissertation, an analysis based on 'globalization' or 'balance of power' is dismissed in favour of a 'hermeneutic' approach. Indeed, Turkey's historical experience shows that the impact of globalization on states should not be overestimated. It is argued that many of the problems that Turkey faces with regard to the outside world today have their roots in Turkey's ambiguous and ill-defined identity. Its historical location can be traced to Turkey's incorporation into western standards of civilisation in the nineteenth century -through various political and legal reforms. The process of westernization culminated in the creation of a Turkish nation-state after the collapse of the Ottoman Empire following the latter's defeat in the First World War. The main objective of the Turkish nationalist leadership, led by Mustafa Kemal Ataturk, was the establishment of a secular nation-state based on modernity and rationalism. Throughout the 1920s and 30s, extensive political and legal reforms, ranging from the disestablishment of the Sultanate and the Caliphate to

the introduction of the Latin alphabet, were undertaken to create the conditions of a social, economic and political system along the lines that existed in western Europe. For Kemal, the fight against the imperialist West had to be fought with the weapons of the West, including its political philosophy (8). Hence, from the outset, Turkish nationalism was effectively premised on the recognized supremacy of Western civilisation. Conversely, this entailed the rejection of the Oriental/Islamic identity as 'backward' and 'despotic'.

Unlike their Ottoman predecessors, the republican political elites were suspicious of heterogeneity and cultural pluralism and, therefore, set out to impose a uniform identity ('Turkish') upon diverse ethnic and sectarian communities. In other words, the state was intolerant of the intermediary institutions and societal processes which could provide a channel of communication between the nation and the state in Turkey. It was the ideals of the Third Republic in France which laid the intellectual foundations of this policy of homogenization and *etatisme* (9).

Turkey's incorporation into the western standards of civilisation was followed by its gradual co-optation into the western states system. Indeed, Turkey became a member of the OECD (initially, OEEC), Council of Europe, NATO, and an associate member of the EC in the post-Second World War era. For the Turkish ruling establishment, political, military and economic alignment with the western world reaffirms Turkey as a 'civilised' nation. Turkey's identification -at the official level- with the western bloc of countries prompts Turkish diplomats to perceive international society from a predominantly western perspective. Hence its reluctance to support the Third World initiatives towards establishing a new international legal order. Unofficially, however, people in Turkey generally feel a deep mistrust of the western world, which frequently evokes memories of Ottoman subjugation by great European powers in the nineteenth century, as well as of the Turkish War of Independence which was fought against Western occupying powers and their protégés. For many Turks, including a section of the ruling establishment, the Kurdish search for self-determination is, in fact, an imperialist plot, devised by western countries and by some 'external' enemies, intended to divide and then subjugate Turkey. It is argued that the ambivalent nature of Turkey's links with the western group of countries is a major cause of Turkey's insecure and ambiguous identity which has a significant bearing on its conception and practice of international law.

Turkey's problematic identity should also be seen as a function of the authoritarian nature of the Turkish state. Although the contemporary Turkish state, its self-perception, and its conception of international law are in most respects diametrically opposed to those of its predecessor -the Ottoman Empire-, the elitist nature of the Ottoman state continues to mark the contours of the republican state today. The political establishment (politicians, bureaucrats, army) is still suspicious of civil society, although Turkey is seemingly a multiparty democracy. Political groups who are opposed to official policies are frequently branded as 'fundamentalist', 'communist', 'separatist' or 'traitor'. The army has a major influence in the formulation of foreign policy objectives. As a result, the outside world is, for the most part, perceived from a security-oriented perspective. In foreign policy discourse, the countries adjacent to Turkey are often depicted as 'hostile', if not 'expansionist'. This is particularly true of Greece which, as Turkey's 'historical enemy', represents the negative referent against which Turkish nationalism defines itself. One of its ramifications is that Greco-Turkish disputes in Cyprus and the Aegean should not merely be understood as purely legal matters which can be resolved through a bi-partisan application of positive international law. Instead it must be recognized that they involve highly emotional questions of 'national identity' and 'prestige' as far as mass public opinion in Turkey and Greece are concerned. Legal jurists, then, are bound to understand how the respective countries define the problem in the light of their peculiar historical experience as a 'nation', and how, then, they present a viable solution.

It is believed that the *hermeneutic approach* has some normative merits too: first, it enhances the possibility of inter-state understanding; second, it makes it possible to put the empirical data and behavioural patterns relating to the posture taken by states towards one another into the service of policy-makers before negotiations. This enhances the possibility of applying legal analyses in real life situations. As a result of the hermeneutic approach, concepts like 'perception' and 'image' are incorporated into the analysis of seemingly 'legal' situations.

It is the view of the present author that Turkey's legal behaviour in international society has received no major scholarly treatment. One may find here and there various books and articles on Turkish foreign policy, or on the Turkish position on some international disputes, like Cyprus and the delimitation of the Aegean, or on the Turkish approach to certain questions of international law. However these themes are explored on an empirical basis, and in a fragmentary way. Besides, Turkey's actual international behaviour is generally explained as a by-product of 'external'

factors -international system, balance of power, external threats, international wars, other states' behaviour towards Turkey and so forth- to the exclusion of 'domestic' factors. The proponents of this approach tend to treat Turkish foreign policy simply as a function of international events, without any dynamics of its own. As a result of this, the existing studies on Turkey's international behaviour hardly discuss the questions as to *why* Turkey behaves the way it does, and *how* it defines its national interests in relation to a wider international society. In other words, that which is missing is a conceptual framework which seeks to locate the complex set of legal issues into the political and cultural context in which they take place. This study purports to take up this challenge.

Three distinct levels of analysis can be singled out in this dissertation : descriptive, explanatory, prescriptive. The *descriptive* analysis is designed to examine Turkey's official policy on various international disputes, such as the Cyprus and Aegean questions, and the problems over Turkish minorities in Greece and Bulgaria on the one hand, and the Kurdish minority in Turkey on the other. In the same context, a description is made of the position taken up by Turkish representatives in the UN General Assembly on some of the newly evolving and progressive areas of international law. Indeed one of the main objectives of this study is to examine Turkey's conceptualization of international society as manifested behaviourally in the United Nations General Assembly. As opposed to official declarations of intent by government representatives, the voting pattern of states in the UN and the arguments on which they are based can be taken as reliable sources of state behaviour. Here there is a sufficient amount of independent empirical referents. The descriptive analysis is also extended to include some multilateral treaties relating to human rights, the protection of minorities, and the principle of self-determination to which Turkey may or may not be a party. Finally, the Turkish conception and practice of international law is uncovered by drawing on the official statements and/or editorial pronouncements on various international legal issues as published in such official or semi-official periodicals as *Dis Politika* (Foreign Policy) and *Turkish Review Quarterly Digest.*

As for *explaining* the Turkish approach to international law, this study will focus on the conceptual definition of the Turkish image of international society. Why, for instance, is Turkey's international behaviour the way it is? What are the main motives and goals that lie behind the formulation and execution of it? The causal questions worth raising and pondering through an investigation of Turkey's policy pronouncements and its actual behaviour are numerous indeed. For instance, can

Turkish behaviour within the larger community of nations be explained by its 'national interests'? If so, what are they and how are they defined and manifested? Can they be explained in terms of Turkey's official ideology which is deeply rooted in Turkish nationalism? If so, what is the main doctrinal or ideological thrust of Turkish nationalism? How is it translated into the external arena? What is Turkey's perception of the emerging international order? Can it be explained in terms of a coherent, long-term strategy with reasonable theoretical foundations, or of an *ad hoc* or pragmatic response to the initiatives of other international actors? These are some of the major issues that are explored under the explanatory level of analysis pursued in this dissertation.

As far as the *prescriptive* level of analysis is concerned, this study has taken up a modest challenge to attempt to project alternative policy options as far as the Turkish posture and strategy of international order are concerned. These themes, among others, will be elaborated in the concluding chapter of this study.

The method of analysis employed in this dissertation is significantly inspired by Foucault's exposition of the links between power/knowledge/discourse. As is well-known, Foucault's main concern was with power and its diffusion into the whole fabric of western societies. However, as he himself was well aware, the mechanisms of power, as they were manifested in the west, could equally apply to non-western societies due to increasing globalization. Besides, the repressive character of many regimes in the Third World make them ideal candidates for an analysis of power there (10). According to Foucault, discourse is the link between power and knowledge. He contends that in every society, discourse is produced, organized and redistributed according to particular patterns and processes (11). Hence, in the specific instance of the discourse relating to Turkish foreign policy, there seems to have been a subtle process in which the public are presented with a particular reading, or misreading, of international affairs that is likely to legitimize existing policies. This study focuses on two of the major institutions which shape public perceptions : the state and the academic establishment in Turkey (they are examined in chapters 3 and 4 respectively).

This thesis is divided into two main segments. Chapters 2, 3 and 4, which follow the introductory chapter, lay the conceptual foundations of the analyses to be made in the rest of the dissertation. Chapter 2 introduces the foundations of the modernist (critical hermeneutics) paradigm adopted in this study. It discusses various approaches to law in general, and to international law in particular, and then seeks to establish why

different theories, ranging from positivism to postmodernism, give an incomplete picture of international law. Accordingly, it suggests that a variety of analytical and conceptual approaches are needed to understand the nature and actual operation of international law. Chapter 3 makes a critique of the liberal notion of sovereignty and traces its impact on the international system. Sovereignty, as the expression of the political autonomy possessed by states, is essentially linked to nationalism in an age of nation-states. Hence the twin concepts of 'nationalism' and 'nationhood' merit serious analysis in order that sovereignty is placed into its proper context. In this chapter, it is argued that the 'nation', although not entirely imaginary, owes much of its existence to the nationalist intelligentsia. It has to be recognized that the nation, not unlike the state, is not a static, all-encompassing organism with a unified identity. It is essentially a political concept in that its recognition as such depends, for the most part, on the armed struggle of the political community which claims to be 'nation', thus becoming a 'nation-state'. From this, it can be deduced that international law does not govern the rules that enable the emergence of states. As Carty observes, states have their own reasons to exist (12). Western liberal political theory, based on the notion of social consensus, defines the individuals living in a given territory not through their ethnic, religious or cultural identity, but as an indistinguishable part of the nation. This implies that individuals have an identity in so far as this is recognized as such by the state. This is at the very heart of the liberal theory of the state and the nation which has had significant implications for international law.

One of its implications is that this conceptual framework does not easily reconcile itself with the notion of minority rights or the principle of self-determination -outside colonial/alien/racist contexts. Minorities, in fact, are perceived as an indistinct part of the political community which purportedly possesses common aspirations and cultural references. It is argued that this is a myth of the 19th century modernist discourse, which exerted considerable influence on Kemalist nationalism -the official doctrine of Turkish nationalism. In chapter 3, it is also asserted that there is no such thing as a 'Turkish nation' in the sense of having singular characteristics. Accordingly, this study seeks to 'deconstruct' this myth by revealing the diversity of interests, aspirations, memories and cultural symbols that exist in Turkish society today. It is argued that the Kurdish uprising since the mid-1980s, as well as the rise of Islamist ideology, have indeed bitterly shown the defects of Kemalist nationalism. Chapter 3 also draws on the impact of Turkish nationalism and national identity upon Turkey's approach towards international society. The same chapter also investigates the decision-making process with reference to Turkish foreign policy.

Chapter 4 makes a critique of the Turkish 'school' of international law and relations. In the first section of this chapter, it is argued that Turkish scholars of international relations have failed to come to grips with new transnational actors and processes which cannot be properly addressed within the narrow confines of inter-state diplomacy. For this purpose, the textbooks of international relations and those relating to Turkish foreign policy will be surveyed to conclude that they are marked by a heavy reliance on the American realist school which gives prominence to power politics.

In the remainder of chapter 4, which is the main crux of that chapter, it is argued that, in the Turkish case, the dominant legal doctrine, legal education and foreign policy buttress a pervasive system of enduring patterns. For instance, the constraints of Turkey's posture within international society are also reflected in the substantive and methodological framework of international law scholarship in Turkey. Just as Turkey has since the 1950s defined itself within a negative framework -by reacting rather than initiating; pragmatic rather than idealist-, Turkish scholars of international law have generally adopted a conservative and positivistic stance in their treatment of the rules, principles and doctrinal conceptions of international law. In chapter 4, having examined the textbooks written by some prominent international jurists in Turkey, it is asserted that they have failed to exceed the boundaries drawn by classical international law at the expense of contemporary methodological and substantive challenges to established orthodoxies. For instance, issues like 'human rights', 'self-determination', and principles embodied in the 'New International Economic Order' have not received the attention which they deserve. This apparently anachronistic and uncritical perspective has to be perceived as an integral part of the foreign policy process in Turkey.

The chapters grouped under Part 2 are intended to serve as empirical cases for the conceptual analyses made previously. These chapters attempt to expose Turkey's official interpretation of international legal norms in the light of specific cases. The first group concerns some of Turkey's major international disputes : disputes with Greece over Cyprus (chapter 5), the delimitation of the Aegean sea (chapter 6), and Turkish minorities in Greece and Bulgaria (chapter 7) -in the Bulgarian case, the policy of forcible assimilation of the Turkish minority has been ended after the demise of the communist regime there. Chapter 8 focuses on the Kurdish minority question in Turkey. After having established the status of the Kurdish community under international law, this section will proceed with an analysis of their rights, and, then, Turkey's obligations towards them. Chapter 9 concentrates on Turkey's voting

behaviour in the UN General Assembly since the 1950s with regard to the newly emerging areas of international law. They may be labeled as 'progressive' issues in that they fundamentally challenge certain assumptions of classical international law such as 'absolute sovereignty', 'the principle of reciprocity among states', and the 'principle of effectiveness' as the basis for sovereignty. The progressive issues are subdivided into three sections : decolonization and the principle of self-determination; search for a New International Economic Order; and human rights.

The Conclusion of this thesis makes a brief review of the previous arguments and reflects on their implications for the future.

Overall, this dissertation sets out to show that international law is still, to a significant extent, based on western assumptions of liberal legality, and on the autonomy of sovereign states. As a result, it leaves very little scope for the *effective* inclusion of human categories other than states -such as minorities, various cultural groups, and individuals- into the ambit of international law. The fact that states are treated as autonomous centres of power under international law, requires an understanding of the domestic environment within which decision-makers operate. Hence the usefulness of a subjectivist approach as is adopted here. (Bloom's analysis of 'identification theory' is central here) One of the main assertions made in this dissertation is that, with its broadly and vaguely worded rules and principles, international law encourages discretionary interpretations of international norms by states. Therefore, these defects, among others, have to be overcome before one can truly speak of 'international' law.

This study relies on primary sources as far as the legal materials are concerned. Hence an extensive use of Turkey's international treaties, which are relevant to the issues discussed, are made. This study also relies on the original materials with respect to international treaties, UN General Assembly and Security Council Resolutions and the rulings of international courts (Court of Justice of the European Communities and International Court of Justice). Besides, the arguments are advanced on the basis of official or semi-official documents when attempting to describe and explain Turkey's official policies towards certain questions of international law. When, however, the primary materials were not available, this study relies on secondary sources such as books, articles, magazines and newspapers.

NOTES TO CHAPTER 1

1.This argument is forcefully elaborated in Anthony Carty, *The Decay of International Law?* (Manchester, Manchester University Press, 1986). See, in particular, Chapter 4.

2.Antonio Cassese, *International Law in a Divided World* (Oxford, Clarendon Press, 1986), pp.143-48.

3.Anthony Carty, "Critical International Law : Recent Trends in the Theory of International Law", *European Journal of International Law,* Vol.2, No.1, 1991, 66-95, p.66.

4.See for instance Sathirathai Surakiart (Ed.), *Third World attitudes toward International Law : an introduction,* (Dordrecht/Netherlands & Boston, Martinus Nijhoff, 1987); R. P. Anand, *International Law and the Developing Countries,* (New Delhi, Banyan Publications, 1986); Richard Erickson, *International Law and the Revolutionary state : a case study of the Soviet Union and customary International Law* (Leiden, Oceana Publications, 1972).

5.See for instance Majid Khadduri, *War and Peace in the law of Islam* (New York, AMS Press, 1979); James Piscatori, "Islam in the International Order", in Hedley Bull & Adam Watson, *The Expansion of International Society* (Oxford, Clarendon Press, 1984), 309-321.

6.Among some of the area studies are the following : Jerome Alan Cohen, (ed.), *China's Practice of International Law* (Cambridge/Massachusetts, Harward University Press, 1972); Samuel S. Kim, *China, the United Nations and World Order* (Princeton/New Jersey, Princeton University Press, 1979); Coral Bell, "China and the International Order", in Bull & Watson, *ibid,* 255-267; Gopal Krishna, "India and the International Order : Retreat from Idealism", in Bull & Watson, *ibid.*, 269-287.

7.W. Bloom, *Personal Identity, National Identity and International Relations,* (Cambridge, Cambridge University Press, 1990), p.52.

8.Baskin Oran, *Ataturk Milliyetciligi,* second edition (Ankara, Bilgi Yayinevi, 1990), p.148.

9.Arnold J. Toynbee & Kenneth P. Kirkwood, *Turkey* (London, Ernest Benn Limited, 1926), pp.3-4.

10.Arturo Escobar, "Discourse and Power in Development : Michel Foucault and the Relevance of His Work to the Third World", *Alternatives,* Vol.10, 1984-85, Winter, 377-400, p.378.

11.Michel Foucault, *Power/Knowledge* (Edited by Colin Gordon) (London, Harvester Wheatsheaf, 1980).

12.Carty, *op.cit.,* 1986, p.5.

CHAPTER 2

AN INTRODUCTION TO THE PARADIGM

Broadly speaking, the interaction between the system of international law and states, as primary subjects of international law, can be studied -at least- in two different ways. First, it can be examined in terms of what it *claims to do* rather than what it actually *does*. The first view suggests, if implicitly, that international legal doctrine - rules, principles and concepts- constitute a coherent and predictable system which guides or coerces behaviour. This analytical approach then proceeds to evaluate the behaviour of states by reference to positive rules of international law. If it concerns a dispute, the international lawyer formulates his/her legal reasoning on the basis of treaties, custom, precedents, juristic writings and so forth. This is the broad description of the 'positivistic approach' to international law. Second, the interaction between the system of international law and states can be examined by focusing on the practical operation of law to discover how it is *actually* perceived by states. This approach suggests that international law, as a social construct, is inevitably partial and reflective of the attitudes and perceptions of states. As such, it is not and cannot possibly be an exclusively positive system of law. Therefore, the second approach, which may be described as a 'sociological approach', favours an empirical understanding of how states (legally) behave and, perhaps, why they do so. By focusing on the *function* of international law in international society, the proponents of this approach hope to understand the limits and possibilities of the existing legal system. For its part, this study adopts this second analytical position, and employs a 'sociological approach' which involves an investigation of actual understandings/interpretations of/attitudes towards international law in the Turkish context.

Before expanding on the concepts and ideas which will constitute the backbone of the theoretical position adopted in this study, an inquiry into the nature of law in general and into different analytical approaches to the study of law may be necessary here. Such inquiry allows a greater understanding of the status of international law as 'law' and introduces various ideas, approaches and concepts, some of which will be used to formulate the 'critical legal' position adopted in this thesis.

There are two classical schools of thought which dwell on the question of the nature of law and the ways of approaching the legal phenomenon. The debate between positivist and naturalist schools of jurisprudence centres around their differing views

as regards the basis of legal obligation. Positivist theories of law concentrate upon a description of law by reference to formal, rather than moral or ethical, considerations. Positivism has been the dominant school of jurisprudence since the nineteenth century, particularly in the Anglo-Saxon world. The positivist theory of law was first developed chiefly by scholars like Jeremy Bentham, John Austin and some others in the nineteenth century.

A major concern of Bentham was to distinguish between the descriptive and the normative, between what 'is' and what 'ought to be'. For him, these were separate issues which had to be dealt with separately. Bentham argued that the will of the sovereign was imperative upon legal subjects since those imperatives were backed up by sanctions. He asserted that implicit coercion is a major aspect of sovereign command. The subjects' habit of obedience, for Bentham, derives from the coercively induced fear of the sovereign and/or its moral authority (1). Austin, who was a disciple of Bentham, went beyond Bentham in asserting that the power of a sovereign was not subject to any *legal* limitation (2). Similarly, Hans Kelsen, a prominent legal theorist of the present century, distinguished law from other social orders on the basis of its character as a "coercive order" (3).

Hence the positivist theory of law attempts to identify law by reference to a single source, to a particular location of power. Since the validity of a legal system is effectively guaranteed by the state as sovereign, moral or philosophical arguments about the nature of law are bound to be speculative and irrelevant to the legal process. Hence legal positivists, ranging from Austin to Kelsen, are concerned with law as a technical discipline without regard to value judgements. Indeed Kelsen called his theory 'pure' in the sense that his legal theory precludes all considerations which fall outside the essence of 'law' (4). For Kelsen, law is always positive and independent of morality (5). Hence positivism claims that the methods of legal 'science' should be objective. That is why this theory is concerned with the *description* of facts, and not of values (6). While value-judgements are not verifiable, factual observations are.

Legal positivists reject the claim that the analysis of law requires an analysis of the content of the legal norms. This is due to the positivist assertion that, since they are not empirically verifiable, there exist no underlying universal attributes of human beings which determine the content of norms (7).

While the positivist theory identifies law by reference to a single source (a particular location of power), naturalist theory does so by reference to its content. Indeed naturalist theory is primarily concerned with morality, rather than with the formal status of a particular norm, which it claims should govern legal regulations (8). Hence it argues that governmental authority on law-making should be limited by moral considerations. This is the criteria for judging whether a particular norm qualifies as 'law' (9). While recognising the positivist emphasis on formal criteria for identifying law, naturalists seek to involve moral and ethical considerations as relevant to law (10). The extent of the divergence between positivism and natural law, however, is often exaggerated.

The fact is that these two main classical theories of law (positivism v. naturalism) give different answers to different questions. Hence the purported distinction between them is mostly arbitrary. The positivist theory is primarily concerned with the identification of formally valid law. In this view, the sense of legal obligation derives from authority, and not from moral rightness. The question of the ultimate source of authority falls outside the scope of positivist enquiry (11). Naturalism, meanwhile, does not question the formal status of 'laws' as understood by positivists. Instead its main concern is to ascertain "the extent to which laws have a claim to obedience" (12). Although naturalists claim that the authority of law should be based on morality, they do not question the 'law' quality of a perceived immoral law (13).

It can be contended that neither of these classical theories of law provides an adequate basis for understanding legal phenomenon. Since this study is not an inquiry into the nature of law as such, the discussions will proceed with an elaboration of their weaknesses in the context of international law. To begin with, naturalism operates at the level of abstractions, and, therefore, does not adequately consider the complexity of international relations. Besides, its universalistic postulates such as justice and morality, are not capable of verification. The existence of a system of international law, however inadequate it may be, the rules of which are not always in conformity with the objective ideas of justice, testifies to the fragility of the naturalist claim. If, however, with a twist of logic, the binding character of international rules is claimed to derive from natural law, then the theory becomes tautological, in which case it loses its explanatory potential.

Contrary to the naturalistic approach, positivism is widely considered to be the most adequate approach to international law -which is after all a 'positivistic' system. Therefore the problems associated with positivistic analysis will have to be explored

in greater detail. Positivistic analysis -not theory- is premised on a view that international law is a complete and gapless system of law which provides clear answers to all conceivable legal problems in international relations. Accordingly, the behaviour of states is observed and measured to test it against the prescriptions of international law. Admittedly such analyses may be rigorously researched through the disclosure of the apparent facts of a situation, and may be meticulous in terms of presenting all the relevant facts. But the critical question is how to make sense of the existing data. The problem with positivistic legal analysis is indeed two-fold : first, it lacks an explicit methodology or clearly differentiated levels of analysis; second, it treats international law as an absolute, complete and universally accepted system of law. These two defects need further elaboration.

Positivistic analysis of international law is premised on an anthropomorphic conception of states which possess coherent personalities. Under this scheme, states interact with one another as individualistic personalities. This approach frees the analyst from the theoretical problems of social integration and political mobilization. The psychological link between the state and national population is dismissed in favour of an uncritical acceptance of legal ties between the citizen and the state as given. In other words, individuals as citizens become passive bystanders in the power game between the representatives of states. This simplistic conception of international relations retains its appeal as an explanatory tool, particularly in times of international conflict. The fact is, however, that decision-makers do not base their position on the basis of supposed international norms. Their objectives and motivations largely derive from the official discourse of historic rights and goals. Indeed national societies are functionally integrated social systems with their own coherent structures, prevailing world-view and a myth of historic rights (14).

Moreover, as an analytical approach in international law, positivism is premised on a rather exaggerated view of international law as a gapless and complete system. However the irony is that the classical theorists of legal positivism often contrasted municipal law, which they regarded as 'real' law, with international law being described as a primitive or less-developed system of law. To start with, John Austin describes international law as "positive morality" since there exists no sovereign in international society to secure compliance with international legal rules. Instead its duties are enforced by moral sanctions (15). In Kelsen's view, under municipal law, the observance of legal norms is guaranteed by the threat of sanctions which are stipulated and authorized by law (16). This is not the case with international law. He notes that international law relies on individual states which establish a decentralised

system of self-help in the absence of a central authority. This system ranges from individual self-help, e.g. reprisals and war, to collective assistance. However recognizing that some elements of a centralized enforcement mechanism also exist in the case of collective security arrangements and universal organizations, like the United Nations, he describes international law as a partially centralized legal order (17). Hart too accepts that international law, unlike municipal law, does not qualify as a complete system of law for different reasons. He draws on the indeterminacy and arbitrary character of legislative and judicial process in international law (18).

Indeed, in order that international jurists take positive rules of international law as the sole frame of reference against which the behaviour of states is evaluated, there must be some degree of correspondence between rules and the actual behaviour of the members of international society. Although it is true that states mostly conduct their international relations in conformity with prescribed rules of international law, they often do not hesitate to disregard their international obligations when they perceive them as being contrary to their major interests and objectives (19). The ambiguity and legal lacunae that characterise many rules and principles of international law inevitably increase the possibility of such behaviour. Moreover, when they do conform with their international obligations, states often do not act on account of their respect for the law. Indeed international law is not necessarily a powerful motivational force in international relations (20). It has been seen that positivist legal theorists perceive international law as an incomplete system. It is true that at the time when Austin, Bentham and other classical positivists dismissed international law, their views were primarily shaped by the absence of an international sovereign in the same sense as municipal law. This is certainly not the case today. International economic, diplomatic or military sanctions imposed by the UN Security Council under Chapter VII of the UN Charter against states which contravene the principle of non-aggression is an example of the greater centralization of international law. However international law still fails to satisfy the 'institutional' test set by classical positivists. Leaving aside the fact of the absence of a world government, world legislature and world judiciary, international law largely proceeds through the agreement of *sovereign* states.

Therefore the international system is maintained more through political bargaining between contending sides than legal proceedings, such as adjudication, compulsory arbitration or conciliation. It suffices only to recall how the system of compulsory arbitration provided for in the Covenant of the League of Nations was beset by extensive compromises. Indeed states are reluctant to delegate matters, which they

perceive as involving their vital security or other interests, to an international authority. Even under the UN system, the sovereignty of states is taken as the point of departure for the UN's operation. For instance, states are entitled to resort to force under certain conditions. The vague language in which the discretionary powers of states are expressed is often exploited by them. The relative absence of major international wars since the end of the Second World War has been more due to the practical calculations of states than to their regard for international law (21).

Besides, despite the growing complexity of international relations which created new international actors and locations of power, the state has maintained its central role. Indeed in international relations, the roles of class, multinational corporations or transnational bodies seem subservient to the state. They may *in effect* have extensive influence in the determination, for example, of a developing state's economic policy and foreign policy, but these activities and effects take place within the boundaries of states (22).

Finally, sovereignty still persists as the most powerful political idiom employed by states in international relations. Undeniably, sovereignty has triumphed over other ways of justifying political authority. The final and absolute authority lies in the state. Indeed the existence of a sovereign authority is the most essential prerequisite for membership of the international community. For instance, Article 2(1) of the UN Charter states that the UN "is based on the principle of the *sovereign equality* of all its Members", while Articles 3 and 4 stipulate that only states qualify for UN membership (Emphasis mine) (23). The principle that there is no supreme authority beyond states has withstood the test of time. Many writers have dismissed sovereignty as an outmoded or immoral concept, particularly in this century, and yet the power and influence of states have increased with the impact of scientific and economic changes. Even in modern times, the state has managed to maintain its authority and effectiveness, although it is true that the actions of the state have greater ethical, legal and political limits than in the past (24).

Attempts by states to establish an international authority that possesses supranational powers have all failed; note for instance the failure of the League of Nations to secure such a system. The UN system did not dispense with the state as the ultimate authority in its own sphere. One can similarly draw on the problem of the gaps between institutional mechanisms and international rules on the one hand, and their execution in reality on the other. Indeed the principle of self-help still remains the most effective guarantor of international security (25).

Therefore it can be argued that positivistic analysis of legal behaviour tends to exaggerate the influence of the international legal system on the behaviour of states. This thesis rejects the view that the international system or the system of international law determines the individual state's behaviour according to a coherent pattern. For if it were to be the case, Turkey would have never invaded the northern part of Cyprus in 1974, or would have to recognize Turkish Kurds as a minority, which would have been a natural concomitant of Turkey's official commitment to European integration. This seemingly contradictory position requires the extra-legal considerations of Turkish nationalism, Turkey's political and legal culture, and its perception of the outside world. Otherwise, coincidence of empirical data relating to Turkey's legal posture over various disputes and questions would provide insufficient evidence of its interaction with international society.

Such an analytical posture favours a sociological approach to law. Accordingly, it seeks to expose the deficiencies of a purely legalistic approach to law. The classical theories of law have been criticised and challenged by the sociology of law movement for ignoring the role of values behind legal norms. The members of this movement argue that the classical theories of law tend to ignore the gaps between rules and their application in reality (26). The sociology of law is a broad movement which seeks to link law with the society in which it operates. This movement does not propose an alternative legal theory, but seeks to enhance an awareness of the nature and operation of law through empirical inquiry. The sociological approach to law is a well-founded discipline whose origins can be traced over some two or three centuries. Some of its most influential theorists include scholars as diverse as Montesquieu, Weber and Parsons. Their common concern has been to contribute to a greater understanding of legal phenomena through the overcoming of partial perspectives (27).

The sociology of law takes law as a social phenomenon which is a useful tool to understand society. While positivists seek to analyse law in terms of the logical structure of legal doctrine, the sociologists of law seek to relate this logical structure to systematic empirical knowledge within a particular society. In other words, legal doctrine and institutions are related to the social environment in which they operate. The sociologists of law recognize that human experience and knowledge are inevitably partial and incomplete. This, in their view, has to be taken on board before making a systematic investigation of the empirical data of experience (28).

The sociology of law is not a tightly defined discipline; instead there is a variety of distinct approaches and concerns within this tradition. A common concern that its proponents share is the search to understand law as a social phenomenon (29). For the sociology of law, law consists both of fact and value. Since impartiality is rejected, one must be aware of the value judgements which inform both the selection of topics to be discussed and their mode of analysis (30). Also the factors which have direct bearing on the interpretation of rules in particular contexts are as important as the content of such rules. Besides, it accepts that legal doctrine is constructed in social action. Legal doctrine takes its meaning and significance only in the context of the social conditions in which it is developed, interpreted and applied (31).

The sociology of law claims that 'objectivity' is more a myth than a reality. Observers, as other social agents, are strongly influenced by their social circumstances. Social science possesses the methodological means to *understand*, rather than simply record, social action in terms of its *meaning* for those engaged in it. As mentioned earlier, this thesis also favours a 'sociological' approach in the sense of exploring international law in terms of its actual operation in reality. In such an analytical scheme, notions like 'perception', 'values', and 'meanings' become relevant factors, alongside facts, for an understanding of the nature of the interaction between states as legal subjects and international law.

The idea of an autonomous legal order and the conception of law as an 'objective' and 'pure' discipline is similarly challenged by the Critical Legal Studies (CLS) movement. The CLS movement takes the sociological analysis of law one step further. The critical legal movement makes a critique of classical theories of law, rather than -as yet- proposing an alternative theory of its own. Its distinctiveness lies in its 'critical' agenda which includes broader ideological and philosophical questions about the context of law in the workings of liberal capitalist systems. The CLS movement does not only focus on municipal law; there is a handful of critical scholars who are presently engaged in international law. Within the critical movement, there is a growing concern with the possibilities and limits of social communication between different traditions as represented by states. In this study, it is argued that such communicative undertakings, which hold varied views about the possibility of universal values and principles, have important implications for international law and legal analysis. These themes will be explored in the remainder of this chapter. First, an overview of CLS will be made here.

The critical legal movement originated in the United States in the 1970s as a successor to the American realist movement. American Legal Realism, although critical of it, was committed to liberalism. Realist scholars rejected formalism, and yet perceived legal reasoning as distinct. One of their major concerns was to improve the legal system (32). The critical scholars, for their part, reject the value-free model of law. They assert that law is an essential component in the workings of liberal society.

CLS draw on the arbitrary and contingent character of law, contrary to the liberal claim that it is rational and coherent (33). Hence the main targets of critical legal scholars' attack are liberal legal theories, and, in particular, positivist theories of law. Critical legal scholars regard liberal law as an ideology, although its emphasis on form and procedure hides its true nature. Liberal legal theory, they argue, cannot resolve conflicts objectively. Its objective exterior hides the power structure beneath law. Despite its claim to embody universal social values, it operates in such a way as to reflect the unequal distribution of power within society (34).

CLS assert that legal concepts are prone to manipulation and that legal texts can be interpreted in different ways. There is no way to agree on one authoritative interpretation. These 'possible' interpretations are determined by the *political* context which prompt the need for interpretation (35). However in spite of their sceptical view of orthodox legal reasoning, CLS do not deny the significance of legal doctrine. They accept that legal doctrine, as an important factor in social life, helps in the construction of a more orderly society. It provides categories of thought which legitimize the usefulness of social relationships (36).

The hierarchy of power envisioned by critical legal scholars differs from that of Marxism, in that for the latter, power is a function of class domination, whereas the former's notion of power is much more complex and diffuse. The critical scholars seek to expose the interaction between the dominant political culture, legal ideology and the legal consciousness of the population (37). They see power as an ongoing process which permeates various institutions and apparatuses of society.

CLS deny that legal logic or overarching values or traditions of the legal system are the main forces behind doctrinal development. The impetus for change comes through political struggle or economic changes, rather than through law itself. However the *real* forces are usually hidden beneath legal doctrine and legal reasoning (38). The critical legal approach seeks to enhance an understanding of the role and character of

legal doctrine -rules, principles and concepts. To that extent, it also contributes to the effort to develop empirical legal theory (39).

The critical legal movement embraces a plurality of different views. While some critical scholars do not wholly reject liberal legality, others pursue an alternative agenda which proposes novel ideas and institutions. Unger, one of the figureheads of the American critical movement, falls into the first category in that he seeks to uncover the emancipatory potential of liberalism. He believes in the instrumental role of law for advancing egalitarian goals. Unger describes his alternative social ideal as 'superliberalism' (40). Postmodernists, for their part, are extremely sceptical about the potentials of liberal law. They seek to deconstruct established systems and ideas to demonstrate that they conceal their hidden agenda through the use of a particular language/discourse. Postmodernists are wary of theories which they perceive as invariably totalitarian. For instance, Lyotard calls for an end to 'grand narratives'. His is a quest for heterogeneity, little narratives and provincial constructions of social systems. Universalism is not achievable since every society has different rules for its operation ('rules of the game'). Therefore Lyotard proposes local solutions to inevitably decentralised problems (41). The common thread that binds critical legal scholars, however, is their radical criticism of liberal legality and their methodological and conceptual quest to go beyond the empirical character of mainstream scholarship (42).

To make an overview of the discussions presented so far, while the sociological approach to law makes an empirical inquiry into the operation of law with due emphasis on the subjective context of the social agent, CLS extends its scope to include broader philosophical and theoretical questions about law and its relation to politics, economics and so forth. The critical legal movement seeks to establish whether law remains true to its own goals and promises. By focusing on law's operation in society, critical scholars attempt to show how the legal system favours certain values at the expense of others -mostly the economically disadvantaged groups. The substantive and methodological arguments presented by the CLS movement (whose methodological ancestry can be traced to the sociological movement in law), informs the analytical approach adopted in this thesis. Indeed, this study shares the CLS movement's criticism of liberal legality, its attack on positivistic scholarship, its emphasis on the arbitrary character of legal rules, its insistence on the need to understand law in relation to the social context in which it operates and its assertion that law does not only consist of facts, but also of values. The ideas and concepts elaborated by the critical legal movement will, in this case, be deployed in

relation to international law. Henceforward the present discussion proceeds with an elaboration of some specific methodological concerns and normative suggestions which clarify the distinctive contributions that this thesis hopes to make.

Critical focus on the operation of law may also involve a reflective inquiry into how social agents perceive law and its function in social life. Some of the adherents of the CLS, as well as various 'critical' social theorists from Europe, have been engaged in a subjectivistic understanding of the behaviour of states which has important implications for the study of international law -however it should be borne in mind that this subjectivistic approach is not unique to the CLS movement. This is the subject of the discussions that follow.

The subjectivist approach to the study of law may be traced to Max Weber, who is one of the founding fathers of the sociology of law movement. Weber's major concern was to *understand* the meanings behind social action. He considered social conduct as subjectively meaningful human behaviour (43). For Weber, law is only one of the determinants of social action (44). A social order is not necessarily maintained through law. The legitimacy of an order can equally be guaranteed by the subjective considerations of social agents, such as faith in its absolute validity, emotional attachment and habit of obedience (45). If an order is backed by legal coercion, it qualifies as 'law'. However force is not the only source of coercion. The coercive force of law may be guaranteed in a variety of ways, such as religious authority, political authority, or through the statute of an association (46).

Weber's subjectivistic approach to social action has had a lasting influence on hermeneutics (47) which comprises the general theory and practice of interpretation. Hermeneutics, as an interpretative technique, seeks to understand the social world not only in terms of what social agents understand, but also in terms of how their understandings are rooted in a particular culture and tradition. The hermeneutic mode of analysis, broadly speaking, may proceed in two directions : the first approach would be to take *understanding* as the purpose of analysis. It suffices that different traditions become aware of one another, and respect one another. This is Gadamer's position. The second position, represented by Habermas, seeks to go beyond mutual understanding to find certain elements of universal consensus. Before elaborating on the respective views of these two social theorists, a brief look at the German hermeneutical school is due here.

That every cultural system has its own peculiar conception of reality was a dominant view of hermeneutics in Germany during the nineteenth century. This hermeneutic understanding emerged out of the historiographical endeavours of German romanticism (48). A hermeneutical scholar is in a sense a cultural broker of different ages and nations (49). Schleiermacher was the founder of historical hermeneutics. Schleiermacher's programme of *psychological interpretation* is based on the understanding of other people's meanings in their own contexts. During this process, one 'loses oneself' in order to identify with the social agent. This is a quest for inner thought and feeling. Psychological interpretation strives to understand social agents (individuals, cultures, etc.) in their cultural contexts, i.e. through the totality of their form of life. Hermeneutics is a *process* in search of a fuller reconstruction of totality (50). This search is based on the assumption that understanding is a work of reason which may be described as the rationalist position.

Gadamer has been among the most prominent members of the German hermeneutical school in this century. Among his major contributions is his elaborate hermeneutic scheme to enhance inter-cultural understanding, and his suggestions about a non-hegemonic acquisition of knowledge about different traditions. Gadamer's analytical proposition for enhancing mutual understanding is based on his rejection of conclusiveness in favour of open-ended interpretation which operates at the level of probabilities (51). Gadamer argues that rationality is inherent in traditions. There is no rationality beyond tradition (52).

Although Gadamer recognizes that there are general ideals of justice and equality, he asserts that they become meaningful only in social practice. In other words, rational enquiry should relate its findings into the particular society in which social agents live (53). For Gadamer, rationality and reflection become valid if they contribute to tradition (54). It is clear that this scheme precludes the possibility of achieving an idea of reason which transcends the existing set of social relations. All that can be done about different and conflicting views that social groups hold is to recognize this difference candidly and be prepared to compromise (55).

Gadamer's rejection of universal reason is opposed by the critical rationalism of Habermas who is the most distinguished heir and successor to the critical theory. His adoption of a hermeneutical approach is among his unique contributions to the critical social theory. His theory of societal rationalisation adopts the paradigm of 'mutual understanding' between social agents (56). For Habermas, cultural traditions can be propagated, groups can be integrated, and social solidarities can become meaningful.

This provides the *context* and *resources* for a process of mutual understanding which derives from a 'rationalized lifeworld' (57). According to Habermas, the social agents mobilize their rationality potential through 'meaningful communication'. Through communication, individual positionings merge into a 'common lifeworld'. Admittedly, such communication is often marked by ambiguity and instability, since communication is a process of negotiation between culturally-charged social agents. Therefore it is only through a continuous dialogue that mutual understanding can be achieved (58).

Habermas takes a transcendental view of social communication. Human beings are capable of finding common values through 'self-reflection and dialogue'. This position is clearly at odds with relativism. For Habermas, all social agents would be able to distinguish true statements from false statements in 'absolutely free and uncoerced circumstances' for unlimited duration. Only in such a situation can a transcendental criterion of truth, freedom, and rationality arise. Every social agent, if given the proper conditions, possesses an innate capacity to 'construct' the ideal speech situation. Hence universal consensus over a set of ideas and norms is achievable (59). The question is, is international law capable of creating ideal speech situations ?

For its part, this thesis adopts a 'critical hermeneutical' position in understanding and explaining the role of international rules and principles in the determination of the behaviour of states. The normative features of social action, such as principles, norms and values, have to be made explicit in order to fulfil the need for a full articulation of social needs and expectations. This Habermasian 'communicative reason' posits international law as a communicative process which has the potential to increase mutual understanding between the major participants in international society. Such a position recognizes the possibility of a transcendental rationality in the sense of recognizing certain universal values and norms which are capable of transcending national traditions. It can be argued that human rights and the prohibition of aggression are among such universalistic values. The fact that there *can* be certain universal values and standards of behaviour is evidenced by the UN Charter which is recognized by practically every state, and is often claimed to have a law-making character. That it is an important source of international law should be welcome. The kind of universalism postulated here does not however foresee the homogenization of states in terms of their political structure or international outlook. The critical hermeneutical approach acknowledges heterogeneity and seeks to understand it. However different cultural practices can be compatible with universal principles. For instance, the principle of *pacta sunt servanda*, that agreements are to be performed in

good faith, does not specify particular formalities for contracts which it accepts are matters for the legal system of states (60).

Admittedly, the hermeneutic mode of interpretation adopted in this study does not have to lead to the Habermasian position adopted here -in the sense of recognizing the possibility of universalism without denying heterogeneity. It may instead produce a variety of approaches on the validity or desirability of international law. Postmodernists, for instance, would favour the breaking up of international law and, in its place, propose localised solutions for resolving inevitably partial and complex problems. The problem with this approach however is that it tends to ignore the necessity of minimum normative and institutional standards for the orderly conduct of international relations. It has to be admitted that standardized general rules are necessary if chaos, arbitrariness and injustice are to be avoided. In a lawless international society, the manipulation and the exploitation of the weak by the powerful becomes inevitable. International law embodies the basic rules of coexistence among states. It restricts violence, and contains rules on issues like international treaties and the law of territory. It also helps -to some extent- to secure compliance with the rules of international society through putting restraints on the international behaviour of states and through mobilizing the non-legal considerations of states in favour of compliance with international agreements. The postmodernist position also ignores the constructive role -at least potentially- played by the 'progressive' rules and principles of international law in bridging the economic, social and cultural gaps between rich and poor countries. The postmodernists also exaggerate the cultural differences between various traditions. They tend to ignore that notions such as 'justice', 'equality' and 'freedom', as natural human aspirations, can be found in every culture, although their content and application may vary from one culture to another. The difference in content does not however invalidate the idea itself. Once such ideas and principles are perceived as subjects of a discursive process among different cultural traditions, international law can no more be rejected than taken for granted.

For their part, assuming that they pursued a hermeneutic approach to the operation of international law, the positivists might still maintain that social reality can be explored on the basis of universal ideas. They would argue that, since international rules transcend the *partial* perspectives of states, international lawyers should accept that positive rules of international law are the only *objective* referents for assessing the behaviour of states. The problem with the positivistic approach, however, is that the standards of international law have to be applied in different social contexts

which reflect heterogeneous human conditions. Since social reality consists of complex set of relationships and processes, and involve subjective considerations by human agents, the application of international legal rules and principles in concrete situations is bound to be problematic. Indeed the world is full of complexity, a fact which should be taken on board before discerning certain universal elements within international law. The analytical position proposed here suggests an *evolutionary* understanding of international problems, rather than, as is often presumed by legal positivists, a *once-and-for-all* solution. This requires a hermeneutic understanding of those involved in international disputes, which takes full account of non-legal considerations, as the point of departure for legal analysis; thus rejecting *a priori* assumptions about the transcendental quality of international legal norms. This is indeed the starting point for the critical hermeneutical position adopted here.

Taking a critical, multi-disciplinary position does not require that international lawyers should cease to expose and interpret existing legal rules as their main task. This is indeed a precondition for their distinctive contribution to international law. However, international lawyers should not simply emphasize the positive international law, but should trace the direction of its progressive development. This would be a contribution to international law since these scholars will be adequately equipped with concepts, normative concerns, analytical tools, and motivation to adapt international law into the changing structure of international society. International lawyers should also recognize that international law cannot be taken as a complete system of law whose effectiveness is undisputed. Instead they should take international law as a *living* law which operates in different spheres of international relations, and with varying degrees of success. International law is not only a normative order, but also a social system. In this sense, it has a subjective meaning for members of international society. This is the context in which to understand international law as a *living* law.

International law is part of the social reality in international relations. To the extent that states can associate themselves with the existing fora for international dialogue and with the existing and/or evolving norms of international law, the system of international law becomes part of their political culture. While the Eurocentric origins of international law cannot be denied, to the extent that it reflects the broader concerns of different cultural traditions and legal systems, its legitimacy and efficacy is bound to increase. Heterogeneity does not necessarily preclude consent. The authority of international law could similarly be enhanced if it can successfully address the complexity of international life. It is indeed encouraging to observe that international law is becoming more concerned with entities other than states, such as

minorities, indigenous peoples and individuals. Besides, international law is not only concerned with maintaining international peace and security, but is actively involved in matters like human rights and the economic prospects of developing states. Although admittedly international law does not operate under conditions which are immune from coercion and intimidation exerted by powerful states upon the weaker ones, it nonetheless embodies some of the essentials for rational communication which *may* produce consent. However the inherent constraints of international law should not be underestimated. Indeed legal analysis of international problems is an arduous task which should preclude *a priori* assumptions about positive law and its capacity for conflict resolution.

The hermeneutic approach adopted here to understand and explain the international legal behaviour of Turkey is largely inspired by Anthony Carty's two works on the theory of international law (first, his book entitled *The Decay of International Law?* (1986) and, second, his 1991 article entitled "Critical International Law: Recent Trends in the Theory of International Law", published in *European Journal of International Law*). In his article, Carty argues that today "individual nation-state is prior to international law" (61). Therefore the internal organization of states has to be understood before making sense of how they behave in relation to the external world.

The point of departure for Carty is "whether international law really satisfies minimum requirements of positivism" (62). He rejects the view that international law is based on an actual consent among states. Instead its emergence and evolution largely derive from complex historical events. In addition, aside from the fact of the absence of a world legislature, executive and judiciary, present international law does not define "comprehensively the rights and duties of States towards one another" (63). Neither the birth nor the disappearance of states is governed by international law (64). Besides, for Carty, as well as for Koskenniemi, both of whom are engaged in the critical inquiry of international law at a theoretical level, behind its veil of objectivity, international law in fact gives a particular reading of the social world. As such, it is a type of discourse which promotes certain values and principles at the expense of others (65). The system of international law features many legal gaps and vaguely defined rules. For its part, positivist legal method ignores what it cannot analyse in strictly legal terms (66).

Carty proposes an alternative approach to international law among other possible approaches. In his view, international law can be more fruitfully studied by understanding how states perceive international rules, and how disputes of states are

often rooted in 'national' antagonisms between them. Therefore states must be treated as independent centres of culture, rather than as mere objects of a would-be-universalistic system of law. Such an approach seeks to enhance inter-cultural dialogue and understanding, while demonstrating the limits of international law (67).

This thesis seeks to test the validity of Carty's alternative methodological approach through various case studies. These case studies, as will be seen, largely confirm that the basic concepts, rules and principles of international law are too general and ambiguous to constitute a complete legal system. Therefore, their contents can be interpreted in different ways by different states and/or by the same states in different circumstances. The efficacy of international law is further compromised by the absence of law-making, law-enforcing, and adjudicative bodies with binding powers, unlike those that exist in municipal law. The limitations of international law in governing international behaviour also derive from the nature of international disputes. As Carty observes, states perceive international rules on the basis of their consideration of themselves as 'nations' and of their 'historic rights' and 'national objectives'. These considerations necessarily call for an understanding of the hermeneutic contexts of states which are the major players in international society. Indeed the Greco-Turkish disputes and Turkey's perception of the 'Kurdish problem' cannot easily be defined and understood in simple legal terms. They involve the difficult questions of 'national identity', 'politics', 'national security', 'historical rivalry' and so forth, which should be studied in terms of how the contending parties perceive them. To that extent, this thesis wholly agrees with Carty.

Carty, however, sees the function of the international lawyer solely as an intermediary of inter-cultural dialogue (68), which is not entirely shared by this study. Although the aim of Carty's hermeneutic understanding of states is to increase inter-cultural dialogue, he does not explore the further possibilities of moving beyond 'mutual understanding' to arrive at 'consensus'. In other words, it is not clear whether Carty sees dialogue as an end in itself, or as a necessary step to strengthen the efficacy of international law in international relations. Dialogue can only become meaningful if it produces shared values through mutual compromise and understanding. Such shared values should in turn lead to concerted action which is potentially capable of producing greater ends than would otherwise be achieved. Such a possibility *does* indeed exist, and has more potent force than Carty admits. Carty's description of the current international society as being in a 'state of nature' tends to exaggerate its anarchic tendencies at the expense of its more orderly aspects.

In a similar vein, Carty's theoretical scheme underestimates the influence of international law on states. States may be more prepared to respect international law than Carty suggests. For instance, states overwhelmingly conform with international law unless it involves their perceived vital interests. Similarly, Carty seems to ignore the dynamics of the interaction between states and the system of international law, the latter of which may, as a result of its growing involvement in international relations, come to play a central part in the former's policy considerations. In this context, Carty ignores the qualitative changes brought to bear upon international law by non-western states and/or ideologies, by holding to a somewhat exaggerated view that international law is *still* part of western culture (69).

Hence, for its part, this study, rather than positing a nihilistic rejection of international law, both as a normative system and as an academic discipline, hopes to contribute to its progressive evolution by discerning some of the problems associated with international legal theory and legal doctrine. Besides, it traces some of the underlying factors that lie beneath the gaps between the prescriptions of international law and the actual behaviour of states in international order. Such a critical inquiry is not designed to propose solutions, but, rather, to enable a greater understanding of the complexity of issues involved in apparently *legal* problems. It is herein suggested that legal doctrine should be more concerned with understanding different legal arguments, rather than seeking a single answer on the basis of orthodox legal reasoning. Besides, given the fact that international law includes a codification of behavioural norms, national behaviour needs to be examined, not least in order to understand the ways states behave. Indeed the observance of international law depends on the validity of its assumptions about the behaviour of states. It has been one of the objectives of this thesis to explain, through various case studies, why states comply with international law in some circumstances and yet ignore them in others.

This study avoids taking an absolute theoretical position which has the merit of an all-encompassing understanding of various issues and problems of international law. None of the legal theories, ranging from positivism to postmodernism, can adequately answer all questions relating to international law. While the existence of positive international rules cannot be denied, it must be admitted that many of these rules, particularly in matters of sovereignty, territory and security, lack precise content which makes them controversial. Therefore, in many cases, international law is *not* based on an actual consent among states. Meanwhile, certain rules and principles of international law may be said to reflect natural law concerns. Among them are the international protection of human rights, the principle of self-determination and the

international law of development which, it may be argued, as ideals, have preceded the practice of most states. Although their binding character is less than certain, since many states tend to perceive them as mere recommendations, their gradual influence over the conduct of states is likely to transform them into solid rules. Similarly, the postmodernist approach to law, which tends to highlight the coercion and friction beneath the rhetoric of consent, as is done by Carty, exposes only a part of the reality of international law, as has been discussed earlier. Therefore, it can be argued that a variety of approaches are needed to explicate how individual states (legally) behave in larger international society. Such a mode of analysis interprets and contextualizes legal situations and problems. It is herein proposed that a multifaceted and multi-disciplinary hermeneutical position, which pays due attention to international legal standards, is capable of grasping the complexity of international relations.

Not unpredictably, then, this thesis does not proceed on the basis of a single conceptual approach to expose the problematic dimensions of international law. While giving considerable attention to 'positive' rules of international law on various subjects, to be discussed, such as sovereignty, human rights and the law of the sea, it draws on a number of 'critical' approaches which are then applied to various case studies. These approaches are bound together with the thread of the critical hermeneutical mode of inquiry pursued in relation to Turkish behaviour in international society. First, deconstructionism is deployed for an exposition of conflict and heterogeneity which lie beneath the myth of 'national consensus' propagated by states. In this context, the following assertions are made : first, the 'state' and 'nation' are not necessarily synonymous; secondly, the 'state' is *not* a 'neutral' arena of competing forces and ideas. Instead it represents a particular ideology and normative outlook ; third, the official discourse is marked by ambiguity and contradictions. A second conceptual approach adopted here concerns the exploration of the link between power/knowledge/discourse, as propounded by Michel Foucault. Foucault's conception of power emphasizes the dispersion of power contrary to the assertions of the classical doctrines of centralized sovereignty; third, William Bloom's identification theory is deployed to uncover the interaction between nationalism, national identity and international relations; finally, a psychological approach is used to expose Turkish perception and image of the outside world, as represented by Turkey's decision-making elite. It is argued that the decision-makers tend to internalize the core values inculcated by the social environment in which they live.

The hermeneutical method of interpretation, which provides the context of analyses for different conceptual approaches employed in this study, involves an understanding

of the culture and politics of a particular social system, in this case, Turkey, from *within*. To that end, this study deploys a variety of concepts, ideas and theoretical approaches in so far as they clarify the hermeneutic exposition of Turkey's international legal behaviour. Given that states' perception of themselves and of the external world derives from a complex mix of historical, political, cultural and economic considerations, the deployment in this study of traditional historical analysis, alongside novel theoretical approaches, such as 'identification theory', is hopefully justified.

NOTES TO CHAPTER 2

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3.Hans Kelsen, *General Theory of Law and State*, translated by Anders Wedberg, (New York, Russell & Russell, 1961), p.19.

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5.*Ibid.*, p.114.

6.Samuel I. Shuman, *Legal Positivism: Its Scope and Limitations*, (Michigan, Wayne State University Press, 1963), p.98.

7.*Ibid.*, p.27.

8.H. McCoubrey, *The Development of Naturalist Legal Theory*, (London, Croom Helm, 1987), pp.XI-XII.

9.*Ibid.*, pp.188-196.

10.*Ibid.*, p.X.

11.*Ibid.*, pp.XI-XII.

12.*Ibid.*, p.XX.

13.*Ibid.*, pp.XX-XXI. For a fuller discussion of the classical theories of law, see Roger Cotterrell, *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy*, (London and Edinburg, Butterworths, 1989); Conference on Legal Theory and Philosophy of Science, 1983, *Theory of Legal Science: Proceedings of the Conference on Legal Theory*, (Dordrecht, Reidel, 1984); Hans Kelsen, *Introduction to the Problems of Legal Theory*, (Oxford, Clarendon Press, 1992); John Finch, *Introduction to Legal Theory*, third edition, (London, Sweet and

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14.William Bloom, *Personal Identity, National Identity and International Relations*, (Cambridge, Cambridge University Press, 1990). See in particular chapters 1 and 5.

15.Austin, *op.cit.*, pp.146-151.

16.Kelsen, *op.cit.*, pp.18-20.

17.*Ibid.*, pp.328-341.

18.H. L. A. Hart, *The Concept of Law*, (Oxford, Clarendon Press, 1961), pp.208-231.

19.Hedley Bull, *The Anarchical Society*, (London and Basingstoke, The Macmillan Press, 1977), p.141.

20.*Ibid.*, p.139. See also Friedrich V. Kratochwill, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, (Cambridge, Cambridge University Press, 1989), p.254 : "The world political process...is often characterized by bargaining and coercive moves rather than by persuasion and by appeals to common standards, shared values, and accepted solutions". The 'realist' school of international relations is also based on such a view of international society. This school claims that states interact with international society to enhance their power and preserve their security in a world of competing states. Accordingly, realist scholars have a sceptical view of a world authority or an overarching system of international law, since such schemes are not seen as realistic in the absence of a transnational force to guarantee compliance with it. For a 'realist' view of international relations and international law, see Hans Morgenthau, *Politics among Nations: the Struggle for Power and Peace*, third edition, (New York, 1965); Georg Schwarzenberger, *Power Politics: a Study of World Society*, third edition, (London, Stevens, 1964).

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23.Charter of the UN, signed on June 26, 1945.

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30*Ibid.*, p.15.

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35.Cotterrell, *op.cit.*, 1989, p.211.

36.*Id.*

37.Hunt, *op.cit.*, pp.147-156.

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40.Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, (Cambridge, Massachusetts; Harvard University Press, 1986), p.41.

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50.*Ibid.*, pp.30-31.

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62.Anthony Carty, *The Decay of International Law?*, (Manchester, Manchester University Press, 1986), p.1.

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65.M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, (Helsinki, Lakimiesliiton Kustannus, 1989), Introduction; Carty, *op.cit.*, 1991, p.66.

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CHAPTER 3

TURKEY AND INTERNATIONAL SOCIETY FROM A 'NATION-BUILDING' PERSPECTIVE

3.1.Introduction

Despite its paradoxes, contradictions and deficiencies, nationalism is a prime fact of contemporary societies. There is no sufficient reason to predict its demise in the foreseeable future. Suffice to note that the demise of communism in eastern Europe and the ex-Soviet Union, which was premised on proletarian internationalism, has led to a resurgence of nationalist movements in large parts of those territories. Most of them are ethnically inspired, and often involve border disputes which threaten international stability. Even some long established, relatively stable, states in Western Europe are challenged by minority nationalisms - such as Catalan and Basque nationalisms in Spain; Scottish and Irish nationalist movements in the United Kingdom; Corsicans and Bretons in France. They all call for a better understanding of nationalism, not least because of their often dramatic impact on the international status quo. Unless their complex origins and varied functions are grasped, the vigour of nationalism and nationalist sentiments will continue to obstruct the creation of a more orderly and peaceful international system. One has to admit that nationalism is prone to create exclusive social and geographical space with its own discourse and disciplinary traditions. Nationalism is closely associated with politics. Its very flexibility and exclusivist nature makes nationalism an ideal instrument for political manipulation. Therefore, it can be suggested that one should endeavour to *understand* nationalism and not merely dismiss it as an 'artificial construct'.

However, thus far, present international law, founded upon western positivistic doctrine, has failed to come to grips with nationalism (1). The state as the sovereign is the primary type of international legal person. A group of people inhabiting a particular territory are recognized as a 'state' precisely because they have *succeeded* in becoming independent. Indeed effectiveness is the overriding principle of traditional international law. A state is entitled to claim international status when it is able to control a specific territory and the people inhabiting it, establish an effective administration, and has the capacity to enter into relations with other states (2). In the absence of a supreme authority capable of legitimizing new situations, or of core principles over which there is universal approval, international law is bound to rely on

"force as the sole standard by which new facts and events are to be legally appraised" (3).

However, the preceding observation has to be qualified. Since the formulation of the 'Stimson doctrine' in 1932 -following the proclamation of the puppet State of Manchukuo as the result of the Japanese invasion of Manchuria-, an evolution has been set whereby any political entity claiming statehood must also have legitimacy in order to qualify for international recognition. Indeed states are under an obligation not to recognize an entity which has attained the qualifications for statehood as the result of military occupation, or by denying the right of a people to self-determination (4). This was, for instance, the case when, with the exception of South Africa, the international community withheld recognition to the white-minority regime which declared the independence of the British colony of Southern Rhodesia in 1965.

However the question remains as to whether international law does govern the rules that enable a state to emerge, when this does not relate to independence from colonial, alien (such as foreign occupation) or racist rule (5). It has to be admitted that modern international law recognizes the right of 'peoples' to self-determination in non-colonial situations as well (6). However it does not prescribe the methods of its implementation. When those who claim the right to self-determination declare their intention to secede from an existing state, they are likely to be confronted by government forces. Over the years, this has been a major cause of civil wars in many parts of the globe. As far as the international community is concerned, these conflicts fall outside the competence of international law since they are matters for the domestic affairs of the state concerned (7). Still the main rationale behind the enunciation of legal provisions concerning the rights of minorities is the preservation of the territorial integrity of existing states. This implies that, in practice, those who claim a right to self-determination in order to secede from an existing state, will find little support from international law (8). Even minority rights are poorly protected under present international law. Although admittedly international law has set some standards for minority protection (9), it has thus far failed to establish legal mechanisms for their effective implementation. The main obstacle here is that the international instruments regulating minority rights reaffirm the 'exclusive jurisdiction' of signatory states over their territory (10).

Under international law, then, states are recognized as the supreme sovereigns of the geographical and social space which they control. This is irrespective of the inhabitants whose 'general will', claim the theorists of nationalism, such as Herder

and Fichte, as will be seen, are the very embodiment of the state. But, if this is so, if the state is one with the nation, then one is bound to understand the ways in which the state legitimates itself and defines national goals and interests. Most inter-state conflicts are in fact the result of rival 'national' claims on a particular dispute -border disputes, territorial disputes, threats to 'national' security etc. However the problem is that international law has not developed an adequate normative or methodological framework to tackle these thorny issues. Instead, by treating states as immutable and all-encompassing entities with their own reasons to exist, international law has failed to play any meaningful role in the resolution of inter-state hostilities.

Since international law remains indifferent to the questions of state formation and popular legitimacy, it is necessary to focus on the western theory of sovereignty and nationalist doctrine, since they have become universal models, of course with varying degrees, for the non-European nationalist movements too. In this chapter, it is argued that an absolutist notion of sovereignty constitutes an obstacle to international peace and co-operation. As Prof. Kearney asserts, as long as the state enjoys an unlimited power in foreign affairs as a manifestation of national independence, not even a theoretical possibility of inter-state peace can be conceived (11).

It is hoped that the preceding discussions adequately convey the rationale behind an analysis of the peculiar characteristics of Turkish nationalism, national identity and the Turkish concept of sovereignty as vital determinants of Turkey's international outlook. This study, then, seeks to analyse Turkey's international behaviour from *within.* This, it is believed, is a more realistic approach than an analysis that focuses exclusively on external factors. For it is not simply the external reality -the international system, international threats, international law- that shapes foreign policy decisions; instead, it is heavily contingent on states' notion of themselves and of others, on their economic strategy, as well as on the cultural and ideological dispositions of the decision-making elites. This will be explored in the context of Turkey.

It is now increasingly accepted by scholars of international law and relations that a given state's international relations cannot be properly understood by merely focusing on the official memoranda, diplomatic transactions, or international treaties. One should go beyond the superficial enunciations of inter-state relations to understand the deeper motives, expectations, perceptions of international actors which prompt them to take a particular mode of action on a particular issue. However the

prevailing view in Turkey is that state officials are conducting an apolitical, non-ideological duty which is 'neutral and non-partisan'. One of the objectives of this study is exactly to show that the state and the 'nation' are not necessarily one and the same thing with identical objectives and aspirations. Neither their historical origins, nor their definition of national interests are necessarily identical, as will be explored.

One is struck by the fact that studies on Turkish nationalism tend to ignore its impact on Turkish foreign policy (12). An equally neglected area is the *process* of foreign policy-making. There is hardly any survey of public perception with regard to Turkish foreign policy (13). In the absence of well-articulated analyses of public opinion on concrete foreign policy issues, this study intends to understand public perceptions by using indirect data. One way of approaching the question may be a reflection on how different social groups in Turkey respond to certain national symbols, or what their preference is with regard to status quo versus change-oriented approaches. Therefore, some of the remarks and suggestions made in this study will be tentative and impressionistic.

This Chapter is both methodologically and substantively informed along the lines set above. The first half of the chapter discusses the origins of the state-centric approach to international law as well as the contemporary challenges to this sovereignty-oriented system of law and legal analysis. The latter part focuses on Turkey's incorporation into western standards of civilisation, with particular reference to its acceptance of western liberal legality and nationalism. This Chapter then discusses its implications for Turkey's conception of international law and its perception of the outside world.

3.2.A Critical Analysis of the Classical Doctrine on the Law of Territory

The classical doctrine on the law of territory, established on the basis of the European system of law in the nineteenth century, was premised on the absolute autonomy of states. According to the doctrine, effectiveness was the overriding principle in the determination of entitlement to territory. The ties between population and territory were largely irrelevant. Besides, its rules and principles were marked by imprecision, ambiguity and legal lacunae. It is below argued that, in spite of the introduction of human rights, minority rights and the principle of self-determination as matters for international law, the classical doctrine on the law of territory still, to a considerable

extent, marks the normative and conceptual underpinnings of the present international law.

The competence of states in respect of their territory is generally described as sovereignty and jurisdiction. The state as the sovereign is the most prominent subject of international law. Under international law, for a legal entity to claim statehood, the following conditions are required : a defined territory, a population, effective administration, and a capacity to enter into relations with other states. It is clear, therefore, that international law does not consider the wishes of the population as a relevant dimension of state-formation, unless it relates to cases of decolonization. Moreover, under international law, once an entity becomes a state, it claims an exclusive right to represent the population in its territory. However whether the state is representative of the people or not -in terms of political legitimacy-, is not a matter for international law. A given state may have an authoritarian concept of itself and society, and/or it may seek to create a "nation" in its own image and ideology. Those segments of the society which resist or challenge the dominant power structure may be persecuted within the framework of 'domestic law'. In such instances, international law remains silent. It is argued in this study that the ineffectiveness of international law in such instances arises from the fact that even today international society is regulated by a nineteenth century concept of sovereignty which sanctifies statehood. Despite the emergence of human rights and the principle of self-determination as distinct legal categories in the aftermath of the Second World War, international law is still, for the most part, premised on an absolutist concept of sovereignty.

Koskenniemi observes that many international developments seem to support the view that sovereignty is essentially beneficial (14). In this context, one can refer to various UN General Assembly resolutions concerning the state's permanent sovereignty over its natural resources or to the growing claims of sovereignty beyond state territory, such as in air space or maritime areas, which increasingly attract general support. This implies that international society seeks to extend the use of sovereignty over varied fields of international conduct, instead of abandoning it. At this juncture, one observes that the state's exclusive right to decide what acts shall take place in its territory is undisputed : sovereignty by itself justifies the argument. Indeed "the very term 'intervention' suggests the idea of the wrongfulness of the act" (15). Hence it is observed that sovereignty of States is *a priori* treated as a natural liberty. The sanctity of sovereignty is the starting point of international law in the

same way as individual liberty is the basis of municipal legal order in western liberal societies (16).

Under international law, the concept of sovereignty covers three important rights which direct themselves to already established states : the right of equality, the right of independence, the right of self-determination. While the first right implicates equality of status among states under international law, it follows that they all are independent actors of international society. Self-determination, in its turn, is taken as a manifestation of independence within the domestic jurisdiction of the state (17). Therefore self-determination, as a relevant dimension of sovereignty, is only implicated in cases involving independent statehood : the right of the state to exercise the supreme power in its territory. Hence both the external and internal aspects of independence emphasise the exclusivity of the state's jurisdiction within a particular territory : freedom from external and internal interference. However there are certain developments which are likely to undermine the absolutist notion of sovereignty as will be explored later.

The state-centric nature of international law has had three repercussions for international relations : first, power imbalances among states are not deemed relevant to international law; secondly, self-determination of peoples is not legally recognized as a *right* -unless of course it relates to colonial, alien or racist cases which are largely passé; thirdly, the principle of permanent sovereignty over natural resources within states is inevitably subordinated to the general rules on the transfer of state competences. Carty asserts that one of the reasons why these considerations are deemed irrelevant to international law has a lot to do with the 'formal' nature of state competence. The jurisdiction of the state is purely geographical. The doctrine is not concerned with the material objects of competence. As a result, both the territory and population of a state are treated as the 'objects' of state competence. The only limitation comes from the positive rules of international law or particular treaties which impose restrictions (18).

International legal theory took over this idea from the nineteenth century theory of the state (19). It was first and foremost the French Revolution which linked the idea of popular sovereignty with the notion of a homogeneous nation. Indeed post-revolutionary France witnessed the pursuance of assimilationist policies, which had already been under way, with greater vigour. Confrontations between central government and secessionary movements, often bloody, were not infrequent, particularly in the Basque country and Brittany (20). This is the context within which

Rousseau's concept of 'general will', originally formulated to provide a genuine philosophical basis for the idea of popular sovereignty, was taken up by the Republic to legitimate its assimilationist policies. What was Rousseau's idea of Social Contract, and why could it be manipulated for the policy of national assimilation?

In his famous treatise titled 'The Social Contract', Rousseau speaks of a Social Pact as an act of delegation of power and political representation by the whole community to the political sovereign -the state. However it is also clear that this act of 'delegation' can be reclaimed by the collectivity should the Social Pact be violated by the state (21). In Rousseau's imaginary Social Contract, each and every person enjoys some rights towards others. On the other hand, "since each man gives himself to all, he gives himself to no one" (22). In the final analysis, the Social Pact comes down to this : "Each one of us puts into the community his person and all his powers under the supreme direction of the general will; and as a body, we incorporate every member as an indivisible part of the whole" (23). For Rousseau "general will...derives its generality...from the common interest" of the society (24).

The idea of Social Contract heavily relies on a state-centric notion of social and political organization. Rousseau argues that freedom can only be guaranteed by a powerful centralized state. He holds that the relations between the members of the body politic :

> "..should be as limited, and relations with the entire body as extensive, as possible, in order that each citizen shall be at the same time perfectly independent of all his fellow citizens and excessively dependent on the republic -this result is always achieved by the same means, since it is the power of the state alone which makes the freedom of its members. It is from this second relationship that Civil Laws are born" (25).

Clearly what Rousseau has in mind is a political community based on republican principles. His notion of common citizenry, however, is ill-at-ease with particularist loyalties. In Rousseau's terminology, the majority domination is sanctified as 'general will' and the 'common good'. He says:

> "So long as several men assembled together consider themselves a single body, they have only one will,

> which is directed towards their common preservation and general well-being...It has no incompatible or conflicting interests; the common good makes itself so manifestly evident that only common sense is needed to discern it" (26).

Rousseau dismisses the opposing elements during the making of the Social Contract by declaring them as "foreigners among the citizens". Rousseau is utterly intolerant towards dissenting voices and expects complete obedience from the citizens towards their state: "After the state is instituted, residence implies consent : to inhabit the territory is to submit to the sovereign". His only qualification is that the state be "free", presumably implying a republican one (27).

Rousseau seems, however, to be aware of the dangers involved in his Social Contract, since he raises the question : "How can the opposing minority be both free and subject to laws to which they have not consented?" His response is both simple and uncompromising : General will is always right. Since the minority cannot be allowed to impose its will upon the majority -since this will be contrary to the general will-, then the majority -which represents the general will- can legitimately impose its will upon the minority (28). Clearly Rousseau's argument is at its weakest here, since he relies on a simple tautology and an unsubstantiated presupposition. He indeed admits the demagogic nature of his project : "This presupposes, it is true, that all the characteristics of the general will are still to be found in the majority" (29).

Rousseau's expositions did not amount to a coherent theory of the state. It was the German philosophers and political theorists of the nineteenth century who provided the main premises of the nationalist doctrine and the theory of political legitimacy. According to the theory (which may be called 'ethnocultural nationalism'), in order that man realize himself fully and gain his freedom, he had to project his individual consciousness onto the state. The individual could not exist without having organic relations with the society whose supreme embodiment was the state (30). Individuals attain real freedom by merging their will into the will of the state. They do not obey rules, but give their active consent to the laws and actions of the state. Kedourie sees in this formulation the perfect recipe for state coercion if imperfectly applied. While the theory speaks of political legitimacy in terms of development, fulfilment, self-determination and self-realization, there is no guarantee that a coercive state will not monopolize religious or aesthetic matters to disguise its iron grip on people. In such cases, Kedourie argues, "Reason of state begins to partake of sovereign Reason, and

necessity of state to seem a necessity for eternal salvation". Kedourie further observes that :

> "this confusion between public and private, this intermixture between the spiritual and the temporal, has passed into current political rhetoric; and rulers have tried to persuade the ruled that relations between citizens are the same as those between lovers, husbands and wives, or parents and children..." (31).

Herder, expounding on post-Kantian themes, laid the intellectual grounds for the creation of an homogeneous type of nation-states. He argued that nations were separate natural entities ordained by God, and therefore every nation should establish its own state. For him the ideal and lasting state was the one formed by natural kinship ties. Multinational states, on the other hand, were unnatural and oppressive, and therefore, could not survive long (32).

Both Fichte and Herder expounded the idea of language as an integral component of the nation. This has had enormous influence on nationalist ideologies. For Fichte and Herder the most essential criteria for nationhood was the existence of an original language. Language, in their view, was the embodiment of the national character and spirit, and of the nation's past and future. Since a nation had to possess a language of its own, the language had to be cleansed of foreign influences. The nation's self-realization and freedom would accordingly be enhanced by the revival and development of the original language. Kedourie notes that this doctrine has had an enormous impact on nationalism, as has been witnessed by vast philological endeavours which have since accompanied the spread of nationalism all over the world (33).

Many non-European states have been similarly influenced by the western theory of political legitimacy, particularly its liberal version, as had been expounded by writers like Rousseau and Hobbes. Both of these writers placed the state in an all-powerful position with respect to community. Hobbes, for instance, failed to articulate necessary institutional mechanisms to delimit state action (34). Both Rousseau's and Hobbes' conception of political sovereignty failed to demarcate the legitimate scope of political action. To be sure, nationalist doctrine found an ideal breeding ground in liberal political theory, since the latter too was essentially based on the relationship

between the individual and the state, without particularistic interventions through religion, ethnicity or local affiliations.

Indeed, as is well-known, modern liberal democratic political systems, the main mottoes of which are 'liberty', 'equality', 'fraternity', and which find their concrete formulation in the principle of 'one man, one vote', are the end products of the centuries-old struggle against the exclusivist monarchies in Western Europe. The direction of the struggle brought to the forefront the rights of the individual citizen, not the group to which the individual belonged, against the all-mighty state. However the popular notion of sovereignty which sought to replace the absolutist monarchies did not do away with an essentially power-centric notion of sovereignty. Foucault argues that from medieval times onwards, the theory of right preoccupied itself with the legitimacy of power. Indeed as far as Western Europe is concerned, power was historically perceived in juridical terms : state, as the sovereign, the individual, as the subject. Foucault thinks that this developed in the Medieval Ages when the monarchy presented itself as a referee to end violence among feudal forces. The monarchy allocated itself a juridical and negative function in order to make itself acceptable. As a result :

> "...sovereignty, law and prohibition formed a system of representation of power which was extended during the subsequent era by the theories of right : political theory has never ceased to be obsessed with the person of the sovereign. Such theories still continue today to busy themselves with the problem of sovereignty" (35).

Hence in western societies, the notion of sovereignty was imbued by strategies of domination from the outset (36). Although admittedly the absolutist concept of sovereignty became anachronistic with the rise of industrial capitalism, in effect, the theory of sovereignty "has continued not only to exist as an ideology of right, but also to provide the organising principle of the legal codes which Europe acquired in the nineteenth century, beginning with the Napoleonic Code" (37). Rousseau's Social Contract also fails to escape this limitation, for under this frame of analysis, power is treated as an instance of negation. In other words, in its exercise, power is taken as a great absolute which forbids by decree (38).

Therefore the 'core' doctrine of nationalism, premised upon the homogenization of a state's population through the imposition of the values of the dominant *ethne*, was

able to consolidate its legitimacy through a power-centric notion of sovereignty. Carl Schmitt, a German political theorist who was influential in the 1930s, argues that parliamentarism should not be confused with democracy. In Rousseau's concept of 'general will', unanimity, in the sense of homogeneity, is taken for granted. For Schmitt, Rousseau's Social Contract is fundamentally flawed, since a contract assumes differences and opposition. In Schmitt's view, the idea of 'free contract' comes from liberalism, and not from popular sovereignty, as suggested by Rousseau (39). As a result, liberal democracy is caught in its own inconsistencies and inadequacies which means that minority or majority domination over the whole of the population is inevitable (40).

For Schmitt, the definition of democracy centres around the identity of governed and governing. While the people are heterogeneous and varied, they are identical with the state as far as the principle of democracy is concerned. He says that "democracy seems fated...to destroy itself in the problem of the formation of a will", because the will of the people is often controlled by narrow segments and/or narrowly defined interests of the society : "military and political force, propaganda, control of public opinion through the press, party organizations, assemblies, popular education, and schools". For Schmitt, "only political power, which should come from the people's will, can form the people's will in the first place" (41). Therefore democracy implies the identity of the quantitative (numerical majority) with the qualitative (justice) (42).

Although admittedly Schmitt lays too much emphasis on the role of the state in his scheme for popular democracy which might lead to totalitarian corporatism, he rightly draws on the self-defeating tendencies of liberal political theory, and on the role of political values in the proper functioning of democracy. To be sure, the absolutist concept of sovereignty is intimately linked to other forms of hegemonic relations within western societies -and most certainly in most non-western societies too. Foucault asserts that power should not be taken as one individual's domination over others, or that of one group or class over others. Power is the subject of an ongoing process with manifold relations of domination. Power is not only exercised by those who hold the monopoly of power, but as well as by single individuals. They are always simultaneously in a process of undergoing and exercising power (43).

Legal doctrine is bound to take the complexity of issues involved in the diffusion of power seriously. A right step in this direction is to challenge the simplistic dichotomy of 'state versus the nation' which has been the starting point of international rules on the law of territory. Such change has, to some extent, indeed come about with the

emergence of new sets of rules and principles concerning human rights, the rights of minorities and the indigenous peoples, and of the principle of self-determination all of which have become or, are in the process of becoming, a corpus of international law. Here regard will be had to the principle of self-determination since it is around this principle that the fundamental premises of sovereignty are being challenged -through the granting of cultural and political rights for national minorities and indigenous peoples.

The principle of self-determination -some speak of a 'right' to self-determination- seems to have two major characteristics : first, it is vested in the people against the state in whose jurisdiction they happen to live; second, it is a collective right in that it is vested in the people as a whole (44). Crawford argues that the notion of 'people' does not solely apply to the whole population of existing states. Instead given the complexity and breadth of the issue at hand, regard has to be made to the context of the claim made by a particular social group to decide if it falls into the category of 'people' (45).

There are several important problems of indeterminancy as far as the principle of self-determination is concerned : first, it is difficult to ascertain with clarity those groups which can legitimately be regarded as 'people'. The problem is worsened by the fact that not even the principal legal texts themselves give any indication of its scope. Therefore the dividing line between 'people' and lesser collectivities, like 'minorities', is not clear; second, the principle of self-determination is diluted with a major principle of international law : that the territorial integrity of sovereign states is inviolable. The only way out of this *impasse* would be to weaken the force of self-determination by reducing its operational framework into various cases of local autonomy; third, there are practical problems like the identification of the representatives of the social group claiming the right to self-determination and of the contents of the right itself (46).

Therefore, not surprisingly, the principle of self-determination has remained a controversial issue, not least because of the difficulties involved in determining what the 'self' is and what it is to be 'determined'. It is also arguable whether self-determination is a universally accepted 'right' and whether it is legally effective. According to Pomerance, international law arises from what states practice constantly and uniformly. She argues that the entire history of self-determination, even during the UN era, has witnessed a subjective and selective interpretation of this principle by

states. They claim for themselves what they deny for others. Not surprisingly therefore "no state has accepted the right of *all* peoples to self-determination" (47).

The principle of self-determination has an 'internal' and 'external' dimension which further complicates the issue. 'External' self-determination concerns the international status of a people as an independent political unit. 'Internal' self-determination relates to the freedom of choosing the desired form of government (48). The question arises as to what extent are these two categories related under international law. The United States and other western states generally hold that genuine self-determination is best secured under a representative government. For a majority of the Third World states, however, this formula does not necessarily represent their own priorities and interests. They mostly fear that this may lead to secessionary demands from disaffected groups within the country against an 'unjust state'. Accordingly, 'external' self-determination has remained the main focus of Third World strategies in the United Nations. They have generally maintained that the new states emerging out of colonialism must have a right to territorial integrity, and that the form of its political regime and its human rights record are not central to the principle of self-determination (49). Pomerance argues that unlike the UN principles in its earlier phase, the UN provisions on self-determination have tended to play down the significance of democratic governance in the effective implementation of self-determination. Therefore while people living under 'colonial', 'racist' or 'alien' regimes were accorded *full* 'external' self-determination, other groups under similarly oppressive regimes were accorded no rights in 'non-colonial' situations (50). This is evidenced by the UN practice concerning self-determination. For instance, while the Declaration on Colonialism (Resolution 1514) spoke of self-determination, under Paragraph 6 it was stated that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations" (51). Similarly the Declaration on Friendly Relations debilitates the vigour of self-determination by referring to the inviolability of territorial integrity of states (52). Pomerance argues that the principle of the 'sovereign equality of states' and 'non-intervention' are interpreted by a majority of states in such a way as to exclude the possibility of secession or the enforcement of representative governments. These inherently conflicting principles, over which there is no guidance for proper balance, have led to inconsistent practices as far as the principle of self-determination is concerned : while one right might be emphasized in one case, a contrary right might be enforced in a similar context (53).

Not surprisingly, then, the legal effect of the principle of self-determination remains a dubious one. First, the UN General Assembly Resolutions and Declarations do not create binding obligations; second, many of the UN resolutions geared to the independence of colonial territories were adopted without unanimity. In such cases, they were often opposed by western states; third, certain states which voted in the affirmative were clearly careful to emphasize that the resolutions were an expression of a "political will" devoid of legal force; fourth, there is often disagreement among the consenting states over the definition of the often vaguely worded resolutions on self-determination. These resolutions therefore fail to provide authoritative guidance for states; finally, the *content* and *scope* of self-determination is so broad, undefinable and subjective that even if it were to enjoy the character of *legal right*, its legal effect remains doubtful (54).

Moreover, since its formulation, the 'external' aspect of the principle of self-determination has been emphasized since it is this aspect which brings about changes in international relations. Indeed colonial self-determination since 1945 naturally gave an impression of independence as the usual outcome of self-determination (55). The only exception to this pattern emerges in cases where 'internal' self-determination is considered as a human rights issue (56).

The classical formulation of standards of human rights suggests that group rights would be duly protected by guaranteeing the rights of individuals. This is for instance the idea behind the Universal Declaration of Human Rights (1948) and the two human rights Covenants of 1966. However, argues Brownlie, granting individual rights does not necessarily guarantee "collective rights" for a variety of reasons : first, the classical provisions do not envision positive actions on the side of the states to maintain the cultural and linguistic identity of communities. At this juncture, Brownlie refers to case-law under the European Convention on Human Rights which confirms that neither Article 2 of the First Protocol to the European Convention nor Article 8 of the Convention itself, which are concerned with the right to education and with the protection of private and family life respectively, impose "positive action" on the part of the signatory states towards their citizens (57); second, the classical formulations do not guarantee the land rights of the indigenous people; third, they fail to respond to the claims of specific social groups to self-determination (58).

Today it is generally accepted -not least by international jurists- that a *right* to self-determination exists in non-colonial situations as well. This implies that minorities may also be regarded as 'peoples' in the sense of entitlement to self-determination.

Indeed Article 1 of the Covenant on Civil and Political Rights (also included in Article 1 of the Covenant on Economic, Social and Cultural Rights adopted the same year) of 1966 which speaks of 'self-determination' does not exclude the possibility of its implementation outside the colonial context (59). However scholars generally agree that this should fall short of complete independence. For instance, Crawford takes a conciliatory view which seeks to combine the concerns of the state and the secessionary movement/s within the territory controlled by that state. A variety of outcomes, ranging from local autonomy to provisions for separate representation in legislative and executive bodies at central or regional level, may satisfy the needs of the minority group/s for self-determination, while leaving intact the territorial integrity of the state (60). This is also the position taken by a majority of other writers : a part of the population may be regarded as 'people' and, as a result, are entitled to self-determination, but the new arrangement should not endanger the territorial integrity of existing states (61).

The impact of the principle of self-determination over the composition and general structure of international society remains to be seen. It can nonetheless be predicted that the absolutist concept of sovereignty will gradually fade away to allow greater expression for different cultural, political and ethnic groups. Perhaps then the ruling elites, particularly in the Third World, will not dismiss ethnic, religious and other kinship loyalties as "primordial, traditional, obstacles to modernization" (62). They may also realise that a monocentric conception of national citizenry runs contrary to the realities of contemporary international society. Indeed today the world is full of multi-ethnic states which render obsolete any notion of a 'one state-one nation'. Very few state territories today correspond to a single nation. On the contrary, most states are composed of distinct ethnic and cultural communities. Furthermore, modern post-industrial capitalism has extended its operations beyond national boundaries, and thus rendered anachronistic any notion of a sacrosanct national sovereignty (63).

It may now be appropriate to examine some substantial and methodological challenges to the classical liberal doctrine on the law of territory. It is argued here that, by making a critique of the positivist legal doctrine and proposing an alternative view of notions like 'democracy' and 'sovereignty', critical legal theory appears to hold the greatest potential for an alternative approach to established orthodoxies.

3.3.An Exposition of the Critical Approach to International Law

Various 'new' schools of thought which emerged after the Second World War have challenged the view that the Enlightenment represents an objective knowledge which is achieved through scientific enquiry. *Critical legal theorists* are among those which see the Enlightenment project from a different angle. Critical legal scholars insist that "the Enlightenment created a *myth* of science which held out an evolutionist and progressive image of accumulating knowledge giving access to reality". Accordingly, they challenge the most basic tenets of the Enlightenment project (64) by 'deconstructing' it. The main focus of this section will be on the legal dimensions of that project which is deeply imbued in the international legal discipline.

Critical legal scholars are deeply dissatisfied with the traditional legal doctrine which emphasizes the procedural and formalistic aspects of law at the expense of their social, economic and political context. For critical lawyers, by projecting law as autonomous and politically neutral, traditional jurisprudence ignores the role played by law in consolidating and maintaining "an extensive system of class, gender and racial oppression". Hence critical legal scholars "seek a theory and practice that makes the overcoming of such oppression a central political task" (65).

Proponents of the critical approach believe that law must be perceived as integral to other social disciplines -as well as to international morality. Thus they seek to place law into the political, economic, and social context in which it operates. Thus they attempt to reconnect law with every day struggles and experiences. Besides, critical legal theory tries to show that law is an "expression and medium of power". Foucault set out to show us that "truth isn't outside power". Contrary to the Enlightenment myth :

> "..truth isn't the reward of free spirits, the child of protracted solitude, nor the privilege of those who have succeeded in liberating themselves. Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements .." (66).

From here Foucault goes on to establish the 'political economy' of truth which he characterises by five important traits :

> "'Truth' is centred on the form of scientific discourse and the institutions which produce it; it is subject to constant economic and political incitement (the demand for truth, as much for economic production as for political power); it is the object, under diverse forms, of immense diffusion and consumption (circulating through apparatuses of education and information whose extent is relatively broad in the social body, not withstanding certain strict limitations); it is produced and transmitted under the control, dominant if not exclusive, of a few great political and economic apparatuses (university, army, writing, media); lastly, it is the issue of a whole political debate and social confrontation ('ideological' struggles)" (67).

Since law is perceived as integrally linked to power, the critical approach requires an analysis of this relationship which is not self-evident. Hence the need for theory (68).

However, while endorsing the need for theory, critical legal scholars are not unified within a single theoretical position. The movement embraces a plurality of approaches and strategies. For instance, the *Marxist* critique of law perceives liberal legality as rooted in capitalist accumulation, and therefore, a function of class relations. It argues that law represents the interests and priorities of dominant classes in the economic and social spheres. Hence law is neither autonomous, nor objective. *Critical Marxism* meanwhile recognizes the 'relative autonomy' of the legal, political and ideological superstructure from the economic sphere. Accordingly, critical Marxists seek to socialise and democratise both the form and content of law (69).

For its part, *postmodernism* represents the end of grand narratives. Marxism also takes its share of the postmodern offensive due to its totalizing, all-encompassing vision of truth. For its part, postmodernism celebrates difference. Society does not constitute an integrated whole; instead it is marked by opposition. However, grand theories ignore this reality by treating difference as non-existent. Postmodernists seek to deconstruct a given text by exposing its hidden assumptions, by 'liberating' its suppressed parts, and by putting the text into its proper context -political, economic,

social or otherwise. Besides, the postmodern approach recognizes the relevance of the institutional setting in which a particular discourse takes place (70).

One should not overrate the significance of postmodernist approach for an understanding of law and its relation to society. Indeed within the critical school of thought, postmodernism is particularly intent on reminding us that "to remain critical, critical legal theory must resist simply replacing the liberal theory it criticises with a theory of its own, which is complete, coherent and determinate. This means that liberal legality can be no more totally rejected than it can be totally accepted" (71).

When deployed for an analysis of international law, *deconstructionism* claims that legal argument is dependent on the language it uses. It is not objective. It is known that individuals internalize the concepts and categories with which they are familiar through a process of *socialization.* The same holds true for the language of international law. International law, as it exists, conveys to us a particular interpretation of the social world under the veil of objectivity. Deconstructionism seeks to uncover the hidden assumptions behind what it calls the 'conservative' system of international law. Accordingly, it rejects any notion of an objective legal argument, and seeks to expose the normative nature of international order (72).

The critical approach, as the broad frame of reference for a multitude of approaches mentioned above, seeks to understand positive international law as a historical construct which has its roots in the liberal tradition. That system of law was, and still is, not sufficiently qualified to claim universality. According to critical legal scholars, this is evidenced by the absence of a central international order as an impartial referent for state actions. Besides, they argue, states should be treated as independent centres of legal culture, and must be understood in relation to one another. Hence the international lawyer is bound "to resist phony, reified, would-be universalistic legal discourse in favour of the recognition of the *inevitably* restrictive and exclusive nature of individual state discourses" (73). The critical international lawyer, therefore, seeks to facilitate inter-state/inter-cultural dialogue by attempting to produce impartial works of 'legal translation' (74).

Critical jurists assert that "legal knowledge does not relate to ideas and facts themselves, but to a (representational) meaning which might be discovered in their name" (75). This calls for an understanding of the mechanisms in which single, purportedly consensual, state discourses are produced (76). Therefore analyses of the states' international behaviour must include a precise examination of decision-

making processes which allow an awareness of psychological perceptions (77). It can confidently be asserted that states' behaviour is a function of a "system of shared perceptions, practices and institutions within which communities of persons establish and advance their ends" (78).

For Carty one way of overcoming the lacunae that exists in international law is the recognition of "key factors which go to provide most states with varying degrees of internal cohesion, and from which they then view international society". He asserts that :

> "..every political community must have its own distinct constellations of political values rooted in a specific political culture which defines what it regards as obligatory. This is the starting point for any work of legal hermeneutic or translation" (79).

The key for the international lawyer is "to determine what a people is, how it understands itself and how it judges others" (80). This implies that he/she engage in a hermeneutic of "the claims, allegations and actions of the states parties to a dispute, incident, etc., in terms of their 'cultural' pre-suppositions" (81). Scholars of international law are therefore bound to accept, as Stavrinides points out, that, in order to understand the nature of disputes between the hostile nations and the facts that constitute the actual *casus belli* :

> "..it is necessary to examine the facts in question under the aspects of the ideological beliefs and values of *both* sides; for it is only within the frame of a national or group ideology that a set of facts bear a relationship to the rights and interests of the nation or group" (82).

Since critical legal theory asserts that international legal discipline is a historically conditioned discourse derived from liberal political theory, it questions the validity of the claim that positivist international law represents a universal system of law based on an actual consent among states. Instead it argues that positivist legal language is used by particular states and their representative legal scholars to justify their claims against others (83). Therefore there is no way in which to solve legal conflicts with a unique, objective legal technique.

In the absence of a system of international law that is supreme arbiter of conflicting individual interests -in terms of its rules, norms, principles and institutions-, it is necessary to enquire "into the internal organisation of the state units". As Carty puts it, today "individual nation-state is prior to any international system". (84).

The postmodern approach, when applied to an analysis of nationalism, resists all forms of cultural uniformity which is frequently imposed in the name of a global, all-encompassing ideology. It also questions the validity of a linear, evolving notion of history which claims a clear transition from 'tradition' to 'modernity'. Instead, it insists on seeing history in its multiplicity and complexity without drawing sharp distinctions between the 'old' and the 'new'. Diversity, not uniformity, is therefore the motto of the postmodern approach to history and society (85).

An analysis of the relationship between nationalism, on the one hand, and international law and society, on the other, may provide us with an invaluable tool for a better understanding of inter-state disputes. A recent contribution to the understanding of the relationship between nationalism/national identity and the actual foreign policy of a given state has been made by Bloom. However before discussing Bloom's theory of 'national identity dynamic', it is useful to expose nationalist ideology and its claims -with regard to 'itself' and to 'others'- as a relevant dimension of contemporary international society.

3.4.Nationalism and the Nationalist Discourse

In the modern world of states, corporate loyalty and identity are manifested as patriotism and nationalism. According to Lewis, those two terms do not necessarily coincide. Whereas 'patriotism' is right and good -the love and loyalty which all of us owe to our country, 'nationalism' is less than clear (86).

The emergence of nationalism is generally associated with modernism. In this view, nationalism and nation-states came into prominence with the break-up of traditional societies in Europe in the 18th and 19th centuries. For instance, Gellner argues that nationalism is ideally suited to the requirements of an industrial social organization due to the former's programme of universal literacy, linguistic standardization, and its all-embracing educational system tied to a state-imposed cultural indoctrination. These characteristics are indispensable for occupational mobility, mass media, and sustained economic growth that are the hallmarks of modern industrial economy. In

this sense, nationalism shoulders a progressive mission (87). Deutsch also works on the dichotomy between traditional and modern societies. He too perceives nationalism as a distinctly modern phenomenon. In his view, a national citizenry gradually emerges as a result of improved communications and centralized, scientific state structure (88). For his part, Breuilly treats nationalism as a political ideology to legitimize the seizure of state. He locates its emergence to the early modern Europe when the masses were increasingly estranged from politics (89). Finally, Kedourie sees nationalism as an artificial construct 'invented' by the marginalized intellectuals (90).

All these differing, yet interrelated, views concerning the origins and functions of nationalism tend to see it as a somewhat passive by-product of the economic, social, and political forces that have shaped the modern conditions. As a result of this, they fail to explain why appeals to nationalism have often aroused passionate responses from the mass of people. Smith asserts that nationalism is no more 'invented' than other forms of culture or ideology. Nationalism is dependent on earlier motifs and ideals since it is not only a political ideology and social movement, but a form of culture as well. As far as the formation of national identity in the west is concerned, it owes a great deal to the presence of pre-modern *ethnies* and the gradual emergence of national states (91).

Smith's view of nationalism as rooted in particular historical and cultural experience is partially shared by Benedict Anderson who recognizes the "cultural roots of nationalism", in his *Imagined Communities*. For Anderson, as far as the European continent is concerned, nationalism replaced religion as the protégé of lost dreams and imaginings as a result of evolving rational secularism after the late Middle Ages. Nationalism became a secular religion in a world that desecrated established customs and beliefs which were inculcated by religion (92). The decline of divinely-ordained polities, sacred communities, and of Latin as the sacred language of Europe were however manifestations of some fundamental historical forces and of new modes of thinking (93). The arrival of the printing press, in particular, novels and newspapers, greatly contributed in the forging of a sense of nationhood among their fellow readers (94). Anderson integrates the 'cultural' dimension of nationalism into an analysis of complex economic, social and political factors that gave rise to nationalist ideals : the emergence of capitalism; formation of scientific, rational state; 'discoveries'; and increasing communications (95).

Most nation-states have been put together by force of arms and cultural pressure (96). However the process of nation-building, whose origins are generally traced to the eighteenth and nineteenth century Europe, has not been a uniform phenomenon (97). Two types of nationalisms are singled out in the context of Europe : western 'civic' nationalism that emerged in 'old', established states like Britain, France and Spain, and 'ethnic' nationalism which was particularly prominent in Germany and eastern Europe. These models were later transposed into other societies in Asia and Africa which often contained various elements from both models.

Western 'civic' nationalism can be traced back to the presence of a core *ethnie* which incorporated other ethnic groups and their regions into its political territory. The strong central state with its homogenizing policies -administrative, economic and cultural- succeeded in forging a national culture (98). The western civic model of the nation is a predominantly territorial conception. This view of the nation holds that "nations must possess compact, well-defined territories" (99). A second element in this model is the idea of a *patria,* which is expressed through highly centralized and unitary institutions. Third, there is also the sense that citizens of the political community must enjoy legal equality before the law. Fourth, a measure of common values and traditions are deemed to be necessary for the cohesion of the population in their homeland (100). Hence western civic nationalism operated on the basis of a correspondence between nationhood and statehood which meant that patriotism was the loyalty which the citizen owed to his/her country, this being personified in the state representing the country.

The second type which can be described as 'ethnic nationalism' emerged in central and eastern Europe -and in Italy- where clearly-defined nation-states did not exist until the nineteenth century. Instead there were nations and peoples who were divided into small principalities, or subject to alien rule. As a result, these nations, including Germans, Poles, Italians and Hungarians, professed their loyalty not in the form of a state or country, but of nation and people. This type of nationalism, based on ethnic and linguistic commonality, was exclusively directed at the creation of an independent state (101). Not surprisingly, then, here ethnic/cultural community prefigures as the frame of reference for the 'nation'. In these instances, *people* figured as both the object and subject of political mobilization. In this form of nationalism, 'the law' in the western civic model was replaced by vernacular customs and traditions (102). Hence unlike France, where the 'national will' was said to constitute the basis for the nation, German nationalists sought to base their claims on 'ethnicity and culture'.

This is evident in the writings of French and German scholars of the nineteenth century. For Renan, for instance, the foundations of the French nation were the common will and consent. Herder, a leading exponent of German nationalism in nineteenth century, meanwhile, longed for a genuinely cultural society outside the realm of an overpowering state. Most German thinkers resented the imposition of a French model of the rationalistic state on Prussia, and instead opted for an organic community with its distinct cultural identity. In this context, Herder rejected the individualistic universalism of the Enlightenment (103). German nationalism was essentially a romantic, pre-capitalist and cultural one. It appealed to the uncorrupted peasantry and folkloric traditions, as well as to the German language, as vehicles for self-discovery (104). Hence on the surface while French citizenship made French nationality, German nationality made German citizenship (In passing, it can be noted that today, with the establishment of the European Union, the citizens of a European state also qualify for European citizenship).

However in reality the distinction is not as clear-cut. Western civic nationalism is not necessarily more benign than the German version. Smith rightly asserts that "every nationalism contains civic and ethnic elements in varying degrees and different forms" (105). Revolutionary France also forged a policy of national homogenization, albeit conflated with universalist principles. Indeed French state nationalism became diluted with linguistic assimilation under the Jacobins and thereafter (106). Weber notes that compulsory schooling was the main vehicle in the acculturation process that transformed people into 'civilised Frenchmen' (107). Similarly, England imposed its own language and political programme upon the Irish, Welsh and Scots under the banner of the United Kingdom (108).

Since Western civic nationalism and its ethnic version intermingle when both see the nation as the main unit of social and political loyalty, they may commonly be labeled as the 'core doctrine' of nationalism, as proposed by Smith. The 'core doctrine' sees the world as a society of nations. In this view, nations must be free and secure for peace and justice to prevail in the world (109).

The 'core doctrine' later became a universal referent for peoples in search of a state of their own. Nationalist movements in Asia and Africa -the 'last wave' of nationalism (110)- were however largely responses to global imperialism. The expansion of the colonial states whose functions had rapidly multiplied with the rise of capitalism required the recruitment of indigenous elites. However the 'natives' were generally barred from key positions in the administrative hierarchy. Combined with the impact

of the printing press, and the earlier nationalist models in Americas and Europe, the resentful intelligentsia in the colonies strived hard to instil national consciousness among the members of the 'imagined community' (111). As for the dynastic states in the non-European world which escaped colonization, they tended to imitate -of course with some additional flavour of their own- western civic nationalism (in other words, official nationalism) as in the case of Japan and Siam (now Thailand) (112).

Since the concept of nation embraces two sets of dimensions -civic and territorial, on the one hand, and, ethnic and genealogical, on the other- in varying proportions at different times, its very multidimensionality and flexibility has made national identity a formidable force in the contemporary world (113). For Smith, nationalism is best suited to bridge the contrast between "warm, intimate, spontaneous relationships supposedly characteristic of community, and cold, distant, reflective relationships supposedly characteristic of society" (114). Indeed while the state wants to exploit the opportunities provided by modernity (industrialization, universal literacy, improved communications), it seeks to compensate the sense of loss, which the very modernity creates, by emphasizing cultural identity and emotional solidarity. This implies that nationalism tends to be more attractive than universalistic doctrines of socialism and liberalism, exactly because "in a chaotic and rapidly changing world nationalism provides simple, concrete labels for friends and enemies" (115).

Nationalism is not inherently reactionary or anti-democratic. As Kearney asserts, one can and must distinguish between "those that emancipate and those that incarcerate, those that affirm a people's cultural identity in dialogue with other peoples and those that degenerate into ideological closure -into xenophobia, racism and bigotry". In this context, he points out that nationalism played an emancipatory role in the shaping of modern Ireland (116). One can similarly point to the progressive role played by the anti-colonialist nationalist movements in this century. Moreover nationalism can harness constitutional and social reforms, while legitimating new regimes in developing countries, as in India and Turkey. It can also provide fresh impetus for modernization and economic growth (117). Although nationalism in Asia and Africa was undeniably linked to colonialism and imperialism in its origins, national independence, inspired by the 'progressive' ideals of republicanism, common citizenship and populism, as had been espoused by the French revolution and independence movements in Americas, has generally improved the lot of the ordinary citizens in the economic, political and cultural spheres. National governments have often strived to improve economic welfare, promote popular education and expand the suffrage.

This is not, however, to say that the transplantation of the nationalist principle, particularly the German type, into different historical and geographical contexts has been an easy one. One problem is that the mythic notions of 'nation' and 'state' could not properly be addressed in cases involving multiethnic and tribal societies, particularly in Africa. For doing so might inevitably lead to majority domination over the minority community/ies within a given state. Indeed modern states in the periphery (the Third World) have tended to exclude the endogenous social movements and networks of communication from the political apparatus. These local forces often have religious or ethnic foundations, and precede the formation of the modern state. However "the peripheral state, completely absorbed in the task of constituting itself, building up the necessary apparatus and integrating segmented communities into a nation, has ignored or often seen them only as obstacles to be overcome" (118). Therefore, not surprisingly, policies of national assimilation have been one of the major sources of civil wars and inter-ethnic conflicts in many parts of the Third World which have occasionally escalated into inter-state wars.

Certain problems are, however, common to all states, such as the legitimation of claims to a 'national' territory, and a constant need to cohere the nation around various nationalist narratives. Although the extent to which the nationalist doctrine is resorted to by the ruling elites appears to be more frequent and intensive among 'younger' nation-states, the use of nationalist discourse is a prominent feature of international politics today. For instance, although power is said to reside in the people in those societies with representative governments, it is often observed that, at times of legitimacy crises, those in power tend to resort to coercion or charisma, or create an 'external enemy' to close the 'credibility gap' -note for instance the Falklands factor in Thatcherite Britain or the communist syndrome in McCarthyite America (119). Indeed states frequently appeal to nationalist sentiments in order to mobilize the 'nation' for a set of goals, which are often linked to 'external threats'. But what are these sentiments and why are they vital for nation-building?

Nationalist identities are often forged on the basis of an ethnic community. However, in most cases, an 'ethnic community' is far from being a racial category. Ethnic community is "a community of historical culture with a sense of common identity". A race, on the other hand, refers to "unique hereditary biological traits" (120). That 'ethnic' communities are far from being 'racial' communities is particularly the case with large territorial states in which diverse ethnic groups exist. Moreover in areas where resettlement of peoples have been a recurring theme in the course of time, it is difficult to trace the origins of ethnic groups (121). 'Ethnic community' must be

distinguished from an 'ethnic category' in that the latter is unaware or has a dim consciousness that it is a separate collectivity. As far as the ethnic community is concerned, at least part of the members are aware of their distinguishing features. Smith lists six main attributes of an ethnic community :

> "1. a collective proper name
> 2. a myth of common ancestry
> 3. shared historical memories
> 4. one or more differentiating elements of common culture
> 5. an association with a specified 'homeland'
> 6. a sense of solidarity for significant sectors of the population" (122).

Ethnic consciousness (or awareness) requires the existence of the 'other', which is well-described by Connor :

> "The sense of being unique or different requires a referrent, that is, the concept of 'us' requires 'them'. Without the knowledge of the existence of foreigners with alien ways, there is nothing...to bind one villager to another...As against members of all other ethnic groups ('them') the two [villagers] are united psychologically in the collective 'us'" (123).

This may largely explain why the ethnic communities reinforce their identity at times of war. It is well-known that *ethnies* (ethnic communities) are frequently antagonistically paired : French and English, Arabs and Israelis, Egyptians and Assyrians etc. Wars provide future generations with myths and memories (124).

Ethnie and 'nation' are two different categories, although similar in many respects. The nation corresponds to an *effective* relationship with a territory. A nation "is a named human population sharing an historic territory, common myths and historical memories, a mass public culture, a common economy and common legal rights and duties for all members" (125). However a 'nation' does not necessarily overlap with a 'state'. Indeed most states emerged prior to the existence of a nation, while some nations were already in existence before establishing a state (126). For instance, the French state had been built long before the arrival of economic modernity which is generally supposed to be the main force behind nationalism. Through imposing a uniform socialization upon its citizens, particularly in education, France sought to

legitimize the state (127). Similarly, the Turks' ethnic awareness of themselves was almost non-existent although they had been the founders and the principal rulers of the Ottoman Empire. Germans, on the other hand, provide a counter-example of an ethnically conscious people who were divided between a large number of territorial and juristic sovereignties until the mid-nineteenth century. There is another reason for distinguishing between the terms 'nation' and 'state'. Very few states today are composed of a single 'nation'. A survey of 132 states as of 1971 showed that only 12 states were composed of a single nation, while in over fifty percent of the states, at least twenty five percent of the population were composed of ethnic minorities. Therefore it would be appropriate to conclude that "a prime fact about the world is that it is *not* largely composed of nation-states" (128).

Most states are in reality dominated by a 'core' *ethne*. This is exactly the problem in many states : the monolithic nature of nationalist historiography and political doctrine tends to marginalize the minorities. Since the state is founded upon the values and aspirations of the core group, a state-centric narrative pervades the social life, hence leaving little scope for minority perceptions and activities (129). It is no surprise, then, that the nationalist historiography contorts the past by converting various political communities into 'nations'. This is a process of discovering the past in the image of the 'nation', although human history is much more complex and multi-faceted than the nationalist historiography suggests. Besides, states tend to propagate the idea that members of a particular nation must speak the same language and share similar aspirations for the well-being and security of the 'nation' (130). This explains why a 'nation' is not simply a given reality but "a work in progress, a model of something at once to be built and to be treated for political reasons as already in existence" (131).

One must not, however, label the ruling elites of states simply as 'devilish chauvinists'. Nationalism is not simply a pathological idea that is inherently prone to racism. One must only recall how nationalism has inspired cultural creations that narrate love, but rarely hatred (132). It must be recognized that the forging of a common, national identity among citizens is not an easy task. Weber rightly asserts that a painful and complex process awaits before "a number of vague, loose individuals" turn into a 'nation' (133).

The forging of national identity has varied functions and is activated through different strategies. Smith asserts that national identity legitimizes legal institutions which are deemed to represent the distinctive culture and traditions of the nation. Therefore

"the appeal to national identity has become the main legitimation for social order and solidarity today" (134). Through public mass education and other socialization processes, individuals become 'nationals' and 'citizens'. Also through its repertoires of shared symbols -flags, anthems, monuments, ceremonies etc., the nation provides a social bond between individuals and classes. Besides a sense of national identity evokes social meanings and frames of reference for the individuals to associate with. In a rapidly changing world of uncertainties, national identity fulfils the human need for self-discovery (135). However the state is constrained by its own limitation in that any appeal to ethnicity must be vaguely formulated so as not to engender divisions among the 'nation' (136).

The mass media serves important functions during the process of 'nation building' by making national symbols part of public life of ordinary individuals. Hence the division between private and public spheres are broken down whereby national rituals become part of every day life. Without television and media coverage, the British royal family would have hardly become an icon of British national identity. International sporting competitions also inculcate national feelings among 'the imagined community of millions' (137).

In the final analysis, however, the main *problematique* of nationalism remains unresolved: its static view of the nation. In this view, nation and citizen permanently face each other without any intermediaries between them. Once the nation is forged, it is assumed that every kind of subgroup must disappear. But the paradox is that "the nation is a complex of collective bodies, all in process of perpetual change and in a constantly varying relationship with one another" (138). One cannot fail to see that the link between territory and culture is rapidly receding in an increasingly interdependent world for a variety of reasons. First, the state culturally constructs people to fit into the international division of labour which itself is also a part. This means that there are always some people "whose horizons transcend its (of the state) own territorial boundaries" (139). Secondly, the world is rapidly becoming a global society in which differences among distinctive cultures are slowly disappearing. This trend is accentuated by the diffusion of global images throughout the globe as a result of market-based economics. Indeed some of the transnational cultural commodity flow is marked by minimum attention to national differences among consumers (140). The result is, then, an inevitable conflict between a state-imposed monocentric vision of the nation and the realities of an increasingly globalized society, the ramifications of which are not yet clear.

While admitting its contradictions and intellectual weaknesses, this section has nonetheless sought to understand nationalism's appeal for members of the 'nation'. As has been argued in the preceding sections, there is no reason to assume that nationalism is likely to lose its attraction in the foreseeable future for reasons which have already been discussed. But what is the process in which nationalism becomes a key to understanding the international behaviour of states?

To elaborate this point, the actual operation of the interaction between national identity and the foreign policy process in states will be examined. A coherent theoretical framework for such an analysis is provided by William Bloom's 'national identity dynamic', which will be examined here.

3.5.'National Identity Dynamic' as a relevant dimension of Foreign Policy-Making

The international relations discipline has recently elaborated new methodological approaches for a better understanding of foreign policy. Prominent among them is the 'identification theory'. This theory seeks to include the mass national public for a clearer analysis of the decision-making process within states. Bloom asserts that this is inevitable "given the long-term historical trend away from divine kingship and absolute individual rule to the more democratic conditions constrained by a world of evolving mass media and information technology" (141).

Bloom defines 'national identity' in the following words :

> "National identity describes that condition in which a mass of people have made the same identification with national symbols -have internalised the symbols of the nation- so that they may act as one psychological group when there is a threat to, or the possibility of enhancement of, these symbols of national identity" (142).

'National identity dynamic', on the other hand, "describes the social-psychological dynamic by which a mass national public may be mobilised in relation to its international environment" (143).

Scholars of international relations have until recently focused on modernisation as a prescription for nation-building. This approach, according to Bloom, is flawed. The author argues that the theory of modernisation floundered due mainly to the inevitable deficiencies of presenting an exclusively western model of progress to fundamentally distinctive societies in the developing world. Another defect of the modernisation project relating to nation-building, for Bloom, was the lack of a consistent theory which could explain the people's transfer of sentiment and loyalty to the new state (144).

Since international law exclusively focuses on inter-state relations, it neglects the relationship between the 'nation' and the 'state'. Indeed Bloom draws on the absence of a conceptual and analytical framework that explicates the relationship between a mass national population and the state. An exposition of this relationship is crucial in understanding the process of nation-building. It is also significant in that it demonstrates the role played by the mass national population in foreign policy decision-making. In short, this is an important aspect of the relationship between the 'citizen' and the 'state'. By utilizing 'national identity dynamic', Bloom seeks to examine "the possibility of a psychological theory -identification theory- giving the mass national population of a state just such a theoretically coherent status" (145).

Bloom asserts that 'national identity dynamic' provides the widest possible mobilisation of national sentiment within a state. It theoretically transcends political, religious, cultural and ethnic cleavages. Therefore, if a politician "can symbolically associate herself/himself with national identity and mobilise it, s/he will then possess a virtual monopoly of popular support" (146).

Since the 'national identity dynamic' is based on the premise that the solidarity of a given society depends to a great extent on the degree to which the individuals internalise their society's values, norms and accepted patterns of behaviour (147), nation-building is never complete. First, there are always those -individuals or groups- who do not identify with the state. Second, changes in political circumstances may alienate certain groups and individuals (148).

The model of economic development may also be decisive in the use or non-use of national identity dynamic for foreign policy purposes -particularly in the developing countries :

> "Developing states which adopt capitalist economic growth policies, and which have internal cleavages based in ethnos, tribe or religion, will not be able to rely on the national identity dynamic and will tend not to adopt aggressive foreign policies. If they do adopt them, the likelihood of internal collapse is high" (149).

States which give low priority to social and economic justice, as in the case of South American states, will tend to "have a military that is used for internal order rather than external security, and to attempt to use minor border and territorial disputes to mobilise the national identity dynamic" (150). Given the low-key nature of its international relations, this observation is equally valid as far as Turkey is concerned, as will be discussed later.

Bloom asserts that the national identity dynamic is a constant feature of domestic politics in western and non-western states alike :

> "As the national identity dynamic, based in the identification imperative, is constantly seeking enhancement and is therefore volatile, it is a permanent feature of all domestic politics that there be competition to appropriate the national identity dynamic" (151).

Moreover, in the face of a political and socio-economic environment that is constantly in flux, nation-building becomes a necessary requirement for maintaining political integration and stability. As a result of this sheer reality, governments are often tempted to mobilize 'national identity dynamic' in relation to the international environment. Therefore every government must be concerned about the ways in which its international actions are perceived by the mass national public from the perspective of 'national identity dynamic'. International political behaviour of a state may thus be determined by internal constraints as much as the nature of its international relations (152).

Therefore international relations must not simply be understood as 'inter-state relations'; it must also connote the relations between 'nations'. This arises, as has been argued in the beginning of this chapter, from a belief that the state is the very embodiment of the nation, that it is the sole legitimate sovereign of its people and

territory. If this is so, if the state is one with the nation, then one must advance the argument into its logical conclusion : "international politics, then, is not simply the relations between state structures, but is also the relations between the *nations*. In international politics, people, government and state fuse into one image" (153).

Bloom asserts that central to the mobilization of 'national identity dynamic' are the questions of 'national interest' and 'national prestige'. In his terminology, national interest is defined as "the political rhetoric...in which the domestic power competition for control of the national identity dynamic is communicated, is framed, rationalised and legitimised" (154). National prestige, on the other hand, "describes the influence that can be exercised or the impression produced by virtue of events and images that devalue or enhance national identity" (155). Bloom asserts that there exist two distinct levels of interstate activity in terms of national interest and prestige. That which involves the national identity dynamic, and that which does not. However the dividing line between them is subject to constant flux (156). It may depend, for instance, on how the international threat is presented within a 'national' context; that is, the way any strategic threat to the existence of a given state arrives at the mass national public after being mediated through domestic media and communicators. Any external action that can be interpreted as 'national', can be presented to the public as 'threatening national interest' (157).

However identification theory does not necessarily contain a clear formula with regard to the final decision-making; they ultimately depend on the decision-makers themselves :

> "At the micro level, identification theory can say little about how the individual decision-makers will behave. Certainly, a powerful public opinion and a mobilised national identity dynamic must affect the decision-maker, but the actual decisions will depend upon the decision-makers' own degree of identification, peer pressure, group mores, individual psycho-history and so on -a kaleidoscope of elements worthy of substantial research" (158).

Besides, it is frequently observed that the public are misguided by political authorities who either misperceive reality and/or withhold information in their exclusive reserve (159).

Although Bloom's theory appears to be implicated in cases involving inter-state conflicts, a closer examination of his analysis indicates the relevance of national identity imperative in the choice of foreign policy strategies, as will be seen later. He also succeeds in explaining the social-psychological basis of nationalism, namely relations between 'a mass of people' (nation/citizens) and the 'state'. Finally, Bloom makes a strong case for international jurists to lay greater emphasis on the decision-making process and its human and psychological dimensions, particularly when involving inter-state relations.

Thus far this chapter has focused on the relevance of nationalism and national identity dynamic in the conduct of inter-state relations. Now it is appropriate to see how these mechanisms operate in the Turkish case.

This section begins with an analysis of Turkish nationalism with particular reference to its similarities with other nationalist movements in Asia and Africa, as well as to its distinguishing features.

3.6.The Emergence of Turkish Nationalism

Until the second-half of the nineteenth century, the notion of the 'land of the Turks' was an alien concept to the Turks. The idea of national territory was so new that the Turkish language even lacked a name for it. It was not until the Young Turk period (1908-1918) that the name *Turkiye* (Turkey) came into common usage (160). Therefore, not surprisingly, Turkish nationalism emerged as a result of a set of complicated factors, most of which were *external* : the disintegration of the Ottoman *millet* system; the *de facto* renunciation of the idea of Islamic *umma* by non-Turkish Ottoman Muslim subjects, like Arabs and Albanians; the dissemination of nationalist ideas by the Turkish speaking *émigrés* from Russia; a growing number of ethnographic studies in Europe during the nineteenth century which included Turcology among its areas of interest. The findings of the Turcological studies were eventually taken up by the proponents of Turkish nationalism. These Turkists sought to influence the Turks' conception of themselves along nationalist lines; finally, the Ottoman defeat in the First World War, and the ensuing War of Independence left no option other than the recovery of the 'Turkish national homeland' (161).

In the Turkish case, not unlike the nationalist movements elsewhere in Asia and Africa, the nationalist doctrine made a novel account of the past. Accordingly, the

Ottoman Empire ceased to be an Islamic dynasty, and became a 'Turkish' Empire. The new ideology was first propounded in the early decades of the twentieth century by the Young Turks. Later the Turkish publicists took up the Turkish cause with often absurd and unscientific glorification of 'Turkish civilisations'. Here is a small excerpt from this type of nationalist writing :

> "It is time that it should be known, thought Ataturk, that the Turk, moving once more on the road of progress and civilisation, is only following the example of his prehistoric ancestors, who were the first cultured peoples of the world. The world, including the Turks themselves, has to understand that for thousands of years, when other peoples simply followed their conscience and their instincts, the Turks were agents of culture and progress, and that they have never ceased to be such except when subjugated by foreign cultures and mores" (162).

The idea of Turkism, as the basis of Kemalist nationalism, was first formulated by Ziya Gokalp. According to his understanding of nationalism, society was superior to the individual and was identical to the nation. Nation was the ultimate reality of modern international society. This meant that it was the collective conscience of the people, represented in nationhood, that could legitimately shape the ideals of individuals. Therefore Turks had to rise up to establish themselves as a nation in order to adapt themselves to the conditions of contemporary civilisation (163).

For Gokalp, the main criteria for nationality was language and religion. This is how he expresses his reasoning :

> "Language is the carrier of ideas and sentiments, the transmitter of customs and tradition; hence, those who speak the same language share the same aspirations, the same consciousness, and the same mentality. Individuals thus sharing common and homogeneous sentiments are also naturally prone to profess the same faith" (164).

He therefore observes that people belonging to the same language groups tend to adopt the same religion. This reasoning enables him to include all Ottoman-Muslim subjects into a future Turkish national state (165). These ideas of Gokalp were later duly taken up by the Kemalist nationalist leadership. The population exchange between Turkey and Greece, provided for by the Treaty of Lausanne in 1923, might have also been prompted, *inter alia*, by Gokalp's idea of nationalism, for he believed that the non-Turkish Muslims migrating to Turkey were becoming Turkified because of their religious affiliation (166).

Gokalp also asserted that nationalism should go along with modernism and secularism, since "a nation has to be a democratic society through centralization, homogeneity, and division of labour" (167). This could only be achieved by separating religion from politics and law, and doing away with Islamic *umma* as the basis of political loyalty (168).

Kemalism -in other words, Turkish nationalist doctrine- duly took up Gokalp's ideas, the latter of which had itself been an adaptation of Durkheimian sociology. Indeed the ideological offspring of the Kemalist movement was nineteenth century positivism and the Western liberal ideals of individualism, constitutionalism and nationalism. Kemalism must not be treated as an ideology because it lacks "universal content and rigidity". It was actually a pragmatic response of a newly established nation-state which sought to catch up with 'western civilisation' (169).

With the founding of the Turkish Republic, Islam was replaced by the elements of Turkish culture as the symbols of national identity. Although Ataturk had initially appealed for support of the liberation movement by partly appealing to the religious sentiments of people in Anatolia, after consolidating his political and military position, he soon began to blame, *inter alia*, the religious establishment for the collapse of the Ottoman Empire. Accordingly, various measures were taken under the new regime to undermine the power and influence of the Islamic establishment (170).

Kemalist nationalism follows the general pattern of other nationalist movements by coupling nationalist consolidation with modernisation. Indeed industrialisation and rapid economic growth were seen by the Turkish nationalist leadership as a *sine qua non* of modern statehood. Modernisation was also perceived as a necessary prerequisite for the creation of a homogeneous and integrated citizenry. Simultaneously, non-Turkish ethnic and cultural identities existing in the country were

gradually Turkified. Hence, not unlike most other national movements, it was through destroying other 'nations' that the Turkish national state emerged.

Turkish ruling elites advocated modernisation as a way, *inter alia,* of reinforcing and enhancing national sentiment and consciousness among diverse ethnic and sectarian groups in the country. Their sustained belief in modernity and secularism as a universal model prompted the nationalist leadership to deny the Ottoman/Islamic legacy which had been deeply embedded in the consciousness of the people. The state also sought to secure the loyalty of the people through a promise of sustained economic and social progress that could facilitate the process of national integration (171).

Hence Turkish nationalism represents, perhaps paradoxically, a triumph for western norms and standards of culture, society and politics. Nationalism and its twin ideologies of modernity and liberalism were the by-products of the particular historical experience of western European societies. This is well-known, and need not be reviewed here. However the crucial role played by international law -an extension of European states system- in spreading these ideas is indicative of how the Ottoman and Turkish states were co-opted into Western civilisational standards.

Gong argues that the process within which the non-European countries entered international society was often the result of European coercion (172). The forging of European identity and, later, civilisational standards, had been greatly shaped by the 'discovery' of the American continent by European explorers by the end of 15th century. The 'discoveries' resulted in the systematic misrepresentation of 'native' peoples and their cultures by many European observers. The indigenous peoples of the American continent were held to be inherently inferior to the Europeans since the former, as it were, were not equipped with adequate brains. It was only sometime at the beginning of the 18th century that the theory began to realise its limitations for an adequate description of the American world. The 'new' accounts of Indian culture and behaviour, however, had more to do with historical and intellectual developments in Europe than the existing realities in America. The European observer took upon himself -almost always a male- the task of bringing the Indians into the grasp of 'history' -European history, of course. Therefore the 'otherness' of the Indian behaviour was treated as something to be eliminated. And this 'task' was indeed carried out with remarkable brutality (173).

As is well-known, European colonialism extended its sphere of influence to other parts of the globe from the late eighteenth to the early twentieth centuries. The fact that the indigenous peoples in European colonies in Asia and Africa were denied independent political existence was justified on grounds that the indigenous peoples had not matured enough to 'determine' their 'self'. In other words, as expounded by a variety of doctrines in Europe, the colonized people were legal non-persons. Recognition of a collective right to coexistence was only applicable in Europe. People in the European colonies could only enjoy, so to speak, 'the rights of man' (sic) as the result of European conquest -since it was only through the European conquest that they could acquire the knowledge and manners necessary to exercise the kind of rights enjoyed by people in the metropolitan countries. However, even then, the limits of such rights would be set by European rulers (174).

Not unpredictably, then, international relations in the nineteenth-century were not rooted in universal cultural norms or legal standards. At the time, the European Powers were willing and able to impose their own view of international law upon the non-western world (175). The Ottoman Empire was an obvious target for western coercion, for it had been hostile to European powers for centuries and its standards of civilisation did not conform to that of Europe. Although an integral part of the European power balance, the Ottoman Empire consistently refused to participate in the European system of international law, and renounced the standard of 'civilisation' as expounded by the European states. After all, as had been underscored by their military dominance and distinctive religious and political traditions, the Ottoman statesmen were convinced of "the immeasurable and immutable superiority of their own way of life". This prompted them "to despise the barbarous Western infidel from an attitude of correct doctrine reinforced by military power" (176). According to Gong, their belief in the supremacy of their standard of 'civilisation', made the 'infidel Turks' a threat to Christian and European civilisation. This mutual hostility and lack of common 'civilisational' standards were prolonged into the nineteenth century as exemplified by the Ottoman sultans' contempt for the emerging nation-states in Europe (177), which incidentally threatened the very frontiers of the Ottoman Empire, particularly in the Balkans. The fact, on the other hand, that the Ottoman Empire established closer diplomatic relations with European powers on the basis of the European state system as from the eighteenth century, must be understood as a pragmatic response to the continuous Ottoman decline : "playing by the rules which conferred the greatest advantage" (178). The same pragmatic approach was in evidence when, particularly following the Napoleonic expeditions to Egypt in 1798, the Ottoman statesmen rushed in to bring European science, technology and training

into the lands of Islam. Accordingly, students were sent to European capitals for training (179).

The reform process gained further pace with the continuous military defeats of the Ottoman Empire at the hands of Russia, and with the insistence of European powers for 'liberal reforms'. Among these reforms were the 1826 army code of regulations which ordered European-style tunics and trousers. In 1847, mixed civil and criminal courts, composed of Ottoman and European judges in equal numbers, began applying European types of judicial proceedings in cases involving non-Muslim subjects or foreign residents. Meanwhile Sultan Mahmut tried to establish the structure and organization of a central government modelled on Europe in order, *inter alia*, "to impress European observers with the modernity and progressiveness of Turkey" (180). Most important of all, the Imperial Edicts of 1839 and 1856 guaranteed equality of civil and political rights to all the Ottoman subjects, irrespective of religious beliefs (181).

The reform process along western lines was an agonizing experience, and it precipitated a painful search for self-identity. For many Ottoman subjects, western-style reforms were 'forced' upon the Empire by the European powers which deepened their sense of disillusionment. The process of adoption of the European standards of 'civilisation' dealt a double blow to the Ottoman self-perception : first, it implied the denial of certain important aspects of the traditional standard of 'civilisation'; secondly, it meant reconciliation with the 'infidel' enemy (182).

It can therefore be argued that Turkey's entry into the 'family of nations' was clearly precipitated by its gradual absorption into western civilisational standards. Having witnessed the persistent onslaughts of the supremely confident European powers over the material and moral integrity of the Ottoman Empire, the Ottoman ruling elites had somewhat 'internalized', however reluctantly, the European perception of the Ottoman Empire as a static and backward instance of Oriental despotism. It was also clear however that the European ideas of nationalism, constitutionalism and secular liberalism coincided with their aspirations for a viable 'homeland' -following the demise of the Ottoman Empire in the aftermath of the First World War. As a result, soon after ejecting the enemy from the 'national homeland', the nationalist leadership sought to create new values and structures that could present an *acceptable* image of the 'Turks'; that is, acceptable to the European audience that was simultaneously *civilised* and *powerful*. When one tries to penetrate the social, cultural, and political milieu within which the ruling hierarchy of the new Turkish state grew, one observes

that it was permeated by an irresistible European *presence,* with its literature, science, and political and military dominance; in short with its 'civilisational superiority'. For the Europeans, the 'other', the non-western world, represented everything that was 'inferior', 'inefficient' and 'barbarous' (183). It is natural therefore to assume that the Turkish educated elites of the nineteenth and early twentieth centuries were profoundly influenced by the existing atmosphere of unchallenged European dominance.

Kemalism represents the pinnacle of the reform process that was already under way in the nineteenth century. What distinguished the Kemalist movement from its antecedents, however, was the *scale* and the *depth* of westernization. In the Kemalist terminology, the criteria for 'civilisation' were used as analogous to 'European civilisation'. The new Turkish society was to be created in the image of a European society with its secular nationalism, its liberal economic and political outlook, and its notion of social solidarity based on functional association. Henceforward the Turkish ruling elites developed a habit of presenting a Turkish image to the outside world that would be *acceptable* to a distinctly western audience.

However the rise of Turkish nationalism was also the result of a genuine desire to preserve and reinforce Turkish cultural identity. Language and literature were therefore the main preoccupations of the early nationalists (184). This was clearly a quest for 'self discovery' and progress. It is an undeniable fact that the abrupt transition from a multinational empire into a compact territorial nation was a contingent result of historical events. However it is also noteworthy that the nationalist republican leaders were able to divest themselves of the Ottoman imperial heritage by accepting the new boundaries of the Turkish State. After having engineered the secession of the Turkish heartlands from the Ottoman empire and caliphate, they repudiated Ottomanism and Islamic legitimacy. These measures paved the way for a series of westernizing social, cultural and political reforms. Smith argues that "territorial and civic concepts of the nation require a solid basis in a national cultural identity" (185). This explains why the Kemalist leadership 'discovered' a variety of ethnic myths and memories that revealed the unique qualities of the Turks. The extensive nationalist self-glorification during the Kemalist republic was also a necessary step for offsetting the agonizing inferiority complex resulting from the many years of Ottoman humiliation by the European powers (186). Kemalist nationalism was also an attempt to 'liberate' the Turkish nation from Arab cultural domination which had been a prominent feature of Ottoman public life (187).

Kemalism created three essential myths as far as nation-building was concerned. First, Turks belonged to Anatolia from time immemorial and therefore had every right to settle in these lands. Second, Turks were an important contributor to western civilisation and therefore were entitled to enjoy the fruits of western civilisation. Third, Turks were a cultured and gifted people who were capable of great achievements, including economic and social progress (188). Having 'discovered' the necessary myths for nation-building, the ruling elites then adopted an educational programme to facilitate the assimilation of ethnic minorities. The images and ideals of the nation were those of the 'core' *ethnie* (ethnic Turks), and were employed to promote the idea of a 'one nation-one state'. These socio-psychological designs, in turn, provided the basis for the radical reforms to come.

Indeed the Kemalist reforms sought to change the traditional values and norms of the society along the lines that existed in western societies. Soon after consolidating its political monopoly, the Kemalist state tried to permeate the whole fabric of the social, economic, and cultural life in Turkey. The political idea on which the Turkish state was constructed came from France. It included :

> "..the conception of a nationally homogeneous, administratively centralized, absolutely sovereign state which must be served by its citizens as a jealous God, intolerant of variety or autonomy in any form" (189).

Certain similarities in the historical experience of the French and Turkish states may have accounted for the sanctification of the state in both countries. To begin with, both were imbued with strong monarchical traditions (note that the predecessor of the Turkish Republic was the Ottoman Empire). Besides, both managed to rule over a variety of ethnic and religious groups through a centralized, bureaucratic state. In both countries, therefore, the state was assigned a quasi-mythic role in the political and cultural life of society. A prominent Turkish scholar argues that while the Kemalist model was an importation of the ideals of the Third Republic in France, the culture of Turkish intellectuals and their philosophical outlook were overwhelmingly of French origin. The Kemalist conception of society was indeed an amalgamation of French humanist ideals, as well as its elitist and secular traditions : severing of links between religion and politics, the belief in humanity as the basis of a moral universe, its elitist view of social engineering of the common folk, its belief in 'order' and 'progress', and its belief in education as the main vehicle by which to join the 'civilised world' (190).

To that end, the Kemalist national state discarded all forms of Islamic legitimacy from the realms of social and political life of the country. The Caliphate, the Sultanate, the Islamic brotherhoods and other identity-reaffirming entities were outlawed from the public realm in the name of secular nationalism. Modernist nationalist discourse sought to penetrate into the very fabric of social life through, for instance, the adoption of secular laws, of Roman script, and through Turkifying the language (191).

Not surprisingly, therefore, the state-centric nature of the Ottoman polity was taken over by the Turkish Republic, although the latter brought about drastic political changes. Indeed although the new regime went through a 'paradigmatic revolution', the Kemalist nationalist movement was in no way a social revolution. Kazancigil notes that "this 'revolution from above' did not need mass mobilisation. Commoners participated in the Kemalist movement as soldiers and not as revolutionaries" (192). For Kazancigil, this finding is not at all surprising given the prevailing political atmosphere in which the state was held to be the only source of legitimacy. In such a milieu 'saving the nation' was synonymous with 'saving the state' (193).

In the Turkish case, the definition of the 'nation', not unlike many other nationalist movements elsewhere, was an amalgamation of western civic, liberal nationalism and that of the ethnic/cultural type. The complexity of ethnic elements in the Turkish territory and the novelty of nationalism made it difficult to forge a coherent, well-defined national identity. One thing was clear however : the new Turkish state would not allow diversity for fear, *inter alia*, that this would destroy the national unity and the territorial integrity of the 'fatherland'. Mardin rightly observes that the pluralistic nature of Ottoman society was obfuscated by the Turkish Republic which fostered a myth of a homogeneous population, though it was apparent that the cultural peculiarities and primordial loyalties continued to persist, albeit officially unrecognized (194). And while it is true that the new symbols of the nation-state, such as the flag and the national anthem, did take hold, the average individual continued to see himself/herself in the context of primary loyalties. This was due to the fact that national symbols did not have much significance in one's day-to-day life (195).

Not only did the domestic perception of the new ruling elites change, but their notion of foreign policy took a new turn with the foundation of the Turkish Republic. Ataturk believed that foreign policy was a function of domestic policy. Speaking in the opening days of the National Assembly in 1920, he said : "Foreign policy is

largely affected by and is based on the internal organization of the state. Foreign policy must correspond to internal organization" (196). The 'internal organization' to which Ataturk was referring was that of a national state. Henceforward, as opposed to the Ottoman Empire which had been a multinational society, the new Turkish state would pursue a national foreign policy (197). Ataturk believed that human ideals could best be achieved within the national group. In his view, Turkey should strive for material prosperity *within* its national frontiers, instead of seeking territorial expansion at the expense of its neighbours. Such an approach would signal the end of rivalry between the national and human ideals (198). These ideas had first been propounded by the nineteenth century French sociologist Emile Durkheim (199) who had a profound impact on Turkish nationalists. Not unlike Durkheim, Ataturk believed that each national state would become a miniature representation of humanity. The Kemalist motto 'peace at home, peace abroad' was a clear expression of his desire to reconcile Turkish nationalism with the larger international society by renouncing irredentism and territorial aggression.

Ataturk's notion of 'national policy', unlike other nationalist movements which emerged in Asia and Africa after the Second World War, was neither anti-western nor anti-capitalist (200). Turkey's co-optation into western standards of civilization, which have already been discussed in this section, accounts for an important portion of this new state of affairs. The *petit bourgeois* character of the nationalist leadership and the nationalist movement was also decisive in this respect (201).

Kemalist nationalism still marks the ideological and normative foundations of official discourse in Turkey. The state is still regarded as the supreme protector of the 'Turkish nation'. Its ideals, meanwhile, are defined as Turkey's co-option into western civilisation. But how far have these 'official' policies permeated to the fabric of the society, and to what extent has the society evolved through its own dynamics? These themes require an understanding of the peculiar characteristics of Turkish national identity, which will be examined here.

3.7.Main Characteristics of Turkish National Identity

The terms 'nation' and 'state' are frequently confused with one another, although often they refer to two different entities. This confusion is caused by the presupposition of the nationalist ideology that the nation and the state should geographically coincide in nation-states. This arises from two sources : first, the national ruling elites wish to

speak in the name of the whole nation, not a section of it. This endows them with political legitimacy in the eyes of the whole people. Secondly, in most cases, those sections of the population which claim to be a 'nation' seek to establish their own state (202). To avoid confusion, one must be aware that a 'nation' does not necessarily denote a single ethnic or religious group with common values and aspirations. Instead it must be understood as a historical-political community. Indeed there are a multiplicity of ethnic and religious groups within nation-states. This picture of heterogeneity is further complicated by the uneven distribution of 'national consciousness' among the social groupings and regions of a country (203). To overcome these obstacles, the nation-state employs various strategies to cement these divergent groups. They include rituals, ceremonies, commemoration of past wars, 'national history', ideals and so on, which are employed as occasions for reproducing and reinforcing national identity. At this point, it may be appropriate to see how this mechanism has worked for the Turkish national state.

A main achievement of Turkish nationalism has been the creation of a *Turkish* identity within a well-defined territory. Undeniably, the sense of being 'Turkish' has become a common denominator among various ethnic groups -of course with the exception of the Kurds and presumably the non-Muslim minorities- as a result of the assimilationist policies over the years. This state of mind among people has been evoked and sustained through education, the media, national ceremonies and rituals -like the national anthem and the flag, state ceremonies and national holidays- the combined effect of which has been to replace religious affiliation as the main source of identity. A recent survey conducted among the workers of a textile factory has shown that 50.3 percent of the workers saw themselves as 'Turks', as opposed to the 37.5 percent of those who saw themselves as 'Muslims'. A nation-wide survey has also confirmed the findings of the above-mentioned survey; that is, the sense of 'Turkishness' seems to be more prominent than religious loyalties of the people in Turkey (204).

One of the main strands of Turkish national identity is *patriotic attachment to the homeland.* The very existence of the nation as an independent political unit was secured after a successful resistance against foreign invaders. The National War of Independence involved not only Turks, but other ethnic groups as well. Therefore the feeling of 'patriotic solidarity' serves as one of the legitimating devices for the national unity and territorial integrity of the 'homeland'.

The Greek invasion of Turkey in the wake of the First World War also provided the necessary xenophobic element that Turkish nationalism required. However this was

not enough to evoke an effective *nationalist* movement. The opportunity later came with the military success of the resistance movement and with the identification of the Ottoman officialdom and Islamic religious leaders with the enemy due to their unfavourable view of the national resistance (205). This also partly explains the aggressive secularism of the new regime (206).

The heroic reassertion of Turkish independence is taught at all levels of schooling, frequently covered by the media, and taught to conscripts during military training (207). However it is also clear that the National War of Independence has been depicted as an achievement of the 'Turkish nation', the content and scope of which are less than clear. Indeed its very ambiguity -referring either to ethnic Turks or the *whole* people in Turkey- makes it into a flexible and infinitely employable term. Although it is true that Kemalist nationalism defined the 'nation' on the basis of cultural affiliation and political loyalty, the official discourse since Ataturk has been set out in accordance with the values and aspirations of the 'Turks'. In the Turkish context, therefore, 'nationalism' implies 'Turkish nationalism', despite the presence of a variety of other ethnic groups -large and small (208).

Meanwhile, Kemalist nationalism's definition of the nation -'Turkish nation'- as the 'ultimate being' and as 'the source of all social attributes', still predominates the official discourse. As apparent in educational policy, "the glorification of national-patriotic morality and the idealization of national virtues constitute an important trait of political culture in Turkey" (209). Official discourse has glorified the hero figures of the past as the moving force of history and a guide for the consciousness and the will of the nation. This nationalistic indoctrination has reinforced and sustained the hero-centric nature of traditional culture (210).

Hence when one refers to the Turkish national identity, one must point to the superimposition of a single, nationalist narrative as seen from the spectrum of the dominant majority. The Turkish culture, which places martial virtues high on its scale of values, superimposes itself upon the distinctive peculiarities and cultural values of other ethnic communities. However it is also clear that since various ethnic communities in Turkey have lived together for centuries, they have come to adopt similar cultural, moral and attitudinal characteristics. Among them is patriotism and respect for authority. In Turkey the state has a quasi-mythic quality that commands respect and affection from people. Although the Ottoman empire was politically and economically subdued by European powers from the eighteenth to the twentieth centuries, unlike most other countries in Asia and Africa, it was never colonized. Its

continued independent status has bred pride in the people living in Turkey. On the other hand, as Mango puts it : "because the state belonged to them, Muslim Turks respected authority. The Turkish equivalent of Mother Russia is Devlet Ana, 'Mother State'" (211). A survey conducted by Kagitcibasi, a Turkish sociologist, has revealed, for instance, that respect for authority and patriotism were more prevalent among Turkish than American youth (212).

Meanwhile the *Islamic faith* is a unifying element that crosses ethnic cleavages within Turkish society given that some 99% of Turkish citizens are Muslims (213), although well over one third of the people living in Turkey are of non-Turkish descent. The population exchange with Greece during Ataturk, as well as the willingness of the successive governments to allow in many former Ottoman Muslim subjects from the Balkans irrespective of their ethnic origins, reveal the extent to which the Islamic faith is perceived to be an important element of national loyalty and harmony. After all, as Lewis sharply observes, the notion of a 'Christian Turk' is an absurdity to a Turkish mind (214). In this context, one might also point to the fact that Turkey has taken a close interest in the fate of Muslim minorities in the Balkans, irrespective of their ethnic origins. Turkey's active involvement in international attempts to find a solution to the sufferings of the Bosnian Muslims at the hands of Serbians is indicative of this trend.

Finally, the *Turkish language* must also be mentioned as a common denominator of Turkish national identity. The Turkish nationalist republicans believed in the need to purify the Turkish language from foreign elements, particularly Arabic and Persian. Not unlike German nationalist romantics, they believed that language encapsulates the peculiar history of the 'nation' and its future glories. In Ataturk's view, one could not claim to be a Turk without knowledge of the Turkish language. Turkish nationalists were clearly aware that a common language and religion were likely to forge and reinforce common customs, sentiments, philosophical outlook and solidarity. They would in turn forge and reinforce a sense of patriotism, and provide a solid basis for the introduction of secular, western-oriented reforms. To be sure, the ideal citizen that the Kemalist project intended to produce, can be described as a "nationalist European in outlook, secular and ...would feel himself to be a Turk" (215).

Although Turkey has taken great strides towards creating a national identity among various ethnic and cultural groups within the country, it is still difficult to speak of a 'Turkish nation' as representing some kind of a coherent, unified and homogeneous collectivity of individuals. First, as the dominant ethnic majority, the Turks

themselves are subject to sectarian divide. Indeed a Turkish sociologist observes that Sunni and Alevi Turks are still suspicious of one another as manifested in the marriage barriers and other cleavages which "remain solid walls dividing the communities in the country" (216). On the other hand, the resurgence of so-called Islamic fundamentalism in Turkey and among Turkish workers in Germany reveals the extent to which Turkish society is divided over the symbols of identity and loyalty. Meanwhile ethnic issues are also undermining national unity. Indeed the Kurdish nationalist movement in Turkey has become a major challenge to the Turco-centric nature of contemporary Turkish society. Meanwhile the pursuance of a capitalist economic strategy since the foundation of the Turkish nation-state -with shifting emphasis on the role of the public sector- has led to undesirable social consequences which are inimical to nation-building. Indeed the existing large-scale economic inequality between various classes and strata of Turkish society has clearly alienated many 'have-nots' from the political community. This inequality also testifies to "remarkable inequalities among regions" (217). One can also point to the absence of a unifying system of morality, since Kemalism has failed to replace Islamic morality with a secular one. Although inspired by Durkheimian notions of national solidarity, Kemalist nationalism neglected the spiritual/collective aspects of his ideals (218). To summarise, then, speaking of 'Turkey' as though it represents a single, coherent entity is misleading.

It is not therefore surprising to observe that the conflicting interests and aspirations within Turkish society have hitherto been maintained by the all-mighty Turkish state with the army as its 'iron fist' (219). For a clarification and elaboration of this point, it is useful to examine the Kemalist concept of sovereignty, and its repercussions for the political identity of the Turkish state today.

3.8.The Turkish Concept of Sovereignty

As is well-known, 'national sovereignty', as the political precept on which most states are based, derives from people and it rests with the people. This means that the source of governmental authority is the consent of the people. Hence, the ultimate authority lies in the people as sovereign, and not in the state. The state exercises this sovereignty through a popularly elected parliament and government. The legislative, executive and judicial branches of state power must be effectively maintained in checks and balances. This model of the separation of powers is the best guarantee against abuses of power by the state.

However popularly elected governments are not necessarily 'democratic'. They may, for instance, in effect, represent partial interests and/or the interests of a particular ethnic or religious group. In order to overcome this, it is necessary that national sovereignty be complemented with popular democracy. Indeed it is among the primary tasks of the state to safeguard the rights and liberties of citizens. Citizens should be trusted as the guardians of their own political and cultural dispositions, priorities and interests. In such a political milieu, the common good and the 'general will' can only be determined through public discourse and public agreement.

In the Turkish case, however, 'national sovereignty' was, from the outset, prejudiced by an elitist political structure. Indeed, as opposed to the Ottoman state, the Turkish national state has sought to closely control the social units by a centralized state structure. This state-centric vision of society has left little scope for the interplay of social forces outside the realm of the state. In such a milieu, it is the official ideology that has created the social and political norms and values prevalent in Turkish society. In other words, the masses are allowed to participate in the political process in so far as they do not exceed the boundaries defined by the state (220).

To start with, the Kemalist concept of sovereignty emphasized two things as the *raison d'etre* of the Turkish state : 'republicanism' as a reaction to Ottoman patrimonialism, and the liberation of the nation from 'internal and external enemies' (221). This conceptual framework presupposed a benevolent, enlightened state which was above and beyond parochial societal conflicts. The welfare and security of the 'nation' would therefore be provided by impartial ruling elites -civil and military (222). National sovereignty was therefore *not* a form of direct political participation of the masses in the decision-making process; it simply implied a republican regime as opposed to a monarchy. The function of the Kemalist state was not that of an arbiter between conflicting classes and other social groups; instead its main function was to formulate and implement 'correct' political decisions for the benefit of the nation as a whole. Clearly from this point of view, the nation was perceived as an aggregate of undifferentiated individuals with identical backgrounds -ethnic, religious, sectarian, cultural, and so forth. On the other hand, since society was 'backward', it was the mission of the enlightened few, representing the State, to impose their own programme for social and economic progress. 'National sovereignty', they believed, could be transformed into reality only after the nation 'emancipated' itself (223).

Therefore for Kemalist ruling elites, the main vehicles for radical reforms were the state itself and the legal order; only through the efficient use of these two institutions

could the nation and civil society be created. Hence the elitist, top-down political tradition of the Ottoman Empire was retained by the national state, despite the fact that the provisional constitution which the Grand National Assembly adopted on 20 January 1921 declared that "sovereignty belongs without reservation and conditions to the nation". It was the identity and the goals of the new state which were radically different from those of the Ottoman Empire: "an ethnically and territorially defined nationalism replaces the universal non-territoriality of Islam...Its goal is no longer the conservation of the traditional status order but the creation of a nation and economic development" (224).

Indeed the Constitutions of 1921 and 1924 reflected the Jacobin characteristics of the Turkish national state. Although Ataturk repeatedly spoke of 'national sovereignty' and 'national will', sovereignty was in effect in the hands of the Grand National Assembly. This Assembly implemented its radical reform programme throughout the 1920s and 30s despite frequent opposition from *people* (225). The Constitution of 1924 provided for an 'assembly government' based on the unity or concentration of the legislative and executive powers. The theoretical supremacy of the National Assembly was however in effect often transferred to the executive, since the executive members were often influential party or faction leaders as opposed to the members of the Parliament who were politically much weaker. These features of the legislative and executive system in Turkey persisted during the single-party (1924-1946) and the multi-party (1946-1960) years (226).

Indeed, despite the introduction of multi-party politics in 1946, national sovereignty has not been duly transformed into reality. In this context, one can point to the periodic suspensions of multi-party politics as a result of military coups. One Turkish author asserts that the military takeovers in 1960, 1971 and 1980 had one peculiar objective in that they all sought to restore Kemalist sovereignty as the basis of state identity. The confrontational politics since the 1950s, it is argued, began eroding the absolute autonomy of the Turkish state and its paternalistic image. Indeed political cleavages between various segments of society -army versus civil society; progressives versus conservative elites, and so forth- were perceived by the army as a threat to national unity and harmony. It is not therefore surprising that immediately following the military coups, the new regimes resorted to Kemalism as a recipe against political rivalries and violence. This is also the case with the latest military take-over (1980) when Kemalism was presented as an antidote against 'foreign ideologies' and 'internal and external enemies' which endangered 'national unity' (227).

The Kemalist notion of national unity, which is still central to the official ideology of the state, required complete loyalty from citizens, and sought to create national harmony through homogenizing society under the rubric of 'Turkishness'. In this context, anything perceived to be divisive of society such as social classes, or distinctive ethnic and cultural groups were written off as non-existent (228). Today the homogenizing nationalist discourse still prevails under the shadow of Kurdish separatism versus the traditional custodians of Kemalist nationalism, particularly the army and a 'faction of the state'. For the latter groups, the Kurdish search for greater self-expression "directly affects the survival of the 'Fatherland' and thus must be confronted with intransigence in which all means are legitimate" (229).

To recapitulate the preceding arguments in this chapter, the distinctive features of 'Turkish nationalism', 'Turkish national identity', and the Turkish concept of 'national sovereignty' can be singled out. It is asserted that Turkey is a 'state-nation' in that the 'nation', composed of multi-ethnic communities, was created by the 'state'. Therefore the nation, which is naturally in a state of flux, constantly requires reproduction and re-interpretation. It is meanwhile argued, in the Turkish context, that the state and community lack meaningful intermediary institutions and locations of power to provide a substantial channel of communication. Accordingly, the Turkish State can be defined as 'centrist', 'elitist', and ultimately 'coercive'. However one should not assume that the 'state' has fully succeeded in imposing its own 'identity' and 'vision' upon the 'nation'. The religious revival and Kurdish search for 'self-expression', as well as the growing assertiveness of radical groups are a testimony to the fact that the 'nationalist discourse', with its Turco-centric secularism and pro-western orientation, is being challenged by rival claims and aspirations.

This chapter will proceed with an exposition of the ways in which nationalism has influenced Turkish perceptions of the outside world. However as far as Turkey's long-term foreign policy strategies are concerned, they are largely determined by the ideological dispositions of the ruling elites. The official ideology -in other words, the body of ideas espoused by ruling elites over a long period of time- legitimizes these strategies via nationalist language. In this sense, nation-building is an integral part of Turkey's assessment of its place within the community of nations, and its interpretation of international legal rules. Such an analysis is intended to contribute to an understanding of the meanings of social contexts for the states which are the major participants in international society.

3.9.Turkish Perception of International Society from the Perspective of Nationalist Discourse

It is generally agreed that Turkish foreign policy is primarily oriented towards the western states system. Its ultimate objective is defined as Turkey's full integration with Europe. Indeed Turkey is a member of the OECD (since 1948), the Council of Europe (since 1949), NATO (since 1952), and is an associate member (a candidate for full membership as provided for by an association agreement between the EC and Turkey) of the European Community (since 1963). Meanwhile Turkey's approach towards the non-aligned bloc of countries has been one of indifference, while it remained distant towards the Islamic countries until the mid-1960s. Particularly following its isolation in the UN General Assembly over the Cyprus dispute, Turkey has sought to take a more sympathetic approach towards the non-western world. Nonetheless Turkey still distances itself from Third World attempts towards establishing a new world order. It has however taken some constructive steps towards forging friendly links with the Islamic world, an indication of which is its membership of the Islamic Conference Organization since the end of the 1960s.

Although one might legitimately argue that Turkey has, objectively speaking, more in common with the Third World nations than with the western world, Turkish ruling elites tend to identify with their counterparts in the west. A major contention of this study is that Turkey's ideological disposition towards the western world has to be related to Turkey's historical experience as a nation-state, i.e. Turkey's co-option into western standards of civilisation which was examined in the preceding sections. Given that Kemalist nationalism has permeated the whole fabric of politics, culture and education for the last seventy years, it is not surprising that Turkish ruling elites have been relatively susceptible to western ideas and ideals of liberalism, modernism and secularism. Since this western model is thought to be desirable, forging close links with the western world is believed to facilitate Turkey's transition to a modern and democratic society.

Turkey's perception of itself, as propagated by official ideology, has an important bearing for its apparent lack of interest in the non-western world. Turkish ruling elites and the academic establishment tend to think that Turkey is somehow unique among other developing countries due to its peculiar history and political identity. It is often argued, for instance, that although a developing country in economic terms, Turkey has a profound experience in statehood which sets it apart from other developing countries most of which have only recently gained political independence.

That Turkey cannot properly be categorized as a developing nation, it is argued, is also evidenced by the existence of a western-style liberal democracy in Turkey (230). Besides, it is also suggested that since the Turks used to be the imperial masters themselves, the language of decolonization or anti-imperialist struggle is not relevant to Turkish priorities. The Turks' subjection to foreign occupation was for too short a period to cause bitter feelings against western colonialism. Most importantly, the Turks defeated the enemy. A logical corollary of these propositions is that Turkish ruling elites have had little psychological inhibitions or prejudices towards the west (231).

Turkey's search for identification with the western world has had important repercussions for Turkish foreign policy. The character and range of Turkey's relations with the industrialized countries of Western Europe and the USA are qualitatively different from those with the rest of the world. Turkey's perceived 'high policy' interests -security, political and economic integration- are concentrated in this area. This relationship is both multidimensional and multilateral. 'Multidimensional' because it covers a whole range of intergovernmental activities -political, economic, cultural, military. 'Multilateral' because their relations are conducted as much through international organizations as through bilateral channels. Turkish membership of the EC is perceived as the ultimate step in Turkey's full integration with Europe, and by implication, with the western world.

Turkey's international outlook, then, is marked by first, a tacit acceptance of the dominance of western states and their liberal ideology in the legal regulation and actual conduct of international relations; and secondly, by an often thinly disguised contempt and suspicion of Third World initiatives directed at the enhancement of the Third World's role in the international system and/or concerning demands for a fairer share of world resources.

However the success of these long-term political strategies in gaining the support of mass public opinion must be weighed against the constraints of nation-building. It is known that nation-building is a dynamic process in that socio-economic and political realities constantly change which, in turn, bring about new identifications and loyalties. In the face of such reality, states are tempted to appropriate and manipulate the external environment in order to evoke nation-building. Much of contemporary politics, including those in the developed states, revolve around continuous attempts by states to appropriate 'national identity dynamic'. If the citizens are convinced that the state is there to protect the nation against external threats, besides materially

benefiting them, national identity is likely to be reaffirmed. This, in turn, consolidates the legitimacy of the state (232).

The problematic of nation-building, then, is an important variable of foreign policy decisions in Turkey. If a review of Turkish foreign policy since the 1920s is made from a 'nation-building' perspective, it can be seen that Turkey is a clear-cut example in which a successful war against foreign occupation followed by a large-scale reform process resulted in successful nation-building -of course with the exception of Kurds. This enabled an active and independent foreign policy during Ataturk's presidency (1923-1938). The post-1950s however was marked by an economic policy of *laissez-faire* albeit diluted with etatism. Declining social welfare and increasing class divisions have ever since threatened national unity (233). Moreover, the rise of Kurdish nationalism and Islamic fundamentalism have threatened the ideological and territorial basis of the Turkish state. Many have indeed spoken of the need to create a 'Second Turkish Republic' -less Turco-centric, more decentralized etc. Increasing cleavages within Turkish society have limited the options for an active and independent foreign policy. Today there is little scope within which the nation can be mobilized, except in cases involving external 'enemies'. A case in point is the enmity between Turkey and Greece.

Indeed Turkey's disputes with Greece over the control and the status of the Aegean sea and Cyprus are among the few international problems over which an overwhelming public support exists. The Turkish-Greek hostilities have a long history of their own and are deeply embedded in the consciousness of the people in Turkey. Leaving aside the era preceding the First World War which witnessed the Greek nationalist struggle for independence in the 1820s and various other wars fought between Greece and the Ottoman Empire, it is observed that the emergence of the present day Turkish Republic was attended by a long and exhaustive war between the Turks and the Greeks in the aftermath of the First World War. The resultant hostility was so bitter that Turkey and Greece immediately agreed on an exchange of populations on an exceptionally large scale for fear of further bloodshed. As far as Cyprus is concerned, the mutual prejudices of Turkish and Greek sides are invoked to such an extent that myth and reality are difficult to separate. This study mainly concerns itself with the Turkish vision of the Greeks and of the Cyprus problem -one can imagine that similar stereotypical images and prejudices do also prevail as far as the Greeks' perception of the Turks are concerned-, as has been exposed by at least one Greek scholar (234).

For ordinary Turks, the Cyprus problem is caused by Greeks who want to displace the Turks in Cyprus, as they had tried against the Turks of Anatolia during the bitter war of 1919-1922. Besides many Turks still believe, as Tachau observed during his conversations with various Turks, that "the Greeks still harboured ambitions for the re-establishment of the Eastern Roman Empire with its capital at Constantinople" (235). This may partially explain why the Greek possession of Aegean islands, some of which are situated a few miles off the Turkish coast, is perceived as a strategic threat to Turkish national security. Turks tend to believe that Greece wants to convert the Aegean into a 'Greek lake'. It is frequently asserted that Greece does not hesitate to abuse international law for the purpose of changing the delimitation of the Aegean in its favour. The long history of intense rivalry between the Turks and Greeks has also ensured that the Cyprus and Aegean problems do not merely relate to Turkey's material interests, but to its 'national prestige' too (236). Therefore for the average Turk and the ruling elites alike, the acquisition of yet another island, Cyprus, by Greece would absolutely be intolerable (237). After all, the Turks are convinced that Greece could not have a legitimate claim over Cyprus since "the whole world knew that Cyprus had been part of Turkey for fully three hundred years" (238).

It should not therefore come as a surprise that the attacks on Turkish-Cypriots in the wake of the military coup against President Makarios (July 1974), which led to large-scale atrocities against Turkish villages by Greek militias, were a clear threat to Turkish national identity. Lack of a military response by the Turkish government would have presumably led to its downfall. Indeed it was impossible for the regime in Turkey not to react given the scale of historical animosity between Turkey and Greece. Having successfully engineered a military 'intervention' (or 'occupation') in Cyprus which led to the downfall of the junta regime, the prestige of the Turkish State and army were reinforced in the popular perception. In terms of 'national identity dynamic', observes Bloom, one could say that "with Turkish national identity threatened, the Turkish government replied successfully and appropriated mobilised mass public opinion...The Turkish regime was strengthened" (239).

It is also clear from the preceding argument that despite Turkey's official renunciation of pan-Turkish irredentism, the question of relations between the Turks of Anatolia and Turks outside the borders has remained an important preoccupation of Turkish foreign policy. Not only has Turkey actively been involved in Cyprus where a sizeable number of Turks live, but it has also taken a close interest in the fate of the Turks of Bulgaria and Greece, by virtue of geographical proximity and cultural

affinity. Any threat to their security and ethnic identity is a matter of grave concern for Turkey (240).

Turkey's conception of 'threat' and 'external enemy' as a relevant dimension of nation-building is not only directed at the Greeks or at those who threaten the welfare, identity and security of the Turkish 'nation'. Turkey's heightened sense of security owes much of its *raison d'etre* to strategic considerations. A prominent Turkish scholar of international relations asserts that Turkey's concern with national security has a lot to do with Turkey's long geographical frontiers. Turkey's geopolitical significance dramatically increases when one considers that the Turkish Straits constitute the only outlet to the Mediterranean for countries surrounding the Black Sea (241). By the same token, it is frequently pointed out by official and non-official circles alike, that Turkey is surrounded by many 'unfriendly' nations. Prominent among them was the Soviet Union before its collapse. The Soviet memorandum of 1945 which demanded territorial concessions in eastern Turkey and naval bases in the Turkish Straits in favour of the Soviet Union, has been depicted in foreign policy discourse as one of the primary reasons for Turkish entry into NATO. Now that the Soviet Union does not exist any more, the emphasis appears to be shifting towards Armenia and Georgia -both of which share frontiers with Turkey- in whose name, it is claimed, the aforementioned Soviet demands had in fact been made (242).

There are other perceived 'threats' to Turkey's territorial integrity : it is occasionally asserted that, alongside Greece, Bulgaria still hopes for some territorial gains at the expense of Turkey. It is believed that this is deeply embedded in their (Greeks and Bulgarians) national consciousness, and kept alive through education and cultural policies (243). Turkey's Middle Eastern neighbours are similarly portrayed as major threats to Turkish national security. It is frequently asserted that, given the intensity of rivalries among the Middle East countries, Turkey might be dragged into a war. Furthermore, Syria and Iran are believed to be particularly hostile to Turkey for their own reasons -historical and ideological respectively (244). Syria still regards Hatay, a Turkish province ceded to Turkey in 1938 when Syria was still under the French mandate, as part of Syrian territory. For this purpose, as is widely believed, Syria does not hesitate to collaborate with various groups hostile to Turkey (245). Iran's hostility is perceived to be directed at Turkey's constitutional order. It is frequently asserted that Iran, as well as Saudi Arabia, actively support Islamic fundamentalist groups in Turkey. Meanwhile the Kurdish nationalists rank among those who want to damage Turkey's territorial integrity. Finally, the left-wing radical groups in the country are depicted as a threat to the constitutional order in Turkey (246) -though

to a lesser extent after the demise of the so-called 'communist regimes' in Eastern Europe and the Soviet Union.

In the light of the preceding analysis, it can be argued that nationalist discourse is by nature exclusivist, and constantly in need of reproducing itself, *inter alia*, by exaggerating the dangers posed by 'enemies'. For its part, the media tends to dramatise external events, particularly at times of international conflicts, which are perceived to threaten national security. This is most importantly "due to the fact that national chauvinism is commercially successful" (247). While national identity is a "foreign policy resource", so is foreign policy a "tool for nation-building" (248). This pattern is certainly relevant to the experience of nation-building in Turkey. It is also relevant to an understanding of why Turkey behaves the way it does, and how it interprets international legal rules. However the picture would not be complete without an investigation of how the actual foreign policy decisions are made. In what follows, it will be argued that the restrictive scope of decision-making process in Turkey tends to highlight the defensive/security-oriented aspects of nationalism.

In Turkey -although this is hardly unique- foreign offices and diplomatic services continue to be staffed from a narrow section of the Turkish society. Parliament and public opinion exert only a partial influence on the political process at governmental level. Foreign affairs are still the prerogative of a group of westernized elites who conduct policies in secret (249). A Turkish jurist observes that despite the fact that the 1921, 1924, and 1961 constitutions gave the legislature some important responsibilities, in practice it is the executive who has exercised all the power in foreign policy making. In Turkey the final decision on foreign policy matters rests with the government. The Prime Minister would usually bring an issue to the cabinet after having already arrived at a final decision with the Foreign Minister. The reluctance of the Prime Minister to have a full discussion in the Cabinet meeting of the issues involved arises out of the alleged need for secrecy, and also shows the elitist nature of decision-making in Turkey. Soysal points out that the Prime Minister "would be reluctant to have the decision further debated in the cabinet for fear of leaks and because it could distort the issue" (250). On the other hand, the 1961 Constitution established a new institution, called the National Security Council (NSC), which would have some role to play in foreign policy decision-making. It consists of the President, the Prime Minister, the Chief of the General Staff, certain ministers, and the commanders of the three armed forces. It is noted that their meetings are closed, and their decisions are kept secret. Although on paper their role would be advisory, in reality the National Security Council is one of the most

important foreign policy sources in Turkey today (251). Hence while the key decisions are made without an active participation by the Cabinet, the NSC is effectively involved in the articulation of foreign policy options.

On the other hand, the army, as 'the guardian of the nation', has, with three exceptions, produced all the Presidents of Turkey since the foundation of the Turkish Republic. This has certainly enhanced the role of the military establishment in the selection of priorities, setting up of objectives and methods of implementing foreign policy (252). Since in Turkey it is the military establishment that has dominated the political scene -either directly or indirectly-, 'national interests' have come to be understood predominantly from a military perspective. Accordingly, Turkish foreign policy has generally taken a security-oriented, power-centric, strategic approach to international relations.

Hence although international law operates upon the minds of Turkish statesmen who often present their policy-decisions as "the will of the nation", the mass of private individuals hardly know of their existence. The activities and interests of ordinary individuals are subordinated to a rigid administrative system that claims to advance 'national interests and objectives'.

The arguments presented here suggest that while, on the one hand, Turkish ruling elites have internalised the values and dominant perceptions of their counterparts in the metropoles, they have consistently resorted to a nationalist language as a way, *inter alia,* of mobilizing the 'nation' for the protection of 'national rights'. The nationalist vocabulary with which they speak is based upon the beliefs and values they hold with regard to such matters as Turkish history and traditions, Turkey's ethnic character, its place within the international community, its culture and major institutions etc. These perceived values and beliefs are utilized to reinforce the nation's sense of cohesion and identity. Stavrinides asserts that since national rights and interests are defined in accordance with certain ideological beliefs and values, the language of national rights and interests is characterized by partiality, ambiguity and self-flattery. Therefore, particularly in conflict situations, the area of language is readily susceptible to abuse and manipulation by national propagandists (253).

What is argued here is *not* that the 'threat' is simply imaginary, but that it is frequently subjected to manipulation in the hands of nationalist ruling elites who are anxious to appropriate the 'national identity dynamic'. This tendency is likely to remain

unchanged in the foreseeable future unless perhaps a genuinely multicultural society and its political framework has been established.

3.10.Conclusion

This study, as is hoped, reveals that the leading exponents of political and nationalist theories which anticipated the modern state, ranging from Rousseau and Fichte to Hobbes, in their own ways, perceived the 'nation' as a homogeneous conglomerate of identical individuals. It did not occur to them that some members of the 'nation' might have possessed a distinct culture, language and symbols of identity of their own. This meant in law that individuals had an identity only in so far as this was recognized by the state. These theorists, similarly, treated the state as an immutable reality with a *raison d'etre* of its own. The fact of its existence was sufficient to legitimise its claim to exclusive sovereignty. According to this paradigm, the interaction between the state and the nation was a static one, since it was based on a unilinear notion of history which was devoid of heterogeneity and conflict. Accordingly, then, the nation and the state were perceived as manifestations of one and the same thing with no intermediaries in between.

The influence of such views on the theory of sovereignty has been immense. Indeed the theory concerned itself with power and strategies of domination from the outset. On the other hand, the sovereignty of states became the starting point of positive international law. The latter concerned itself with the 'form' of state competence, and not with its 'substance'. Accordingly, international law confined its role to the delimitation of jurisdictional spaces possessed by states. It has been argued that the state-centric nature of international law still persists, although its rigidity is somewhat loosened by recent legal developments, particularly in the field of human rights and minority rights.

Critical legal scholars, among others, challenge the primacy of the state as the absolute sovereign. Besides, they assert that diversity, and not uniformity, is the common pattern of social and political evolution. Accordingly, they seek to 'liberate' the suppressed identities from the unitary discourse imposed by the domineering state. Minorities, individuals and other social categories, in such a frame of analysis, become active participants in the complex network of local and global politics. Critical legal scholars also dispute the existence of international law as an *objective* reality. They argue, particularly those belonging to the postmodernist school of

thought, that international law is marked by ambiguity and partiality, since it is not a complete legal system with clear conceptual and normative premises. In the absence of a supranational system of law and a universally-recognized world court, individual states themselves define law and legal facts in the light of their own view of themselves and of their historic rights. Therefore critical legal scholars are not content with the formalistic overtones of conventional legal analysis and methods of conflict resolution; instead, they seek to relate a given legal discourse into the proper cultural and historical context in which it takes place. For critical lawyers, then, an hermeneutic frame of analysis becomes the key for discerning the dynamics of change in international law.

Therefore, the relative and subjective nature of inter-state relations must be exposed if international law is to free itself from the limitations posed by nationalist discourse. This requires that nationalism not be ignored by simply labelling it as an 'artificial construct' or, as most international jurists do, treating it as non-existent. The ideals of the 'nation', its specific political and legal culture, and its conception of itself and of others play a vital role in the actual behaviour of states. Indeed many inter-state disputes are rooted or implicated in national antagonisms and/or rival nationalist ideologies. However this is not to deny, as has been seen in the Turkish case, that the mass of people are rarely involved in international conflicts which are rather considered as matters for the ruling elites of conflicting states.

However, while broadly in agreement with the postmodernist critique of international law, this study does not dispute the significance of international law in the orderly conduct of international relations. States take international law more seriously than the postmodernists suggest. For example, excepting issues which involve their perceived vital interests, such as national security, national unity or territorial claims, states tend to act in conformity with international law. Even in matters which involve their perceived vital interests, states seek to justify their position in accordance with international law. Hence international legal norms and institutions have become vital components of international life. The fact that states have a particular vision of international society deriving from their peculiar experience, does not necessarily preclude the possibility of universal norms and values. Rather what it suggests is that the rules of international law become meaningful only in the context of the concrete circumstances in which they are addressed. Returning to the possibility of universality, it may be argued that one of the principal functions of international law is to provide a common language in which states exchange ideas and discuss their differences. Such dialogue may gradually produce consent, and influence the future

development of international law. Arguably such consent does exist with regard to matters such as the protection of human rights and the prohibition of aggression, at least in terms of their desirability, in spite of a plurality of concerns and priorities that inform different traditions and legal systems.

The effectiveness of international law largely depends on its ability to accomodate the changing realities of international life. This challenge is most acutely posed in relation to the subjects of international law. Although their status as 'law' is still disputed, there is sufficient evidence to suggest that the adoption of a range of international treaties and UN resolutions on the rights of individuals, minorities, and various other human categories, some of which have been examined in this chapter, has, to say the least, broadened the thematic and territorial scope of international law, while challenging the exclusive monopoly enjoyed by states over their 'subjects'.

It is the task of the international lawyer to take these developments on board. Indeed international can no longer be perceived simply as a system of law that governs relations between 'states'. It has to be recognized that peoples, ethnic and religious minorities, and, in some cases, individuals are perfectly entitled to be subjects of international law. Therefore international documents dealing with self-determination, human rights and minority rights bear great significance, and must be granted more effective status, particularly through more effective implementation and enforcement mechanisms. The next chapter focuses on the state of international relations and international legal disciplines in Turkey. Some major questions will be raised in this context : Have textbooks on international relations, for instance, given the weight that actors and processes going beyond inter-state relations deserve? Has the Turkish school of international law come to grips with contemporary challenges to classical international law? Are there any links between the official ideology and the doctrinal attachments of international jurists in Turkey? These themes will be explored through an analysis of Turkish textbooks of international relations and public international law.

NOTES TO CHAPTER 3

1.Anthony Carty, *The Decay of International Law?* (Manchester, Manchester University Press, 1986), p.2.

2.Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933, *League of Nations Treaty Series*, vol.19, p.165. This treaty later became a frame of reference in the determination of the necessary requisites for statehood.

3.Antonio Cassese, *International Law in a Divided World* (London, Oxford University Press, 1986), p.27.

4.Vera Gowland-Debbas, "Collective Responses to the Unilateral Declarations of Independence of Southern Rhodesia and Palestine : An Application of the Legitimizing Function of the United Nations", *The British Yearbook of International Law,* Vol.61, 1991, 135-153, pp.143-145.

5.Cassese, *op.cit.*, p.134.

6.See for instance the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. UN General Assembly Resolution 2625 (XXV), October 24, 1970, *Yearbook of the United Nations,* 1970, 788-792. See also International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights. Both were adopted on 16 December 1966 by the UN General Assembly Resolution 2200 A(XXI), *Yearbook of the United Nations,* 1966, 419-432.

7.The UN Charter itself sanctifies the sovereignty of states by, *inter alia*, prohibiting outside interference into the domestic affairs of Member States as embodied in Article 2/7 and in some other provisions. Virtually all the major international instruments which speak of self-determination adopted since then have reaffirmed the principle of non-interference.

8.James Crawford, "The Criteria for Statehood in International Law", *The British Yearbook of International Law,* Vol.48, 1976-77, 93-182, p.166.

9.Prominent among these international instruments is the 1966 Covenant on Civil and Political Rights which guarantees the cultural, religious and linguistic rights of minorities under Article 27.

10.This is also true of the proposed UN General Assembly declaration on the legal protection of minorities which is currently being discussed by the Working Group of the Human Rights Commission. See Bokatola Isse Omanga, "The Draft Declaration of the United Nations on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities".*The Review, International Commission of Jurists*, No.46, 1991, 33-41.

11.Richard Kearney, "Postmodernity, Nationalism and Ireland", *History of European Ideas*, Vol.16, No.1-3, January 1993, 147-155, pp.152-153.

12.See, for instance, Tarik Zafer Tunaya, *Devrim Hareketleri Icinde Ataturk ve Ataturkculuk*, second edition, (Istanbul, Turhan Kitabevi, 1981); Bernard Lewis, *The Emergence of Modern Turkey*, (London/New York/Toronto; Oxford University Press, 1961); Hikmet Tanyu, *Ataturk ve Turk Milliyetciligi*, (Ankara, Orkun Yayinevi, 1969); Suna Kili, *Turk Devrim Tarihi*, (Istanbul, Bogazici Universitesi Yayini, 1980); Niyazi Berkes, *Turkish Nationalism and Western Civilisation : Selected Essays of Ziya Gokalp*, (New York, Colombia University Press, 1959).

13.See, for instance, *Olaylarla Turk Dis Politikasi*, Seventh Edition, 2 volumes, Ankara, Alkim Kitabevi Yayinlari, 1989; Fahir Armaoglu, *20. Yuzyil Siyasi Tarihi*, 2 Volumes, Ankara, Turkiye Is Bankasi Kultur Yayinlari, 1991; Rifat Ucarol, *Siyasi Tarih*, Istanbul, Filiz Kitabevi, 1985; Duygu Sezer, "Turkish Foreign Policy in the Year 2000", in *Turkey in the Year 2000*, Ankara, Turkish Political Science Association, 1989, 63-117; Haluk Ulman, "Turk Dis Politikasina Yon Veren Etkenler (1923-1968)", *Ankara Universitesi Siyasal Bilgiler Fakultesi Dergisi*, Vol.23, No. 3, September 1968, 241-273.

14.M. Koskenniemi, *From Apology to Utopia. The Structure of International Legal Argument* (Helsinki, Lakimiesliiton Kustannus, 1989), p.203.

15.*Ibid.*, pp.203-204.

16.*Ibid.*, pp.221-222.

17.Ingrid Detter de Lupis, *International Law and the Independent State,* Second edition, (Aldershot, Gower Publishing Company, 1987), pp.3-4.

18.Carty, *op.cit.*, 1986, p.47.

19.*Ibid.*, p.5.

20.Eugene Weber, *Peasants into Frenchmen* (London, Chatto & Windus, 1977), pp.98-100.

21.Jean-Jacques Rousseau, *The Social Contract* (London, Penguin Books, 1968), pp.59-60.

22.*Ibid.*, p.61.

23.*Id.*

24.*Ibid.*, p.76.

25.*Ibid.*, p.99.

26.*Ibid.*, p.149.

27.*Ibid.*, p.153.

28.*Ibid.*, pp.153-154.

29.*Ibid.*, p.154.

30.Elie Kedourie, *Nationalism,* third edition, (London, Hutchinson, 1966), pp.38-40.

31.*Ibid.*, pp.47-48.

32.*Ibid.*, pp.58-59.

33.*Ibid.*, pp.67-68.

34.Thomas Hobbes, *Leviathan*, Edited by Richard Tuck, (Cambridge, Cambridge University Press, 1991). See particularly Chapters 18, 21, 23, and 30 which deal with sovereignty, its institutional representation and the subjects' place in this scheme.

35.Michel Foucault, *Power and Knowledge*, edited by Colin Gordon, (Hertfordshire, Harvester Wheatsheaf, 1980), p.121.

36.*Ibid.*, p.95.

37.*Ibid.*, p.105.

38.*Ibid.*, p.140.

39.Carl Schmitt, *The Crisis of Parliamentary Democracy*, translated by Ellen Kennedy (Massachusetts and London, The MIT Press, 1985), p.14.

40.*Ibid.*, pp.28-29.

41.*Id.*

42.*Ibid.*, Introduction by the translator.

43.Foucault, *op.cit.*, pp.78-108.

44.Crawford, "The Rights of Peoples : Some Conclusions", in Crawford (Ed.), *The Rights of Peoples*, (Oxford, Clarendon Press, 1992), 159-175, pp.164-165. For a fuller discussion of the principle of self-determination, see R. J. Johnston, David Knight, and Eleonore Kofman, *Nationalism, Self-Determination, and Political Geography*, (London, Croom Helm, 1988); Martti Koskenniemi, "National Self-determination Today: Problems of Legal Theory and Practice", *ICLQ*, Vol.43, April 1994, 241-269; Leng Lim Chin, *The Problem of the Definition of the 'self' in Self-Determination in Public International Law towards a Human Rights Test in Law from a Legal-Conceptual Perspective*, (Nottingham, University of Nottingham, 1993); H. Gros Espiell, *The Right to Self-determination: Implementation of United Nations Resolutions* (United Nations, New York, Doc E/EN.4/Sub.2/405/Rev 1, 1980)

45.*Ibid.*, pp.168-175.

46.David Makinson, "Rights of Peoples : A Logician's Point of View", in Crawford, *op.cit.*, 69-92, p.82.

47.Michla Pomerance, *Self-Determination in Law and Practice* (The Hague/Boston/London, Martinus Nijhoff Publishers, 1982), p.68.

48.*Ibid.*, p.37.

49.*Ibid.*, pp.38-41.

50.*Ibid.*, pp.40-42.

51.Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960. United Nations General Assembly Resolution 1514 (XV), *Yearbook of the United Nations*, 1960, 49-50.

52.General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States, *op.cit.*, in note 6.

53.Pomerance, *op.cit.*, pp.46-47.

54.*Ibid.*, pp.63-67.

55.Crawford, "Outside the Colonial Context", in W. J. Allan Macartney (Ed.), *Self-determination in the Commonwealth*, (Aberdeen, Aberdeen University Press, 1988), 1-22, p.2.

56.Hanna Bokor-Szego, *New States and International Law* (Budapest, Akademiai Kiado, 1970), pp.33-34, in Pomerance, *op.cit.*, p.102.

57.Belgian Linguistics case, European Court of Human Rights Series A No. 6 (1968) in Ian Brownlie, "The Rights of Peoples in Modern International Law", in Crawford, *op.cit.*, 1-16, pp.2-3.

58.*Ibid.*, p.4.

59.International Covenants of 1966, *op.cit.*, 423-432.

60.Crawford, *op.cit.*, 1988, pp.13-15.

61.Pomerance, *op.cit.*, p.104; Garth Nettheim, "'Peoples' and 'Populations' : Indigeous Peoples and the Rights of Peoples", in Crawford, *op.cit.*, 1992, 107-126, pp.119-120; David Makinson, *op.cit.*, p.92; Brownlie, *op.cit.*, 1992, p.16. Brownlie does not however exclude the possibility of secession in certain cases. As a matter of principle, the international community has, in Brownlie's view, also been prepared to recognize new states.

62.Rodolfo Stavenhagen, *The Ethnic Question* (Tokyo, The United Nations University, 1990), pp.7-8.

63.*Ibid.*, p.4.

64.Alan Hunt, "The Critique of Law : What is 'Critical' about Critical Legal Theory?", *Journal of Law and Society* Vol.14, No.1, Spring 1987, 5-19, p.7.

65."Introduction" to Ian Grigg-Spall & Paddy Ireland (eds.) *The Critical Lawyers' Handbook,* (London, Pluto Press, 1992).

66.Foucault, *op.cit.*, p.131. For a fuller discussion of power, see Steven Lukes, *Power*, (Oxford, Blackwell, 1986); Hubert Morse Blalock, *Power and Conflict : Toward a General Theory*, (London, Sage Publications, 1989); Richard Fardon, *Power and Knowledge : Anthropological and Sociological Approaches*, (Edinburgh, Scottish Academic Press, 1985); Dennis H. Wrong, *Power*, (Oxford, Blackwell, 1979).

67.*Ibid.*, pp.131-132.

68.Alan Thomson, "Foreword : Critical Approaches to Law : Who Needs Legal Theory?", in Grigg-Spall & Paddy Ireland, *op.cit.*, 2-10, p.3.

69.Robert Fine & Sol Picciotto, "On Marxist Critiques of Law", in *ibid.*, 16-22.

70.Costas Douzinas & Ronnie Warrington, "The (Im)possible Pedagogical Politics of (the Law of) Postmodernism", in *ibid.*, 30-39, pp.31-36.

71.Thomson, "Foreword : ...", *op.cit.*, p.9.

72.Koskenniemi, *op.cit.*, Introduction.

73.Anthony Carty, "Critical International Law : Recent Trends in the Theory of International Law", *European Journal of International Law,* Vol.2, No.1, 1991, 66-95, p.67.

74.*Ibid.*, pp.67-68.

75.*Ibid.*, p.80.

76.*Ibid.*, p.81.

77.Carty, *op.cit.*, 1986, pp.30-36.

78.*Ibid.*, pp.111-113.

79.Carty, *op.cit.*, 1991, p.94.

80.*Id.*

81.*Id.*

82.Zenon Stavrinides, *The Cyprus Conflict-National Identity and Statehood* (Nicosia, Loris Stavrinides Press, 1975), p.6.

83.Carty, *op.cit.*, 1991, p.66.

84.*Ibid.*, p.93.

85.Kearney, *op.cit.*, p.149.

86.Bernard Lewis, *The Middle East and the West* (London, Weidenfeld and Nicolson, 1964), p.74.

87.Ernest Gellner, *Nations and Nationalism* (Oxford, Blackwell, 1988), Chapters 3 and 4, pp.19-52.

88.Karl Deutsch, *Nationalism and Social Communication : an inquiry into the foundations of nationality*, Second edition (Cambridge, The M.I.T. Press, 1966).

89.John Breuilly, *Nationalism and the State* (Manchester, Manchester University Press, 1985).

90.Elie Kedourie "Introduction" to *Nationalism in Asia and Africa* (London, Weidenfeld and Nicolson, 1971), 1-152.

91.Anthony D. Smith, *National Identity* (London, Penguin Books, 1991), pp.71-72.

92.Benedict Anderson, *Imagined Communities*, Revised Edition (London/New York, Verso, 1991), p.11.

93.*Ibid.*, p.22.

94.*Ibid.*, pp.35-36.

95.*Ibid.*

96.Eugene Kamenka, "Human Rights : Peoples' Rights", in Crawford, *op.cit.*, 127-139, pp.133-134.

97.Anderson is an exception to this trend. He argues that historically the first real models of national statehood came about not in Europe, as expounded by the theorists of nationalism, but in the new American states of the later eighteenth and early nineteenth centuries. The disappearance of old certainties and loyalties came about first, in western Europe, later elsewhere under the impact of certain economic, social and scientific developments. This whole new episode was precipitated by print-capitalism. (Anderson, *op.cit.*, p.36) However, argues Anderson, this explanatory framework falls short of anticipating the emergence of political communities in the form of nation-states. As far as the Spanish Americas are concerned, the tightening of Madrid's control over the colonies and the spread of Enlightenment ideals, such as liberalism, in the late eighteenth century were crucial in the awakening of national consciousness among the colonies. The fact that the Spanish colonies had been self-contained adminstrative units since the sixteenth century was also central in the forging of national loyalties. The local inhabitants of Spanish America were generally barred from holding high offices in the Spanish empire which further fuelled the

resentment felt by the educated few towards their imperial overlords. Finally, here too the arrival of print-capitalism was of prime significance. (*Ibid.*, pp.47-65) These factors similarly account for the declaration of independence by the Thirteen Colonies in the north which later became the United States. Here there were the added factors of a tightly linked community and trade zone, (*Ibid.*, pp.63-64) as well as of the refusal of the Colonies to accept taxation without representation in the British parliament.

98.Smith, *op.cit.*, 1991, p.61.

99.*Ibid,*, p.9.

100.*Ibid.*, pp.10-11.

101.Lewis, *op.cit.*, 1964, pp.70-92.

102.Smith, *op.cit.*, 1991, pp.12-13.

103.Pierre Birnbaum, "Nationalism: a comparison between France and Germany", *International Social Science Journal*, Vol.133, August 1992, 375-384, pp.378-379.

104.E. J. Hobsbawm, *Nations and Nationalism since 1780* (Cambridge, Cambridge University Press, 1991), pp.103-104.

105.Smith, *op.cit.*, 1991, p.13.

106.*Id.*

107.Weber, *op.cit.*, p.303.

108.Smith, *op.cit.*, 1991, p.55.

109.*Ibid.*, p.74.

110.The term belongs to Anderson, in *op.cit.*

111.*Ibid.*, pp.113-140.

112.*Ibid.*, pp.109-110.

113.Smith, *op.cit.*, 1991, p.15.

114.Breuilly, *op.cit.*, p.30.

115.*Id.*, p.30.

116.Kearney, *op.cit.*, p.150.

117.Anthony Smith, *Theories of Nationalism,* second edition (London, Duckworth, 1983), p.14.

118.Ali Kazancigil, "Paradigms of modern state formation in the periphery", in Ali Kazancigil (ed.), *The State in Global Perspective,* Paris, UNESCO, 1986, 119-142, p.138.

119.Kearney, *op.cit.*, pp.152-53.

120.Smith, *op.cit.*, 1991, p.21.

121.Hobsbawm, *op.cit.*, pp.63-64.

122.Smith, *op.cit.*, 1991, pp.20-21.

123.Walker Connor, "The Politics of Ethnonationalism", *Journal of International Affairs*, Vol.27, no.1, 1973, 1-21, pp.3-4.

124.Smith, *op.cit.*, 1991, p.27.

125.*Ibid.*, p.40.

126.Gellner, *op.cit.*, p.6.

127.Birnbaum, *op.cit.*, p.376.

128.Connor, "A Nation is a nation, is a state, is an ethnic group, is a ...", *Ethnic and Racial Studies,* Vol.1, No.4, October 1978, 377-400, p.382.

129.Colin H. Williams, "Minority Nationalist Historiography", in R.J. Johnston, David B. Knight & Eleonore Kofman (eds.), *Nationalism, Self-determination and Political Geography* (London/New York/Sydney, Croom Helm, 1988), 203-221, pp.203-204.

130.Elie Kedourie (ed.), *op.cit.*, 1971, pp.131-132.

131.Weber, *op.cit.*, pp.493-494.

132.Anderson, *op.cit.*, pp.141-142.

133.Weber, *op.cit.*, p.112.

134.Smith, *op.cit.*, 1991, p.16.

135.*Ibid.*, pp.16-17.

136.Hobsbawm, *op.cit.*, p.169.

137.*Ibid.*, pp.142-143.

138.Weber, *op.cit.*, p.113.

139.Ulf Hannerz, "Scenarios for Peripheral Cultures", in Anthony D. King (ed.), *Culture, Globalization and the World-System* (London, Macmillan, 1991), 107-128, p.119.

140.*Ibid.*, pp.118-119.

141.William Bloom, *Personal Identity, National Identity and International Relations* (Cambridge, Cambridge University Press, 1990), p.111. For a fuller discussion of foreign policy process, see William Wallace, *The Foreign Policy Process in Britain*, (London, Royal Institute of International Affairs, 1976); Emil Joseph Kirchner, *Decision-Making in the European Community: The Council Presidency and European Integration*, (Manchester, Manchester University Press, 1992); Christopher Hill, *Two Worlds of International Relations Academics, Practioners and the Trade in Ideas*, (New York, Routledge, 1994); Steve Smith, *Foreign Policy Implementation*, (London, Allen & Unwin, 1985)

142.*Ibid.*, p.52.

143.*Ibid.*, p.79.

144.*Ibid.*, pp.3-4. Although nationalist doctrine has been thoroughly investigated with full blooded conceptual and theoretical formulations, they often relate to the *process* of nation-building, not to the international relations of states. In this sense, Bloom's analysis has additional value.

145.*Ibid.*, pp.1-2.

146.*Ibid.*, p.81.

147.*Ibid.*, p.26.

148.*Ibid.*, p.63.

149.*Ibid.*, p.101.

150.*Ibid.*, p.102.

151.*Ibid.*, p.81. The so-called 'liberal' -Smith's 'civic' nationalism- nationalism can also be ethnocentric, particularly at times of inter-state conflicts. See for instance Anthony Barnett, *Iron Britannia*, (London, Allison and Busby, 1982), where he speaks about the rise of English nationalism during the Falklands war.

152.Bloom, *ibid.*, p.68.

153.*Ibid.*, p.1.

154.*Ibid.*, p.84.

155.*Id.*, p.84.

156.*Ibid.*, p.85.

157.*Ibid.*, p.116.

158.*Ibid.*, pp.103-104.

159.*Ibid.*, p.22.

160.Bernard Lewis, *op.cit.*, 1961, p.347.

161.*Ibid.*, pp.327-355.

162.Tekin Alp, "The Restoration of Turkish History", in Kedourie, *op.cit.*, 1971, 207-224, p.210.

163.Niyazi Berkes, *op.cit.*, Translator's introduction.

164.*Ibid.*, p.80.

165.*Ibid.*, pp.77-78.

166.*Ibid.*, pp.80-81.

167.*Ibid.*, p.132.

168.*Ibid.*, p.133.

169.Mahmut Bali Aykan, *Ideology and National Interest in Turkish Foreign Policy towards the Muslim World*, (Unpublished PhD dissertation, University of Virginia, 1988), pp.20-21.

170.Lewis, *op.cit.*, 1961, pp.250-269.

171.Ozay Mehmet, *Islamic Identity and Development* (London-New York, Routledge, 1990), pp.116-128.

172.Gerrit W. Gong, *The Standard of 'civilization' in international society* (Oxford, Clarendon Press, 1984), p.239.

173.Anthony Pagden, *The Fall of Natural Man* (Cambridge, Cambridge University Press, 1982).

174.Peter Fitzpatrick, *The Mythology of Modern Law* (London and New York, Routledge, 1992), pp.108-111.

175.Gong, *op.cit.*

176.Bernard Lewis, *The Middle East and the West* (London, Weidenfeld and Nicolson, 1964), p.32.

177.Gong, *op.cit.*, p.108.

178.*Ibid.*, pp.108-109.

179.*Ibid.*, p.109.

180.Lewis, *op.cit.*, 1961, pp.94-95.

181.*Ibid.*, pp.104-114.

182.Gong, *op.cit.*, p.112.

183.See for instance Edward Said, *Orientalism* (New York, Pantheon Books, 1978) for a historical review of the process in which the East, in particular the Islamic world, came to be appropriated and essentialized by the western disciplinary tradition called 'Orientalism'. Said also demonstrates the links between colonialism and western representations of the Orient.

184.David Kushner, *The Rise of Turkish Nationalism 1876-1908* (London, Frank Cass, 1977), pp.81-89.

185.Smith, *op.cit.*, 1991, p.104.

186.Sina Aksin, "Turkish Nationalism Today", *The Turkish Yearbook of International Relations*, Vol.16, 1976, 18-32, p.23.

187.Orhan Turkdogan, *Kemalist modelde fert ve devlet iliskileri*, second edition (Istanbul, Istanbul Kitabevi, 1982), p.115.

188.Baskin Oran, *Ataturk Milliyetciligi* second edition (Ankara, Bilgi Yayinevi, 1990), pp.254-260.

189.Arnold J. Toynbee & Kenneth P. Kirkwood, *Turkey* (London, Ernest Benn Limited, 1926), pp.3-4.

190.Serif Mardin, "Culture and Religion towards the Year 2000", in *Turkey in the Year 2000* (Ankara, Sevinc Matbaasi, 1989), 165-185, pp.166-167.

191.Andrew Finkel & Nukhet Sirman, "Introduction" to *Turkish State, Turkish Society* (edited by Finkel & Sirman) (London and New York, Routledge, 1990), 1-20, p.5.

192.Ali Kazancigil, "The Ottoman-Turkish State and Kemalism", in *Ataturk : Founder of a Modern State* (edited by Kazancigil & Ozbudun), (London, C. Hurst & Company, 1981), 37-56, pp.46-48.

193.Ali Kazancigil, "Turkiye'de Modern Devletin Olusumu ve Kemalizm", in *Turk Siyasal Hayatinin Gelisimi* (edited by Ersin Kalaycioglu & Ali Yasar Saribay), (Istanbul, Beta, 1986), 171-188, p.182.

194.Serif Mardin, "Youth and Violence in Turkey", *European Journal of Sociology*, Vol.19, 1978, 229-254, pp.236-237.

195.*Ibid.*, p.237.

196.Andrew Mango, *Turkey : A Delicately Poised Ally* (London, Sage Publications, 1975), p.12.

197.*Id.*

198.Lewis, *op.cit.*, 1961, pp.286-87.

199.M. Marion Mitchell, "Emile Durkheim and the Philosophy of Nationalism", *Political Science Quarterly*, Vol.46, 1931, 87-106, pp.103-104.

200.Baskin Oran, *op.cit.*, pp.84-87.

201.*Id.*

202.James Anderson, "Nationalist Ideology and Territory", in R.J. Johnston et al (eds.), *op.cit.*, 18-39, p.21.

203.Hobsbawm, *op.cit.*, p.12.

204.Metin Heper, "Turkiye'de Islam, Siyasal Sistem ve Toplum - Orta Dogu'daki Bazi Ulkelerle Bir Karsilastirma", in Kalaycioglu & Saribay (Eds.), *op.cit.*, 369-387, p.377.

205.Breuilly, *op.cit.*, pp.212-213.

206.*Ibid.*, pp.214-215.

207.Nukhet Sirman, "State, Village and Gender in Western Turkey", in Finkel & Sirman, *op.cit.*, 21-51, p.33.

208.In addition to the Kurds as the largest minority (estimated between ten to twelve millions), there are other smaller minorities like Lazes, Circassians, Arabs, Georgians, Greeks, Armenians, Jews and others.

209.Ayse Neviye Caglar, "The Greywolves as Metaphor", in Finkel & Sirman, *op.cit.*, 79-101, pp.96-97.

210.*Ibid.*, p.97.

211.Mango, *op.cit.*, p.9.

212.Cigdem Kagitcibasi, "Social Norms and Authoritarianism : A Turkish-American Comparision", *Journal of Personality and Social Psychology*, Vol.16, 444-451.

213.Nur Yalman, "Islamic reform and the mystic tradition in eastern Turkey", *Archives Europeenes de Sociologie*, Vol.10, 1969, 41-60, p.59.

214.Lewis, *op.cit.*, 1961, pp.350-351.

215.Philip Robins, *Turkey and the Middle East* (London, Pinter Publishers, 1991), p.4.

216.Yalman, *op.cit.*, p.60.

217.Rusen Keles, "Urban Turkey in the Year 2000", in *Turkey in the Year 2000, op.cit.*, 201-226, p.216.

218.Serif Mardin, *op.cit.*, 1978, p.249.

219.Ilter Turan, "Turkey and the EC : Toward the Year 2000", in *Turkey in the Year 2000, op.cit.*, 33-57, p.55.

220.Metin Heper, "Ataturk'te Devlet Dusuncesi", in Kalaycioglu & Saribay, *op.cit.*, 223-252, pp.226-27.

221.*Ibid.*, p.150.

222.*Ibid.*, p.151.

223.Metin Heper, "Turkiye'de Devlet, Demokrasi Gelenegi ve Silahli Kuvvetler", in *Turkiye'nin Savunmasi* (Ankara, Dis Politika Enstitusu, 1987), 144-169, pp.152-153.

224.Kazancigil, *op.cit.*, 1981, p.52.

225.Bulent Daver, in *Milli Egemenlik Sempozyumu*, Ankara, 24-25 April 1985 (Ankara, T.B.M.M. Basimevi), pp.12-19.

226.*Ibid.*, p.26.

227.Heper, *op.cit.*, 1987, pp.164-169.

228.Turkdogan, *op.cit.*, pp.56-64.

229.Hamit Bozarslan, "Political aspects of the Kurdish problem in contemporary Turkey", in Philip G. Kreyenbroek & Stefan Sperk (eds.), *The Kurds* (London and New York, Routledge, 1992), 95-114, p.113.

230.Tekin Akillioglu, "Temel Haklarin Gelismesi Uzerine Bazi Dusunceler", *A.U.S.B.F. Dergisi*, Vol.44, January-June 1989, Nos.1-2, 161-194, pp.191-92.

231.Oran, *op.cit.*, pp.84-86.

232.Bloom, *op.cit.*, pp.54-75.

233.Mehmet, *op.cit.*, pp.134-149.

234.Stavrinides, *op.cit.*, pp.3-6.

235.Frank Tachau, "The Face of Turkish Nationalism as Reflected in the Cyprus Dispute", *Middle East Journal*, Vol.13, 1959, 262-272, p.267.

236.Seyfi Tashan, "Turkiye'nin Tehdit Algilamalari", in *Turkiye'nin Savunmasi* (Ankara, Dis Politika Enstitusu, 1987), 32-40, pp.35-36.

237.Ucarol, *op.cit.*, p.560.

238.Tachau, *op.cit.*, p.268.

239.Bloom, *op,cit.*, pp.97-98.

240.Tashan, *op.cit.*, pp.34-35.

241.Mehmet Gonlubol, "A Short Appraisal of Foreign Policy of the Turkish Republic", *Milletlerarasi Munasebetler Turk Yilligi*, Vol.14, 1974, 1-19, pp.12-13.

242.Tashan, *op.cit.*, pp.32-33. Representation of the outside world, and in particular, the neighbouring nations, as a 'threat' to Turkish national interests and security, is frequently encountered in Turkish foreign policy literature. One of such studies depicts the whole world, excepting countries which are far removed from Turkey's geographical location, as a constant threat to Turkey : Muharrem Ergin, *Turkiye'nin Bugunku Meseleleri*, fourth edition (Ankara, Turk Kulturunu Arastirma Enstitusu, 1988).

243.*Id.*, (Tashan)

244.*Ibid.*, pp.38-39.

245.*Ibid.*, pp.32-33.

246.*Ibid.*, pp.32-34.

247.Bloom, *op.cit.*, p.86.

248.*Ibid.*, p.89.

249.A graphic illustration of the cliquish nature of Turkish foreign policy can be found in, Mehmet Ali Birand, *Turkiye'nin Ortak Pazar Macerasi,* third edition (Istanbul, Milliyet Yayinlari, 1987).

250.Orhan Soysal, *An Analysis of the influences of Turkey's Alignment with the West and of the Arab-Israeli Conflict upon Turkish-Israeli and Turkish-Arab Relations* (Princeton University, unpublished PhD dissertation, 1983), p.9.

251.Gonlubol, *op.cit.*, p.16.

252.Soysal, *op.cit.*, pp.9-10.

253.Stavrinides, *op.cit.*, pp.3-6.

CHAPTER 4

AN ANALYSIS OF FOREIGN POLICY AND INTERNATIONAL LAW SCHOLARSHIP IN TURKEY

This chapter is an attempt to explore the role played by the Turkish academic establishment vis-à-vis the prevailing discourse relating to Turkey's interaction with international society. As has been argued in the preceding chapters, the legal behaviour of states cannot simply be explained in terms of their reaction to the external environment. Instead, their behaviour must, with greater justification, be related to the internal factors which prompt states to adopt a particular approach with regard to various rules and principles of international law. It has been argued that the individual nation-state, on the basis of which international frontiers are presently demarcated, constitutes an independent centre of political and legal culture. Chapter 3 was an attempt, *inter alia,* to expound and explain the ideological and normative foundations of Turkish nationalism and its impact on Turkey's attitude towards international society. Indeed the 'nationalist discourse' is among the primary instruments by which the state, with its legislature, executive, judiciary and army, seeks to impose its own projection of the outside world on society. However the state is not the sole institution by which the society is presented with a particular image of the outside world and the 'nation's' peculiar place therein. Among these institutions are the media and the educational establishment as nation-wide transmitters of 'knowledge' and imagery. Within the specific confines of this thesis, it is the academic profession -those involved in the teaching of Turkish foreign policy and international law- which constitutes the next subject of the conceptual analyses pursued here. Given that a primary *raison d'être* of this study is to make a critique of Turkish conceptions and practices of international law, a far greater proportion of this chapter is devoted to an analysis of major textbooks of international law written by Turkish scholars. The shorter section, which follows next, reviews some of the textbooks relating to Turkish foreign policy, and seeks to find out their impact on Turkish perception of international society. After having reviewed the Turkish 'school' of international law and relations, the analyses made in the present chapter will be related to the fundamental arguments made previously.

4.1.A Brief Survey of the Literature on Turkish Foreign Policy

This section attempts to explore a part of the literature relating to Turkish foreign policy. Those which have been selected for review are among the primary materials used in the international relations departments of Turkish universities. The few works examined here should not be seen as merely intellectual enterprises, but also as a relevant dimension of the discourse relating to the Turkish image of international society.

To start with, a general feature of studies on Turkish foreign policy is their exclusive focus on inter-state relations. International actors, other than states, are treated marginally. These studies draw heavily on Turkey's diplomatic treaties, its military and economic ties , as well as on crisis situations. In this analytical framework, 'high politics' are deemed to be relevant as opposed to 'low politics'. Turkey is treated as a junior partner in the international power game. Turkish scholars of international relations, therefore, belong to the realistic school of thought with their emphasis on 'state', 'power politics', and 'confrontation'. For this 'power paradigm', as observed by Korany :

> "...questions of interstate conflict and 'national security' were 'high' on the agenda, whereas issues of culture, economy and even society were very 'low' and almost fell outside the paradigm's focus" (1).

This is equally true of the Turkish 'school' of international relations-as well as of those conducted by western, in particular, American, scholars on Turkey -with the exception that since the oil 'crisis' in 1973, Turkish scholars of international relations have increasingly focused on economic issues too. It is argued that today the state-centric, problem-solving pragmatism of 'cold-war' studies on Turkish foreign policy still predominate in the discipline.

To start with, in *Olaylarla Turk Dis Politikasi* (2) (Turkish Foreign Policy by Events), which is a collective study of some prominent academics, the authors pay almost no attention to Turkey's relations with international organizations. The book is merely a chronology of events which are relevant to Turkey's security and economic prospects. To cite some of the headings may make the point clearer : "Soviet threat in the immediate aftermath of the Second World War", "Truman doctrine and Marshall Plan which secured Turkish sovereignty against Soviet

aggression", "Balkan Pact and Baghdad Pact" -military pacts, "Cold War and Turkey", "Suez Crisis and Turkey", "Cyprus crisis", "Greco-Turkish disputes", "The plight of Turkish minority in Bulgaria", and so forth. Evidently, the main focus of the book is the confrontational politics of the Cold War era of which Turkey was a part. The authors treat foreign policy as a matter of static interaction between states without considering the contextual dimensions of their behaviour. This power-centric analytical attitude, moreover, assumes that states interact with international society *solely* to maximize their national interests. Finally, the book deals with the general evolution of international affairs in the twentieth century in so far as this has *direct* and *immediate* bearing on Turkish foreign policy.

An article written by Duygu Sezer, a Turkish academic of international relations, entitled *"Turkish Foreign Policy in the Year 2000"* (3), is equally caught in the rigidity of a state-centric approach in spite of its detailed analysis. This article was prepared for a conference in 1987. The major concern of this paper is Turkey's diplomatic relations with other countries, although subsections include Turkey's relations with NATO and the EC -given that Turkey has been a member of NATO since 1952, and an associate member of the EC and a candidate for full membership in the future-. Here, too, power politics is a dominant frame of focus which permeates the whole article. In her attempt to account for the external factors in the formulation and conduct of Turkish foreign policy, the author draws on the following : Iran-Iraq war- which was still under way at the time of writing; changes in the domestic and foreign policies of the now defunct Soviet Union, and the Superpower agreements on nuclear and conventional arms reduction in Europe; and the probability of an international conference on the Arab-Israeli conflict (pp.77-89). As a result of this security-oriented analysis, non-military dimensions of international relations are ignored. This type of Hobbesian approach to international relations is well described by Braillard :

> "From this standpoint, the state is seen as the central actor in international relations, whose dynamic is the evolving pattern of the balance of power among states. The sphere of foreign policy is quite distinct from that of domestic policy, and its central concern is the security of the state. Foreign policy options are rational choices made in the national interest" (4).

Although Sezer's analysis of the external determinants of Turkish foreign policy suggests that the international system is undergoing profound changes towards peaceful co-existence between the hitherto rival ideological camps, Sezer argues that there is no clear-cut alternative to the existing pro-Western foreign policy. She presumes, without any material evidence, that "no political party today that espouses a radical change of course...can be elected to power" (p.94). This assertion leads her to conclude that Turkey must remain within the existing military and political alignments, in spite of her admission that "the larger strategic environment has been undergoing an intense phase of transition " (p.95).

This rather prophetic view of Turkish foreign policy is a common feature of most Turkish foreign policy analysts. Its logic derives from rather simple and mechanistic assertions : that Turkey must remain in NATO because it is surrounded by aggressive, hostile and unpredictable countries; that Turkey is bound to pursue pro-western foreign policies because the western world is superior to the rest of the world in economic, political, military and cultural spheres. Broadly speaking, the main differences among Turkish scholars centre around the extent to which Turkey, in their view, should co-operate with the non-western world without endangering its links with Europe and the USA. Hence, while agreeing that the Arabs and the Iranians are often motivated by primitive instincts and extremist views which evoke caution, they consider it as being desirable to extend links with the countries in the Middle East. This is mainly due to the following considerations : first, these countries are among the world's major oil exporters, a commodity of which Turkey is short; second, these countries share common historical, religious and cultural ties, which are deeply-embedded in the consciousness of the common folk, with Turkey -a fact which cannot be ignored; third, a greater co-operation with Islamic countries is seen as a vote-winner in the UN and other international organizations where the Cyprus problem and some other Turkish disputes are being discussed. It is clear that these considerations are not made out of a desire to open up and broaden Turkey's rather rigid and monolithic approach towards the international community, but rather out of a *pragmatic* urge to advance Turkey's self-interests.

There is also an ideological dimension which should be emphasized here. Turkish scholars of international relations tend to share a liberal, modernist outlook shaped by a capitalist world view. They presume that since the international system and its conceptual and cultural framework are still underpinned by the western world, it is futile and undesirable to challenge the status quo. Therefore, the implicit argument goes, Turkey should strive to share in its spoils by joining in the western orbit.

Inevitably, then, the non-western world becomes marginal in this scheme of things. In *Olaylarla Turk Dis Politikasi*, there is hardly any mention of Turkey's relations with the Third World countries. The same applies to Sezer's article: although the author extensively examines Turkey's relations with a variety of states and regional organizations, such as NATO, the EC, the US, Greece, the Middle East and Western Europe, she totally dismisses the Third World countries. It can be suggested that this attitude is evoked by the low level of economic and military links between Turkey and the countries in the 'periphery'. Similarly, Ucarol's book, *Siyasi Tarih* (5) (Political History), which uncritically narrates major political developments since the French Revolution in 1789, totally bypasses Turkey's relations with the Third World in his chapter on Turkish foreign policy.

Another common trait of studies on Turkish foreign policy is that the themes are examined at a descriptive level. There is hardly any criticism of Turkish foreign policy. The themes are presented as a chronology of events with heavy reliance on official Turkish sources. Their general tone is marked by an apologetic attitude which seeks to justify Turkey's foreign policy behaviour on almost every issue. Inevitably, such an apologetic attitude undermines the scholarly quality of these studies.

For its part, *20.Yuzyil Siyasi Tarihi* (6) (The Political History of the Twentieth Century), published in 1991, is an extreme example of this apologetic attitude. Written by Fahir Armaoglu, a prominent Turkish professor of international relations, the book is full of nationalistic demagogy and inconsistencies. In his book, he blames Greece and the ex-Soviet Union for everything that has gone wrong in Cyprus (pp.275-286). On the other hand, he relies almost exclusively on Turkish official sources when concerning Turkish foreign policy as such. As far as international affairs are concerned, he resorts to Anglo-American materials; a natural outcome of his pro-western bias and preconceptions.

In conclusion, one can observe that the Turkish scholars of international relations generally adopt a non-critical and nationalistic attitude towards their subject matter. In addition, their analytical approach is very much informed by the American school of *realpolitik*. On the other hand, the fact that these studies are marked by Eurocentrism and strategic concerns may partially be attributed to the limitations of Turkish foreign policy itself. In other words, the subject of analysis -Turkish foreign policy- and the subject itself often overlap.

4.2.The State of International Law Scholarship in Turkey

4.2.1.Introduction

This section, which constitutes the main bulk of this chapter, focuses on the textbooks of international law written by academics in Turkey. Rather than investigating the whole range of issues relevant to international law, the scope of this section is limited to a review of the international legal themes which are indicative of the normative and methodological posture adopted by Turkish publicists. They include the following themes which are commonly found in international law books: the historical origins of international law; its formal sources; subjects of international law; the law of territory and self-determination; international law and development.

In this chapter, it will be argued that one of the anomalies and inconsistencies of Turkey's interaction with the society of nations can be attributed to the textbooks of international law in that country. These books are generally written from the vantage point of western positivism. For the authors of these books, international law should deal with "what is", excluding "what ought to be". Besides, they solely focus on technical/procedural themes, while ignoring the historical/ideological forces behind international law. This study purports to show that these works are often ambiguous and problematic, both substantively and methodologically. These considerations are then linked to the current discourse on Turkey's place in international society and the role assigned to international law in such deliberations.

This chapter will start with a preliminary analysis of the legal system in Turkey. Indeed, an important determinant of the intellectual outlook of Turkish scholars of international law has to be sought in the domestic legal system of that country. Turkey began experiencing a process of legal transformation by the middle of the last century from a predominantly Islamic legal structure towards a European-oriented legal system. This radical shift in legal orientation has simultaneously altered the doctrinal conceptions and the method of inquiry employed by the international law professionals in Turkey. After providing the reader with this background, the study will continue with an examination of some major textbooks of international law written by Turkish scholars. In this context, the following questions, among others, will be raised: What are the main themes of their analysis? How can their method of investigation be defined? (e.g. formalistic/substantive; technical/multi-disciplinary) Do they bring any contribution to the discipline? (either through the individual

intellect of the authors and/or by inserting the Ottoman/Turkish context into the analysis)

4.2.2.Major Features of the Turkish Legal System

Turkey is often regarded as one of the first states to incorporate an 'alien' system of law -European, or Romano-Germanic- by its own decision. Historically, the western European systems of law were transplanted into other parts of the world either by force, as in the case of European colonies in Asia and Africa, or they were adopted by European settlers who carried their legal codes into the new settlements in the United States of America, Canada, Australia and New Zealand, and in parts of South Africa and South America. Turkey's reception of western legal codes, *en bloc*, soon after the foundation of the Turkish Republic in 1920s is a different case:

> "...an independent nation of its own decision resolves to import into itself a system of law, or some parts of a system, which not only is foreign but is the product of a markedly different culture" (7).

Indeed, for centuries, Turkey had formed part of the Islamic world, both in political, religious and cultural terms. The moral values, the mental framework, and the legal outlook of the society were, broadly speaking, shaped by Islamic precepts. The state was of a theocratic nature, and, in this connection, the legal basis of the state was the Islamic *shari'ah*. The law was administered by the people of religion. However, things began to change by the middle of the 19th century when it became clear that the existing legal system could not respond to new circumstances. While western codes contained elements of canon law which were becoming secularized, no such transformation took place in Islamic legal doctrine (8). The 'modernization' of the Turkish legal system is generally traced back to 1839 when the Sultan Abdulmajid proclaimed the *Tanzimat* (re-organization). This charter promised legislative reforms safeguarding life, honour and property of the Ottoman subjects, while promising a strict adherence to the letter of the law in criminal justice. This is described by a prominent Turkish scholar as "an act of auto-limitation" which curtailed the prerogative powers of the Sultan (9). This was the beginning of a process whereby the law of the state and Islamic law differed (10). The *Tanzimat* charter was later followed by a series of new legislative codes received from the European countries. In 1850 a new commercial code was introduced, followed in 1858 by a criminal code.

While a new maritime law was enacted in 1864, an important part of the civil code was codified in the *Medjelle* in 1877 (11). It is noted that in this process of legal reformation -however imperfect or casuistic it may be- a generation of jurists began receiving their training in the law faculties where the principles of the law of the European states were familiar. Furthermore, in 1908 some twenty students were sent by the Turkish Ministry of Justice to study law in various European universities. They later played crucial role in the process of legal modernization (12).

The westernization of the Turkish legal system within a comprehensive framework was ultimately realized after the foundation of the Turkish Republic in 1923. President Ataturk, the founder of modern Turkey, was determined to create a secular nation-state based, *inter alia,* on western notions of law. This was the main motive behind the castration of Islam as a source of political and legal legitimacy. To that end, the institution of the Caliphate was abolished in 1924 which was a blow to the religious hierarchy. This act was accompanied by the abolition of the Ministry of *Shari'at,* of the separate religious schools, and of the special *Shari'at* courts in which the men of religion administered the Holy Law (13). These measures were followed by a series of new legal codes imported from the various European countries: the Penal Code (1926), the Civil Code and the Code of Obligations (1926), the Commercial Code (1926), the Code of Civil Procedure (1927), the Code of Criminal Procedure (1929) and the Code of Maritime Law (1929). Hence, by the end of the 1920s, Turkish law ceased to belong to the so-called "Muhammadan" legal systems and became a part of the positivist system of law. As Hamson rightly observes, Turkey "decided to re-create itself in the image of a European state" (14).

Since then the positivist conception of law has greatly reinforced its status as the law of the land. This is reflected in the legal profession too. Since the foundation of the Turkish Republic, generations of jurists have been trained in law faculties to grasp the principles of European legal systems. Besides, the need to master thoroughly the principles of legal codes has compelled an increasing number of jurists to study the European legal literature and to cultivate an acquaintance with western culture in general (15). Contrary to the privileged status of European law, Islamic legal doctrine is not accessible to the students of law, since it is not part of the curricula.

This is the background upon which the disciplinary knowledge and the ideas of international law scholars in Turkey are shaped. They are solely acquainted with positivistic European law, and speak at least one European language. They generally view 'modernization' as a desirable project. By contrast, they see in Islam an inherent

'backwardness' when looked at from an intellectual vantage point. They have neither the educational background, nor the linguistic skills to study the Islamic concept of international law. The acceptance of the Latin alphabet in 1926 to replace Arabic script has literally cut off the Turkish intelligentsia from its history, while preventing them from establishing intellectual contacts with their counterparts in the Middle East. These considerations, as is believed, have to be taken into account before making sense of international law scholarship in Turkey.

4.2.3.Preliminary Remarks on the Development of the International Legal Discipline in Turkey

It has to be stated that international law is relatively at a premature stage of development in Turkey. Turkey -or more correctly, the Ottoman Empire- entered 'international society' as late as the middle of the 19th century when the Ottoman Empire was accepted into the 'Concert of Europe'. As Pazarci, a Turkish scholar of international law, notes, this date also corresponds to the involvement of Ottoman jurists in international law (16). At the time a significant portion of international law books, which were generally in the form of translations or adaptations from European textbooks, were written by Christian minorities.

It was only after the foundation of the Turkish Republic that the in-depth studies began to be carried out in the field of international law, as well as in other disciplines. These studies, for the most part, focused on general aspects of international law. Leaving aside the doctoral thesis of the Turkish jurists in the European universities, Turkish scholars managed to produce only five studies addressing an international audience before the end of the Second World War.

The aftermath of the War has witnessed a growing number of studies by Turkish jurists of international law, particularly in matters of general international law and those which are closely related to Turkish foreign policy, such as EC Law and the Law of the Sea. However these studies have not made any major contribution to the discipline, as observed by Pazarci. This is evidenced by the fact that a very limited number of Turkish jurists have been represented in international courts and law commissions (17).

4.2.4.An Examination of International Law Books Written by Turkish Scholars

This section focuses on a number of textbooks of international law written by Turkish jurists. The purpose is to show how the present body of international rules and principles are conveyed to the reader. The books are examined both in terms of their substance and methodology. The topics that are selected for investigation are intended to reveal the prevailing doctrinal conceptions and normative assumptions lying behind the Turkish 'school' of international law. These themes include the following : the historical origins and basic features of international law; formal sources of international law; subjects of international law; law of territory; and, international law and development. In this context, five of the major textbooks of International Law will be investigated here: Edip Celik, *Milletlerarasi Hukuk* (International Law) (18); Huseyin Pazarci, *Uluslararasi Hukuk Dersleri* (International Law Lectures) (19); Hamza Eroglu, *Devletler Umumi Hukuku* (Public International Law) (20); Sevin Toluner, *Milletlerarasi Hukuk Dersleri - Devletin Yetkisi* (Lectures on International Law - The Jurisdiction of the State) (21); Seha Meray, *Devletler Hukukuna Giris* (Introduction to Public International Law) (22). These authors are deemed to be representative of the state of international legal discipline in Turkey given that, with the exception of Seha Meray, they hold professorships in various Turkish universities, while their books are widely read by students and professionals alike.

A qualification with regard to the latter two studies is due here. As is obvious from its title, Toluner's book has a narrower scope, in comparison to the others, in that she merely focuses on the jurisdiction of states. Because of this, her study will be reviewed only within the section titled 'the law of territory'. As for Meray, unlike other studies all of which have been published after the 1980s, his book was edited in 1968. This discrepancy in dates is important for two reasons : first, the linkage between international law and development was most firmly established after the 1970s; second, the overall influence of the non-western states over the direction of international law and the impact made by revisionist scholars upon the international legal discipline were only vaguely felt when the book was written. Because of this, Meray's book is only partially representative of the *present* state of international legal scholarship in Turkey. Therefore, greater emphasis will be laid on those textbooks written after the 1980s. This has to be borne in mind when evaluating the various assessments made in this Chapter.

4.2.4.1.Historical Origins and Basic Features of International Law

Meray apart, the scholars under consideration show a scant interest in the historical roots of international law. Meray starts his book with an analysis of the historical evolution of international law in two chapters. He draws on the evolution of international law in antiquity and medieval eras before discussing its formative years from the 17th century onwards. In this context, he examines, *inter alia,* the Islamic conception of international law which underpinned the ideological outlook of the Ottoman Empire (Meray : 12-15).

As far as Eroglu is concerned, he does not investigate the historical conditions under which the rules, principles and institutions of international law emerged and evolved. Neither is any mention made of the doctrinal conceptions lying behind legal rules. Without providing any context within which to trace the historical origins of international law, the author restricts himself to the description of rules and institutions which govern international relations; and he does this, within a formalistic framework. Furthermore, he does not question the claims of classical international law to universality (Eroglu : 1-23).

As opposed to Eroglu, Celik notes that international law is of European origin and that its rules were an outgrowth of the 'balance of power' in Europe after the Napoleonic wars. For this author, the 'Public Law of Europe' could not claim universality, as it merely reflected the colonial interests of European Powers in the nineteenth century (Celik : 2-4, Vol.1). Nonetheless, the author does not go far enough to show the relevance of its Eurocentric origin in the understanding of the basic concepts and norms of present international law.

Pazarci seems more committed to the investigation of historical development of international law. He informs the reader that international law has hitherto been an exclusive preserve of the Eurocentric system of law. Besides, while most Turkish jurists trace the history of international law to that of the Public Law of Europe, the present author states that from the vantage point of international relations, the rules of conduct among states first developed in antiquity. The author points out that the first examples of international agreements, arbitration and mediation appeared in the Middle Eastern region and China. He also notes that during the medieval period, the main contributions towards the development of international legal norms came from the Islamic Middle East, alongside Christian Europe. He later describes the main features of the Islamic concept of international law during the Medieval era. (Pazarci :

35-42, Vol.1) Hence the author does not omit the experiences of international relations -more correctly, inter-state relations- preceding the nineteenth-century European experience.

Nonetheless, Pazarci seems to be less than critical as regards the impact of the experience of European colonialism on the conceptual framework and the normative assumptions of classical international law. When informing the reader of the non-recognition by the European Powers of the political communities outside the Christian world as sovereign states, the author does not explain why they did so. He does not, for instance, mention the colonial powers' intention to occupy those territories which were declared as "lacking statehood". It is well-known that they went as far as refusing to 'recognize', until the middle of the nineteenth century, those non-European States with a long experience of statehood such as the Ottoman Empire, Siam, China, Persia and Japan as members of 'international society'.

The international law of the nineteenth century can be defined as a 'ruler's law' according to which "the non-European, colonised peoples were the object rather than the subject" (23). Accordingly, the powerful states in Europe used their military and technological superiority to compel the dependent or weak independent states to grant economic concessions and privileges through unequal agreements of capitulation, extra territoriality and alike. This meant that international law reflected the economic interests of western states (24). Pazarci, however, ignores this link between colonial expansion and the legal rules developed to justify it.

While Eroglu remains indifferent, Celik speaks of radical changes which have had significant repercussions on the legal structure of international society in the twentieth century. In this context, he refers to the following developments as the new challenges to classical international law: the decline of European colonial powers after the First World War, in particular, Britain and France; the socialist revolution in 1917 in Russia; the experience of Nazism and Fascism in Europe after the First World War which revealed the inadequacy of international law in securing peace; the experiences of decolonization after the Second World War. (Celik : 4-6,Vol.1)

It has been argued, particularly by scholars in the Third World, that classical international law, developed as it was among the western Christian countries, is not adequate for the extended world-wide community of states with different legal, social, cultural, ethical and religious backgrounds. For instance, Anand, an Indian international lawyer, wrote in 1966 that as international law is no longer the exclusive

preserve of Christian Europe, it has to take the consent of non-European communities which are far more numerous than the former. Secondly, for Anand, the liberal, individualistic doctrine of law, which forms the basis of conventional international law, is not suitable for the present heterogeneous society (25). The majority of the states that make up international society are indeed economically weak and vulnerable as a result, *inter alia,* of the shortage of capital and technology. Therefore they need the protection of international society :

> "More important, while the earlier international society was extremely nationalistic and individualistic, and put the greatest stress on sovereignty and national independence, the present society, in spite of its vast horizontal expansion, has become extremely interdependent. The fantastic scientific and technological developments have already made the world too small. Not only peace but prosperity has become indivisible" (26).

These are some of the underlying phenomena which have greatly contributed to the emergence of the law of co-operation among nations.

In spite of the fact that Celik takes notice of the new challenges to classical international law, he does not further elaborate this theme. For instance, although recognizing that the Soviet Union, while initially partially rejecting international law which in its view had been reminiscent of capitalist/imperialist hegemony, gradually undermined some of the basic doctrines and rules of the 'old' law, he does not say what they are, and how they can be relevant to an understanding of the present international law. (Celik : 27-38, Vol.1) Eroglu, for his part, is totally dismissive of the 'progressive' forces within the discipline. As a result of this anachronistic approach, the author does not investigate issues like "the protection of human rights at international level" or "the principle of self-determination". Contrary to Eroglu, Pazarci tackles these issues. He draws the reader's attention to the changing structure of international society and the emergence of new issues as a relevant dimension of international law, as in the case of 'human rights' and 'the protection of the environment'. However, although Pazarci speaks of the impact of the Third World on the operation of the United Nations, he does so briefly and without focusing on the problematic confrontation between the NORTH and the SOUTH. (Pazarci : 51-58, Vol.1) Nonetheless, it has to be welcomed as one of the first attempts by a Turkish

jurist to come to grips with the Third World dimension, albeit merely in the context of the United Nations.

In conclusion, it can be argued that there does not appear to have been a common attitude among Turkish publicists in regard to their exposition of the historical origins and the general characteristics of present international law . While Eroglu seems to align himself with 'conservative positivism', with total indifference to the historical dimension of international law, this is less true for others. They are both aware of the Eurocentric origins of classical international law, and also of the contemporary challenges to that system of law. Nonetheless, excepting Meray, they fail to elaborate on these themes or on their relevance to present international law.

4.2.4.2.Formal Sources of International Law

With the exception of Meray, the authors under consideration lean heavily on treaties and customary international law as sources of international law. These themes are examined from a formalistic perspective. For instance, when dealing with treaties, they describe the legal procedures which give treaties their binding effect. There is hardly any discussion with regard to the actual operation of international treaties. Similarly ignored are the doctrinal discussions relating to the formal sources of international law.

This section will start off with Meray, who appears more aware of the emerging trends compared to others. When examining the legal sources of international law, the author also includes the general principles of international law and the secondary sources such as court decisions and doctrinal writings. (Meray : 92-106) On the other hand, at the time when this book was written, the new legal and normative developments of what may be termed as 'progressive' international law had not yet crystallised. Therefore, the author can be excused for not mentioning some new standards among the general principles of international law, such as respect for human rights and self-determination of peoples. (Meray : 101-102)

The question of the formal sources of international law is in fact a hotly disputed issue. Some developing countries, for instance, assert that the newly independent states should not be bound by customary law as they have played no part in the development of such an alleged custom. Moreover, they draw on a wide range of resolutions in various organs of the UN, especially in the General Assembly, as a

legitimate source of international law with binding force (27). However, excepting Meray, the scholars under examination do not involve themselves in these controversial issues, except noting in passing that due to the sharp economic and social changes in the twentieth century, customary international law has increasingly been replaced by international treaties. It seems that, not unlike those positivistic legal scholars in the west, these jurists advocate the view that norms must conform to a particular model in order to be acknowledged as law. It is therefore no wonder that no mention has been made of UN resolutions as a relevant source of international law.

This is not to say that the authors under consideration preclude all sources other than treaties and custom. With the exception of Eroglu who totally dismisses them, Pazarci and Celik draw on the general principles of law, judicial decisions and scholarly writings as relevant sources of international law. While citing examples, Celik accounts for the following principles as established sources: supremacy of international law; permanence of states; the requirement to exhaust municipal law procedures. (Celik : 165, Vol.1) For Pazarci 'some of the significant general principles of international law' are somewhat different: the prohibition of the denial of justice; the principle of non-discrimination; the prohibition of the abuse of rights; the principle of equity; and, acquired rights. (Pazarci : 216-224, Vol.1) The authors seem to ignore, when giving examples, that there are other generally accepted principles which may, with equal weight, be relevant to the contemporary realities of international society : the principle of self-determination; respect for human rights; international co-operation; good faith and so forth.

Today the political, ideological and ethical sources of international law are no longer limited to a particular group of nations. Indeed, it is now generally recognized that classical international law, far from being universal, was simply a response to the dominant ideas of a particular period -at the time of the industrial and commercial expansion of western powers in the eighteenth and nineteenth centuries- in European history. Therefore for progressive publicists, any contributions made by the non-western community of states has to be welcome since this brings the idea of a universal system of law closer to reality. This is the context in which to evaluate the novel concepts and legal materials introduced by various regional, ideological and political groupings in this present century. It will later be examined how, alongside the communist bloc of countries, the challenge posed by the Third World countries, which are linked by some common or shared historical experiences and/or by poverty (28), has transformed the normative assumptions of classical international law.

In the face of the apparent multiplicity of approaches to international law, the Turkish jurists, Meray aside, continue to treat their discipline as a unified, cohesive and universal body of rules against which the non-western opposition is a 'marginal' posture. Hence, for these scholars, if a particular rule or principle is rejected by western states and/or if it does not conform with the western mode of law-making (unanimity, precision, and so forth), then it has to be dismissed as 'non-legal'.

4.2.4.3.Subjects of International Law

In this case too, Meray appears more in tune with the contemporary developments than the rest of the authors under consideration. In addition to states, the author also accounts international organisations, certain political communities short of statehood and individuals -although far limited international personality than states- among subjects of international law. (Meray : 135-136) Indeed an entire chapter is devoted to an analysis of the status of individuals under international law. Having examined various categories of international crimes, such as slavery, piracy, war crimes and genocide, which might be committed not only by states but also by individuals, the author shows that in some cases individuals are also accountable under international law. (Meray : 232-236) That individuals have an international personality -albeit limited- is, according to the author, also evidenced by the fact that they have been accorded the right of *locus standi* before the international courts established by some regional organizations such as the Central American Court of Justice and the European Court of Human Rights. (Meray : 236-237) The specific international protection of minorities, refugees and stateless persons also indicates, according to the author, that individuals also qualify for subjecthood under present international law. (Meray : 237-250) Finally, human rights are among the major concerns of present international law. All of these factors, the author concludes, ensure that individuals and various categories of social groups are among the subjects of international law -albeit a limited one (Meray : 250-263). Meray's extensive focus on individuals is clearly a novelty in so far as Turkish textbooks of international law are concerned. (Meray : 229-263) Meanwhile, the author notes that the Mandates System was in fact a legal cloak used by colonial powers to justify their continued hegemony over the mandated peoples, territories, and their resources. (Meray : 193)

Pazarci, too, notes that certain progressive developments within the community of nations have rendered as outmoded a conception of the state as the sole actor of international law. He holds therefore that not only states but also international

organizations and individuals can be singled out as subjects of international law. (Pazarci : 1-3, Vol.1) Speaking of the "mandatory regimes" after the First World War, the author states that the people living in the mandated territories were deemed by Britain, France and other mandatory states -victors of the First World War- as lacking the experience and capacity for independent statehood. Typical of his approach throughout the book, the author does not attempt to inform the reader of the political/economic interests involved in the mandatory process; neither does he express his own views on this question. (Pazarci : 18-19, Vol.2) Not unlike his colleagues under consideration, Pazarci focuses on the formal requirements for statehood -a permanent population, a defined territory, and a government- while excluding substantive issues such as the question of legitimacy, i.e. the nature of links between a state, its territory and people. (Pazarci : 93-109, Vol.2) This theme will be elaborated in the next section.

A common attitude of Pazarci and Eroglu is that both examine various forms of limited statehood which are no more in existence. Neither the "mandates system" nor "the regimes under trusteeship" are in operation today. "Vassal regimes" and "the protectorates" are also matters for the past. Similarly, cities like Danzig, Saar and Trieste are no longer under international status. (Pazarci : 112-115, Vol.2) (Eroglu : 114-124) The criticism brought here is not that they are irrelevant *per se,* but that their inclusion into a contemporary analysis of sovereignty and statehood is wholly anachronistic. Should these jurists examine them as a matter of practice which existed at a particular stage of history, their approach could be justified.

Another similarity between Pazarci and Eroglu is in their treatment of the "mandates system". The authors merely present the relevant provisions of the UN Charter on the rules governing the mandated territories. Neither of the jurists make any reference to the political/economic context in which these rules were adopted and put into operation, nor the way in which they were implemented *in fact.* Besides, Eroglu goes as far as employing the term "under-civilised" for peoples who lived under mandatory regimes in Asia and Africa. A similar Eurocentric attitude can be observed in relation to "the territories under trusteeship". This suggests that the authors have no qualms about the legitimacy of the mandates system. (Pazarci : 115-119, Vol.2) (Eroglu : 119-123)

Unlike Pazarci and Eroglu, Celik observes that the mandates system was established by the victors of the First World War to rule over the territories formerly governed by defeated powers -the Ottoman Empire and Germany. The author dismisses the

British and French claims that the mandated peoples were incapable of governing themselves. Furthermore, drawing on the actual operation, he raises serious doubts as to whether the populations living under the mandates system gained any benefits out of it. (Celik : 234-237, Vol.1) Celik's critical stance also prevails over the subject of "recognition". The author states that "recognition", as a precondition for new states to join the 'international community' -which was controlled by European powers until the second half of the present century-, was an 'invention' of European colonialism. The author argues that this requirement was used as a legal cloak to dismiss the demands of the colonial peoples for independence. Therefore, Celik rejects the view that recognition is a precondition for independence. Recognition, he says, has to be regarded as a declaratory act which *confirms* rather than *constitutes* the independence of the recognized state. (Celik : 221-222, Vol.1)

It is observed that the sphere of international law has been rapidly expanding to cover new fields of human activity, while embracing new actors which had hitherto been treated as exclusive preserves of state sovereignty. This emerging trend is observed by Celik. He asserts that today international relations are not only conducted between states, but between other actors, such as international organizations, as well. He disagrees with those who merely examine inter-state relations in spite of a complex network of transnational transactions and activities which are witnessed today. (Celik : 302, Vol.1) For his part, the author avoids this pitfall by examining international organizations and individuals as subjects of international law. Celik maintains that international organizations are an integral part of international legal life, and therefore, have to be examined from a *legal* point of view. That is exactly what he does : he describes the institutional structure and the objectives of international organizations, in particular the League of Nations and the United Nations; albeit purely from a legal/procedural perspective, though on occasion, he draws on the actual operation as when he notes that the League of Nations did not succeed in securing peace and security. (Celik : 247-283, Vol.1) This is also the case with his treatment of individuals. He notes that individuals possess rights and hold responsibilities in certain areas which are sanctioned by international law, as in the case of human rights. In this context, he speaks of the international conventions and resolutions adopted by the United Nations. (Celik : 283-301, Vol.1) However he does not express his opinion as regards their implementation, or the legal force and effectiveness of international documents on human rights.

For his part, Eroglu refuses to incorporate individuals as relevant actors in international society. Instead he focuses on various international organizations. The

criticism raised against Celik can be transposed to Eroglu *par excellence*: he simply informs the reader of their purported objectives and of the institutional machinery devised to implement those objectives. (Eroglu : 135-168) In the end, the reader is left wondering what has happened in actuality and what the author thinks of them.

This formalistic/technical mode of analysis is also the approach adopted by Pazarci. He ignores the historical background and the political/ideological forces that have shaped the formal framework of international organizations. He is merely descriptive in his handling of the issues. The author takes for granted the rules and institutions of international law. He narrates the technicalities of his subject from a western positivistic perspective. Pazarci seems to ignore the fact that despite their formal equality, some states are "more equal" than others in the decision-making forums of certain international organizations, like the IMF, World Bank and the UN Security Council. For the author, it seems this is 'natural'. (Pazarci : 119-160, Vol.2) In addition to his dubious moral position, Pazarci wholly ignores the background necessary for an understanding of why some states hold a privileged status in the decision-making bodies of key international organizations. As a result of this uncritical approach, the reader is bombarded with mere information that lacks the kind of critical insight necessary to comprehend the issues at stake.

A similar attitude prevails over his treatment of human rights issues. He makes no comments on the implementation of human rights provisions by states which have adopted them. For instance, while noting that Turkey has not signed the two conventions of the UN General Assembly adopted in 1966 on the protection of human rights, Pazarci does not explain why. It seems that Pazarci avoids being involved in politically 'sensitive' issues. Instead he seeks to justify the Turkish position and deny the legal effect of the human rights conventions in question (The Covenants on Civil and Political Rights, and on Economic, Social, and Cultural Rights). In order to strengthen his argument, the author does not hesitate to pursue an eclectic attitude by making use of socialist doctrine of international law -as professed by the communist states, particularly the Soviet Union, which were reluctant to accept the 'internationalization' of human rights for fear, among others, of its being used as a pretext for western interference in their domestic affairs. (Pazarci : 203-223, Vol.1) In fact, the major assumptions of socialist doctrine contrast with a positivist concept of international law which the author seems to advocate throughout the book. This example demonstrates that Pazarci lacks a coherent and well-formulated analytical approach which could prevent him from inconsistencies and, at times, contradictory statements. Meanwhile, the author dismisses the Universal

Declaration of Human Rights (1948) as "non-binding", without however discussing its political and moral force -given that it was unanimously adopted by the General Assembly.

It can be concluded that there is a growing awareness among Turkish publicists, with the exception of Eroglu, of the extension of international law to cover international organizations, various social groups and individuals as subjects of international law. However their analyses generally remain at a purely legalistic and descriptive level.

4.2.4.4.The Law of Territory

International law does not make any distinction as to whether a polity claiming sovereignty and asking for recognition is a legitimate representative of the people unless it relates to colonial rule, racist minority regimes or foreign occupation. It suffices that the claimant is effectively controlling a clearly defined territory and its population. This principle of 'effectiveness' is the result of the Eurocentric origins of international law which was initially premised on the existing balance of power. This came about as a result of the need of the colonial powers in Europe to set up a system of law to legitimize the status quo and to demarcate the territorial limits of their colonial expansion. In this context, the term *terra nullius*, which had been designated for any piece of land without a possessor, was transposed to describe the non-European territories inhabited by tribal groups with distinct forms of political administration. The designation of these territories as *terra nullius* meant that the occupation and effective administration of these territories by colonial powers were sufficient for the occupier to claim sovereignty under international law . (29)

This theme is taken up by Celik and Pazarci. Celik rejects the view that societies in the territories labelled by colonialists as *terra nullius* were lawless. He argues that this was a gross distortion of reality. They had, like any society, a different set of rules and an administrative framework to govern the relations between the members of their community. Therefore, for the author, acquisition of these territories by certain European powers was nothing other than a 'conquest'. (Celik : 18-21, Vol.2) Pazarci draws on the historical experience of western colonialism after the so-called "discoveries" of other continents from the fifteenth century onwards. Just as Celik, the author notes that the term *terra nullius* was a legal cloak used by the colonizers to occupy the territories of the so-called 'primitive' people which supposedly lacked a proper political and social organization. (Pazarci : 237-240, Vol.2)

Leaving aside the historical issues, both Pazarci and Celik focus on the national jurisdiction of states and the limitations posed by international law. They also summarize the doctrinal discussions as regards the nature of relations between a state and its territory. These authors, as well as Eroglu, examine the legal requirements for the birth and the extinction of states. (Eroglu : 124-134) (Celik : 7-73, Vol.2) (Pazarci : 6-58, 234-245, Vol.2) As usual, these themes are investigated from the point of view of the classical doctrine on the law of territory. They do not, furthermore, discuss the doctrinal conceptions behind this methodological framework. (These themes have been discussed in Chapter 3)

The doctrinal conceptions behind the classical law of territory are only discussed by Meray. Indeed the author brings to light the legal foundations of the jurisdiction of states over their territory and its population. In this context, he presents a brief summary of the arguments made by various schools of thought for an explanation of the doctrinal conceptions behind the law of territory. (Meray : 143-146) The author does not fail to discuss the principle of nationality and self-determination when accounting for the population factor as an essential component of statehood. (Meray : 138-143) His analysis of the question of self-determination draws both on its evolution during the League of Nations and the United Nations era, as well as on the decisions of international courts and scholarly writings in regard to this principle. (Meray : 139-143) Finally, when discussing types of statehood, he draws on some non-western cases too. (Meray : 168-171)

The other jurists under investigation, for their part, simply take the classical doctrine, which was premised on the principle of effectiveness, for granted. No attempt is made to discuss its origins, or its implications for present international law. Besides, no mention is made of the contemporary challenges to the classical notion of exclusive sovereignty exercised by states. This anachronistic approach inevitably limits further inquiry into substantive issues, such as the question of legitimacy and the question of whether a people could have a right to self-determination under international law. Toluner's book is a case in point.

The author focuses on the jurisdiction of states in the context of the law of territory. For its part, Chapter 2 deals with the acquisition of territory under the 'old' international law which was largely premised on the principle of effectiveness. (Toluner : 5-22) However she does not devote as much space to the contemporary legal and political criteria for the acquisition of territory or qualifications for

statehood. Neither does she mention that the principle of human rights and the protection of minorities have limited the scope of exclusive jurisdiction enjoyed by states. She also fails to discuss the implications of the principle of self-determination for disaffected minorities. Instead, noting that the principle of self-determination precludes secession, she refrains from further analysis. Hence for the author, self-determination is no more an applicable principle of international law since it was merely intended to bring about independence for peoples living under colonial domination. Its relevance today largely derives from its affirmation of the principle of non-interference. (Toluner : 27-30) As a result, she devotes only four pages to self-determination out of a book of four hundred pages.

To conclude, it appears that 'the law of territory' is treated by Turkish jurists as an exclusive preserve of the state. At this juncture, international law is assigned an abstract, formal function of reaffirming the existence of states and endowing them with rights and duties arising out of international law towards other states. Issues of substantive significance which relate to the relationship between the state, the territory and the people are dismissed as 'irrelevant'. This analytical framework is a far cry from the realities of an interdependent international system in which international law increasingly permeates into the municipal laws of nation-states.

4.2.4.5.International Law and Development

This section initially examines the historical reasons behind the incorporation of the notion of 'development' into the scope of international law. Next, it exposes the major premises and objectives of this new subject by referring to the rules and principles adopted to achieve those ends. Finally, it discusses the position of Turkish jurists on these matters.

As has previously been examined, traditional international law reflected the liberal individualism of industrializing, capitalist nations in Europe during the 18th and 19th centuries. This was a law of coexistence and non-intervention whereby 'security' was the catch-phrase of this Eurocentric system of law (30). It also reflected the colonial and commercial interests of European powers.

The Bolshevik Revolution in October 1917 in Russia was the first crucial blow to established international law. The new Soviet regime, refusing to accept the traditional rules governing state succession, repudiated the debts and treaties inherited

from Tsarist Russia. This marked the beginning of a voluntary international law as opposed to a legal system that had been imposed by strong nations. The creation of the United Nations after the Second World War also represented a major step towards the establishment of a more just and progressive international order (31).

Real progress in international law came with the process of decolonization in the aftermath of the Second World War. The emergence of newly independent states has had significant repercussions on the composition of international society, and on the nature and purpose of international law. The numerical superiority of these 'new' Asian and African states, together with the equally disgruntled Latin American states, -together they are referred to as the 'Third World' countries- enabled them to exert significant influence in the United Nations General Assembly and other universal organizations. The newly independent states came to realize that "political independence" had to be matched with "economic independence" if they were to achieve real independence. They also realized that:

> "...traditional international law has helped to make independence a completely superficial phenomenon, beneath the surface of which the old forms of domination survive and the economic empires of the multinational corporations, and the powers that protect them, prosper" (32).

The newly independent states were therefore not willing to accept some of the old treaties which reflected their unequal position vis-à-vis the European powers. They challenged these unequal treaties and some of the established principles of international law. They have been seeking to eliminate those rules which constitute an obstacle to their national sovereignty and aspirations for a *real* self-determination. Besides, they have also demanded that the industrialized nations should actively contribute a fairer share of the world's wealth and resources. To them, these are necessary preconditions to eradicate poverty and relieve them from bonds of illiteracy, disease and early death. The Third World has launched an "anti-colonialist, anti-racist crusade" which has put former colonial powers on the defensive. Furthermore, they often recall that today's 'developed' nations were partly responsible for retarded development in the 'periphery' -in the light of the historical evidence that their wealth was sucked and their markets saturated by the goods originating in the industrialized 'centre' (33). Therefore, the newly independent states have put forward

various demands which have, to some extent, changed the course of the present system of international law:
-they are willing to annul 'unequal' treaties,
-they refuse to grant economic and political privileges to their former colonial masters,
-they demand equality of rights and participation in the international community,
-they demand the protection of law against the might of powerful states, particularly in the economic field,
-finally, not satisfied with a negative law of peace, they are demanding the active contribution of international law to their development efforts (34).

The General Assembly of the United Nations has been used by developing nations to legitimize their claims, actions and policies since the late 1950s. In this context, numerous "law-making" resolutions, particularly in the field of economic co-operation, have been adopted by the General Assembly. Hence, as opposed to the formation of customs in the preceding era, which used to take generations to develop and become binding, the second half of the 20th century has witnessed the formation of customs rapidly -in response to the acceleration of the rhythm of modern life (35). Of particular importance are the UN Resolutions adopted in the 1970s.

As is well-known, the UN General Assembly adopted two resolutions on 1 May 1974 at its sixth Special Session which primarily concerned themselves with the development problems of poor nations (36). They were adopted upon the insistence of the Group of 77 which is a consortium of developing countries containing more than one hundred and twenty members. The first is the Declaration on the Establishment of a New International Economic Order. This Declaration proclaimed that the current economic order had to change with a view to establishing a new international economic order. The Declaration laid down general principles on which the new economic order had to be founded. The second Resolution spoke of concrete measures designed to bring about the general objectives mentioned in the first resolution.

The same year, on 12 December 1974, the UN General Assembly adopted "The Charter of Economic Rights and Duties of States" (37). Although its normative force was somewhat weakened as a result of the intense opposition from western governments, the Charter has a greater legal force in comparison to other resolutions since its language is "couched in a language more akin to international legislation" (38). Given that the Charter, with its specifically defined provisions, has become a

primary legal referent for later discussions with regard to the substance and the scope of 'international law and development', it is worthwhile to discuss its content with some detail.

Its preamble defines the fundamental purpose of the Charter as "the establishment of a new international economic order". Article 2(1) reaffirms the right of every state to enjoy permanent sovereignty over its natural resources. Article 2(2c) states, in spite of strong opposition from developed countries, that every state has the right to nationalize or expropriate alien property on payment of "appropriate compensation" in accordance with its domestic law. Several other Articles in the Charter invite the international community to favour or give preference to the developing countries in economic and trade matters. Aware of the tremendous achievement of the oil-producing countries (OPEC) in their oil embargo against the western powers in 1973-74, Article 5 holds that the producers of primary commodities have the right to associate for the purpose of balanced development of their economies. This Article was also adopted with western powers opposing it. The same Article goes on to impose a general duty on all states to refrain from "applying economic and political measures that would limit it" (the association). Article 6 urges the conclusion of long-term multilateral commodity agreements to promote trade with stable and equitable prices. Article 13 speaks of facilitating the transfer of science and technology for the benefit of developing nations. Article 14 makes it a duty for all states to promote the expansion of world trade and an improvement in the welfare and the living standards of all peoples, in particular those of the developing countries. Article 17 makes clear that "international co-operation for development is the shared goal and common duty of all states". The rest of the Charter calls on the developed countries to extend and improve the system of generalized preferences to the developing countries on a non-reciprocal and non-discriminatory basis.

Not unexpectedly, there exists a clear disagreement between developed and developing countries, as well as among legal scholars, with regard to the legal force of this Charter. Contrary to the assertions of the developing countries, developed countries insist that the Charter cannot be binding, since it is neither universally accepted nor adopted by those who are empowered to legislate binding instruments. On the other hand, those who challenge this view argue that the UN resolutions evidence the practice of states and thus "contribute to the crystallisation of a rule of customary international law" (39). In other words, they gradually gain binding force. One can note that through its 'non-binding' resolutions, the General Assembly has initiated a process which played a central role in undermining various colonial and/or

unequal dimensions of traditional international law. This function of the General Assembly, defined by Anand as 'collective legitimation', has been evident during the whole process of decolonization through the adoption of resolutions denouncing colonialism, affirming the principle of self-determination, and through the redrafting of the Law of the Sea. Therefore, as Anand puts it, traditional lawyers can, if they wish, dismiss the Charter of Economic Rights and Duties of States as not legitimate, but they can not afford to ignore the political force of this resolution in changing the traditional law (40).

Whatever the position of international lawyers on these issues, it is clear that the notion of 'development' has been incorporated into the fabric of international law. It has also challenged certain principles of classical international law, in particular, the principle of equality and its corollary, reciprocity. The poor nations are not satisfied with a "formal" equality without any material basis, but ask for the active participation of international law to reduce the disparity between rich and poor nations. This may imply the setting aside of the principle of equality of rights and obligations in favour of "positive discrimination", granting of financial aid, technological assistance and so forth. Therefore it is only to be expected that the relationship between international law and development is discussed in Turkish textbooks of international law.

Typical of his general treatment of his subject, Eroglu sticks to the classical doctrine, and, as a result, totally dismisses 'international law and development'. Celik, meanwhile, while ignoring this subject, makes some observations with regard to the question of "state succession", some aspects of which may be related to the economic problems of newly independent states. The author criticises the scholars who examine this matter -state succession- from the stand point of the ex-colonial state. He argues that the process of decolonization has become a general feature of present international law. Therefore, in order not to be trapped by the classical doctrine, the jurists are bound to focus on the 'new' state. (Celik : 272, Vol.1) In this context, the author takes an anti-colonialist/anti-imperialist stance on the theme of "state responsibility". He notes that often the treaties of succession between the ex-colonial state and the newly independent state are rendered meaningless as a result of the concessions received by the former from the latter -the 'cost of independence'. He therefore questions the legitimacy of these agreements. Besides, he points out that the constitutions of newly independent states were often in effect drawn by the former colonial masters which were keen to secure their privileges. The author, however, notes that the works of codification by the UN on "state succession" and "state

responsibility" have radically transformed the rules of the previous regime. The author welcomes the new developments which he perceives as being beneficial to the newly independent states. (Celik : 315-319, Vol.1)

However the progressive posture adopted by Celik with regard to the specific issues mentioned above falls short of concern for 'development law' as such. It can be assumed that he does not regard the UN resolutions dealing with this question as being binding. If this is the case, then it can confidently be asserted that he is attached to a positivistic conception of law which draws a sharp distinction between 'hard' law and 'soft' law. Since, technically speaking, the UN resolutions are not binding, the author, it seems, dismisses them out of hand.

Not unlike Celik, Pazarci also remains indifferent to the legal developments towards the creation of a new international economic order. Instead he draws on some of the evolving principles of international law which are vital prerequisites for the establishment of a new international economic order. In this context, he draws on the principle of "positive discrimination" which is designed to contribute to the protection of poor nations against the industrialized rich. (Pazarci : 18-19, Vol.2) This, as far as the present author is aware, is one of the first attempts by a Turkish publicist to recognize the existence of an exception, sanctioned by international law, to the conventional principle of "reciprocity". Though he merely 'informs' of its existence without further elaboration, this 'new' approach may set a precedent for future studies in Turkey. The author also makes a reference to the principle of "permanent sovereignty over natural resources" when examining the body of rules relating to sovereignty. (Pazarci : 28-29, Vol.2)

Broadly speaking, then, Turkish jurists have not yet come to recognize "development law" as a corpus of international law. While the "radical" lawyers, particularly in the Third World and the (former) socialist states, show a great deal of interest in the development of the normative aspects of law, the Turkish scholars of international law are attached to a liberal positivistic tradition which insists on detailed and precise legal rules for legal norms to gain mandatory force. Hence, given that the resolutions adopted in response to the development problems of poor nations do not conform to the western standards of law-making, they are ignored by Turkish scholars.

4.2.4.6.An Overview of the Methodological and Substantive Analysis

Starting with Eroglu, his is a descriptive study and takes the established rules and conceptions of classical international law for granted. He hardly initiates any arguments or discussions. As the author declares in the preface, this textbook is written in the form of a handbook. Apparently, the book was written hastily as it looks quite sketchy and disorganized. It is doubtful whether the book has any purpose other than informing the reader of the general practice of international law. The issues are dealt with from a formalistic framework in which rules and institutions are described *in abstract*, and with an almost exclusive focus on the procedural dimensions of the law, legal process and institutions. The author takes a positivistic view of international law since he sees the already established, binding and enforceable rules as the sole legitimate source of international law. On the other hand, he does not rely on source materials other than those written in the west. Not a single source from non-western literature can be found in the book. Neither does the author refer to the Ottoman or Turkish context. Finally, Eroglu totally ignores the historical background of international law, whereas he dismisses the contemporary issues of international law, such as human rights, the right to self-determination and 'international law and development'. Therefore, this study can be "stereotyped" in the sense that it epitomizes all the weaknesses and prejudices of international legal scholarship in Turkey.

As for Pazarci, his textbook is written for an audience that does not challenge the ideological/doctrinal basis of the present international system which is still dominated by a western bloc of states. The author describes the existing rules and institutions of international law as they *are*, and only draws on western legal experience of inter-state relations. Not unlike Eroglu, he lays too much emphasis on the procedural aspects of international law. The author often declines to elaborate on the themes that have been discussed in this study or on the operation of rules in reality. By concentrating his efforts on the traditional issues of international law, this being purely from a legal/technical perspective, the author fails to relate international law into wider international relations. As a result, he fails to open a discourse which may be of help towards an understanding of the context in which Turkey faces international society.

Not unlike Eroglu and Pazarci, Celik lacks the kind of critical attitude necessary for exceeding the parochial boundaries of conventional scholarship. However this is not to say that the author wholly ignores contemporary developments. He does, for

instance, make brief references to recently adopted rules and principles which benefit the developing nations. However they do not alter his Eurocentric frame of analysis which he takes for granted. As a result, the reader is deprived of conceptual and normative tools with which to assess the new actors and processes of international law and the patterns of its development.

The same also holds true for Toluner. Although her book was published in 1989, no reference is made to the new legal and jurisprudential developments, or scholarly writings in the 1980s in the field of sovereignty and statehood which are the main topics of her book. Besides, nowhere does she make use of non-western materials or writings.

For its part, Meray's book is immune from most of the criticisms made above. His is an elaborate and insightful study which treats international law in its entirety. The author seeks to explore the historical, theoretical and practical dimensions of international law as evidenced by the diversity of legal materials on which he relies : doctrinal discussions relating to the nature and foundations of international law, treaties, custom, UN resolutions, judgements and advisory opinions of international courts. Besides, as has been seen, this book appears rather progressive for its time.

With the exception of Meray, then, Turkish scholars of international law have drawn almost exclusively on western legal experience and practices in their treatment of the subject. For these authors, the fact that 'traditional' international law was a creation of the so-called 'Public Law of Europe'- the rules of which served to legitimize the imperial interests of European Powers- is simply 'irrelevant' given that it has sound basis to claim 'universality'. These textbooks do not rely on materials other than those produced in the west. This bias is unjustified given that the family of nations is no longer limited to a handful of European countries. On the contrary, it has rapidly grown into a world-wide society of nations. As Prof. Khadduri states:

> "To draw on the experiences of an increasing number of other nations is as logical as it is pragmatic, for diversity of experience serves the common interests of an expanding community of nations" (41).

Furthermore, it is stated in Article 38 of the Statute of the International Court of Justice that one of the sources of international law is "the general principles of

international law" which also includes the general principles of the public orders of various nations (42).

In addition to the uncritical acceptance of European legal tradition as the sole framework of inquiry, Turkish scholars of international law seem to take side with the positivist school within that tradition. Similar to the English school of international law, they limit themselves with what 'is', to the exclusion of what 'ought to be'. As a result, in Turkey, international law has remained as a highly technical discipline with its hierarchical and formalistic framework. For instance, Turkish scholars are reluctant to concede legal consequences to resolutions of the General Assembly, even for the states which have voted in the affirmative. As a result of this posture, while the 'hard-core' sources of international law, namely treaties and customary rules, constitute the main bulk of legal analyses, other sources, such as resolutions, general principles or doctrinal writings, are treated marginally. This conceptual and methodological framework inevitably leads to an outmoded conception of international law which is frozen in its formality and neutrality. This contradicts with the nature of international law as it is a dynamic process in which the changes in economic and social structure in international society finds its expression (43). Hence, it can be asserted that the relative weakness of international legal discipline in Turkey is due to the inability and/or unwillingness of legal scientists to come to grips with the evolution of law. To put it more explicitly, in the Turkish case, legal science is reduced to the mechanical description of an existing body of mostly conventional topics without due regard to the dynamics of international law.

Not unpredictably, then, as far as the academic establishment is concerned, international law discourse in Turkey has thus far failed to come to terms with the contemporary problems and trends in international society. Turkish publicists tend to adopt the kind of analytical method which is devoid of the economic, social and political context in which legal standards evolve. Besides, the contemporary conditions shaping the future evolution of international law or the influence of legal institutions upon the realities of the present world order are often ignored. By this token, a large number of themes which are vital to the explanation and exploration of international law are not at all investigated: what, for instance, is the historical background to the emergence and development of international law? what were the economic and political interests behind the 'Eurocentric' international law? what are the distinctive contributions of 'progressive' trends on the conceptual and doctrinal framework of international law? what is the nature of the relationship between 'international law' and 'development' as an expanding discipline within international

law? Besides, they do not seek to understand what part, if any, international law plays in the actual conduct of international relations. In the Turkish tradition, this has largely been left to the experts of international relations. On the other hand, the choice of topics generally centre around the rights and duties of sovereign states and international organizations. Only a small segment of contemporary issues -issues which do not smack of 'politics'- are incorporated into the analysis of international legal rules and principles, such as 'the protection of environment' and the new 'law of the sea'.

4.2.5.Conclusion

It appears that Turkish academics of international law and relations generally lack a tradition of critical scholarship. Their analytical and normative frame of reference is based on the acceptance that Turkey is part and parcel of the European -or western- states system, which then relegates the non-western world into a secondary status. This is premised on a belief that Turkey's official policies towards the outside world are essentially 'correct' as they are 'desirable'. Hence the task for the Turkish foreign policy analyst is to 'describe' and/or 'narrate' Turkey's actual behaviour as seen from the perspective of Turkish diplomats. As far as Turkish publicists are concerned, their analytical attitude is largely informed by Eurocentric assumptions. Law is perceived in its technical formality and procedural dimensions, without much attention to its substance or context.

The following observation of a Turkish sociologist in relation to the state of social sciences in developing countries experiencing a process of modernization, equally applies to the state of international legal scholarship in Turkey. She asserts that the uncritical transmission of 'knowledge':

> "...becomes more important than to analyse, to think and to discover new relationships...Because of the dominance of scholasticism, the most striking characteristics is the extraordinary weight given to teaching, on the one hand, and the low quality and the limited amount of research, on the other...Repetition of dated knowledge, as in scholastic teaching, continues to be considered appropriate" (44).

Indeed, for their part, broadly speaking, Turkish academics of international law have been unaware of, or indifferent to, the actual or potential role played by international law in contemporary international relations. As a result, Turkish jurists have failed to play a critical role in the dissemination of legal knowledge, and, instead, remained as uncritical transmitters of often outdated standard textbooks written by western scholars. Though often not clearly discernible, the theoretical/ideological position of Turkish academics of international law can be defined as 'liberal positivism' of a conservative type. For it appears that the international law establishment in Turkey takes an apolitical stance of legal scholarship founded upon the belief that it is possible to be value-free and that a legal scholar can operate as a technical expert. Here the legal *ideology* is treated as legal *reality*. However as the findings of the sociology of knowledge have shown, no scholar could claim to be free of 'prejudices' or 'ideological assumptions'. Personal feelings are often reflected in one's work. Therefore, the Turkish academics whose works have been examined in this chapter do not represent a 'neutral' and 'scientific' system of thought. Their assertions about the rules and basic assumptions of international law are not necessarily universally valid and good for international society. They merely propagate a particular model of doctrine -western positivism- which claims to provide a minimum of standards necessary for the conduct of international relations.

The uncritical stance of Turkish international lawyers cannot be duly understood without examining certain non-academic factors. The members of the universities in developing countries are also members of the elite (45). This assertion is particularly valid for Turkey where academics of international law are also often employed as functionaries of the state. Most of these scholars are legal advisers and/or representatives of the Turkish government in international organizations. Therefore, they are either ideologically aligned to the official establishment or are unwilling to resist official policy. This is inevitably reflected in their studies. Since they see themselves as advisers/employees of the state, they tend to be pragmatic rather than theoretical or critical. It is therefore not surprising that they frequently refrain from 'stirring' politically 'sensitive' issues which might undermine Turkey's official position on various questions of international law.

Also of particular relevance is the experience of statehood in Turkey. It is observed that in newly independent states or in relatively young nation-states, such as Turkey, the academics in social sciences often find it difficult to adopt a critical approach on the politics, the economic and social system or the foreign policy of their countries. Given that, in such countries, national unity is almost never complete, there is always

a likelihood that the non-conformist researcher will be accused of undermining 'national interests', 'national unity' and other perceived 'high interests' of the 'nation' or the 'state'. For instance, in the specific instance of foreign policy, the scholars of international law and relations are expected to support, or at least suggest, minor modifications to, official policies. This fact, coupled with the lack of democratic traditions in most developing countries, tends to create a docile and non-critical tradition of scholarship in those countries.

In the light of the analysis made above, it might be asserted that the scholars of international law and relations may find it difficult to enjoy the 'luxury' of being critical and argumentative, for fear that this might undermine Turkey's official policies and, therefore, its 'national interests'. Indeed the fact that an exclusive weight has been accorded to the western group of states in the formulation of Turkish foreign policy, is partly to account for the formalistic/conventional attitude of Turkish scholars of international law. Although one might argue that the methodological framework of international law books written by Turkish scholars is hardly relevant to Turkey's priorities and aspirations as a developing nation, it is also clear that this frame of analysis with its Eurocentrism and positivism coincides with Turkey's official policy of alignment with the western group of countries. In other words, instead of taking a critical attitude toward existing policies, the Turkish academic establishment seem to have reproduced and reinforced the dominant discourse relating to Turkey's official conception of international society and its legal framework.

Finally, a brief recapitulation of the preceding chapters is due here. It was stated in the Introduction that a major purpose of this dissertation is to make an exposition of the link between power and discourse, as formulated by Foucault, in the context of Turkish nationalism. Chapter 3, *inter alia,* has been an attempt to construct a paradigm for a clearer understanding of the conceptual and normative foundations of Turkish perceptions of international society. Turkish nationalism and national identity are among the cardinal instruments of this paradigm. In Chapter 4, it has been argued that the analytical focus and the conceptual framework of international law and relations books are subsumed to the limitations of Turkish foreign policy. In other words, the academic discourse in Turkey has become an integral part of a process in which the 'nation' is presented with a particular vision of the international order. For their part, the chapters that follow seek to expose Turkish conceptions and practices of international law in the context of specific disputes and questions.

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PART II

CASE STUDIES

INTRODUCTION

The case studies that follow are designed to test the validity and implications of the theoretical arguments presented in the first part of the thesis. It is therefore appropriate to give a brief review of the preceding discussions. Chapter 2 was intended to provide the foundations of the analytical and conceptual posture adopted in this study. It argued that the critical hermeneutical analysis of international law transcends the constraints posed by an approach informed by a single legal theory. For its part, Chapter 3 was an attempt to identify the historical, political and psychological constraints within which Turkish foreign policy is formulated. It was intended to show how Turkish nationalism became the normative underpinning of Turkey's definition of itself and its conception of the outside world after the disintegration of the Ottoman Empire in the aftermath of the First World War. It was argued that nationalism, in the Turkish context, was from the outset imbued with modernism, western conceptions of legality, and elitism. It was also noted that Turkey's incorporation into western standards of civilisation was in congruence with the western orientation of international law which Turkey accepted uncritically. However it is wrong to assume, as discussed in chapter 3, that Turkey's political identification with the western world as well as with its standards of civilisation has been devoid of frictions between Turkey and the international society which is still largely dominated by western powers. It has been seen that, in the specific case of Turkey, concepts like 'national honour', 'national prestige', and 'national consciousness' have played a disproportionate role in the conduct of foreign policy. The inherent tensions between 'nationalism' and 'legal formalism', which has been a prominent feature of Turkey's international behaviour, has been particularly visible in the case of the Cyprus dispute and Turkey's problems with the Kurdish minority. These will be elaborated in Part II.

Another *raison d'être* of chapter 3 was to expose the priorities, motives and objectives that lie behind the Turkish approach towards the outside world. It is hoped that these expositions will make it possible to relate a particular legal situation or problem to the broader framework of Turkish foreign policy. The overall purpose of chapter 3, then, was mainly to explore the internal variables -of course in interaction

with the external world- that have direct or indirect bearing on Turkish conceptions of international law.

If chapter 3 was an attempt to trace the emergence and the evolution of Turkish nationalism as defined by ruling elites, chapter 4 sought to explore the contribution of the academic establishment to the construction of a particular discourse as far Turkey's conception of the outside world is concerned. Together they were intended to show that 'power' has to be understood in relation to the particular 'discourse' in which it takes place. For their part, the individual chapters that follow, unlike chapter 3 which deals with the overall context of their *formulation*, examine the *execution* of particular policies with regard to various test cases.

Indeed the chapters compiled under Part II focus on the individual legal disputes of Turkey as well as its posture regarding the newly evolving rules of international law. The disputes which will be considered here are as follows : 'Cyprus dispute', 'Aegean dispute', 'Turkish minorities in Bulgaria and Greece' on the one hand, and the 'Kurdish minority in Turkey' on the other. The final chapter of Part II explores Turkey's voting pattern in the UN General Assembly since the 1950s in respect of newly evolving areas of international which may be described as 'progressive' : decolonization and the principle of self-determination; search for a new international economic order; human rights. An analysis of Turkey's legal behaviour in the context of specific disputes and cases does not merely highlight some of the major preoccupations of Turkish diplomacy since the 1950s, but also demonstrates the Turkish position on various concepts, rules and principles of international law, such as 'self-determination', 'minority rights', 'sovereignty', 'the use of force' and so forth.

In the chapters that follow, it will be argued that the increasing impact of UN resolutions and other international instruments over the conduct of international relations has heightened Turkey's feeling of insecurity in the aftermath of the Second World War. This is partially due to the fact that the balance (military and political) established by the Treaty of Lausanne (1923) has been increasingly undermined by the creation or codification of new international legal rules and principles adopted mostly under UN auspices. Among them are the following : first, the adoption of UN resolutions which accorded the right of 'self-determination' for territories under colonial domination eventually resulted in the establishment of the independent Republic of Cyprus, which had formerly been under British sovereignty, in 1960. However the independence of Cyprus also carried the seeds of the future conflicts to come. For Turkey, the well-known desire of the Greek-Cypriot majority to unite

Cyprus with Greece would, should it become a reality, not only endanger the lives of the Turkish-Cypriots but also upset the military and strategic balance in the eastern Mediterranean in favour of Greece. The 'Cyprus problem' has since the early 1960s become a major preoccupation of Turkish foreign policy, and remains so up to this day. Besides, Turkish military intervention in Cyprus in 1974, as well as the continued presence of Turkish armed forces in northern Cyprus, have been largely condemned by the international community as an 'occupation'. Secondly, the emergence of international human rights and the system of minority protection has become one of the major pillars of the UN system after the Second World War. As far as Turkey is concerned, this has brought to the forefront the plight of the 'Kurdish minority' in Turkey. Turkey's refusal to recognise the Kurds as a 'minority' and its poor record of human rights in general have been internationally criticised, not least by the European Community in which Turkey seeks full membership. Thirdly, the adoption in 1982 of the Convention on the Law of the Sea has undermined the balance in the Aegean in favour of Greece. Under the Convention, islands also possess their own territorial waters and continental shelf. Its outright implementation in the Aegean would place some seventy percent of that sea under Greek sovereignty. That is, *inter alia,* why Turkey is among a handful of countries not to have signed the Convention.

In the following analysis, it will be argued that these unforeseen international developments, combined with Turkey's alignment with the western group of countries and its failure to formulate clear and well-planned foreign policy objectives, are the major factors behind the contradictions and inconsistencies of the legal dimensions of Turkish foreign policy. They are also central to an understanding of Turkey's pragmatic but frequently anachronistic conception of international society and its legal framework.

The subject of the next chapter is the Cyprus dispute.

CHAPTER 5

THE CYPRUS DISPUTE

The Cyprus conflict is internationally known for the intractability and the intensity of the hostilities between two rival ethnic and religious groups. This conflict has also has become one of the main preoccupations of Turkish diplomacy and a microcosm of the problematic dimensions of Turkish foreign policy since the 1950s. As a Turkish scholar and former diplomat, Suat Bilge, puts it, the conflict over Cyprus is a 'national' issue which is beyond party politics (1). Granting the complexity of the Cyprus 'problem', as well as its special significance as part of the domestic politics in Turkey and Greece, it is difficult to give a fair account of its legal dimensions. In the light of the objectives of this thesis, this chapter is primarily concerned with Turkey's perception of the Cyprus dispute. However, when discussing the legal dimensions of Turkish military involvement in Cyprus and the following partition of the island, the Greek thesis will also be presented.

First, it may be useful to understand the legal and political justifications of Turkey's involvement in Cyprus since the 1950s. First, a well-known principle of international law, the doctrine of *historical continuity*, applies here. Cyprus was an Ottoman province from 1571 until 1914. At the outbreak of the First World War, the island was annexed by Britain which exercised sovereignty over the island until the establishment of the independent Cyprus Republic in 1960. Turkey legally recognized British sovereignty over Cyprus by the Treaty of Lausanne of 1923. In order to justify Turkish involvement in Cyprus, some Turkish scholars have argued that since Turkey renounced its claims over Cyprus in favour of Britain, any changes in the political status of the island would require Turkey's consent (2).

There is also an ethnic dimension of Turkish involvement in Cyprus. It is known that Turkey did not claim sovereignty when the British and French mandated Arab territories, which had formerly been ruled by the Ottoman Empire, gained independence in the 1930s and 40s. The sole exception here is the province of Hatay, in which a sizeable Turkish community, alongside Arabs and some other smaller communities, was living. When it became clear in the 1930s that France was about to give independence to Syria, Turkey laid claim to Hatay which had an autonomous status during the mandate regime. While initially reluctant to succumb to Turkish demands, France eventually accepted the Turkish claim in order to secure Turkey's

support for the anti-revisionist bloc against Germany and its allies (3). In Cyprus, as in Hatay, a significant fraction of the population are of Turkish descent (roughly 20 per cent Turks, 80 per cent Greeks). When the independence of Cyprus was being discussed in the 1950s, Turkey feared that the Greek majority of the island would either seek to join mainland Greece and/or suppress the Turkish-Cypriots which made up some twenty percent of the island's population. From the Turkish point of view, history lent support to Turkish suspicions. A Turkish scholar points out that the origins of the Cyprus crisis can be traced to the nineteenth century when the 'nationalist virus' 'infected' the Greek-Cypriots who were led by the Greek-Orthodox church (4). The *enosis* movement, which aimed at the union of Cyprus with Greece, was active during the reign of the Ottoman Empire and of Britain. However both sovereigns managed to contain this nationalistic fervour. The principle of self-determination became a cardinal principle of international relations in the post-Second World War era, and sanctioned the independence of many Asian and African colonies. However, given that, under this principle, that which was to be 'determined' was to be decided by the 'majority' of the population of a particular territory, the search towards the 'self-determination' of Cyprus in the 1950s, in Turkey's view, could eventually lead to the destruction of the Turkish 'minority'. Therefore, it was suspect from the outset (5).

The legal arguments in favour of Turkish involvement in Cyprus are reinforced with the added dimension of political and strategic considerations. Cyprus is approximately forty miles south of the Anatolian coastline, which makes the island strategically vital for Turkey's security. Turkey is particularly sensitive to the idea of being 'strangled' by Greece from Thrace to Cyprus.

When the question of the independence of Cyprus, which was then a British colony, was raised by the Greek majority of the island in the 1950s, Turkey was reluctant to become involved in Cyprus for fear of weakening NATO as a result of a possible confrontation with Greece (6). At the time, the main focus of Turkish diplomacy was directed towards the perceived threat from the Soviet Union. This compelled the Menderes government to keep a low profile over Cyprus unless the situation dangerously showed signs of getting out of hand. Turkey initially favoured the continuation of British sovereignty of the island, as was explicitly stated by the Foreign Minister in 1951 (7). This Turkish posture prompted Greece to accuse Turkey of being an 'accomplice of colonialism' (8).

In response to the growing demands of the Greek-Cypriots for independence, Britain decided to invite Greece and Turkey to discuss the future of the island. This was the first time since the signing of the Treaty of Lausanne in 1923 that Turkey became a party to the Cyprus question (9). The first London conference (1955). ended in failure with Greece asking for the implementation of the principle of self-determination, and Turkey advocating the continuation of the status quo (10). However, as it became clear that Britain was intent on renouncing its sovereignty over Cyprus due to growing international pressure, Turkey began advocating the partition of Cyprus between Greek and Turkish-Cypriots (11). This was, however, an unlikely prospect since the international community, particularly the newly independent Asian and African states, was not prepared to accept the territorial disintegration of Cyprus, which was perceived as being contrary to the principle of self-determination.

The final agreement on the status of Cyprus was reached in 1959 with the convening of the Zurich and London Conferences. The Conferences were joined by the representatives of Turkey, Greece, the UK, Greek-Cypriots and Turkish-Cypriots. While Turkey dropped its insistence on the division of the island, Greece renounced its sovereignty claim over Cyprus. Britain, meanwhile, accepted the independence of the island after having secured the preservation of its bases there (12).

The Treaty of Establishment and the Treaty of Guarantee, as well as the Cypriot Constitution, initially drawn during the Conferences as the 'Basic Structure of the Republic of Cyprus', reflected the Turkish distrust of the Greek-Cypriot majority. The Constitution (13) provided both internal and external checks and balances as a guarantee to secure the safety, well-being and the cultural identity of the Turkish community in Cyprus. Though, on paper, the Republic of Cyprus was to be a unitary, sovereign state, it was in effect a 'functional federation'. The Constitution recognized the two communities as equal partners by establishing the principle of bi-communality. In this context, the communal affairs of the islanders were to be relegated to the responsibility of the Communal Chambers (prg.10). The Constitutional provisions were designed in such a way as to give equitable participation to the Turkish community in the functioning of the state; that is, in legislative, judicial and governmental affairs. While the President was to be chosen from amongst the Greek community, the vice-president was to be of Turkish origin (Prg.1). The Turkish community would have a fair share in the composition of the Cabinet and of the National Parliament (Prgs.5 & 6). In case of a legal dispute involving Turks and Greeks, mixed courts were to be authorized (Prg.17).

Meanwhile, as expressed in the Treaty of Establishment, the new status of the island was to be guaranteed through the close co-operation of the Republic of Cyprus with Turkey, Greece and the United Kingdom (14). A similar arrangement was made in the Treaty of Guarantee which was designed to "ensure the maintenance of its (Cyprus) independence, territorial integrity and security, as well as respect for the Constitution". The same Article "prohibited any activity likely to promote...either union with any other State or partition of the island" (15). Here one can easily observe the existing mutual distrust between Turks and Greeks. The Turkish side was presumably fearful of Greek designs to unite the island with the 'motherland' Greece, whereas the Greeks wanted effective guarantees against the establishment of a separate Turkish state in Cyprus.

The most vital and controversial of all the clauses in the Treaty of Guarantee was Article 4. This reads :

> "In the event of a breach of the provisions of the present Treaty, Greece, Turkey and the United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions.
>
> In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty" (16).

In most probability, the last paragraph was included upon the insistence of Turkey. Indeed, according to Averoff, the Greek Foreign Minister at the time of the Zurich and London agreements, the Turkish Foreign Minister Zorlu had, during the London conference, stated that the right of unilateral action was a measure against a possible *coup de main* in Cyprus, or against any attempts directed at the union of Cyprus with Greece (*enosis*) (17). Turkey's insistence on a unilateral right of intervention was an indication of its mistrust of Greeks, as well as of the United Kingdom. As has been discussed in the preceding chapters, Turkey's perception of the outside world is marked by a sense of isolation and insecurity. In so far as Cyprus was concerned, this meant that Turkey was adamantly opposed to any security arrangement which precluded the possibility of a unilateral Turkish action in Cyprus.

The Cyprus Agreement which provided for the independence of Cyprus was actually signed under the patronage of NATO, with effective British involvement, and was hailed as a triumph for diplomacy. However in reality it was "imposed upon the Cypriot people without their consent" (18). Besides, the consociational character of the Constitution was hardly workable due its "complicated and inflexible nature" (19). This meant that the new status of the island was doomed to failure, unless the communities acted with a spirit of co-operation.

Perhaps not unpredictably the Greek-Cypriots were resentful of the new arrangements. They felt that the Constitution unduly and unjustly favoured the Turkish community. In their eyes, although the Turks were a 'minority', they were unjustifiably treated on a par with the Greek majority who made up some eighty percent of the population. This was a major factor behind the ensuing Constitutional deadlock in a variety of matters in the years that followed the establishment of the Republic of Cyprus. Barely three years after the establishment of the Republic, the Greek-Cypriot President of the Republic of Cyprus, Archbishop Makarios, proposed thirteen amendments to the Constitution. These proposed amendments, six of which were part of the Basic Articles which had been declared immutable by the Treaties and the Constitution, were clearly intended to shift the balance of power in favour of the Greek-Cypriot majority (20). Combined with the ensuing armed assault against Turkish-Cypriots, this constitutional 'coup' prompted the Turkish members of the Government to withdraw.

Meanwhile, the Greek-Cypriot leadership began to argue that the international agreements over the status of Cyprus had become obsolete since they had been imposed on Cyprus before independence. In this view, which was also declared before international fora, since the Republic of Cyprus had been admitted to the membership of the United Nations as a sovereign state, any right of intervention by foreign powers in the affairs of Cyprus would be inadmissible under international law (21). However, to the dismay of Greek-Cypriots, having discussed this matter in 1964, the UN Security Council passed no decision on the question of the validity or the legal effect of the Treaty of Guarantee (22). The Security Council took a similar posture when the Treaty of Guarantee was once again invoked in 1965 (23).

The inability or unwillingness of the two communities to agree on constitutional reform resulted in mutual recriminations between the leadership of the respective communities. Meanwhile, Turkish-Cypriots became the target of growing attacks by various armed groups. This culminated in the launching of attacks on some Turkish

villages in 1963-64 by some members of the newly created Cyprus National Guard, many of whose members were sent from Greece. In the face of these grave developments, the Turkish Government decided to intervene in Cyprus. However this decision could not be implemented due to the last minute intervention by the US President Johnson who, in his letter to the Turkish Prime Minister Inonu, made it clear that Turkish military action in Cyprus would be unacceptable to the United States, and warned that should Turkey send its troops to Cyprus, the US would not feel obliged to defend it in case of Soviet aggression against Turkey (24). 'The Johnson Letter', as this incident is known in Turkey, outraged the Turkish political establishment and the masses alike. They came to believe that Turkey's unsuspecting alliance with the western world did not necessarily guarantee its security (25).

The period between 1967-1974 was similarly marked by continuous tensions and inter-communal strife in Cyprus. The mutual distrust between the two communities intensified when, in 1967, the army took over power in Greece. This led to a greater rearmament of the Greek-Cypriot forces and the increasing involvement of Greece in the internal affairs of Cyprus. The inter-communal talks between Turkish and Greek-Cypriots, meanwhile, seemed fruitless, since the parties could not agree on a plan towards the reconstruction of a workable constitution. This deadlock resulted in the setting up of a "Transitional Administration" by Turkish-Cypriots in December 1967 (26).

The 1970s witnessed growing friction between Makarios, the President of Cyprus, and the Greek military junta due to the latter's increasing interference in the internal affairs of Cyprus. This confrontation took a new turn, when, with the encouragement of the military regime in Greece, General Grivas, a veteran of the *enosis* movement, secretly returned to Cyprus in September 1971. Soon he founded a terrorist organization called EOKA-B with the aim of reviving the struggle for *enosis*. The EOKA-B members, as well as some members of the church and those who sympathized with the *enosis* cause, began to call for the deposition of Makarios for betraying the 'sacred' cause. As is well-known, these events culminated in the *coup d'état* of 15 July 1974 which led to the overthrow of Makarios (27).

It is not the intention of this chapter to give a full account of the events leading to the Turkish intervention in Cyprus or of the military action itself. Instead it mainly concerns itself with the objectives and the legality of the Turkish action in Cyprus. In this context, the legal dimensions of Turkish military intervention of 1974, which has since become the focus of much controversy, will be discussed here.

Immediately after the deposition of Makarios, Nicos Sampson, a former EOKA activist, was appointed as the President of Cyprus. This unconstitutional move posed a clear threat to the security and well-being of the Turkish community. Indeed the aftermath of the *coup* led to the break-out of violence during which the Turks suffered a large number of casualties. Meanwhile, the UN Security Council condemned the *coup d'état* in Cyprus. Makarios also testified that this was an 'invasion from outside', and asked for the restoration of the constitutional order (28).

Relying on Article 4 of the Treaty of Guarantee, the Turkish Prime Minister Bulent Ecevit immediately urged the United Kingdom and Greece for a prompt action to restore the constitutional order, while sending an ultimatum through the intermediary of US Under-secretary of State J. Sisco for the resignation of Nicos Sampson. He also asked for the withdrawal of the 650 Greek Officers of the Cypriot National Guard, and firm pledges that Cyprus would not be united with Greece (29). However, none of these demands were met. A Turkish scholar asserts that Turkey was fearful that the United Kingdom would eventually recognize the new regime out of its concern for the British bases in Cyprus. The author adds that Turkey was equally suspicious of the apparent passivity of the United States (30). Under these circumstances, Turkey felt obliged to send Turkish troops to restore the constitutional order and to protect the Turkish community in Cyprus. Hence, it can be argued that, before sending its troops to Cyprus on 20 July 1974, Turkey had exhausted all diplomatic avenues in search of a solution to avoid military confrontation. Seeing that no effective international action was forthcoming, the Turkish government decided to resort to a major motto of Turkish foreign policy in order to find a definitive solution to the Cyprus problem: self-reliance.

Immediately following the cease-fire on July 22, Turkey joined the Geneva Conference alongside Greece and the United Kingdom in response to the request of the Security Council. The conference ended on 30 July with a joint declaration which confirmed the existence in effect of 'two autonomous administrations' in Cyprus (31). The second Geneva Conference took place between 8-13 August 1974, with the additional participation of the Turkish and Greek-Cypriot delegations. Here, the Turkish delegates put forward two proposals which could be acceptable to the Turkish side: a political arrangement based on a bi-zonal federation or a cantonal administration. Neither of these proposals, however, were accepted by the Greek side. The conference came to a stalemate, when, during the plenary session, the Greek side asked for an extension of the deadline set by the Turkish delegation for a consideration of the Turkish proposals. Turkey rejected the Greek request for fear

that the suspension of a definitive agreement might endanger the lives of many Turkish-Cypriots who were surrounded by Greek-Cypriot forces. Indeed, immediately after the news of some Turks who had been killed by Greek forces was heard, the Turkish military operation resumed on August the 14th. As a result of this second intervention, which ended on the 16th of August, some 36 percent of the island fell into the hands of the Turkish forces (32).

Although Turkey had no doubts about the legality or the morality of its military intervention in Cyprus, the international community almost universally condemned the Turkish 'invasion' of Cyprus. It was particularly the second military operation which lent support to the Greek thesis that this was an 'illegal invasion'. Indeed, Turkey was not as much blamed after the first military intervention. For instance, the Security Council resolution No. 353 of 20 July 1974 was non-committal. Paragraph 1 called on all states to respect the sovereignty, independence and territorial integrity of Cyprus (33). Meanwhile, the Parliamentary Assembly of the Council of Europe, in its resolution No. 573 of 29 July 1974, admitted that the Turkish military intervention was an exercise of a right arising out of an international treaty (Treaty of Guarantee) (34). However, after the second military operation, neither the UN Security Council nor the Council of Europe maintained their previous 'mild' stance. For instance, Security Council resolution No. 360 of 16 August 1974 expressed its "formal disapproval of the unilateral military actions undertaken against the Republic of Cyprus" (35). Furthermore, Turkey was utterly isolated when the UN General Assembly resolutions in 1975 (36) and 1976 (37) demanded the restoration of the territorial integrity and sovereignty of the Republic of Cyprus as well as the withdrawal of Turkish troops from the island. Turkey alone voted against the resolution. For the first time in its modern history, Turkey confronted international society as an 'aggressor'. Apparently, the Turkish ruling establishment was bewildered by the extent of the gap between the Turkish perception of the Cyprus crisis and that of the rest of the international community. After having kept a low profile in world affairs with its policy of legal formalism since the demise of the Ottoman Empire, Turkey was once again in the 'spotlight'.

The legal dimensions of the 'Cyprus problem' have been subject to innumerable scholarly writings and countless discussions in the UN. It is almost impossible to give an 'impartial' account of such a delicate and complex problem, and propose a definitive legal prescription accordingly. The assessment of the facts and the position of international law with regard to these facts often depends on the preconceptions and the emotional biases of the commentator himself/herself. Before expressing the

views of the present author -which will inevitably be subjective-, it is more appropriate to present the respective positions of the Turkish and Greek sides, as well as the views of some 'non-partisan' observers with regard to the Turkish military intervention in Cyprus.

The Greek view is most systematically put forward by Jacovides, a former ambassador of the Republic of Cyprus to the United States, which merits particular attention. In his view, the Turkish 'invasion' of Cyprus was legally unjustified, both in terms of Article 4 of the Treaty of Guarantee and that of Article 2(4) of the UN Charter. He argues that, contrary to Article 4 of the Treaty of Guarantee, Turkey did not meet the requirement of 'consultation' with Greece and the United Kingdom before taking military action (38). However, this argument is refuted by an independent observer, Glen Camp, who notes that the Turkish Prime Minister had prior consultation with his British counterpart before the Turkish troops landed at Cyprus (39). A second point made by Jacovides in relation to Article 4 of the Treaty of Guarantee is that the term 'action' could not be interpreted as meaning the use of 'armed force'. The same view was expressed by the representative of Cyprus before the UN Security Council :

> "Those words 'concerted action' mean lawful action, peaceful action, through measures of representation, through the Security Council and through other means, not through aggression, which under the Charter of the United Nations is forbidden" (40).

Returning to Jacovides, he also asserts that the right of intervention is, *inter alia*, contrary to the doctrine of sovereign equality of states as had been embodied in Article 2 (1) of the UN Charter (41). This view was also echoed by the Greek-Cypriot representative before the UN Security Council. He argued that Turkish action was inconsistent with Articles 2 (1), 2 (3), and 2 (4) of the UN Charter which prohibits the threat or the use of armed force between sovereign independent states, this being a peremptory norm *(jus cogens)* of international law as confirmed by the 1969 Vienna Convention on the Law of Treaties (42).

Jacovides also argues that the Turkish military action in Cyprus was not taken "with the sole aim of re-establishing the state of affairs created by the present treaty"; instead Turkey's aim was to impose by force its own prescription for a political solution which contravenes the Treaty of Guarantee (43). He also points to the lack

of proportionality between the harm done to the Turkish community as a result of the Sampson coup of 1974, and the 'devastating consequences' of Turkish military 'occupation' of the island (44).

To reinforce his arguments, the author also refers to Article 103 of the UN Charter which holds that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, the obligations under the present Charter shall prevail." Therefore, according to Jacovides, Article 4 of the Treaty of Guarantee "did not and could not authorize use of armed force by Turkey against Cyprus" (45). Besides, even if it were to be interpreted as authorizing the use of force, this would still be a clear violation of the peremptory norms of international law (46).

In the face of these sophisticated legal arguments, Turkish representatives in the UN and elsewhere have consistently argued that Turkey's unilateral intervention in Cyprus was based on Article 4 of the Treaty of Guarantee. As has been mentioned earlier, this provision explicitly states that if the parties- meaning, Turkey, Greece and the United Kingdom- do not agree on a collective action in the event of a breach of the treaty, "each of the three guaranteeing powers reserves the right to take action" (47). For Turkey, this alone justifies its use of force in the face of a *coup d'état* which overthrew the legitimate government of the Republic of Cyprus, and whose main objective was to create a union between Cyprus and Greece. It has been seen that the right to 'unilateral use of force' had been inserted into the Treaty upon the insistence of Turkey. Before launching military intervention, Turkey had indeed consulted the other parties for a concerted action -which was rejected- before taking the military initiative. The legality of the Turkish action, the argument goes, is also evidenced by the fact that, following the Turkish intervention, the legitimate government of Cyprus was reinstalled and the independence of the island restored (48). David Hunt, who very much sympathizes with the Greek position, fervently argues that, rather than resorting to unilateral use of force, Turkey should have gone before the UN Security Council in accordance with Article 24 of the UN Charter to ask for immediate action to remedy the situation created by the *coup d'état* in Cyprus (49). However, as two Turkish scholars put it, it was only after Turkey intervened in Cyprus that the UN Security Council took any decisions, although Turkey had been calling for immediate action following the military *coup* in Cyprus (50).

Turkey has, of course, rejected the view that Article IV of the Treaty of Guarantee was null and void since it authorized forcible action in Cyprus. The Turkish thesis

regarding the unilateral right of intervention in Cyprus was expressed before the UN Security Council in 1964 by the Turkish representative :

> "The very preamble of our Charter demands respect for the obligations arising from treaties and other sources of international law. In fact, respect for pledges and commitments embodied in international treaties is the only foundation upon which stability in international relations can be achieved" (51).

Indeed Turkey consistently argued, during the years between 1964-74, that Turkey's right to unilateral action, as a last resort, derived from the principle of *pacta sunt servanda.*

As for the Greek claim that 'the use of force' is contrary to the peremptory rules of international law, the Turkish side has argued that the Vienna Convention on the Law of Treaties of 1969 has no retroactive effect as expressed under Article 4, which means that it is not applicable to the Treaty of Guarantee which was signed in 1960 (52). Furthermore, no objection regarding its qualification as a sovereign state was raised when the Republic of Cyprus was admitted to membership of the United Nations (53). Finally, as quoted by a Turkish scholar, "neither the Security Council nor the General Assembly has ever declared a treaty void under Article 103, although the issue has been raised in both bodies" (54).

It has already been stated above that Turkey has also been blamed by the other party for transgressing the terms of the Treaty of Guarantee due to the continuing partition of Cyprus caused by Turkish military action in 1974. This view is also shared by Gillian White, a British scholar of international law, who, while accepting that Turkish military intervention cannot be characterized as a violation "against the territorial integrity or political independence" of Cyprus, since the Republic of Cyprus had consented to the possibility of the 'use of force' as it was among the Parties to the Treaty of Guarantee, she argues that Turkish action in Cyprus went beyond what was necessary for restoring the constitutional order there. In this sense, argues the author, the Turkish action is contrary to the UN Charter, as well as to the Treaty of Guarantee itself (55). To this, the Turkish side responds by asserting that the expression "to re-establish the state of affairs" is meant to correspond to the period which preceded the break up of the inter communal partnership caused by the Greek-Cypriot constitutional '*coup*' of December 1963. The reversal to the period between

December 1963-1974 could only restore the "illegitimate regime of Makarios" (56). Considering that the Republic of Cyprus was founded on the basis of a functional partnership between the two equal communities, the argument goes, one has to accept that their (Turks and Greeks) respective rights of self-determination were implicitly recognized in the constitutional arrangements and the international treaties which gave birth to the Republic of Cyprus (57). The new situation, the roots of which lie in the break-up of the inter communal partnership in December 1963, "will require the making of a new constitution. In view of this, it seems that when a settlement is reached, the Treaty of Guarantee, which is now in force, will have to be up-dated" (58).

The respective legal claims of the two sides which have been examined above clearly show that a major contention between Turkey and Greece is the precise point of time when the Cyprus crisis first arose. For the Greek side, the crisis began with Turkey's military occupation of Cyprus in 1974. In Turkey's view, however, the origins of the Cyprus problem have to be traced to 1963 when the bicommunal partnership was destroyed by the Greek-Cypriots. Furthermore, since December 1963, the Turkish-Cypriots had been forced to live in 'enclaves' due to armed attacks by various Greek-Cypriot elements. On the other hand, the Turkish intervention in 1974 should not, in Turkey's view, be singled out as an isolated instance. It has to be related to the *coup d'état,* the main aim of which was to put Cyprus under Greek sovereignty, which was the sole *raison d'être* of Turkey's military involvement in the island. This view was emphatically expressed by the Turkish Foreign Minister before the UN General Assembly in 1989. He asserted that it was "Greece and the Greek-Cypriots who are responsible for the *coup* of 15 July 1974 when they tried to deal a final blow to the independence of the island and the Turkish-Cypriots' existence there" (59). From the Turkish point of view, then, the Turkish position was legally and politically justified. It was morally justified too, since Turkish military action was the only way to protect the lives, property and welfare of the Turkish community in Cyprus. In this context, Turkish diplomats and scholars almost universally agree that, at the time when the pro-*enosis coup d'état* took place in Cyprus, no Turkish Government could afford 'to sit back and watch the massacre of Turkish-Cypriots' in the face of growing public pressure for action. The Turkish public only remembered too well how Turkey had been deterred from unilateral action during the inter-communal strifes of 1963 and 1967 which had resulted in the loss of many Turkish lives. This time, however, the mass public were not prepared to see another failure on the part of the Turkish government (60).

One can easily observe that the contending parties perceived the establishment of the Republic of Cyprus from different angles which led them into opposing conclusions. The Greek-Cypriots tended to emphasize the 'unitary' nature of the Republic of Cyprus, while the Turkish-Cypriots drew on its 'bicommunal' functionalism. This is perhaps not surprising. The Republic of Cyprus emerged as a result of an externally-imposed partnership which did not necessarily reflect the consent of the 'people' of Cyprus. Never in the history of the island did the Greek and Turkish communities share common symbols of identity or political loyalties. In this sense, the notion of a Cypriot 'national identity' was simply a myth. Britain is partly to blame for this, since, during its colonial rule in Cyprus, it pursued a policy of keeping the two communities apart in order to secure its hold on the island. This meant that Britain had no interest in harnessing a Cypriot national identity among the Greek and Turkish communities (61). The Greek-Cypriot community speaks Greek, belongs to the Christian church, and emotionally identifies with Greece. The Turkish-Cypriots, on the other hand, speak Turkish, belong to the Islamic faith, and emotionally identify with Turkey. Furthermore, the communities possess separate historical memories and cultural symbols which, in some cases, are defined in contradistinction to one another. The problem in Cyprus, then, was, and is, one of conflicting nationalisms.

As has been mentioned earlier, as a result of the Turkish intervention in 1974, Turkish-Cypriots took possession of some 36 percent of Cyprus. There have been ongoing negotiations to end the partition of Cyprus since then. However they only helped to underline the extent of the rift between Turkish and Greek views of an appropriate solution. To start with, the inter-communal talks in 1974-75 ended in failure when the Greek side favoured a strong central government, as opposed to the Turkish-Cypriot proposal for a weaker one. Soon after the meetings ended, the Turkish-Cypriots proclaimed the Turkish Federated State of Cyprus in February 1975. The Turkish side, however, assured the Greek-Cypriots that this did not imply the establishment of a separate state, but was intended to make up the Turkish-Cypriot wing of a future Federal Republic of Cyprus (62).

Not unexpectedly, this new initiative was not welcomed by the international community. For instance, on March 12, 1975, the UN Security Council adopted Resolution 367 -without vote- regretting that "a part of the Republic of Cyprus would become 'a federated Turkish state'" (63). Both the UN Security Council and the General Assembly reaffirmed that there was only one state in Cyprus irrespective of the *de facto* division of the island (64). However these resolutions also recognized the existence of two separate communities in Cyprus. Indeed, Resolution 367 spoke of

"...the continuation of negotiations between the representatives of the two communities on an equal footing" (65). This implied, as Wolfe remarks, the acceptance of a bicommunal statehood in Cyprus (66).

In pursuance of paragraph 6 of Resolution No. 367, which entrusted the UN Secretary General with a new mission of good offices, inter-community talks resumed in August 1975. At the third round of the talks, on 2 August 1975, the parties agreed for a voluntary exchange of populations. During the sixth round of Vienna talks which took place between 31 March and 7 April 1977, the Turkish-Cypriot side proposed a "federation by evolution". It was for the first time during these communal talks that the Greek side accepted the notion of bi-communality and the principle of bi-regionality. However, the talks were interrupted with the death of Makarios (67). After the resumption of talks, the Turkish side submitted a proposal in January 1978, described by the UN Secretary General as "concrete and substantial", which was rejected by the Greek-Cypriot leadership (68). Talks in May-June 1979 also failed over the priority of the topics to be discussed. Whereas the Turkish side wanted at first to discuss the issues of 'bi-zonality' and 'security', the Greek side prioritised the resettlement of Maras (Varosha). (69). A few months later, on 20 November 1979, the UN General Assembly passed Resolution No. 34/30 by a vote of 99 to 5 with 35 abstentions demanding, *inter alia,* the immediate withdrawal of all foreign forces from Cyprus. The Resolution also called on "all states to support and help the Government of Cyprus to exercise its rights on the Republic, and its people to *full* and *effective* sovereignty and control over the *entire territory* of Cyprus and its *resources*" (70). (Emphasis mine). This was undoubtedly a major diplomatic victory for the Greek side. The resolution unambiguously advocated the Greek thesis that Cyprus should remain a unitary state, and that any moves which could lead to the creation of a separate state were unacceptable. Besides, the resolution demanded the withdrawal of Turkish troops from the island, which was another blow to the negotiating position of the Turkish side.

The Greek strategy of 'internationalizing' the Cyprus dispute gained new impetus with the election of Papandreou to the Greek premiership in 1981. His government declared that neither the formal negotiations, nor the UN-sponsored inter-communal talks, could succeed unless the Turkish forces in Cyprus were withdrawn. Besides, the Papandreou government began calling for an international conference which was hoped to compel Turkey to withdraw its troops from Cyprus (71). From the Turkish point of view, this 'uncompromising' stance of the Greek government was an obstacle to the negotiation process (72).

In 1983, while a new round of talks was scheduled for May 31, the UN General Assembly, with the initiative of the Non-Aligned Contact Group on Cyprus, adopted another resolution which reaffirmed its Resolution No.34/30 of 1979. Resolution No. 37/253 of 13 May 1983, *inter alia,* recalled the Greek proposal for an international conference on Cyprus (73). In reaction to this development, the Turkish-Cypriots boycotted the new round of talks. Furthermore, in defiance of the international community, the Turkish-Cypriot Legislative Assembly passed a resolution on 17 June 1983 affirming that "the Turkish people of Cyprus have a right to self-determination" (74). Shortly after, on 15 November 1983, the Turkish-Cypriots took a historical decision by proclaiming the Turkish Republic of Northern Cyprus (Henceforward, TRNC). On the same day, Turkey recognized the new Republic (75).

From the Turkish point of view, the proclamation of independence in the northern section of Cyprus was primarily intended to increase the bargaining position of the Turkish-Cypriots in inter-communal talks. Indeed, in his letter to the Secretary General of the UN, Rauf Denktash, the leader of the Turkish-Cypriots, assured that the Turkish side was willing to continue the inter communal talks (76). Nonetheless, as is well known, this Turkish initiative has been universally condemned by the international community. For instance, the UN Security Council Resolution No. 541 of 18 November 1983 considered that the Declaration was "incompatible with the Treaty of Establishment and the Treaty of Guarantee", and that it was "legally invalid". Accordingly, it called for its withdrawal, while urging "all countries to refrain from recognizing it" (77). The following year, the Security Council adopted Resolution No.550/84 which reaffirmed Resolution No.541 and condemned all "secessionist acts" in Cyprus (78). Meanwhile, in its Recommendation No.974 of 23 November 1983, the Parliamentary Assembly of the Council of Europe rejected the "unilateral declaration of independence of the northern part of Cyprus" and demanded the immediate withdrawal of the "occupying Turkish troops" as an indispensable condition for a solution to the Cyprus crisis (79). Other organizations followed suit with verbal condemnations, including the European Community and the Commonwealth, as well as the United States, the former Soviet Union and Britain. Indeed no state, other than Turkey, has so far recognized the TRNC.

The representatives of the Turkish-Cypriots and Turkey have repeatedly assured the international community that the proclamation of independence in northern Cyprus is not an irreversible decision. This point was made clear by Turkey's Permanent Representative to the UN in his speech to the Security Council on 18 November 1983. First, he argued that the *bi-communal* Republic of Cyprus was based on the

recognition that *both communities* had the *right to self-determination.* Since this system was destroyed by Greek-Cypriots, Turkish-Cypriots were again free to enjoy their right to self-determination. However, he assured that the independent republic in northern Cyprus would remain so unless "both communities agree to come together again on an equal footing in the Federal Republic of Cyprus in a bi-communal, bi-zonal and federal framework" (80).

Turkey is all too aware that the international community is unlikely to recognize the TRNC in the foreseeable future. As Groom rightly observes, "practically all states have a vested interest in condemning secession" (81). Indeed, many states are fearful that the recognition of the TRNC might create a dangerous precedent in international law by giving legitimacy to the struggle of many beleaguered minorities for independence. Turkey itself is not immune from these considerations since, as will be seen later, some sections of Turkey's Kurdish minority are demanding the right to self-determination, which is flatly rejected by the government. Therefore, it is also in Turkey's interest to advocate a single state in Cyprus -albeit, within a federative structure.

The inter-communal negotiations have not come to a halt despite the proclamation of an independent Turkish republic in northern Cyprus. The UN Secretary General's proposed plan in 1986 called for the reunification of Cyprus on the basis of a bi-national federal republic with a Greek-Cypriot President and a Turkish-Cypriot vice-president, both of whom would have a veto power over a bi-cameral legislature. The proposal suggested a reduction in the land controlled by Turks from 35,8 percent to a little over 29 percent. While the Turkish-Cypriots accepted the proposals, the Greek-Cypriots put forward certain preconditions, such as the withdrawal of Turkish forces from the island, before any consideration of the proposals. In response, President Denktash of the TRNC, in his letter to the Secretary General of the UN, stated that there could be no withdrawal of Turkish troops until all aspects of the Cyprus problem were settled. In the face of this disagreement, the Secretary General's plan was dropped (82).

Due to an apparent lack of agreement over some key issues, such as the presence of Turkish troops in Cyprus and the powers to be assumed by the central government, the parties have failed to resolve the Cyprus problem to this day. This deadlock in negotiations has only encouraged the Turkish-Cypriot community to distance itself from the larger Greek community. This tendency can be discerned in the latest proposal (1990) of Rauf Denktash in which he suggested a confederative solution as

the political framework in which to bring the two communities together. Besides, the proposal spoke of the Turkish 'people' rather than the 'community', while expressing its right to 'self-determination' (83). This shift in policy is attributed to the recent disintegration of the federally-constructed states in central and eastern Europe, as expressed by the Attorney-General of the TRNC. He asserts that the collapse of the Soviet Union and Yugoslavia, both of which were based on federal structures, has "demonstrated peoples' reliance on the right of self-determination" (84). Returning to the 1990 proposals made by the Turkish side, not unpredictably, they were rejected by the Greek-Cypriots.

The apparent unwillingness of the Turkish-Cypriot leadership to accept even a federal constitutional arrangement has however been largely criticised by the international community. A UN Security Council resolution, adopted unanimously on November 25, 1992, attributed the failure of the latest round of UN-sponsored talks between the Greek and Turkish representatives of Cyprus largely to the fact that the "positions adopted by the Turkish-Cypriot side were fundamentally at variance with the Set of Ideas" put forward by the UN Secretary-General Boutros-Ghali (85). Earlier, on November 6, Rauf Denktash, the President of the Republic of Northern Cyprus, had been blamed by Boutros-Ghali for being "in total opposition to all UN resolutions, to the society of nations and to the Security Council". His reaction had been prompted by Denktash's insistence on two separate states, his rejection of the proposed map and his refusal to hand over Varosha, previously the Greek suburb of Famagusta, to UN administration (86).

At this point, it may be appropriate to discuss the principle of self-determination and its failings in the context of Cyprus. Under present international law, the declaration of independence in northern Cyprus seems unacceptable. Independent observers have almost universally agreed on the illegality of the Turkish declaration of independence in northern Cyprus in 1983. Wolfe asserts that international law does not empower a community to secede from an existing state. He asserts that :

> "Were that to be the case would not the independence and territorial integrity of many U.N. members be at risk? The Treaty of Establishment was indeed signed by democratically chosen representatives of both communities, and it was a commitment to maintain the Republic, not dissolve it" (87).

Hunt too points out that, in violation of the treaties establishing the Republic of Cyprus, the Turkish side has presented as its intention "one of the two courses formally excluded by the Treaty, namely the partition of the island" (88).

Similarly the Greek side has all along argued that the Turkish-Cypriot community does not have a right to exercise separately the right to self-determination. This view was expressed in the UN Security Council by the representative of the 'Republic of Cyprus' -of course not recognized as such by the Turkish side : "The principle of self-determination cannot be interpreted in such a way as to impair the unity of the people and the territorial integrity of any state" (89).

However, the Turkish view is that, contrary to the pretensions of the Greek-Cypriots, the Republic of Cyprus had ceased to represent the *whole* people of Cyprus as of December 1963. One Turkish scholar asserts that sovereignty requires the consent of the people, which was non-existent in pre-1974 Cyprus. He argues that the first mission of a state is to guarantee the self-realization and self-government of the individuals within its territory. This requires that states should not be treated as the only subjects of international law; otherwise, all the conventions dealing with human rights would loose their original *raison d'être* (90). Once it is accepted that the legitimacy of the state is a *sine qua non* of sovereignty, then the 'Republic of Cyprus' can be described as an 'illegal state' given that it sought to deny the right of existence to Turkish-Cypriots and suppressed their national aspirations (91). In such cases, the argument goes, the 1970 UN General Assembly declaration on the right of self-determination permits secession. This declaration does not authorize "any action which could dismember...independent states conducting themselves in compliance with the principle...of self-determination of peoples...thus possessed of a government representing the whole people...without discrimination as to race, creed or colour" (92). Since the Republic of Cyprus 'only represented the Greek-Cypriots', the declaration of independence in northern Cyprus was a perfectly legitimate act of self-determination.

As for the Greek claim that it was the Turkish military occupation which created the 'illegal' state in northern Cyprus, the Turkish view is that the use of force by Turkish armed forces in Cyprus was legally justified under the terms of the Treaty of Guarantee. Besides, the TRNC was not established immediately following the Turkish military intervention. It was only after having exhausted all diplomatic and

political avenues for a lasting and just solution all of which had failed, the Turkish-Cypriots finally decided to declare independence some nine years after Turkish intervention. In any case, not all cases of foreign intervention result in the non-recognition of the state created as a result (93). For instance, the fact that the state of Bangladesh succeeded in seceding from Pakistan in 1971 largely thanks to Indian military intervention did not deter the international community from recognizing the new entity (94). In other words, in the Turkish view, an act of international intervention which is a breach of international law does not necessarily invalidate the legal existence of the new state (95).

From a strictly legal point of view, the position of those who advocate the Turkish-Cypriots' right to self-determination is hardly defensible. Even if the Turkish military intervention in Cyprus could be justified by reference to Article 4 of the Treaty of Guarantee which permits 'unilateral' action, the same article strictly states that "the sole aim" of the action must be to "re-establish the state of affairs created by the present Treaty" (96). Given that the Turkish intervention, far from restoring the previous constitutional order, led to the division of the island, it may *ex post facto* be seen as a clear violation of the Treaty of Guarantee. Again, from a legal point of view, Turkey's campaign for the recognition of the TRNC is, by definition, inconsistent with its call for a federative solution in Cyprus. Indeed if the TRNC were to dissolve itself within a future federative state, the fact of its international recognition would become immaterial. On the other hand, the case of Bangladesh is an exception rather than a rule. Besides, unlike the situation in Cyprus, Bangladesh was geographically separated from West Pakistan. International law does not recognize the right of a minority to self-determination unless a minority group succeeds in seceding from an existing state through its own efforts. As has been argued in Chapter 3, international law is premised on an anachronistic notion of self-determination. It assumes that once a previously colonized territory gains independence, the relationship between the new state and its citizens becomes a matter for domestic law. Under international law, self-determination is not treated as a continuum of rights, but a once-and-for-all right to independent statehood based on 'majority rule'. This implies that the question of legitimacy or the political aspirations of minority groups are irrelevant to international law. Although the 'international protection of human rights' comes close to ensuring the legitimacy of states, even in this case, these measures are primarily designed to preserve the existing system of states. Besides, states themselves possess the ultimate authority in deciding how to implement international legal instruments (For a detailed analysis of these points see

Chapters 3 and 8). In the light of these considerations, it appears that the Turkish conception of self-determination in the context of Cyprus is legally untenable.

Perhaps not surprisingly, instead of engaging in a strictly legalistic discourse, Turkey, at the official level, has sought to draw on the humanitarian and political dimensions of the internal conflict in Cyprus before Turkey militarily intervened in 1974. Turkish diplomacy has, *inter alia*, resorted to the following principles to justify the Turkish position in Cyprus : the principle of *pacta sunt servanda;* the principle of human rights; appealing to reason, and a sense of justice and fairness. To make an overview of the kind of arguments advanced by Turkish diplomats, they may briefly be formulated as follows : perhaps Turkish actions in Cyprus have not always been in conformity with existing international law, but they were morally justifiable and politically correct. The Turkish 'people' of Cyprus had been forced into submission by an 'alien' majority from 1963 onwards. It is *only* due to Turkey's determination in the face of an indifferent international community that their lives and security were spared. The declaration of independence in northern Cyprus is not an irreversible step; on the contrary, it will hasten the process towards the establishment of a "bicommunal, bi-zonal federation based on the political equality of the two peoples of the island" (97). That is why Turkey has all along advocated the continuation of negotiations.

Hence, in the final analysis, one's view of the Cyprus dispute depends on the posture he/she takes. An international lawyer of a conventional type might rely on the established rules of international law on questions of sovereignty, self-determination, the use of force and so forth. He/she could then conclude that Turkey "has brought in question the whole modern concept of the rule of law in international affairs" (98). An unorthodox scholar of international law might, for his/her part, draw on the newly evolving areas or perspectives of international law to justify the Turkish position on the question of self-determination: the doctrine of legitimacy, secessionary self-determination and so forth. Admittedly, the 'conventional' international lawyer has a clear advantage over his/her 'unorthodox' counterpart, since, the issues raised by the latter do not, as yet, form part of the corpus of international law. As far as the principle of the sanctity of treaties is concerned, it cannot justify the continued partition of Cyprus.

As the Cyprus conflict demonstrates, international law is still dominated by anachronistic rules with regard to questions like 'sovereignty', 'self-determination' and 'recognition'. It treats law *per se*, without due regard to the complex set of non-legal

factors which have direct bearing on a particular legal situation. For instance, international law has nothing to say about 'national identity' which has played a key role in the Cyprus conflict. Besides, the question of the legitimacy of states is subordinated to the principle of effectiveness or, as in the case of Cyprus, to majority rule. Its apparent indifference towards factual realities has often led to the ineptitude of international law in solving conflict situations. This vacuum between international law and 'the problem out there' is also observable in Cyprus.

As far as Turkey's handling of the Cyprus problem is concerned, one sees that despite its initial reluctance to engage in such an intricate issue for fear of weakening the NATO alliance in the eastern Mediterranean, it has managed to assert itself as a key player there. Indeed Turkey has skillfully exploited the existing vacuum in international law as well as the inner contradictions of the Republic of Cyprus in its own favour. With a long and enduring experience in statecraft, Turkey is an old master of diplomacy. It is, for instance, keenly aware of the power-centric nature of the international system. Besides, it knows well that international law still largely lacks rules and institutions to ensure that 'aggressors' are punished. The UN often remains impotent in conflict situations since, for instance, the UN General Assembly is not authorized to adopt binding resolutions. Similarly, the UN Security Council resolutions are not backed up by enforcement mechanisms, save in cases which threaten 'international peace and security' as is enunciated under Chapter VII of the UN Charter. Furthermore, the decision-making in the Security Council is too 'politicised' to provide clear guidelines with regard to the consequences of unlawful behaviour by states. For instance, despite the UN Security Council Resolution No.242 of 1967 (99) which called for its withdrawal from the occupied Arab territories, Israel has consistently refused to abide by them, knowing that the United States will veto any resolutions demanding sanctions against itself. Turkey itself being a member of NATO and a strategic ally of the US, these considerations were presumably taken on board before it finally decided to rely on its own resources following the pro-*enosis coup* in Cyprus in 1974.

On the other hand, contrary to Greek strategy, Turkey has been adamantly opposed to the 'internationalisation' of the Cyprus conflict. As has been argued earlier, the Turkish vision of the outside world is marked by a 'siege mentality'. This manifests itself in the context of Cyprus *par excellence*. Turkey detests the idea of a Cyprus under Greek sovereignty which, as it sees it, would provide Greece with another foothold in the eastern Mediterranean. This, in turn, would have finalized Turkey's 'encirclement' by Greece. One can also draw on the fact that, before the emergence

of Turkish-speaking republics in the ex-Soviet Union, Turkey lacked an 'international political and ethnic constituency" (100). This was, and still is -given the relative weakness of the Turkish-speaking republics-, another factor which contributed to Turkey's opposition to third party involvement in Cyprus. Besides, Turkey bitterly recalls how the Council of the League of Nations unanimously voted to put Mosul, which was also claimed by Turkey, under British sovereignty in 1925 (101). On the other hand, Turkey has never been a part of the Non-Aligned movement, which partially explains why it was often rebuffed by its members in international fora. Indeed a large fraction of these countries, which make up the majority in the UN General Assembly, have accused Turkey of 'occupying' a small state like Cyprus, and asked for the withdrawal of Turkish armed forces from Cyprus, which they perceived as "an essential basis for the solution of the Cyprus problem" (102). In this context, they have refused to accept a dual right of self-determination in Cyprus. Turkey has equally been suspicious of the western bloc of countries which it perceives as unjustly favouring Greece against Turkey, not least in Cyprus.

It is true that Turkey has financially and diplomatically suffered a great deal after militarily intervening in Cyprus. It also suffered the consequences of an American arms embargo during the period between 1975-79. However the politicians and the general public are convinced that it was a price worth paying. No one can deny that Turkey's determined action in Cyprus has greatly enhanced the bargaining position of the Turkish-Cypriots in inter-communal negotiations. Suffice it to say that the Greeks have gradually come to accept the idea of a federal republic in Cyprus, which they had previously dismissed. The same change of attitude has been observable with regard to the international community at large. Although a number of UN resolutions adopted since 1974 have harshly criticised the Turkish 'occupation' of Cyprus, the same provisions have called on the parties to seek a negotiated solution based on a 'bi-communal federation'. The Cyprus report of the Secretary General of the UN in March 1991 was indeed very close to the Turkish position. The report notes that :

> "Cyprus is the common home of the Greek Cypriot and Turkish Cypriot communities whose relationship is not one of majority and minority, but one of two communities in Cyprus...The objective is to work out a new constitutional arrangement for the State of Cyprus that will govern the relations between the two communities on a *federal* basis that will be *bi-*

communal as regards constitutional aspects and *bi-zonal* as regards territorial aspects" (103). (Emphasis mine).

The preparedness of the international community to accept a 'bi-zonal' and 'bi-communal' federation in Cyprus, according to which the territory of Cyprus will be divided between the two communities and the constitution will be arranged on the basis of power-sharing between them, is clearly a diplomatic triumph for Turkish political strategy in Cyprus. It is also a testimony to the failure of international law which, instead of solving disputes of an ostensibly legal nature, often constructs legal formulae which suit the state of affairs created as a result of non-legal means, e.g. by the use of force.

Cyprus is only one aspect of Greco-Turkish disputes. The parties also disagree over the delimitation of the Aegean Sea, which will be examined next.

NOTES TO CHAPTER 5

1.*Olaylarla Turk Dis Politikasi*, Seventh Edition, 2 volumes (Ankara, Alkin Kitabevi Yayinlari, 1989), p.337.

2.*Ibid.*, pp.337-343.

3.*Ibid.*, p.131.

4.*Ibid.*, p.338.

5.*Id.*

6.*Id.*

7.*Ibid.*, p.339.

8.*Ibid.*, p.340.

9.*Id.*

10.*Ibid.*, pp.342-343.

11.*Ibid.*, p.356.

12.*Keesing's Contemporary Archives*, Vol.12, 1959-60, pp.16657-16661.

13.Nominally known as the "Basic Structure of the Republic of Cyprus" as was framed during the Zurich and London Conferences. Its text can be found in *ibid.*, pp.16657-16658.

14.Article 3 of the Treaty Concerning the Establishment of the Republic of Cyprus, British Treaty Series No.4 (1961), Cmnd.1252. pp.5-7.

15.Article 1 of the Treaty of Guarantee, British Treaty Series No.5 (1961), Cmnd.1253, pp.2-4.

16.Article 4 of the Treaty of Guarantee.

17.W. M. Dobell, "Policy or law for Cyprus?", *International Journal,* Vol.31, 1975-76, 146-158, p.150.

18.Eamonn Breen, *The Three Islands : International Agreements in Northern Ireland, Cyprus and Sri Lanka,* (Belfast, The Queen's University of Belfast, 1990), p.16.

19.*Ibid.*, p.17.

20.Monreo Leigh, "The Cypriot Communities and International Law", *Turkish Review Quarterly Digest,* Winter 1990, p.50.

21.*UN Security Council Official Records,* S/PV.1097, 25 February 1964, para.137.

22.*Yearbook of the UN*, 1964, pp.150-163.

23.*Ibid.*, 1965, pp.195-209.

24.*Olaylarla, op.cit.*, pp.372-386.

25.Omer Kurkcuoglu, "'Dis Politika' Nedir? Turkiye'deki Dunu ve Bugunu", *A.U.S.B.F.D.*, Vol.35, no.1-4, 1980, 309-335, pp.325-326.

26.*Keesing's Contemporary Archives*, Vol.16, pp.22435-37.

27.Cigdem Kurt, "The Reception and Evolution of the Cyprus Issue in the United Nations: 1954-1984", *Foreign Policy,* Vol.11, Nos.1-2, 47-83, pp.60-62.

28.*Yearbook of the UN,* 1974, p.264.

29.Kurt, *op.cit.*, pp.62-63.

30.*Ibid.*, p.63.

31.The Geneva Declaration of 30 July, 1974, HMSO, Misc., No.30 (1974), Cmnd.5712, prg.5.

32.Kurt, *op.cit.*, p.65.

33.Resolution No.353 of the Security Council of the UN, adopted on 20 July 1974, in *Yearbook of the UN*, 1974, p.291.

34.Resolution No.573 of the Parliamentary Assembly of the Council of Europe, adopted on 29 July 1974, in Zaim Necatigil, *The Cyprus Question and the Turkish Position in International Law* (Oxford, Oxford University Press, 1989), p.104.

35.Security Council Resolution No 360 of the UN, adopted on 16 August 1974, in *Yearbook of the UN*, 1974, p.293.

36.Resolution No.3395 of the General Assembly of the UN, adopted on 20 November 1975, in *ibid.*, 1975, pp.300-301.

37.Resolution No. 31/12 of the General Assembly of the UN, adopted on 12 November 1976, in *ibid.*, 1976, p.302.

38.Remarks by Andrew J. Jacovides, the panel on "Cyprus: International Law and the Prospects for Settlement", *Proceedings of the American Society of International Law*, 1984, 107-132, p.116. This view was also expressed by the Greek representative before the UN Security Council the day when the Turkish military action in Cyprus was launched : *UN Security Council Official Records*, S/PV.1781, 20 July 1974, para.218.

39.Glen D. Camp, "Greek-Turkish Conflict over Cyprus", *Political Science Quarterly*, Vol.95, no.1, Spring 1980, 43-70, pp.47-48.

40.*UN Security Council Official Records*, S/PV.1781, 20 July 1974, para.238.

41.Remarks by James H. Wolfe, the panel on "Cyprus: International Law and...", *op.cit.*, pp.109-110.

42.*UN Security Council Official Records*, S/PV.1098, 27 February 1964, paras.95-105; *UN Security Council Official Records*, S/PV.1795, 30 August 1974, para.19. For a fuller discussion of the principle of non-intervention, see Gene M. Lyons and Michael Mastanduno, *Beyond Westphalia? International Intervention, State Sovereignty, and the Future of International Society*, summary of a conference held at Dartmouth College, May 18-20, 1992 (Hanover, N.H., Dartmouth College, 1992); Hedley Bull (ed.), *Intervention in World Politics* (Oxford, Oxford University Press,

1984); Malvina Halberstam, "The Copenhagen Document : Intervention in Support of Democracy", *Harward International Law Journal*, Vol.34, No.1, Winter 1993, 163-175; Caroline Thomas, *New States, Sovereignty and Intervention* (Aldershot, Gower, 1985)

43.Jacovides, *op.cit.*, p.116. The same point was raised by the Greek representative before the UN Security Council : *UN Security Council Official Records*, S/PV.1781, 20 July 1974, para.218.

44.Jacovides, *ibid.*, pp.116-117.

45.*Ibid.*, p.117.

46.*Id.*

47.*Loc.cit.*, in note 16.

48.*Olaylarla...*, *op.cit.*, p.575.

49.David Hunt, "Three Greek Islands and the Development of International Law", in John T.A. Koumoulides (ed.) *Cyprus in Transition 1960-1985*, (Trigraph, London, 1986), 38-53, p.51.

50.*Olaylarla...*, *op.cit.*, p.575.

51.*UN Security Council Official Records*, S/PV.1098, 1964, 27 February 1964, para.40.

52.Necatigil, *op.cit.*, 1993, p.117.

53.*Ibid.*, pp.120-121.

54.Thomas Ehrlich, *Cyprus : 1958-1967*, (London, Oxford University Press, 1974), p.73 in Metin Tamkoc, *The Turkish Cypriot State : The Embodiment of the Right of Self-determination* (London, K. Rustem & Brother, 1988), p.150.

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56.Tamkoc, *op.cit.*, 1988, p.102.

57.*Id.*

58.Necatigil, *op.cit.*, 1993 edition of *The Cyprus Question...*, p.125.

59.Turkish Foreign Minister Mesut Yilmaz's Statement in the 44th Session of the General Assembly of UN (3 October 1989) in *Turkish Review Quarterly Digest*, Winter 1989, 123-134, pp.134-135.

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62.Kurt, *op.cit.*, pp.68-69. The text of the "Joint Resolution of the Council of Ministers and the Legislative Assembly on the Proclamation of the Turkish Federated State of Cyprus" can be found in Zaim M. Necatigil, *Cyprus: Constitutional Proposals and Developments*, (Nicosia, the State Printing Office of the Turkish Federated State of Cyprus, 1977), pp.125-126.

63.Security Council Resolution No.367, adopted on 12 March 1975, in *Yearbook of the UN*, pp.297-298.

64.*Ibid.*, Prg.1; and General Assembly Resolution 3395 (XXX), adopted on 20 November 1975, in *Yearbook of the UN*, pp.300-301.

65.*Ibid.*, prg.2.

66.Wolfe, *op.cit.*, p.111.

67.Kurt, *op.cit.*, pp.69-72.

68.A/33/107-S/12715 of 23 May 1978; A/33/101-S/12707 of 17 May 1978; and the Secretary General's Report S/12723 of 31 May 1978, paragraphs 47 to 58 in *UN Security Council Official Records*, Supplement, 1978.

69.Necati Munir Ertekun, *In Search of a Negotiated Cyprus Settlement*, (Nicosia, Ulus Matbaacilik, 1981), pp.75-84.

70.UN General Assembly Resolution No.34/30 of 20 November 1979, in *Yearbook of the UN*, pp.431-432.

71.Kurt, *op.cit.*, p.77.

72.*Id.*

73.UN General Assembly Resolution No.37/253 of 13 May 1983, in *Yearbook of the UN*, pp.245-246.

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75.*Ibid.*, Vol.30, 1984, pp.32638-40. The full text of the declaration can be found in UN Doc. A/38/586-S/16148 of 16 November 1983, pp.11-33.

76.*Yearbook of the UN*, 1983, p.253.

77.UN Security Council Resolution No.541 of 18 November 1983, in *ibid.*, p.254.

78.UN Security Council Resolution No.550 of 11 May 1984, in *ibid.*, pp.243-244.

79.Recommendation No.974 of 23 November 1983, the Parliamentary Assembly of the Council of Europe.

80.Address Given by the Permanent UN Representative of Turkey, Mr. Kirca, to the Security Council on 18 November 1983, UN Doc.S/PV 2500, in *UN Security Council Official Records*, 1983, Vol.2.

81.A. J. R. Groom, "Cyprus, Greece and Turkey - A Treadmill for Diplomacy", in John T. K. Koumoulides (ed.), *op.cit.*, 126-156, p.137.

82.UN Secretary-General's Draft Proposal for a "Framework Agreement on Cyprus" was presented on 29th March 1986, and published as Annex II to the Records of the Security Council S/18102/Add.1 of 11th June 1986. For the Report of the Secretary-

General to the Security Council with regard to the respective response of the parties, see UN doc. S/18102.

83.Fahir Armaoglu, *20.Yuzyil Siyasi Tarihi*, Vol.2 (Ankara, Turkiye Is Bankasi Kultur Yayinlari, 1991), p.294.

84.Necatigil, *op.cit.*, 1993, p.391.

85.*Keesing's Contemporary Archives*, November 1992, p.39210.

86.*Ibid.*, 1992, p.39211.

87.Wolfe, *op.cit.*, p.113.

88.Hunt, *op.cit.*, p.49.

89.UN Security Council, S/PV, 2591, 14 June 1985, p.13.

90.Tamkoc, *op.cit.*, 1984, pp.120-122.

91.*Ibid.*, pp.120-121.

92.The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. UN General Assembly Resolution 2625 (XXV), October 24, 1970. *Yearbook of the United Nations*, 1970, 788-792.

93.Necatigil, *op.cit.*, 1993, pp.324-325.

94.On Bangladesh's emergence as a new state see T. M. Franck and N. S. Rodley, "After Bangladesh : The Law of Humanitarian Intervention by Military Force", *American Journal of International Law*, Vol.67, 1973, 275-305.

95.Tamkoc, *op.cit.*, 1988, p.32.

96.*Loc.cit.*, in note 16.

97.Foreign Minister Mesut Yilmaz's speech in the UN on 3 October 1989, *op.cit.*, pp.134-135.

98.Hunt, *op.cit.*, p.47.

99.UN Security Council Resolution No.242, adopted on 22 November 1967, *Yearbook of the UN*, pp.257-258.

100.Duygu Sezer, "Turkish Foreign Policy in the Year 2000", in *Turkey in the Year 2000* (Ankara, Turkish Political Science Association, 1989), 63-117, p.84.

101.Ismail Soysal, *Turkiye'nin Siyasal Andlasmalari, 1920-1945*, Vol.1, (Ankara, Turk Tarih Kurumu Basimevi, 1989), pp.304-306.

102.Part of a speech made by the representative of Guyana during the Security Council discussions with regard to the declaration of independence by Turkish-Cypriots in northern Cyprus. *UN Security Council Official Records*, S/PV.2500, 18 November 1983. The final declarations adopted during the Summit Conferences of the Non-Aligned Movement almost invariably "demanded the immediate and unconditional withdrawal of foreign armed forces...from Cyprus". They also urged all states "to respect the sovereignty, independence and territorial integrity of Cyprus". See for instance the Final Declarations of the Fifth (1976), Sixth (1979) and Seventh (1983) Non-Aligned Summits held in Colombo, Havana and New Delhi respectively, in *The Third World Without Superpowers : The Collected Documents of the Non-Aligned Countries*, (Oceana Publications; Dobbs Ferry, New York); Volumes 2, 5, and 10.

103.Cyprus Report of UN Secretary-General Perez de Cuellar, 17 March 1991, *Turkish Review Quarterly Digest*, Spring 1991, 105-108, p.106.

CHAPTER 6

THE AEGEAN DISPUTE

Turkey and Greece also disagree over the delimitation of the Aegean sea. The 'Aegean dispute' covers a variety of issues : sovereign rights over the Aegean continental shelf; territorial sea limits; the control of military and civil air traffic; and the re-militarization of the Greek islands close to Turkish borders. Controversy over these matters is aggravated by the intensity of overall hostility between the two sides, as discussed in the preceding chapters. The 'Aegean dispute', therefore, has both legal and political dimensions. This chapter initially examines each of the matters of the dispute separately. Since the main concern of this dissertation is to make a critique of the Turkish conceptions and practices of international law, the specific details and technicalities of the various disagreements involved in the Aegean dispute will largely be by-passed. Therefore, following an introduction to various aspects of the Aegean dispute, the essential rationale behind Turkey's official position will be explored. The historical and psychological factors which have direct bearing on the legal posture adopted by Turkey -and occasionally, by Greece- will also be examined.

The question of the delimitation of the Aegean sea became a matter of *dispute* in the wake of the world-wide 'oil crisis' in 1973 which severely affected both Greece and Turkey. The same year Greece discovered oil resources off the island of Thasos. The crisis was sparked off by an announcement by the Turkish government that a Turkish petroleum company was granted a licence to explore oil resources in the sea-bed areas near the Greek islands of Lemnos, Mytilini and Chios. Greece immediately protested this Turkish move and claimed that these areas formed part of its own continental shelf. Turkey, in response, argued that those Greek islands were a natural extension of the Anatolian peninsula. Greece, for its part, asserted that under Article 1 of the 1958 Geneva Convention on the Continental Shelf, each of the Greek islands in the Aegean had its own continental shelf (1). This meant that Turkey could not claim any rights to the west of the Greek islands. Unlike Greece, Turkey was not a signatory to this Convention for reasons which are not difficult to understand. The Convention provides that islands are entitled to continental shelves. Article 1(b) states that the term 'continental shelf' refers, *inter alia*, "to the sea bed and subsoil of...submarine areas adjacent to the coasts of islands". The problem with this article is that its very general wording was bound to create confusion and conflicting claims in certain maritime areas. Indeed, in objecting to the Greek claims, Turkey has

argued that the Aegean is a special sea whose delimitation has to be based on the principle of equity; otherwise, the argument went, the Aegean would become a Greek 'lake' due to the fact that the Greeks possessed an innumerable number of islands some of which were a few miles from the Turkish coast (2).

In 1975, Greece proposed to submit the dispute to the International Court of Justice. This was rejected by Turkey. Instead, Turkey insisted on bilateral negotiations. In 1976, following a renewal of tension over the continental shelf dispute, Greece brought the problem before the UN Security Council. The latter called on the parties to "resume direct negotiations over their differences", which was fully in accord with Turkish policy (3). Following this failed initiative, Greece unilaterally appealed to the International Court of Justice for a ruling on the delimitation of the Aegean continental shelf. In its submission, Greece requested the Court to adjudge and declare that the activities of exploration and exploitation pursued by Turkish naval vessels since 1973 over the maritime area which, in its view, encroached upon the continental shelf belonging to Greek islands are illegal. Pending the final decision of the Court, Greece also requested interim measures of protection. To Greece's disappointment, however, the Court held that the alleged breach by Turkey of the exclusive right claimed by Greece was capable of compensation by appropriate means. Therefore the Court concluded that there was no sufficient reason "to justify recourse to its exceptional power under Article 41 of the Statute (of the International Court of Justice) to indicate interim measures of protection" (4). Soon after the Court's interim ruling, the Greek and Turkish sides decided to freeze the dispute by an agreement in Berne on 11 November 1976. Under the terms of the agreement, both parties undertook to refrain from any action which might prejudice the negotiations (5). Two years later, the Court announced its ruling with regard to the dispute relating to the delimitation of the Aegean continental shelf. It held that the Court had no jurisdiction in matters which were brought without the other Party consenting to it (6). The Court, *inter alia,* argued that in the absence of an express commitment by Turkey jointly to submit the present dispute to the International Court of Justice, there was no rule of international law which obliged it to act otherwise (Parags.100-107).

The question of the continental shelf was among the major considerations of the Third United Nations Conference on the Law of the Sea. During the discussions, which came to fruition with the signing, in 1982, of the United Nations Convention on the Law of the Sea, Turkish delegates consistently drew on the special features of the Aegean ('semi-enclosed sea'), and, therefore, the necessity to apply the principle

of 'equity' in that area (7). The final text adopted by the conference was, however, more akin to the Greek position, since it provided islands with their own territorial waters and continental shelf (8). This explains why, unlike Greece, Turkey has refrained from signing the new convention.

In the Turkish view, the heart of the controversy over the delimitation of the continental shelf and of the territorial seas in the Aegean, both of which remain unresolved to this day, is that many of the Greek islands are situated very close to the Anatolian peninsula. Should the Greek argument be accepted, then the Aegean would virtually become a Greek sea (9). This fear of encirclement by Greece constitutes the security dimension of Turkey's interpretation of the rules relating to the law of the sea. Turkish international lawyers have maintained that there is considerable legal support for the Turkish thesis. They argue that the International Court of Justice recognizes the special nature of the 'semi-enclosed seas', such as the Aegean, and, accordingly, accepts that the criteria for their delimitation should be based on the equity principle. This, one Turkish jurist argues, was the position of the Court in the North Sea dispute in 1969 (10). But if that is the case, one wonders why Turkey has consistently refused the Greek proposal to bring the continental shelf dispute before the International Court of Justice. A Turkish scholar of international relations, who has close links with the Turkish diplomatic establishment, candidly expresses the reason behind the Turkish reluctance for international adjudication : although the probability of the Court's decision being in Turkey's favour is some eighty percent, there is still a twenty percent risk that the Court's ruling will favour the Greek position. He therefore concludes that Turkey cannot let its vital interests be delegated to fifteen judges over whom it has no control. That is why, in his view, Turkey should press for bilateral negotiations (11). In these words, one can easily trace the Turkish mistrust of 'third parties' in cases which involve Turkey's national interests, as has been argued in previous chapters.

Besides that of the continental shelf, the delimitation of the territorial waters is another question that complicates the controversy over the Aegean. Presently, Greece and Turkey observe a six-mile limit with regard to their territorial waters in the Aegean sea. Given that under the 1982 Convention on the Law of the Sea, islands are assigned their own territorial seas, with well over 2000 Greek islands, Greek territorial waters presently make up over one-third of the total area, while Turkish territorial waters are merely one tenth of the Aegean sea. However Greece has repeatedly declared that its territorial waters should extend from six to the more common twelve miles which is the main cause of the friction in this matter. If the

Greek demand were to be realised, then the Greek territorial waters would embrace some two-thirds of the Aegean. Conversely, if Turkey followed suit, it would not gain substantial benefits. Turkey has made it clear that it would resist by any means should Greece extend its territorial waters to twelve miles. Indeed, Turkey has declared that it would regard any Greek action in this direction as a *casus belli*. So far, Greece has acted with restraint, while purportedly reserving the right to make such an extension in the future (12).

As in the case of the continental shelf, Greece lays greater emphasis on general international law and international adjudication, while Turkey advocates a primarily 'political' solution reached through bilateral negotiations (13). Greece asserts that as a general rule of international law, which is reaffirmed under Article 3 of the 1982 Convention on the Law of the Sea, territorial waters can extend as far as twelve miles. The same rule should apply to the Greek islands too. Besides, in Greece's view, the littoral state is entitled to proclaim the boundaries of its territorial waters unilaterally. From a Turkish point of view, however, there are no clear-cut, standard rules concerning the delimitation of territorial waters. Before declaring the limits of its territorial seas, the littoral state is obliged to consider the geographical peculiarities of the region in question. Turkey has all along claimed that the Aegean constitutes a special case because, first, it is a semi-enclosed sea, and, secondly, when the generally applied twelve-mile rule is applied to the Aegean, it would hardly gain access to the 'open seas', due to the presence of a great number of Greek islands in the vicinity of the Anatolian peninsula (14). Turkey also fears that the new status of the territorial waters could greatly damage its security and economic interests in the Aegean (15). These considerations all mean that Turkey has every reason to insist on mutual diplomatic negotiations which would address the complexity of issues relating to the Aegean.

Another controversy between Greece and Turkey relates to the control of the air space in the Aegean. In 1931, Greece extended its air space to ten miles which was not at the time challenged by the Turkish government, although Turkey never recognized the extension explicitly. However, following the outbreak of the Cyprus crisis in 1974, the Turkish government demanded that all civil aircrafts crossing the median line in the Aegean should report to the Turkish FIR (Flight Information Region). Turkey has since refused to recognize Greek control over the air space extending beyond six-miles -which is also the outer limit of territorial waters assigned for Greece. In response, Greece has continuously protested that Turkish flights over the disputed four-mile strip are a violation of its sovereignty (16).

The militarization of the Eastern Aegean islands has also been a matter of friction between Turkey and Greece. The Treaty of Lausanne of 1923 which, *inter alia,* settled the long standing problems between Turkey and Greece, reaffirmed Greek sovereignty over the Aegean islands, with the exception of Imbros (Gokceada) and Tanados (Bozcaada), which the latter had acquired in 1912 during the first Balkan War. This Treaty prohibited the militarization of the Greek islands off the western entrance to the Turkish Straits -Mythilene, Chios, Samos, Nikaria, Samothrace and Lemnos. This meant that no naval base or fortification was to be allowed in the islands; instead, the military forces would be limited to the requirements of internal security. The Treaty of Lausanne imposed a similar prohibition for the Turkish Straits (17).

The balance established in the Treaty of Lausanne changed in Turkey's favour with the signing, in 1936, of the Montreux Convention which permitted Turkey to remilitarize the Straits. The Convention made no mention of the Greek islands which had been demilitarised in Lausanne (18). When the Treaty of Paris of 1947 transferred the sovereignty of the Dodecanese islands from Italy to Greece, these islands were declared to be demilitarized too (19). The problem, according to Turkey, is that, contrary to the terms of the Montreux Convention, Greece has been remilitarizing and fortifying the afore-mentioned islands, particularly since the outbreak of the Cyprus crisis in 1974. In reaction to this Greek move, Turkey has created an 'Aegean Army' which is outside NATO control (20). For its part, Greece has either denied the fact of violation or the validity of such obligations (21).

The respective arguments of the contending parties with regard to the militarization of the Greek islands can be roughly summarised thus : Greece asserts that the Treaty of Lausanne of 1923 sought to bring a security balance between Turkey and Greece by imposing military restrictions not only on the Greek islands off the Turkish coast, but also in the Turkish Straits. Therefore, since the Montreux Convention of 1936 allowed Turkey to re-militarize the Straits, by implication, the same should apply to the Greek islands (22). It is hence clear that Greece relies on an established rule of international law, *rebus sic stantibus*, (the term refers to changes in material circumstances which could not be foreseen at the time when the relevant treaty had been signed) to justify its claim. Greece also draws on a speech made by the Turkish Foreign Minister in the National Assembly soon after the signing of the Montreux Convention in which he said that, as far as Turkey had been concerned, the Greeks could have fortified the islands in question (23). In any case, argue the Greeks, no

treaty provision can override a country's basic right under international law to defend its borders against an "aggressive adversary" (24).

Turkey has countered these claims by arguing that the whole rationale behind the militarization of the Turkish Straits, as had been explicitly reaffirmed by the Montreux Convention, was to guarantee Turkish security. That is why the Convention did not authorize the fortification of the Greek islands in question. Neither had the Greek representatives forwarded such a claim during the Montreux Conference (25). Turkey asserts that the legitimacy of its claims is further evidenced by the fact that, during the secession by Italy of the Dodecanese islands to Greece under the terms of the Treaty of Paris of 1947, the same imposition of demilitarization was also explicitly mentioned therein (26).

The Greco-Turkish dispute over the islands took a dangerous turn since the beginning of the 1980s when Andreas Papendreou was first elected to the Greek premiership. The Papandreou government adopted a new military strategy according to which the main 'threat' to Greek security came, not from the ex-Warsaw Pact, but from Turkey. As a result, Greece began fortifying the Greek islands in the eastern Aegean, besides deploying the bulk of its troops in Western Thrace -bordering Turkey. The controversy over the island of Lemnos, situated a few miles from the Dardanelles, is particularly revealing. Greece deployed a brigade and built an airport in Lemnos, which, in Turkey's view, serves as a strategic stronghold against itself. Turkey believes that there is ample historical evidence to justify its fears, among which is the fact that the island of Lemnos served as a base for the Allied military campaign against the Dardanelles during World War I. The Papandreou government sought to legitimize this *fait accompli* by proposing, in 1984, the inclusion of Lemnos in NATO military exercises. Although NATO had initially taken a sympathetic attitude to Greek suggestions, the plan was dropped as a result of the Turkish veto (27). In 1986, Greece signed a treaty of non-aggression with Bulgaria which, in Turkey's view, was directed against its own security. For Turkey, this Greek initiative was contrary to the 'NATO spirit', because a member of NATO was entering into a legal commitment with a Warsaw Pact member against a fellow member of NATO (28). These Greek moves further complicated the crisis over Lemnos and some other Greek islands.

The Turks generally resent that, although a much smaller country, it is Greece which possesses most of the islands in the Aegean. In a meeting held in Turkey in 1986 on the Aegean question, one Turkish professor drew on the fact that Turco-Greek

friendship during Ataturk's leadership (from 1923 to 1938) often operated in favour of Greece. He complained that, at the time, Turkey naively let the islands slip into Greek hands without much consideration of the long term implications for its national interests. The same scholar also complained that, after gaining independence in 1829, Greece largely extended its territory at the expense of Turkey in pursuit of *megalo idea* -the half-nationalistic, half-religious ideal of a greater Greece (29). This scholar's view of Greece as a 'cynical expansionist' is shared by many other observers in Turkey. Indeed the memories of the Turkish War of Independence is still alive in the collective consciousness of the people. The Greek occupation of Western Anatolia in the aftermath of the First World War seemed to Turks as the first step towards the partition of Asia Minor. For the Turks, this abortive Greek attempt was not only a threat to the territorial integrity of the 'homeland', but to their own existence as an independent nation. Turkish perceptions of Greece are therefore associated with 'aggression and expansionism'. Here is a small passage from a quasi-official article, written in 1990, on Greco-Turkish relations. Noting that Turkey and Greece became allies after both entered NATO in the 1950s, the authors add :

> "The Megalo Idea, however, was beneath the surface in the relations of Greece and Turkey, and it surfaced to create the Cyprus and Aegean issues. Both of these problems could be solved by peaceful means. But the desire of Greece to own everything has cut off all roads to a peaceful solution" (30).

Hence when assessing the Aegean dispute, one could clearly observe that the collective memories of the 'nation' with regard to the past events underline much of the negotiating position held by Turkish statesmen and diplomats. From the Turkish perspective, it is always Greece which is to blame for any inconvenience in the Aegean or in Cyprus. Mass public opinion in Turkey almost takes it for granted that the Greek approach to any legal dispute involving Turkey is 'irrational'. The Turks tend to believe that "the Greeks' only function in history has been to make trouble for Turkey in general and between Turkey and Europe in particular" (31). (It is almost certain that Greeks have similar convictions about the Turks. However, since the principal purpose of this dissertation is to uncover the Turkish perception of the outside world, the main focus of this chapter is the Turkish view of Greece). As Tachau sharply observes, the Turks are a very emotional people, and tend to classify nations as either friends or enemies of their country. Greece is undoubtedly seen as a

national enemy (32). In Turkey, anything that is associated with Greece conjures up nationalist sentiments which, in turn, is exploited and manipulated by the sensationalism and chauvinism of the popular press. As a result, apparently legal questions, like the delimitation of the territorial sovereignty in the Aegean, are swiftly turned into questions of national honour, national pride or national prestige, and makes it all the more difficult to reach a negotiated settlement. In Turkey, as in Greece, the armed forces see themselves as the guardian of the nation which further exacerbates the situation, and prejudices a clear understanding of the substantive issues (33). Boulding observes that the way in which foreign policy decision-makers interpret any given situation is less determined by the objective facts than their subjective perception of the situation, and their images of other states. In this sense, argues Boulding, the subjective interpretation of a given situation may not necessarily correspond to the objective facts (34). This observation applies to the Greco-Turkish disputes *par excellence,* as has been observed above.

Turkey frequently declares that relations between itself and Greece are based on the balance of rights and obligations set up by the Treaty of Lausanne of 1923. This implies that for Turkey, the Greco-Turkish disputes "have been the result of Greek attempts to bring about changes in the various aspects of this balance" (35). The proponents of this view draw on the fact that the boundaries of territorial sovereignty are defined in such a way that neither Turkey nor Greece could obtain military advantage over the other in the Aegean (36). However, the problem is that the Treaty of Lausanne did not, and possibly could not, solve all the matters of contention that are seen today. As has already been examined, the so-called 'balance' in the Aegean changed in Turkey's favour when the Montreux Convention of 1936 allowed Turkey to re-militarize the Straits. The balance then changed in favour of Greece when Italy ceded the Dodecanese islands to Greece in 1947. In the meantime, new developments in international law since the 1950s have significantly enhanced Greek claims for sovereign rights in the Aegean.

Indeed, under the terms of the new Law of the Sea Conventions of 1958 and 1982, islands are assigned their own territorial waters, contiguous zone and continental shelf, with the addition of an exclusive economic zone in the latter convention (37). Under Article 3 of the 1982 Convention on the Law of the Sea, territorial waters can extend as far as twelve miles. Granted that the exploitation of sea resources -e.g. petroleum, minerals, fishing- have become increasingly significant in the economic life of states, Greece has sought to make full use of the 1958 and 1982 Conventions. However, today, even with the declared six-mile limit for its territorial waters, Greece

already controls well over one-third of the Aegean sea in comparison with the mere one-tenth controlled by Turkey. Turkey has understandably drawn on 'the principle of equity' when renouncing Greek claims of a twelve-mile limit for its territorial waters, and of entitlement to continental shelf for each of the Greek islands. Turkish domestic law relating to territorial waters explicitly adopts the principle of reciprocity, save for the Aegean where the 'median line' is to determine the delimitation of territorial waters (38). Clearly it is the very proximity of Greek islands to the Anatolian peninsula which the legislators had in mind. Greece, however, has been challenging this Turkish posture by arguing that this is contrary to the new Law of the Sea. Greece is well-aware that the emerging rules and principles of international law seek to furnish the littoral states with utmost rights by, for instance, extending the maritime areas under their sovereignty. Greece therefore has been keen to bring the Aegean dispute before international arbitration or adjudication, in particular, before the International Court of Justice. Clearly Turkey is aware that from a strictly legal point of view, Greece, as in the case of Cyprus, has the upper hand. Therefore, fearing that the ruling of the Court might result in favour of Greece, Turkey has refused to accept the jurisdiction of the Court on this matter. Turkey is not a party to the 1982 Convention on the Law of the Sea, and therefore, it is not bound by its terms. Greece argues however that the new rules have taken the characteristics of customary international law to prove that they are binding on Turkey too (39). In turn, Turkey draws on the novelty of these 'law-making rules', and on the fact that they are not yet universally accepted (40). Besides, in the Turkish view, the Greek demand for the uncritical application of the general rules of the 1982 Convention in the Aegean constitutes "an abuse of right" (41).

The preceding arguments must have shown that the Greeks and the Turks perceive the Aegean dispute not merely as a matter of 'legal difference', but as part of the long struggle between Turkish and Greek nationalisms. Indeed, as in the case of Cyprus, the Aegean dispute cannot simply be perceived in legal terms, but, granting the historical enmity and suspicion that has so long prejudiced relations between Turkey and Greece, it has political, strategic and security dimensions without which the intensity and the extent of the Aegean dispute cannot be understood. This implies that the jurist cannot take for granted the positive law as an ideal and objective referent to which the contending parties should conform. Besides, Turkey is not even a party to the 1982 Convention on the Law of the Sea, which makes it all the more difficult to make a meaningful legal analysis of the Aegean dispute. Not only do Turkey and Greece disagree on the substantive issues, but, as has been seen, they also have divergent views over the methods to be used for the settlement of the

dispute. As has been argued throughout this thesis, today the individual nation-state is prior to international law. As the Court expressed in the Aegean Continental Shelf dispute, Turkey had not been under any obligation to recognize its jurisdiction in that particular case in the absence of an express commitment by that state. It can therefore be argued that international jurists are bound to recognize the relative autonomy of states, and, accordingly, should seek to understand nation-states from *within*. This means that the international lawyer is bound to engage in a hermeneutic of mutual claims and perceptions of contending parties in terms of their normative presuppositions. Only then can a set of facts be related to the legal argumentation.

The hermeneutic approach is, as is believed, also one of the key prerequisites for resolving the particular dispute in question. In other words, the Aegean dispute will, in most probability, have to be settled on the basis of a comprehensive settlement between the contending parties themselves. It is indeed revealing to note that official circles in Turkey are convinced that if Turkey and Greece were treated equally by the international community, particularly by the west, this would encourage Greece to take a more conciliatory posture towards its disputes with Turkey (42). Not surprisingly, it has been outraged by Greek attempts to involve NATO and the EC into the Greco-Turkish disputes. This Greek strategy has played into the hands of those who are keen to draw negative analogies with the past. Here is a small quotation from such a Turkish article :

> "To conclude, since gaining her independence from the Ottoman Empire in 1829 with the help of England, France and Russia, Greece has made it a policy to be ally to all states hostile to the Empire in an effort to expand her frontiers at the expense of the Ottoman Empire" (43).

Less demagocical quarters, meanwhile, draw on the cordial nature of Greco-Turkish relations from the mid-1920s to the 1950s, when there was no 'outside interference'. Thus, Bulent Ecevit, a former Turkish Prime Minister, writes :

> "Turkey and Greece cannot solve their problems...under the shadow of others...because whenever other countries were involved in the Turco-Greek differences, the Turks and Greeks ended in conflict. But, whenever they were left alone to settle

their own differences, they showed great ability to do so" (44).

It seems, however, that considering the extent of the imbalance in their respective military strengths (Turkey being the stronger side), it is unlikely that Greece will cease its quest for international support against Turkey. This would in turn suspend the final resolution of the Aegean conflict with Turkey refusing to bow to 'outside pressure'.

Greco-Turkish relations are also complicated by the controversy over the treatment of the Turkish minority in Greece. The question of the 'Turkish minority' also worsened Turkish-Bulgarian relations in the 1980s. While Turkey has sought to gain international support against the 'suppression' of Turkish minorities in Bulgaria and Greece, and propagated the right of Turkish-Cypriots to self-determination, Turkey itself has been accused of 'suppressing' the Kurdish minority in Turkey. It is therefore necessary to understand the rationale behind this seemingly contradictory position. The chapters which follow seek, *inter alia,* to expound on Turkey's legal interpretation of various concepts and rules which are central to 'progressive' international law, such as 'minority rights', 'human rights' and 'the principle of self-determination'.

NOTES TO CHAPTER 6

1.Convention on the Continental Shelf, done at Geneva, on 29 April 1958, *New Directions in the Law of the Sea,* compiled and edited by Robin Churchill, Myron Nordquist & S. Houston Lay, Vol.I, New York, Oceana Publications, 1973, 101-105.

2.A. J. R. Groom, "Cyprus, Greece and Turkey - A Treadmill for Diplomacy", in John T. K. Koumoulides (ed.), *Cyprus in Transition 1960-1985* (Trigraph, London, 1986), 125-156, pp.145-146.

3.United Nations Security Council Resolution 395(1976), August 25, 1976 in Churchill et al., *op.cit.*, Vol.V, 1977, pp.282-283.

4.Aegean Sea Continental Shelf Case (Greece v. Turkey), Request for the Indication of Interim Measures of Protection, 11 September 1976 in *Reports of the International Court of Justice,* 1976, 4-43.

5.Agreement on the Procedure to be followed for the Delimitation of the Continental Shelf by Greece and Turkey, signed at Berne on November 11, 1976, in *New Directions..., op.cit.*, Vol.V, 284-285.

6.Aegean Sea Continental Shelf Case (Greece v. Turkey), Judgment of 19 December 1978, in *Reports of the International Court of Justice,* 1978, 3-45.

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8.The United Nations Convention on the Law of the Sea, adopted on 7 October 1982, in *ibid.*, 151-221.

9.This view was expressed by the Turkish Prime Minister in May 1976, in *Keesing's Contemporary Archives,* 1976, p.27987.

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11.Mehmet Gonlubol, in *Ibid.*, p.51.

12.Richard Clogg, "Troubled Alliance: Greece and Turkey", in Richard Clogg (ed.). *Greece in the 1980s* (London, Macmillan, 1983), 123-149, p.137.

13.During the proceedings of the Aegean Continental Shelf dispute, in his letter to the Court, the Turkish Ambassador argued that the dispute between Greece and Turkey was "of a highly political nature". (Parag.31, *op.cit.*)

14.Ege Deniz..., *op.cit.*, pp.89-92.

15.*Olaylarla Turk Dis Politikasi*, Seventh Edition, 2 volumes (Ankara, Alkin Kitabevi Yayinlari, 1989), p.581.

16.See for instance *Keesing's Contemporary Archives*, 1979 & 1980, p.29936 and p.30484 respectively.

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18.Convention Regarding the Regime of the Straits, with Annexes and Protocol. Signed at Montreux, July 20th, 1936, in *ibid.*, Vol.173, 1936, 213-241.

19.Treaty of Peace with Italy, Paris, 10th February, 1947, in *United Kingdom Treaty Series*, No.48, 1948, Cmd 7481, Article 14, pp.12-13.

20.*Olaylarla...*, *op.cit.*, pp.586-588.

21.Groom, *op.cit.*, pp.145-146.

22.Theodoros Katsoufros, "Ege Deniziyle Ilgili Turk-Yunan Uyusmazliklari", in Semih Vaner (ed.), *Turk-Yunan Uyusmazligi*, (Istanbul, Metis Yayinlari, 1990), 76-105, pp.77-78.

23.Andrew Mango, "Greece and Turkey: unfriendly allies", *The World Today,* Vol.43, 1987, 144-147, p.145.

24.Katsoufros, *op.cit.*, p.78.

25.Fahir Armaoglu, *20.Yuzyil Siyasi Tarihi,* 2 volumes (Ankara, Turkiye Is Bankasi Kultur Yayinlari, 1991), vol.2, p.258.

26.Treaty of Paris, *op.cit.*

27.Armaoglu, *op.cit.*, Vol.2, p.258.

28.*Ibid.*, p.261.

29.Ege Deniz..., *op.cit.*, pp.102-103.

30.Ergun Aybars & Kemal Ari, "The Past and Present of Western Thrace", *Turkish Review Quarterly Digest,* Summer 1990, 25-39, pp.38-39.

31.Mango, *op.cit.*, p.144.

32.Frank Tachau, "The Face of Turkish Nationalism as Reflected in the Cyprus Dispute", *Middle East Journal,* Vol.13, 1959, 262-272, p.264.

33.Clogg, *op.cit.*, p.125.

34.K. E. Boulding, "National Images and International Systems", *Journal of Conflict Resolution,* Vol.3, 1959, 120-131, p.120.

35.The General Directorate of Press and Information, *Turkey,* 1990, p.92.

36.Duygu Sezer, "Turkey's Security Policies", in Jonathan Alford (ed.), *Greece and Turkey : Adversity in Alliance* (Hants, The International Institute for Strategic Studies, 1984), 43-89, p.58.

37.The entitlement of islands to territorial waters and contiguous zone are contained in Articles 11 and 24 of the Geneva Convention (1958) on the Territorial Sea and the Contiguous Zone respectively (Its text can be found in *New Directions..*, *op.cit.*,

Vol.1, 1-10); whereas the entitlement of islands to a continental shelf is provided under Article 1 of the Geneva Convention on the Continental Shelf. As far as the 1982 convention is concerned, the rights possessed by islands are embodied under Article 121(2).

38.Edip Celik, *Milletlerarasi Hukuk*, Vol.2, (Istanbul, Filiz Kitabevi, 1982), pp.88-90.

39.This view was expressed by the Greek delegate during the proceedings of the 1982 conference on the Law of the Sea, in *Official Records of the Third United Nations Conference on the Law of the Sea, op.cit.*, Vol.XVII, p.110.

40.The 1982 United Nations Convention on the Law of the Sea was adopted by 130 states in favour, 4 against with 18 abstentions. During the proceedings of the conference, Turkey proposed an amendment which, if adopted, would have allowed reservations to the Convention. The amendent was rejected with 45 states either voting in favour of the proposal or abstaining. This, in the Turkish delegate's view, indicated that "a considerable number of states had difficulty with the Convention". *(Official Records of the Third..., op.cit.*, Vol.XVII, p.242)

41.This was among the arguments forwarded by the Turkish delegate against Greek claims that the 12 mile-limit for territorial waters had acquired the character of the rule of customary international law, in *ibid.*, p.242.

42."Turkey's International Relations", *Turkish Review Quarterly Digest*, Winter 1989, 5-16, p.12.

43.*Loc.cit.*, in note 30.

44.Bulent Ecevit, "Turkey's Security Policies", in Alford (ed.), *op.cit.*, 136-141, pp.140-141.

CHAPTER 7

TURKISH MINORITIES IN BULGARIA AND GREECE

Before discussing the human rights violations suffered by Turkish minorities in Greece and Bulgaria, it is more appropriate to understand Turkey's official interpretation of the concept of 'minority'. It is important precisely because Turkey itself has for long been accused of suppressing the Kurdish 'minority' in the country. For instance, Michael Gunter complains that "the suppression of the Turkish Kurds is particularly ironic given the official Turkish complaints about the suppression of the Turkish minorities in Cyprus, Bulgaria, and Greece" (1). Turkey's apparently contradictory posture can meaningfully be comprehended by tracing the emergence of the Turkish nation-state in the early 1920s. Following that, the legal and some non-legal dimensions of the problems faced by Turkish minorities in Bulgaria and Greece will be discussed. Finally, Turkey's behavioural attitude towards the plight of these minorities will be assessed.

Soon after the beginning of the Turkish War of Independence, it became obvious that the nationalist leadership perceived minority issues from a religious perspective. Article 1 of the National Pact, which set out the nationalist programme for the first time (1919), stated that with the exclusion of the territories inhabited overwhelmingly by an Arab majority, the parts of the Ottoman Empire "which are inhabited by an Ottoman Muslim majority...form a whole which does not admit of division for any reason..." (2). This article reveals that, irrespective of the ethnic composition of the territory which later became Turkey, Muslim peoples formed the natural human element of the new 'nation' which was 'indivisible'. Article 5 of the National Pact stated that "the rights of minorities as defined in the treaties concluded between the Entente Powers and their enemies...shall be confirmed and assured by us." This article was clearly intended for the Christian and Jewish minorities living in Turkey.

Indeed, the Ottoman *millet* system, which had been based on the separation of various ethnic groups along religious lines, continued to shape the policies of the new Turkish state throughout the 1920s and 30s. This was despite the avowed principle of secularism which was declared as being one of the pillars of the new regime. To give an example, the selection of individuals to be repatriated under the terms of the compulsory exchange of populations which took place between Turkey and Greece during the years between 1923-1930 was not simply based on ethnic criteria. This

was rather an exchange of Greek Orthodox Christians and Ottoman Muslims (3). Among those who were 'repatriated' to Greece were the Greeks of Karaman, who, although Greek Christians by religion, spoke only Turkish. Similarly, many of the 'repatriated' Turks knew little or no Turkish (4). Besides, during the same period, the Christian Turks of the Balkans, called Gagavuzes, were not allowed in Turkey, while the Boshnaks and Pomaks of the Balkans, although ethnically distinct from Turks, were accepted into the country thanks to their Islamic faith (5). This peculiarity of Turkish nationalism is sharply observed by Bernard Lewis who draws on the centrality of the role played by religious affiliation in the construction of a 'national citizenry' :

> "In the Turkish Republic, the constitution and the law accorded complete equality to all citizens. Yet even on the official side, in the structure and policies of the state, there were signs that, despite secularism and nationalism, the older idea that Muslim equals Turk and non-Muslim equals non-Turk persisted" (6).

This religion-centred conception of nationhood was also deemed to be vital as a matter of statecraft. According to Baskin Oran, a Turkish scholar of international relations, one major motive behind this approach was to avoid granting minority rights, which Turkey had undertaken under the terms of the Treaty of Lausanne, to an additional flow of Christian populations. Besides, the nationalist leadership was well aware that Muslim communities, irrespective of ethnic differences, tended to have similar values, traditions and ways of life. This faith-based selection, then, was deemed to increase the chances of social harmony and political loyalty of citizens (7).

Hence, it is clear that, during the early years of the Turkish Republic under Ataturk's presidency, the Turkish notion of 'minority' was based on religious criteria. The same attitude still prevails today. That this is still the case should not come as a surprise given that the fundamental principles of Kemalist nationalism have not yet been challenged in contemporary Turkey (See chapters 3 and 8 for further analysis of Kemalist nationalism and its centrality in contemporary Turkey). This is the context in which to understand the fact of the non-recognition of the Kurdish community, which is overwhelmingly Muslim, as a 'minority group'. As will be seen in Chapter 8, the Kurds are generally perceived, both by the government and mass public opinion alike, as an integral part of the Muslim people of Turkey.

Whilst, internally, the Turkish concept of 'minority' is based on religious criteria, externally, i.e. those in Greece and Bulgaria whom Turkey regards as Turkish Muslim minority, it is a joint mixture of ethnicity and religion -both Turkish *and* Muslim. It has to be noted, however, that not all the Muslims of Greece and Bulgaria are ethnically Turks. Nonetheless, Turkey tends to treat them as 'Turks', which is another indication of its identification of Muslims as Turks in the context of Turkey, Greece and Bulgaria. The population exchange between Turkey and Greece during the 1920s, which has been examined above, excluded two categories from its ambit: the Muslim Turks of Western Thrace in Greece, and the Christian Greeks of Istanbul in Turkey. Under the terms of the Treaty of Lausanne of 1923, these two groups were recognized as 'minorities' with corresponding rights (8). It was therefore clear that the formulators of the Treaty of Lausanne also advocated a notion of minority which was based on religious affiliation. Under the terms of the Treaty of Lausanne, Turkey undertook to give equal treatment for non-Muslim minorities, including those belonging to the Greek Orthodox church, while Greece took similar undertakings in respect of the Muslim minorities living there. Both countries were under an obligation to grant these minorities the same civil and political rights as those enjoyed by the rest of the population. Article 40 is specifically designed for the protection of minority rights:

> "...they shall have an equal right to establish, manage and control...any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein..."

The mutual commitments of Turkey and Greece were, as stated in Article 37, in the nature of "fundamental laws"; and furthermore, under Article 44 "these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations". The rights mentioned in the Treaty of Lausanne were later reaffirmed in bilateral agreements signed between Turkey and Greece (9).

However the question of the treatment of minorities has, over the years, become a major area of contention between Turkey and Greece. Both sides have accused one another of harassing and violating the rights and freedoms of the minorities under consideration -Muslim Turks in Greece and Greeks in Turkey. Greece has complained that the Greek community in Turkey has shrunk from 112,000 in 1934 to

a mere 6000 in recent years which, it claims, is a result of discriminatory measures imposed on them by the Turkish government. That the Turkish community in Greece has actually increased from 106,000 to 125,000 during the same period is, in the Greek view, a testimony to Turkey's failure to comply with international treaties. Greece mentions a specific instance which, in its view, was a clear case of discrimination against non-Muslims in Turkey : in 1942, the Turkish government introduced the notorious *Varlik Vergisi* (Capital tax) according to which non-Muslim taxpayers in Turkey were asked to pay up to ten times as much as the Muslims. Those who could not afford to pay, among them many Greeks, were victimised and punished: arrests, deportations and confiscations were a common occurrence at the time (10). The Greek side has also drawn on the continuous harassment of the Patriarchate in Istanbul and of the Greek schools and religious institutions (11).

In response, Turkey has claimed that the Greeks of Turkey, being economically well-off, have deliberately chosen to live abroad (12). It also denies the existence of harassment against Greek institutions. Besides, for its part, Turkey has complained that in the light of the high birth rate among Turks, the figure indicating the Turkish population of Western Thrace should have been much higher. In this context, it has claimed that due to official and semi-official discrimination against the Turkish minority in Greece, many of them have been forced to migrate to Turkey (13).

There is little doubt that the existence of Turkish and Greek minorities in their respective territories is frequently exploited and manipulated by the Turkish and Greek governments as part of their power struggle. Although the Greeks of Turkey are a shrinking minority and cannot possibly be perceived as a 'potential threat' to Turkish security, since they are a minor fraction of the largest city in Turkey (Istanbul), Turkey has not always complied with the Lausanne arrangement. Greek policies, meanwhile, are designed to assimilate the Turkish minority and/or cause their displacement from Western Thrace so as the alter the population balance of that area in favour of Orthodox Greeks. Unlike the Greeks of Turkey, the Turks of Greece, among whom the annual birth rate is around 2.8 percent, are likely to increase for the foreseeable future. This means that their share of the population is likely to increase, unless large-scale migrations occur. This, the Greek government sees as 'threatening', particularly in the light of the fact that the Turkish minority in Greece is concentrated in the region -Western Thrace- which is close to Turkish borders.

Innumerable evidence suggests that the Greek policies against the Turkish minority are designed to 'overcome' this new form of 'Turkish threat'. To start with, Greece

has consistently sought to assimilate the Turkish minority, in contravention of its international commitments. It is pointed out by Turkish observers that, since 1967, Turkish foundations have been prohibited from buying estates. Besides, Turkish houses, schools, mosques and other buildings are not granted permission for repairs. Meanwhile, Turkish schools have been deprived of educational equipment and teaching materials, while the Turks are not allowed to open new secondary schools. On the other hand, the Greek government has frequently confiscated Turkish lands. The Turks are also barred from purchasing land or houses. It is noted that some 80 percent of the lands expropriated by the government over the years belongs to the Turks (14). Turkish observers argue that these measures are designed to force internal migration of the Turks in order to change the demographic composition of Western Thrace in favour of Greeks. This Greek policy has recently gained a new momentum with the planned settlement in Western Thrace of some 100,000 Pontian Greek emigrants from the ex-Soviet Union, which Turkey has sharply criticised (15).

Furthermore, the Turks are not employed in public services, whereas they are deterred from commercial activities through restrictive measures, like the withholding of permits and licences. It is therefore obvious that members of the Turkish minority in Greece are not treated equally before the law with the rest of the population. They are economically disadvantaged, even marginalized, as a result of deliberate legal and administrative restrictions. Besides, their civil, educational and cultural rights are severely violated. As a result, their long-term collective existence as a distinct ethnic, linguistic and religious community is being threatened through assimilationist pressures (16).

Finally, as Turkey has protested angrily, the Greek government has recently embarked on a campaign of designating the 'Turks' as 'Muslims' (17). It is true that the Treaty of Lausanne spoke of 'Muslims' rather than 'Turks'; however, this was presumably intended to distinguish Muslim Turks from Turkish-speaking Christians. Indeed, Turkey has consistently sought to ensure that the rights of Turkish 'Muslim' minorities in Greece and Bulgaria are protected, whereas, by contrast, it has not shown much interest in the fate of the Christian Turks living in those countries. Therefore, it is clear that, instead of resorting to a literal interpretation of the related provisions, regard must be made to the intention and the spirit of the Treaty of Lausanne. That the term 'Muslims' *in fact* corresponds to 'Muslim Turks', is also evidenced by the fact that Article 3 of the 1923 Convention on the Compulsory exchange of Turkish and Greek populations speaks of "Turkish inhabitants" to be exchanged (18).

In response to the 'suppressive' policies of the Greek government, Turkey has launched complaints before various international organizations. Indeed, after having examined the Turkish complaint concerning the maltreatment of the Turkish minority in Greece, the Helsinki Watch Committee, in a report published in August 1990, has condemned the Greek 'oppression' of the Turkish minority (19). This matter is also currently being investigated by the European Commission of Human Rights. The maltreatment of the Turkish minority in Greece, whom the Greek government legally recognized as a 'minority' by the Treaty of Lausanne and undertook to secure their rights and freedoms accordingly, is a clear violation of various other international instruments of which Greece is also a part : Article 1(3) of the UN Charter speaks of the protection of human rights and fundamental freedoms for all "without distinction as to race, sex, language or religion" (20); Article 14 of the European Convention on Human Rights and Fundamental Freedoms sanctions the principle of non-discrimination in regard to the rights and freedoms embodied in the Convention (mainly civil and political rights) (21); The International Convention on the Elimination of All Forms of Racial Discrimination of 1965 prohibits racial discrimination by states against their citizens (Article 2), guarantees the right of everyone to equality before the law (Article 5), and provides for adequate legal remedies against any acts of racial discrimination as well as adequate compensation for damages suffered (Article 6) (22); Article 5(c) of the Convention against Discrimination in Education of 1960 obliges signatory states to respect the educational rights of national minorities (23); Article 27 of the 1966 Covenant on Civil and Political Rights guarantees the cultural and linguistic rights of minorities (24); finally, Principle VII of the Declaration on Principles of the Helsinki Final Act of 1975 accords equality of treatment for national minorities (25). It is therefore clear that by failing to abide with its international obligations, Greece contravenes a fundamental principle of international law, *pacta sunt servanda* -the rule that treaties must be performed in good faith.

The question of the treatment of the Turkish minority was also, until recently, a major cause of friction between Turkey and Bulgaria. The extent of the problem in this case far exceeded the Greek case, and deeply touched the sensitivities of public opinion in Turkey. First, with a population estimated at around one million, the Turkish minority in Bulgaria makes up some 10 percent of the population in Bulgaria. Secondly, the extent of forcible assimilation was such that it threatened the very existence of the Turkish community as a distinct 'minority'. The whole policy of forcible assimilation, in this instance, was put into practice systematically and with a sense of urgency, the effect of which was immediate and imminent.

The campaign, which was initiated in 1984 and lasted until the demise of the Zhivkov regime towards the end of 1989, included the following measures : the prohibition of the use of the Turkish language in work places and of religious gatherings in mosques, except for Friday prayer; the forcible replacement of Turkish/Muslim names with Slav names; the denial of the existence of the 'Turkish' community who were claimed to be 'Bulgarian Muslims'; the closing down of Turkish schools; the prohibition of Islamic practices, like fasting, circumcision and Islamic burial; the killing or imprisonment of those who defied the forcible measures of 'Slavization' (26).

Under present rules of international law, the Turks of Bulgaria should easily qualify as a 'national minority'. Just as the Turkish Muslims of Greece, they have certain traits which set them apart from the rest of the population : ethnic and religious difference; possession of a separate language; different customs and symbols of identity; and, most of all, a collective willingness to maintain their distinct identity. The Turkish Muslims of Bulgaria -just as the Turkish Muslims of Greece- have already been recognized as a minority, and their rights are guaranteed accordingly, under various international treaties. (The question of the international protection of minority rights will be extensively examined in the next chapter)

To start with, the Berlin Treaty of 1878, which confirmed Bulgaria as an autonomous principality, spoke of the 'Turkish Muslim' minority in Bulgaria, and guaranteed their rights and freedoms accordingly -religious, cultural, linguistic (27). The Istanbul Protocol and Convention of 1909, signed between the Ottoman Empire and Bulgaria, obliged the latter to protect the religious properties of the Turkish Muslim minority (28). The Neuilly Peace Treaty (1919) contained detailed provisions on the legal, religious, cultural, communal/institutional, linguistic and educational rights of minorities, not least those of the Muslim Turks, in Bulgaria (29). The Treaty of Friendship (30) and the Turkish-Bulgarian Convention on the Conditions of Residence (31), both of which were signed in 1925, reaffirmed the rights contained in the aforementioned international treaties.

Not unpredictably, Turkey continuously protested at the forcible assimilation of fellow Muslim Turks during the mid-1980s, and asked for the restoration of their rights. When this was not forthcoming, it asked the government of Bulgaria to hold bilateral negotiations to resolve the dispute. However, the Bulgarian side reacted angrily at what it saw as an interference in its internal affairs. Besides, the government claimed that, contrary to allegations of forcible assimilation, the changes

were the result of the fact that the 'Muslim' minority had 'instantaneously' and 'voluntarily' realized its Bulgarian identity (32). However, relying on Bulgarian sources, a Turkish professor of international relations draws on the fact that even an official book admitted that the Turks came from Asia and that they constituted the largest minority in that country. Besides, prior to 1984 when the forcible assimilation began, Thodor Zhivkov, then the First Secretary of the Bulgarian Communist Party, had acknowledged the existence of Turks in Bulgaria (33). In any case, it is irrational to think that the Turks realised their 'true' identity overnight, given the fact that any form of collective cultural mutation takes place over a long period of time.

Upon the initiative of its Turkish members, the Parliamentary Assembly of the Council of Europe adopted a draft resolution on September 26, 1985, which condemned the coercive measures against the Turkish minority in Bulgaria, and asked for the restoration of their rights (34). In January 1986, Turkey brought the problem before the summit of the Islamic Conference Organization which then passed a resolution calling Bulgaria to restore the religious and cultural rights of the Muslims of Bulgaria (35). The Islamic Conference adopted a similar resolution in March 1988, while deciding to keep the issue on record until a satisfactory solution had been found (36). Similarly, Amnesty International condemned the maltreatment of Turks by Bulgarian authorities in its 1986 report (37). Although the condemnations by these international fora were far from having any binding force, they nonetheless had the effect of increasing the awareness of world public opinion and damaging the prestige of the Bulgarian government.

In 1989, upon the insistence of the Turkish government, Bulgaria agreed to grant passports to the members of the Muslim Turkish community who were willing to emigrate to Turkey. Around 300,000 Turks took up the offer, some one third of whom later returned to Bulgaria due to unpleasant economic and social conditions in Turkey. As a result of the massive inflow of Bulgarian Turks, the Turkish government, strained by housing shortages and a high unemployment rate in the country, soon closed the borders to the further influx of Turkish migrants (38). This typically self-reliant, nationalistic 'heroism' is another example of Turkey's anachronistic approach to international relations. Indeed, without considering its consequences, the Turkish political establishment was drawn into the nationalistic fervour which was, to a great extent, the result of the polemical exploits of the media and the press.

The restoration of the rights and freedoms of the Turkish minority in Bulgaria did not, however, come about as a result of international pressure -though it might have had a catalysing impact. Indeed, following the fall of the Zhivkov regime, which precipitated democratic changes, the new regime in Bulgaria acknowledged that grave mistakes had been done, and that the rights of the Turkish minority were to be restored (39). Accordingly, on the basis of the existing constitution, which guaranteed equal rights to all citizens irrespective of race, colour or religion, the Bulgarian National Assembly abolished all the measures designed to assimilate the Turks (40).

Certain similarities can be drawn from the two cases concerning the plight of Turkish minorities in Greece and Bulgaria. First, both communities are concentrated in Western Thrace bordering Turkey. In this sense, they live in areas which are strategically significant. Secondly, the Turkish minorities, in comparison to the majority Greeks and Bulgarians, have a high birth rate and a young population. Third, both communities have maintained their distinct Turkish Muslim identity. These are presumably among the major considerations behind the assimilationist policies pursued by Bulgaria -until recently- and Greece. As discussed in Chapter 3, nation building is a never-ending process, since those who make up the 'nation', as well as the economic, political and social strategies pursued by the state, are always in flux. The nation-state, engrossed in the 'task' of creating a homogeneous 'national' identity, often regards those who are distinct from the dominant majority as 'alien intruders' whose very presence is a constant reminder of the fragility of the nation-state. This explains a great deal about the attitude of the political establishment in Greece and Bulgaria towards the Turkish minority. Indeed, the latter, with their 'otherness', i.e. their ethnic difference, Islamic creed, use of the Turkish language, peculiar customs and rituals, were perceived as obstacles to the self-assurance of the national majority. Even the avowedly communist regime in Bulgaria did not do away with a nationalistic strategy based on ethnic exclusiveness. It is revealing to note that, at the height of the assimilationist campaign in 1985, the Chairman of the Bulgarian National Assembly declared that people had come to realise that Bulgaria was a "one-nation state" (41).

In response to the report submitted to the Islamic Conference Organization, meeting in Amman on March 19-26, 1988, which reaffirmed the existence of human rights violations against Muslim Turks, Bulgaria blamed the Organization for placing its prestige "at the service of self-seeking pan-Turkish objectives" (42). However, in fairness, it must be noted that Turkey has done nothing to manipulate the situation,

either in Bulgaria or Greece, for irredentist objectives. Turkey, instead, merely asked for the proper implementation of existing international treaties according equal treatment for, and guaranteeing the minority rights of, the Turkish communities in Greece and Bulgaria. It did not, for instance, call for the granting of autonomy or self-determination to fellow Turks. Turkey's reliance on existing legal arrangements rather than on ambitious, but mostly controversial, legal deliberations, is in line with its traditionally cautious and formalistic approach to international law. This posture may also be explained by its fear that this strategy -of resorting to international conventions and resolutions on the protection of minority rights or on self-determination- might eventually backfire, since, it might, with greater justification, be used by Kurdish nationalists in their struggle against the Turkish state. Finally, Turkey's cautious handling of the problems faced by Turkish minorities is also a function of its *defensive* nationalism. In other words, given that the territorial objectives set out by the nationalist leadership during the Turkish War of Independence (1919-1922) were largely achieved, the *raison d'etre* of Turkish nationalism is to legitimate the state and to ensure that Turkey's territorial integrity remains intact. Besides, as has been seen in Chapter 3, ethnic irredentism is largely a discredited idea in republican Turkey.

The minority problems which are dealt with in this chapter also testify to the fragmentary nature of international law. Indeed neither the international community nor international legal instruments have played any significant role in the resolution of the problems faced by the Turkish minorities in Bulgaria and Greece. While, contrary to binding international treaties, Greece continues to violate the rights -both collective and individual- of the Turkish minority, Bulgaria had taken no notice of international condemnations prior to the demise of the communist regime which resulted in the renunciation of the policy of forcible assimilation. International law is conceptually and institutionally ill-equipped to ensure that states comply with established norms of behaviour. As has been argued in Chapter 3, sovereignty of states is the starting point of international law. Since the state is the dispenser of rights and enjoys wide discretionary powers, individual human rights are frequently sacrificed by governments in the name of political expediency -'integrity of the nation', 'indivisibility of the homeland', 'national interests' and so forth. This has indeed been the case with the Turkish minority problems explored here.

If Turkey is the 'claimant' in both minority cases mentioned above, it is the 'defendant' in the case of the Kurdish minority in Turkey. Turkey has long been accused of forcibly assimilating Turkish citizens of Kurdish descent through linguistic, cultural,

political and economic pressures. The chapter that follows focuses on the legal dimensions of the 'Kurdish problem' on the basis of two major questions : first, what is the status of Turkish Kurds under international law? ; second, what are Turkey's obligations under international law with regard to the protection of the rights and freedoms of the Kurdish community?

NOTES TO CHAPTER 7

1.Michael M.Gunter, "The Kurdish Problem in Turkey", *Middle East Journal*, Vol.42, 1988, 389-406, p.400.

2.The Turkish National Pact, in A. J. Toynbee & K. P. Kirkwood, *Turkey* (London, Ernest Benn Limited, 1926), pp.85-86.

3.Convention Concerning the Exchange of Greek and Turkish Populations, and protocol, signed on January 30, 1923, *League of Nations Treaty Series*, Vol.32, 1925, 75-87.

4.Bernard Lewis, *The Emergence of Modern Turkey* (London-New York-Toronto, Oxford University Press, 1961), pp.348-349.

5.Baskin Oran, *Ataturk Milliyetciligi*, Vol.2, (Ankara, Bilgi Yayinevi, 1990), pp.159-160.

6.Lewis, *op.cit.*, 1961, p.350.

7.Oran, *op.cit.*, p.159.

8.Treaty of Lausanne and other Instruments signed at Lausanne, July 24, 1923, in *League of Nations Treaty Series*, 1924, Vol.28, 11-113.

9.Prominent among them being the Ankara Convention of 1930 which guaranteed the property rights of the Turkish Muslim minority in Western Thrace : Convention between Turkey and Greece regarding the Final Settlement of the Questions Resulting from the Application of the Treaty of Lausanne and of the Agreement of Athens Relating to the Exchange of Populations, signed on June 10, 1930, *Ibid.*, Vol.108, 1931, 233-253.

10.Lewis, *op.cit.*, pp.291-293.

11.Richard Clogg, "Troubled Alliance : Greece and Turkey", in Richard Clogg (ed.), *Greece in the 1980s* (London, Macmillan, 1983), 123-149, pp.136-137.

12.Andre Mango, "Greece and Turkey : unfriendly allies", *The World Today*, Vol.43, 1987, 144-47, p.145.

13.*Loc.cit.*, in note 11.

14.Baskin Oran, *Turk-Yunan Iliskilerinde Bati Trakya Sorunu*, (Ankara, Mulkiyeliler Birligi Vakfi, 1986), p.122.

15.*Keesing's Contemporary Archives*, 1990, p.37516.

16.Yusuf Sarinay, "The Rights of the Turks of Western Thrace and the Greek Policy", *Turkish Review Quarterly Digest*, Spring 1991, 27-38, pp.31-34.

17.*Keesing's Contemporary Archives*, 1988, pp.36116-36117.

18.*Loc.cit.*, in note 3.

19.A Helsinki Watch Report, *Destroying Ethnic Identity : The Turks of Greece*, August 1990.

20.Charter of the United Nations, in *Yearbook of the United Nations*, 1947-1948, 987-997.

21.The Convention was signed on 4 November 1950 among members of the Council of Europe, in *European Convention on Human Rights : Collected Texts*, (Dordrecht/Boston/Lancaster, Martinus Nijhoff Publishers, 1987), 4-21.

22.General Assembly resolution 2106 A(XX) of 21 December 1965, *Yearbook of the United Nations*, 1965, 440-446.

23.This Convention was adopted on 14 December 1960 by the General Assembly of the United Nations Educational, Scientific and Cultural Organization, in *UNESCO's Standard-Setting Instruments*, 3-10.

24.This Covenant was adopted on 16 December 1966 by the General Assembly Resolution 2200 A(XXI), *Yearbook of the United Nations*, 1966, 423-432.

25.Conference on Security and Co-operation in Europe, Final Act, Helsinki, 1975, in John J. Maresca, *To Helsinki-The Conference on Security and Cooperation in Europe 1973-1975*, (USA, Duke University Press, 1985), 227-283.

26.*Keesing's Contemporary Archives*, 1985, pp.33670-33671; *Keesing's...*, 1986, pp.340509-340510; *Keesing's...*, 1987, pp.35520-35521.

27.Treaty of Berlin, signed on July 13, 1878, *American Journal of International Law*, Vol.8, 1914, Supplement, 27-45.

28.Qoted in, *ibid.*, Vol.6, 1912, p.663.

29.Treaty of Peace Between the Allied and Associated Powers and Bulgaria, signed on November 27, 1919, *ibid.*, Vol.14, 1920, Supplement, 185-309.

30.The Treaty of Friendship between Turkey and Bulgaria with Protocol annexed thereto, signed on October 18, 1925, *League of Nations Treaty Series*, Vol.54, 1927, 125-133.

31.The Turkish-Bulgarian Convention on the Conditions of Residence, signed on October 18, 1925, *ibid.*, Vol.54, 1927, 135-143.

32.Turkkaya Ataov, "The Turks of Bulgaria", *A.U.S.B.F. Dergisi*, Vol.44, Ocak-Haziran 1989, No.1-2, 135-152, p.136.

33.*Ibid.*, pp.136-137.

34.Resolution 846, in *Official Report of Debates of the Parliamentary Assembly*, 1986, p.342.

35.Fahir Armaoglu, *20.Yuzyil Siyasi Tarihi*, 2 Volumes, (Ankara, Turkiye Is Bankasi Kultur Yayinlari, 1991), Vol.2, p.312. Here it must be noted, in passing, that the resolution speaks of 'Muslims', not of 'Turks'. This may be attributed to the fact that the Islamic Conference is designed, *inter alia*, to enhance 'Islamic' solidarity in international relations.

36.*Ibid.*, pp.314-315.

37.*Annual Report of Amnesty International*, 1986, 272-275.

38.Armaoglu, *op.cit.*, p.316.

39."Foreign Policy of Turkey", *Turkish Review Quarterly Digest*, Spring 1991, 5-16, p.15.

40.Armaoglu, *op.cit.*, Vol.2, p.317.

41.*Keesing's Contemporary Archives*, 1985, p.33671.

42.*Ibid.*, 1988, p.36305.

CHAPTER 8

THE KURDISH MINORITY IN TURKEY AND THEIR RIGHTS UNDER INTERNATIONAL LAW

8.1.Introduction

While innumerable scholarly articles have been written about the plight of Turkish minorities in Bulgaria and Greece, as far as the present author is aware, not a single scholarly work has been undertaken by Turkish international lawyers about the plight of the Kurdish minority in Turkey. For mainstream scholarship, the Kurdish problem exists only in a political sense as something to be resolved through political and economic means. In other words, as far as the academic establishment is concerned, the Kurdish question does not fall into the ambit of international law; hence, it is not a *legal* matter.

However, in the analysis that follows, it will be argued that this is not necessarily so. First, the Kurds are not simply a subsection of Turkish society. They are a 'people' with a separate culture and identity of their own; second, the Kurds are not merely asking for equal treatment with the rest of the population in Turkey. They also demand the recognition of their separate identity. Thirdly, the question of minorities is not only a matter for states themselves. It is, under certain conditions, also a matter for international law.

The exposition of the Kurdish problem and its legal dimensions is intended to expand the preceding arguments relating to Turkey's peculiar approach to international law. In this context, an attempt will be made to relate Turkey's failure to come to terms with the Kurdish reality with Turkey's authoritarian notion of itself and the monolithic 'construction' of a Turkish national identity. This chapter also contributes to an exploration of the problematic dimensions of international law, this time, in the context of human rights, minority rights and self-determination. Here, before engaging in legal analyses, it may be useful to make an overview of the international setting which has highlighted the need to regulate the rights of minorities in recent years.

Today while the Cold War is over, ethno-territorial conflicts have become the order of the day. Bloody conflicts among various ethnic groups in the ex-Soviet Union, and

the disintegration of the former Yugoslavia are a testimony to this new trend. For long suppressed under the monolithic disguise of the communist systems in eastern Europe and the ex-Soviet Union, nationalist sentiments and ethnic hostilities are now threatening political stability and the existing territorial arrangements in many states, while causing loss of lives, human misery and hardship. Many victims of war have fled their countries to become refugees. The scale of refugee flow is such that -three million from ex-Yugoslavia alone-, it is seen as the greatest 'refugee crisis' in Europe since the Second World War. Conflicting national and ethnic claims are clearly endangering international peace and security and call for urgent international measures to remedy the situation. It is generally agreed that the establishment of an effective system to guarantee human rights, as well as minority rights in countries with mixed populations, will be a major step in the right direction.

Not unexpectedly, the Conference on Security and Co-operation in Europe (CSCE) which embraces all the countries in Europe as well as the United States and Canada, held a conference in July 1991 on problems of national minorities in Europe. All 35 CSCE members were present. The conference was marked by disputes between east European delegates about the treatment of minorities in their respective states. In the end, the delegates adopted a document on minority rights and protection (1).

Some trends are emerging within the CSCE mechanism for the protection of human rights in the member states : first, derogation in some cases from the principle of unanimity in decision-making; second, a growing conviction that international concern over the protection of human rights within the member states does not constitute an interference in domestic affairs. German Foreign Minister Hans Dietrich Genscher went further by suggesting during the third Conference on the Human Dimension on September the 10th, 1991 that Germany advocated the creation of a CSCE peace-keeping force with the power to intervene in member states which are suspected of violating human rights "even if their governments do not agree to this" (2).

It remains to be seen whether the CSCE members will agree to delegate the necessary force to the legal texts to ensure their effective implementation within the internal jurisdiction of the member states. The force of events and public pressure are likely to persuade many governments to derogate from 'exclusive jurisdiction' in cases involving human rights and minority protection. The growing international concern is also underscored by the fact that the UN General Assembly adopted a declaration in December 1992 (3) and the Parliamentary Assembly of the Council of Europe passed

a recommendation in February 1993 (4), both of which are specifically designed for the protection of national minorities -as will be discussed later.

The emergence of inter-ethnic conflicts all over eastern Europe and the ex-Soviet Union incidentally coincided with the Kurdish and Shiite uprisings against the Iraqi government in the wake of the Gulf War. The declaration of a 'safe haven' by the UN Security Council -under the auspices of the US and some other western governments- in northern Iraq to protect the Kurds from persecution by the Iraqi forces has apparently led to the creation of a quasi-independent Kurdish state in that region. However this new development has been widely resented by regional states with a substantial Kurdish population -Turkey, Iran and Syria-, and prompted them to enter into closer understanding and co-operation against "western-sponsored projects". Any idea of an independent Kurdish state is an anathema for all, for fear that this might encourage similar moves among their brethren in neighbouring countries. Indeed a tripartite meeting was held in November 1992 between Turkey, Iran and Syria with the aim of discussing the ways to ensure that "solutions to regional issues are confined to the regional states", hinting that they would not welcome an independent Kurdish state (5).

The number of Kurds is estimated at around 20 millions, of whom some 10 to 12 millions live in Turkey. Turkey is particularly apprehensive about the US backing for Iraqi Kurds, fearing that Kurdish self-determination on the other side of the border might have a catalysing impact on the Kurdish nationalist movement inside Turkey. Granted that the Kurdish community in Turkey is far more numerous than that in Iraq and enjoys far less freedom of self-expression, Turkey's ambivalence over a "safe haven" for the Iraqi Kurds is not difficult to understand. Abdullah Ocalan, the leader of the PKK -Kurdistan Workers Party which is the political wing of a Kurdish guerrilla movement, continues to advocate total secession from the Turkish state, as opposed to the Iraqi Kurdish leadership which seems to be content with regional autonomy under a federal structure.

Indeed the PKK continues with its armed campaign for secession which was first launched in 1984. The scale of fighting has intensified in recent years as Kurdish provinces are increasingly oppressed and economically isolated. There is a state of emergency in many provinces of south-east Turkey. According to the official figures, the nine years of insurgency has produced over 10,000 fatalities by the end of 1993 - guerrillas, soldiers, policemen and civilians. More than a half of them died in 1991-93.

In January 1991, at the expense of antagonizing the conservative factions within his party and the army, the late President Ozal paved the way for the easing of restrictions on the use of the Kurdish language. He had hoped to achieve two objectives with this move : first, to undercut the popular support for the PKK; second, to improve Turkey's minority rights record. The head of the new government which came to power in October 1991 announced his government's intention to continue with Ozal's policy of greater cultural rights for the Kurdish minority. However he could not afford to ease off the campaign against the PKK guerrillas for fear of antagonizing the army and the nationalist factions of the state (6). During October 1992, the PKK guerrillas and the Iraqi *peshmerga* fighters engaged in fighting in northern Iraq when the *peshmerga* asked the PKK to evacuate northern Iraq. The Iraqi Kurds calculated that the expulsion of the PKK guerrillas from the areas they control was a necessary price for Turkish acquiescence in the semi-independence they had just declared in the Kurdish part of Iraq. They were also anxious to ensure that Turkey continued to allow its air bases to be used by the allied forces in order to provide the Kurdish 'safe haven' with air protection (7). Meanwhile on October 16, 1992 Turkish armed forces entered Iraq in a large scale air and ground operation in order to force the PKK out of Iraq. As a result of this operation which lasted over two weeks, around 1,000 members of the PKK were killed (8).

The Kurdish question continues to constitute the main political problem facing the Turkish government. Liberal observers have generally been agreed that the former Prime Minister Suleyman Demirel (currently President) and his successor from the same party, Tansu Ciller, have, contrary to Demirel's pledges, failed to humanize the government approach towards the Kurdish problem. On March 30, 1992, 14 Kurdish deputies resigned from the Social Democratic Popular Party (SHP), which was -and still is-, junior partner in the coalition government dominated by the centre-right True Path Party (DYP). This decision was prompted by the failure of the government "to keep its promises" towards the Kurdish population (9). The European Parliament meanwhile condemned the "scale and excessive severity" of Turkish government actions in the south-east (10).

In recent years various studies have been published in the English language that sought to understand different aspects of the Kurdish problem -its historical origins, as well as its political, economic and cultural dimensions. It seems, however, its international legal dimensions have not been adequately explored. For instance, are the Kurds a 'people' or a 'minority', in the sense of entitlement to self-determination? And if so, what is it to be 'determined'? And finally, what obligations does the

Turkish government hold towards its Kurdish citizens under international law? By engaging in this kind of legal discussion, it may be possible to advance some concrete and practical suggestions that could provide a conciliatory framework for a meaningful dialogue between the two contending sides -the Turkish government and the Kurdish nationalists.

8.2.Minorities and Self-determination

As has been argued in Chapter 3, it is a difficult task to put the principle of self-determination into appropriate legal terms. There is neither an international consensus regarding the status of secession in the context of self-determination, nor a universal criteria for a legitimate secessionist movement. Under international law, all peoples are entitled to self-determination. However it is not clear what is meant by 'peoples', or the way in which this right is to be exercised. This right has so far been invoked successfully by colonial peoples only. Moreover it is not easy to enforce the principle of self-determination in concrete cases. For instance, the presence of the UN Resolution has not done much to establish the sovereignty of the indigenous people in East Timor (11).

Another difficulty with regard to the principle of self-determination is that it is generally a part of the vocabulary employed by minorities whose demands do not necessarily coincide with secession (12). Self-determination can be defined as the right of a 'people' freely to determine their own political organization and the form of their relation to other social groups. The end result of this right is not limited to independent statehood. It may take the form of association with other social groups under a federal framework, or autonomy, or assimilation in a unitary state (13). For instance, Puerto-Rican people have, time and again, declined independence, and instead opted for a special legal status under the protection of the United States - particularly for economic reasons (14). Nonetheless the explosive potential of the principle of self-determination has often prompted governments to deny its relevance to certain well-established social groups in their territory. At this point, two questions can be raised : how can one differentiate between 'peoples' and 'minorities'? And can minorities qualify as 'people' under certain conditions?

A former member of the UN Commission on Human Rights, Ermacora, argues that the notions of 'minority' and of 'people' are neither exclusive of one another, nor are they identical. He points out that "the term minority is a man-made notion comprising

man-made situations", while "the term peoples is of an archetypic nature" (15). Therefore a group of people may simultaneously be a 'people' and a 'minority'. Those who categorically deny minorities any right to self-determination do not consider the meaning of the term 'people'. Before elaborating on the notion of 'people', the definition of the concept of 'minority' has to be clarified. A report prepared for the UN by Capotorti appears practical for this purpose:

> "Minority means a group numerically inferior to the rest of the population of a State, in a non-dominant position, -whose members being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language" (16).

It is clear from this definition that not all human categories which may sociologically qualify as minorities should be regarded as such by law. As Ermacora puts it, a social group which can be distinguished from the rest of the society by ethnicity, religion or language, must have a group consciousness and some form of organizational structure in order to claim minority status. If the group is content to assimilate into the mainstream society, then it does not qualify for specific measures that go beyond the general system of human rights (17).

Capotorti's definition is clear enough for minorities which accept the territorial status quo of states in whose domain they live. Once, however, a given minority claims a right to self-determination, any attempt to distinguish between the notion of 'minority' and 'people' is blurred. The logic follows that the notion of people itself is inevitably controversial. Cristescu, in his report to the UN, compiles varying views on 'peoplehood' in the following definition:

> "The word 'peoples' should be understood to mean all those that are able to exercise their right of self-determination; occupies a homogeneous territory and whose members are related ethnically or in other ways" (18).

Here there is an added dimension of territory and capacity for self-determination. It is thus clear that any minority group with a distinct ethnic or religious identity and a separate geographical location -in the sense of constituting the majority over the territories to which they lay claim-, can claim to be a people. However its *effective* transformation into reality depends on the claimants' *capacity* to *exercise* their right of self-determination. One of the implications of this definition is that if force is used to seize a territory on the basis of a claim to self-determination, the new state may more readily be recognized by the international community than in cases of unlawful capture of territory (19). The case of Bangladesh is relevant here. The Bengalis of East Pakistan, ethnically and geographically separated from West Pakistan, and thus qualifying for self-determination, succeeded in gaining independence after waging war against the latter -though with substantial assistance from India. The new state was rapidly and widely recognized by other states (20).

It is therefore clear that international law does not explicitly prohibit the use of the language of self-determination by minorities in so far as they qualify as 'people'. This implies that minorities cannot legitimately be excluded from the right to self-determination *a priori*. However if self-determination is to be understood as the right to secede from an existing state, then it is arguable whether it is a universally accepted 'right', and whether it is legally effective. According to Pomerance, law arises from what states practice constantly and uniformly. She argues that the entire history of self-determination, even during the UN era, has witnessed a subjective and selective interpretation of this principle by states (21). While *full* 'external' self-determination was accorded to peoples living under 'colonial', 'racist' or 'alien' regimes, such arrangements were denied for peoples living under similarly oppressive regimes in 'non-colonial' situations (22). Since 'colonial' regimes have been reduced to a handful of cases, the principle of self-determination has gradually been transformed from 'state creation' to 'human rights enforcement' in the form of 'internal' self-determination (23). Today most international lawyers agree that minority groups which qualify as 'people' should be accorded a limited degree of cultural and political autonomy. However such an arrangement would have to preclude secession. (For further analysis of this question, see Chapter 3)

It is indeed difficult to ignore the existing realities of the international system and its legal framework which are premised upon the immutability of state boundaries. However arbitrary, they remain the dominant reality. The debate on self-determination has shown that states are unwilling to accept it as a prerequisite for the enjoyment of all other human rights. Instead they insist that it should be subordinate

to other principles of international law, such as the inviolability of existing borders and the maintenance of international peace. Therefore it can be concluded that the general trend in international law is that the right to self-determination *must not* lead to changes in existing frontiers.

8.3.The Kurds of Turkey and the Principle of Self-determination

It is generally accepted that the Kurds can be distinguished from the Turks, both ethnically and culturally. It is noted that their ethnic and cultural progenitors were the tribes of Medes who were settled in the mountains of western Iran by the seventh century BC. The Kurdish language is deemed to be a "distinct and separate language belonging to the Aryan branch of the Indo-European family" (24). Ismail Besikci, a Turkish scholar of sociology, has documented the distinctive nature of the Kurdish language, culture and historical heritage, as well as the injustices committed against them (25).

Indeed the Kurds had already developed a distinct identity of their own during the nineteenth century when the survival of the Ottoman Empire seemed tenuous. For centuries, due to the remoteness and mountainous nature of their locations -eastern Anatolia and upper Mesopotamia-, the Kurdish tribes had largely remained beyond the direct authority of the central government. Often, the central authorities chose not to interfere in the 'internal affairs' of Kurdish communities for fear that this might provoke a rebellion, which was not infrequent. The area was in effect controlled by feudal landlords and religious sheikhs. Moreover, the Kurds did not mix with the rest of the population, and only spoke Kurdish. This peculiarity of the Kurdish case leads a Turkish scholar to conclude that "the Ottoman sovereignty in Kurdish areas was only on paper. " (26).

Britain and other members of the Allied coalition were quick to observe secessionary tendencies among the Kurds of Anatolia (and northern Iraq) in the aftermath of the First World War. Immediately after the occupation of Turkey, the Kurds were promised independence by the victorious European powers which were keen to get their support against Turkish nationalists (27). The promise was soon fulfilled with the signing of the abortive Treaty of Sevres of August 10, 1920. Under Article 62, the Kurds of Turkey were promised local autonomy in predominantly Kurdish areas of eastern and south-eastern Turkey. For its part, the Turkish government based in Istanbul agreed to accept the terms of that provision (Article 63). Article 64 made a

further promise to the effect that should the majority of the Kurdish people in the area decide to become independent within one year, and subject to this being approved by the Council of the League of Nations, Turkey was under an obligation to renounce all its claims over these areas. The Allied powers finally committed themselves not to raise any objection should an independent Kurdistan and the Kurds of Mosul province -this province formed part of northern Iraq which was then under British occupation- choose to unite (28).

However the Kemalist leadership, based in Anatolia and opposed to the Sevres arrangement, managed to win the support of the Kurds for the nationalist struggle by playing on two themes: a holy *jihad* against the 'Christian invaders', and a possible Armenian 'threat' to the survival of the Kurds should the Armenians succeed in establishing an independent Armenian state in eastern Anatolia (29). An overwhelming majority of the Kurds responded to the call by joining the Kemalist resistance movement believing, furthermore, that their 'national aspirations' would be fulfilled after victory. There was indeed some indications that this might be materialized after the ejection of the 'infidel' enemy. For instance, throughout the National War of Independence, Ataturk spoke of the 'people of Turkey' rather than 'Turkish people'. Furthermore, in a press conference in 1923, Ataturk promised autonomy for Kurds (30).

However the whole promise was shelved after the Turkish victory was complete. Turkey's territorial borders and other outstanding issues were finally settled by the Treaty of Lausanne of 24 July 1923 (31). Henceforward, in the official parlance, the term 'people of Turkey' was replaced by 'Turkish people' (32). Besides, the public use of the Kurdish language and any other manifestations of Kurdish identity were banned. At least, as far as language was concerned, the forcible imposition of the Turkish language was in stark contrast with Article 39 of the Treaty of Lausanne. It was therein stated that :

> "No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press or in publications of any kind or at public meetings" (33).

However the signatories of the Treaty of Lausanne clearly preferred to ignore this Turkish commitment in order to establish 'friendly' relations with the new Republic.

Feeling betrayed, the Kurds frequently took up arms against the Turkish government in the 1920s and 30s (34). As a result, many Kurds were subjected to forcible internal deportations throughout the 1920s and 30s (35). The Kurds of Turkey were further harassed by the chauvinistic extremities of the 1930s. The Turkish 'language' and 'history thesis' glorified Turkish 'civilisation', while the Kurds were branded as 'mountain Turks'. The schools of Republican Turkey propagated the 'superior' qualities of the Turkish race, its culture and history (36). It is indeed striking to note that once in the peak of state apparatus, Kurdish statesmen have tended to deny the existence of the Kurdish community in Turkey. Prominent among them was Ismet Inonu, Ataturk's long time ally and his successor to the presidency, who was discouraged from revealing his Kurdish identity. He took a strong nationalist - Turkish- stance against Kurdish demands for autonomy. When referring to the Kurdish uprisings in eastern Turkey during the 1920s, he declared that "Only the Turkish nation is entitled to claim ethnic and national rights in this country" (37). These apparently racist policies increased the sense of isolation felt by Kurds, particularly among Kurdish intellectuals. The avowed motto of the new Turkish Republic, 'national unity and solidarity', could only be maintained through military means (38). To be sure, at the time, Turkey was inhabited not only by Turks and Kurds, but as well as by Circassians, Lazes, Bosnians, Albanians, Arabs, Greeks, Armenians, Jews and others. The experience over the years has shown that the non-Turkish Muslim minorities have largely been assimilated and enjoyed equal participation in the political life of the country. Meanwhile, the non-Muslim communities in Turkey, excepting occasional obstructions, freely enjoy their specific rights as minorities which are guaranteed under the Treaty of Lausanne.

Therefore it is clear that among the non-Turkish Muslim communities in Turkey, the Kurdish community alone resisted the temptations of assimilation by maintaining its distinctive cultural traits and language. The reasons probably lie in a combination of cultural, historical, geographical and economic factors. As has been seen, the Kurds have an identity which can partially be discerned from the rest of the population in Turkey. Besides, their collective suffering at the hands of a Jacobinist state has enhanced their group cohesion. Third, the fact that the Kurds have lived in a more or less separate geographical location -south-eastern Anatolia- for hundreds of years has reinforced their claim to a separate nationhood. Finally, one must also mention the relative economic deprivation of eastern Anatolia in comparison to other regions in Turkey. All these factors have combined to convince the Kurds that they are a 'deprived and neglected community', and reinforced their separate identity (39).

It is therefore clear that the Kurdish quest for self-determination has largely, though not exclusively, evolved as a reaction against a repressive majority. In this sense, to some extent, the Kurdish case resembles the situation in Cyprus: Turkish nationalism, like Greek-Cypriot nationalism, asserted itself against colonial rule which, in turn, led to a 'majority' domination over a 'minority'. As a result, the minority itself has come with counter claims for self-determination -although the extent to which this idea is supported by Kurds is not known. Here, as in the case of Cyprus, the dialectic between conflicting nationalist aspirations has created a dangerous confrontation which is hardly reconcilable in legal terms. (The Cyprus question is examined in Chapter 5)

In the light of the preceding analysis, it can confidently be asserted that the Kurds of Turkey constitute a "minority" as defined under international law. They are ethnically, linguistically and culturally discernible from the rest of the population. They have sufficient numbers to claim such a status -between 10 to 12 millions. Besides, there is every indication to suggest that the Kurds of Turkey are willing to maintain their distinctive identity.

They may also be regarded as a 'people' given that they make up the majority in the territories claimed by Kurdish separatists. Moreover they are concentrated in a territory in which they have lived for about three thousand years. However it is difficult to ascertain whether the majority of the Kurdish population seek independence, since they were never allowed to manifest or exercise their right to self-determination. Therefore periodic resurgence of Kurdish nationalist activities have until recently been expressed solely through violent confrontation with the Turkish state. However today there exists a political party which exclusively represents Kurdish electorates in eastern Turkey and takes its place in the National Parliament. The People's Labour Party (HEP) -recently closed by the Constitutional Court, but was immediately replaced by another party (Democracy Party)- seeks to secure the demands of the Kurdish minority within the existing political system, and rules out the possibility of secession. Given that the Kurdish electorates in eastern Turkey overwhelmingly voted for this party in the 1991 elections, it may be assumed that a majority of Turkey's Kurds would prefer to remain within Turkey's existing frontiers.

If, however, the majority of the Kurdish people decided to exercise their right to self-determination with independence as the final goal, they would hardly find support from international law for reasons discussed above. Besides, international law

does not draw a clear distinction between those who qualify as minorities and those who are entitled to self-determination. Neither does it prescribe the methods by which new states are to be established. Moreover, most states have a stake in advocating Turkey's existing territorial status-quo given that an overwhelming majority of them contain minority populations, and, therefore, are fearful of its repercussions for their own country. Therefore, it can be predicted that, in the final analysis, the eventual outcome of the Kurdish claim to self-determination would be decided on the military front. The international recognition of an independent Kurdish state would then largely be a matter of political expediency on the side of the states advocating this claim.

8.4.Minority Protection under International Law

International law is not as passive when it comes to the protection of minorities. It is generally agreed that the recognition of minority rights strikes an adequate balance between the interests of states and the needs of minorities. As was mentioned earlier, under the United Nations system, 'minority rights', as a distinct human rights category, was first mentioned in Article 27 of the 1966 Covenant on Civil and Political Rights. This article enunciates the following principle:

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language" (40).

This article is clearly designed to ensure that the non-dominant groups, vulnerable to assimilationist pressures, may maintain their distinct identity. The rights contained in this provision do not in any way imply political or economic self-management, while the article itself is declaratory in nature (41).

The fear of states, particularly those in Asia and Africa which have recently gained independence, that a 'full' recognition of minority rights might eventually lead to claims for self-determination, has been a main obstacle on the way to providing minority groups with precise and effective protection. This largely explains why the United Nations has so far failed to adopt a binding convention specifically designed to

protect minority rights. On the other hand, international human rights documents which touch upon the ethnic, religious and linguistic minorities, tend to emphasize the 'principle of non-discrimination' -with few exceptions. It is however worthwhile to have a brief look at these documents, as they highlight various aspects of minority protection and the risks to which minorities are exposed.

To start with, the Convention against Genocide adopted in 1948 seeks, *inter alia*, to protect ethnic and racial groups from the threat of annihilation (42). The ILO Convention No.111 of 1958 prohibits discrimination in employment on the basis, *inter alia*, of "race" and "national extraction" (43). The Convention against Discrimination in Education of 1960 seeks "to promote equality of opportunity and treatment for all in education". Accordingly, no distinction among citizens is allowed on grounds, *inter alia*, of "race", "language" or "national origin". Furthermore, Article 5(c) speaks of cultural autonomy of "members of a national minority", by holding that it is essential for them "to carry on their own educational activities, including...the use or the teaching of their own language", on condition that this would not prejudice the integration process of minorities and the national sovereignty of states (44). The United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 aims at eliminating all practices of segregation and discrimination against individuals (45). The International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965, seeks to guarantee equal rights for all citizens of states. The Convention, without mentioning "minorities" as such, also stipulates that the states take necessary social, economic and cultural measures to "ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms" (46). The International Covenant on Economic, Social and Cultural Rights of 1966 enunciates, *inter alia*, that the educational system in the Member States "shall...promote understanding, tolerance and friendship among...all racial, ethnic or religious groups" (47).

These conventions and covenants are binding on the states party to them, and accordingly, the signatories must comply with the obligations enunciated under these international instruments. On the other hand, by its very nature, the UN Declaration on the Elimination of Racial Discrimination does not have binding force. Clearly these international documents represent a piecemeal approach to a question which requires an unequivocal commitment against pressures faced by the minorities, both *individually* and *collectively*. The legal instruments mentioned above try to secure

legal equality for minorities before the law, while ignoring, or else vaguely referring to, educational, linguistic and cultural rights, the question of the protection of the distinctive identity of minorities. Furthermore, they refrain from an explicit reference to "minorities" as such, almost denying the very existence of minorities as subjects of international law.

On the other hand, the texts which specifically include minority rights often fail to provide adequate legal guarantees. The Helsinki Final Act of 1975 is a case in point. Principle VII of the "Declaration on Principles" deals with human rights and contains the following stipulation:

> "The participating states on whose territories national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them full opportunity for the actual enjoyment of Human Rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere" (48).

This provision is apparently a weak one as far as collective minority rights are concerned. First, there is still the problem of the 'existence' of minorities, which moreover is reduced to those 'national minorities' (49). Ermacora informs us that a 'national minority', as a sociological category, comes closer to 'nationhood' than racial, linguistic or ethnic minorities in that, it "is a group of persons who besides the characteristics of an ethnic minority, have the will to exercise as a group those rights which give minorities the possibility to take part in the policy-decisions process within a given territory" (50). However the distinction between a 'minority' and a 'national minority' is bound to be an arbitrary one, since it is difficult to ascertain whether a minority group wants to take part in the 'policy-decisions process'. Clearly the above-mentioned clause of the Helsinki Final Act fails to dispense with "exclusive jurisdiction" by placing the recognition of "national minorities" under the discretion of the member states. The same document also ignores any 'right to identity', and merely speaks of "interests", which represents a lower category than "rights" (51). Principle VIII of the Helsinki Final Act speaks of self-determination in the following terms:"...all peoples always have the right...to determine...their internal and external political status...and to pursue...their political, economic, social and cultural development". Although the provision might be interpreted as benefiting minorities

too, it is generally agreed that this is not so, in that the term "people" here actually refers to the dominant majority which identifies with the state (52).

Contrary to the preceding era, it appears that the 1990s will be an era of greater activism in the field of minority protection. Indeed the steps taken in recent years have transformed minority rights beyond non-discrimination and equal protection to specific protection of minority groups. As is well-known, the Paris summit formally ended the Cold War, which had been the major cause of confrontation and division in Europe for four decades, with the signing, on 21 November 1990, of the Charter of Paris for a New Europe. The summit reaffirmed that the protection of "the ethnic, cultural, linguistic and religious identity of national minorities" was among the cardinal principles upon which the new Europe was to be based (53).

Indeed the CSCE has rapidly been transformed from being a predominantly inter-state security conference to a forum for international co-operation. Under the CSCE system, new institutions with law-making functions are being established. The changing face of Europe brought into fore hitherto unexplored issues for discussion, among which human rights is of cardinal importance. The Copenhagen summit, held between 5-29 June 1990, was the second of the Conference on the Human Dimension which was sponsored by the Conference on Security and Co-operation in Europe. The summit, *inter alia*, confirmed the right of national minorities to use their own language, both in private and in public, and set up educational and religious institutions. A major significance of the document is that it mentioned "local or autonomous administrations" among the possible means to protect and promote the distinctive identity of national minorities. Meanwhile, the final document called on all the participating states to accede to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant human rights instruments. The statement however is not forceful enough to oblige them to do so : "the participating states reaffirm that they will consider acceding" to the aforementioned instruments (54). On the other hand, proposals for strengthening mechanisms to monitor human rights in signatory countries was rejected (55).

One year later, the Report of the CSCE Meeting of Experts on National Minorities, adopted on 19 July 1991, generally reaffirmed the principles contained in the Copenhagen Document (56). For instance, it reaffirmed that "persons belonging to minorities will not be subjected to assimilation against their will" (III. para.4). However in some respects it went further. It promised that, in the future, the

discussions on minorities would also involve the minorities themselves (III. para.1). In addition, recognizing the inadequacy of enforcement mechanisms as far as the protection of minorities is concerned, the Document called for "a thorough review of implementation" procedures (II. para.1). However this statement may also be taken as an admission of the failure of the Member States to accept a monitoring system which could ensure that the norms and principles relating to minorities are transformed into reality. One of the most controversial aspects of the Document is that it leaves wide open the question of who constitutes a minority. Indeed, in the fourth paragraph of section two, it is stated that "not all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities". This creates a dangerous loophole since states might use it as a pretext to deny minority status to those who feel that they share a common identity by virtue of ethnicity, culture, language, religion and so forth. Is it, for instance, up to the states or to the members of the minority themselves, to decide whether a minority group qualifies as a 'national minority'? Finally, not unlike other international instruments on the rights of minorities, the Document states that these rights -minority rights- will be enjoyed by "persons belonging to national minorities" "alone" or "in community with others". From this, one is tempted to infer that the present system of international law downplays the collective aspects of minority protection in favour of individual rights.

In recent years, the UN has recognised that the protection of individual human rights is not adequate as far as minorities are concerned. Although it is true that UN bodies have set up standards -which often lack effective guarantees- to protect minorities, they need to be articulated in a single document whereby vaguely worded principles can be transformed into concrete and clear obligations. This task is taken up by the UN General Assembly. The Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, adopted on 18 December 1992, is designed to set up certain legal standards that could provide a basis for the protection of minorities around the world (57). Article 1 of the Declaration demands that the existence of minorities, as a collective category, be guaranteed. Besides, states are requested to "encourage conditions for the promotion of their identity". To that end, they are under an obligation to "adopt appropriate legislative and other measures". Article 2 speaks of cultural, religious and linguistic rights of individuals belonging to minorities, as well as to their right of association, and the right to participate in the decision-making process on matters which relate to the minority to which they belong. Article 3 reiterates Article 27 of the International Covenant on Civil and Political Rights of 1966. Article 4 deals with special measures to ensure that minorities effectively enjoy the rights contained in the previous Articles. Article 5

imposes a novel obligation upon states. It declares that "National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities". Under Articles 6 and 7, states are requested to co-operate in protecting and promoting the rights of minorities. Article 8, paragraph 4, reaffirms the inviolability of the territorial integrity and political independence of states. This implies that minorities are entitled to special protection in so far as they recognize the legitimacy of the states in whose jurisdiction they happen to live.

The Declaration is, by definition, not binding on states. Therefore, this text will almost certainly have only limited influence in the protection of minorities. However, if the Declaration is taken as a codification of existing standards, it may prove to be a standard text on which minorities may rely in the future. In its preamble, the Declaration states that "the United Nations has an increasingly important role to play regarding the protection of minorities", which is reiterated in Article 9. The Declaration generally restates the already existing rights and freedoms for minorities. Besides, not unlike other international instruments which contain provisions for minorities, it fails to address the collective rights of minorities, with the sole exception of a phrase about individuals enjoying minority rights "in community with other members" (Article 3), which had already been included in Article 27 of the International Covenant on Civil and Political Rights. Besides, its language is full of vaguely formulated phrases and references to national laws which give states too much discretion when it comes to implementation: "wherever possible", "encourage conditions", "appropriate measures", and so forth. Furthermore, the proposal fails to address the fundamental obstacle posed by "exclusive jurisdiction", by reaffirming states' absolute sovereignty over their territories. As a result, the application of the rights protected under the draft Declaration is severely prejudiced (58). Finally, the Declaration lacks a monitoring mechanism to supervise its implementation.

Does this mean that minorities cannot rely on international legal instruments unless the states under whose jurisdiction they live consent to binding treaties? This is not necessarily so. First, human rights are an exceptional aspect of international law. They are accorded to individuals directly; in other words, without the interposition of the state (59). Furthermore, international law seeks to protect the individual against the state, which is clearly a limitation on state sovereignty. The individual in this sense is "excluded from the domain reserved for the domestic jurisdiction of states. " (60). Furthermore, international human rights have become "universal and general" (61). Secondly, when regard is made to the specific case of minority rights, it will be

observed that the rules on the prevention of discrimination which have been recognized in various instruments of a universal or quasi-universal character, have become *jus cogens* (having the status of peremptory norms from which no derogation is permitted) in international law (62). As international human rights instruments are gradually adopted by a growing number of states irrespective of a particular state's consent, the obligations concerned can become binding on all states by virtue of customary international law. However it is also clear that states are more likely to respect a commitment to which they have consented specifically rather than one which arises through customary law (63).

As to whether minorities can rely on international law for the enjoyment of *specific minority rights*, the emerging tendency is towards responding in the affirmative. The essential question here is whether minority protection measures are an integral part of human rights standards, and whether they can be resorted to by minorities even if the minorities are not recognized as such by the state. Some authors, like Ermacora, argue that minority protection is an autonomous notion of international law, in that it binds states regardless of whether they legally recognize minorities or not (64). Therefore, individual states have an obligation towards the international community to guarantee minority rights in their territory. However, this view is not always shared by states, as is evidenced by the absence of a binding convention on minority rights - although the Committee of Ministers of the Council of Europe will soon be discussing an additional protocol on minorities which will be referred to shortly.

It is well known that states do not always comply with international instruments which they endorse, particularly when they perceive this to be contrary to their national interests. Because of this, the value and effectiveness of international human rights on minorities ultimately depend on the supervisory mechanisms intended to monitor the performance of states. There are those which monitor state performance at intergovernmental level. Prominent among them is the UN Commission on Human Rights which is composed of fifty-three experts. It is authorized to examine any matters relating to human rights. Through its Special Rapporteurs or Working Groups, it prepares reports on the situation of human rights in a particular country or on a particular theme. The Subcommission on the Prevention of Discrimination and Protection of Minorities is entrusted with the task of investigating private complaints relating to the violations of human rights. If the Subcommission reaffirms the existence of a violation, it then submits its report to the Commission on Human Rights. The latter may then investigate the case further. This procedure, which was established by ECOSOC -Economic and Social Council- resolution 1503, remains

confidential until the Commission decides to announce the names of the states which are found to be in violation of human rights. It is asserted that "the fact that such complaints are taken up may have a certain corrective effect" on states (65).

The Commission may also publicly discuss human rights situations in all parts of the world. Any of the individual member states may raise the question of the violation of human rights by other state/s. The Commission may then adopt resolutions which are submitted to ECOSOC and to the General Assembly. The Commission may also decide to conduct further enquiries into the problem through *country rapporteurs*. The latter procedure has been widely used, *inter alia*, on questions relating to the problems faced by minorities, as is the case with countries like Iraq and Romania (66). A unique feature of the Commission on Human Rights is its admission, alongside the Member States, of a large number of non-governmental organizations with consultative status into its debates. Among them are the monitoring bodies such as Amnesty International, the International Commission of Jurists and the various "watch" committees which constantly call for effective enforcement mechanisms for the protection of human rights.

Although the resolutions adopted under the auspices of the Commission on Human Rights are not binding for states to which they are addressed, they bring certain problems to international attention, which the states can hardly ignore. Together with the pressure of the international community at large, the influence exerted by the press and the public may help correcting the wrong-doings of states. Having said that, however, it must be admitted that ECOSOC or the UN General Assembly cannot effectively punish governments for their lack of compliance with human rights norms. It is the UN Security Council which has the real bite, though it can only act if "a violation of human rights threatens international peace and security", which is a rarity (67).

One of such exceptions has been the establishment by allied forces of a 'safe haven' in northern Iraq in the aftermath of the aborted Kurdish insurrection against the Iraqi government forces following the Gulf War in 1991. Its purpose was declared as being the protection of the Kurds from the impending threat of massive attacks by Iraqi troops. However it is noted that the Security Council Resolution 688, although, *inter alia*, expressing grave concern over "the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas which led to a massive flow of refugees towards and across international frontiers and to cross border incursions, which threaten international peace and security in the region", did

not authorize the allied forces to take military protective measures to create a 'safe haven' in northern Iraq (68). Therefore the legal validity of this 'humanitarian intervention' remains dubious.

The main dilemma in such cases lies in the inherent contradiction between the prohibition of the use of force against states as sanctioned under Article 2(4) of the UN Charter and the act of humanitarian intervention which is launched against the wishes of the state in whose territory the action takes place. Besides, as noted by Malanczuk, the prevailing view rejects the legality of humanitarian intervention under international law on grounds that it may be abused by powerful states for their own ends (69). However this is not to deny that, whatever the political and strategic motivations in the Iraqi Kurdish case, it has set a precedent for future humanitarian interventions in cases of gross and systematic human rights violations committed by states against their population. The establishment of 'safe havens' may indeed become an effective means by which the UN Security Council involves itself with matters conventionally perceived as belonging to the exclusive jurisdiction of states. In other words, if properly applied, this practice may in the future constitute a source of international human rights and humanitarian law. The establishment of 'safe areas' in Bosnia-Herzegovina -although, in this case, with the consent of the Bosnian government- is indeed a testimony to such a trend.

When exploring the supervisory mechanisms for the international protection of human rights, one may also refer to judicial or quasi-judicial institutions and mechanisms which are an important source of standard setting in international law. For instance, although they concern specific conflicts and issues, the judgements or decisions of international courts or committees of experts "provide concrete guidance to states for future conduct in analogous situations" (70). Prominent among them is the Human Rights Committee which was established as an independent body of experts to examine complaints by individuals against their state under the procedure established by the Optional Protocol to the International Covenant on Civil and Political Rights which entered into force on 23 March 1976. However its decisions are not binding for it is only entitled to "forward its views to the state" against which the complaint has been made. On the other hand, for its part, the International Court of Justice has not yet developed a jurisprudence in the field of minority rights.

Hence, it can be argued that although the international standards on minority protection are reasonably well-established, particularly in the field of non-discrimination and affirmative action for individual members of minorities, the

enforcement mechanisms for their effective implementation are less than adequate. Therefore, not surprisingly, the implementation of minority protection measures still remain in the legal domain of individual states. Indeed the studies carried out for the United Nations have shown that "it is up to the states to bring about their minority protective measures bilaterally, regionally and by national law" (71).

However this is not to say that existing international mechanisms have no role to play in this process. Indeed, they can be effective "by exerting moral, psychological and political pressure and by making use of public opinion-in the country concerned and in the whole international community" (72). On the other hand, experience has shown that human rights are best protected at the regional level due to greater ideological or political homogeneity (73). Indeed legally binding human rights instruments are easier to adopt at regional level. Such is the case with the European Convention on Human Rights, the African Charter on Human and People's Rights (came into force in October 1986) and the American Convention on Human Rights (came into force in July 1978).

It is generally agreed that the policy of forcible assimilation is against the principles of international law. Assimilation of minorities has to be a matter of sociological process, an autonomous desire of minority groups "to renounce their will to preserve their characteristics, and so become equal to the rest of the population of a state" (74). In this sense only, international law is not against the assimilation of minorities (75). However it would be wrong to assume that dominant majorities within existing states always try to assimilate minorities. For instance, the UK approach towards different ethnic communities can be described as 'internal multinationalism'. The state does not interfere with different cultures and national traditions (although, as has been argued in Chapter 3, this was not always the case in the past when the British government suppressed the linguistic and cultural identity of the Irish, Scots, and Welsh). Today one can be British without ceasing to be English, Scottish, Welsh or an Ulsterman (76). However, the British case hardly constitutes a general pattern. More often than not, states are tempted to forge a uniform culture -almost always the culture of the dominant majority- in order to create a "national identity". Therefore the importance of minority protection at the international level is not to be underestimated.

A general consensus is beginning to emerge with regard to minority protection : first, no discrimination should be practised against individuals belonging to a minority group, and against the group as a whole. The principle of non-discrimination against,

inter alia, minorities has become *jus cogens* in international law. States are bound by this principle; second, special economic, social and cultural measures may be required to ensure the equality of minorities with the rest of the population *in fact;* third, equality of treatment towards minorities must encourage legal integration, not assimilation. However the latter *may*, not *must*, be a sociological consequence of this integration (77). At this point, a distinction must be drawn between 'nationality' and 'citizenship'. Every citizen of a state should have the right to choose his/her national identity. This does not however in any way imply the questioning of the sovereignty of the state; finally, the emerging trend in international law is that it is *not* up to states to decide whether there exist minorities in their territory or not. This is a factual matter which can be ascertained through the criteria set by international law.

It is within the framework of the above-mentioned discussion -on the position of minorities under international law- that the "Kurdish problem" in Turkey can properly be addressed. Two questions are central here : first, is the Turkish government under an international obligation to recognize the Kurds of Turkey as a "minority"? second, if so, what measures should be taken to guarantee their rights?

8.5.Turkey's Obligations Towards the Kurdish Minority under International Law

First of all, it must be admitted that Turkey has been consistent in avoiding any international obligations which might oblige it to guarantee the rights of Kurds as a *minority*. Turkey is not a party to the Convention against Discrimination in Education (1960), the International Covenant on Civil and Political Rights (1966), or the International Covenant on Economic, Social and Cultural Rights (1966) which are binding on the states adopting them (78). It is generally agreed that under international law, states are not bound by international obligations unless they have consented to them -with the exception of peremptory international norms. Turkey is not a party to the Covenant on Civil and Political Rights which explicitly refers to 'minorities', on grounds that this provision contradicts Article 3 of the Constitution which holds that "the Turkish State is an indivisible whole with its territory and nation. Its language is Turkish" (79). Indeed Turkish Constitution is still based on a homogeneous notion of territorial nation (80).

Instead, Turkey has signed only those international texts which merely reaffirm the principle of non-discrimination. It did not, for instance, hesitate to join in the Helsinki

Final Act without putting reservations on minority rights. This is presumably because the provision relating to minorities solely speaks of the principle of non-discrimination which is also guaranteed by the Turkish constitution. Article 6 of the 1982 Constitution declares that all individuals are equal before the law regardless of language, race, colour or religion. Article 11 guarantees the right of the individual to fundamental rights and freedoms. The Constitution also includes other basic human rights commonly found in liberal democratic constitutions, such as freedom of speech, press, association, assembly, travel, communications, sanctity of law, right to privacy, freedom from arbitrary arrest and so forth (81).

These civil and political rights are also guaranteed under the system established by the Council of Europe to which Turkey has been attached since 1949. The Commission of the Council of Europe is authorized to examine cases brought by one state against another. In such cases the Commission undertakes an investigation concerning an alleged violation of human rights, and then tries to secure a friendly settlement between the related state parties. This procedure was used when Denmark, France, the Netherlands, Norway and Sweden collectively launched a complaint against Turkey in 1982 concerning the alleged human rights violations in the country under the military regime. A friendly settlement was finally agreed in 1985 (82). In case a friendly settlement is not achieved, the Commission prepares a report, and submits this to the Committee of Ministers of the Council of Europe. The Committee then prescribes a period within which the government concerned is expected to take satisfactory measures to remedy the situation. In case the remedy is not forthcoming, the Committee is entitled to take further action, including the suspension of the defendant government's membership. Any state which claims to be democratic, cannot afford to be unconcerned about the publication of a report by a competent and impartial international organ. Although this procedure exerts considerable international control, it does not allow individuals to seek an international remedy against their own governments.

An individual right to petition is indeed provided under Article 25 of the European Convention of Human Rights, under the terms of which only those states which have expressly declared that they accept it are bound by it. In January 1987, Turkey submitted a declaration which recognized the competence of the European Commission of Human Rights to receive applications from individuals or non-governmental organizations claiming to be victims of a violation by the Turkish state (83). The Commission is not entitled to take a binding decision regarding individual applications. Instead it submits its report concerning the alleged violation of human

rights to the Committee of Ministers. The Member States are bound by the decision of the Committee concerning the individual complaint.

The recognition, initially made for a three-year period, was extended in 1990 -for another three years- during which time Turkey also recognized the compulsory jurisdiction of the European Court of Human Rights (84). Under Article 47 of the European Convention on Human Rights, the Court may only deal with a case when the Commission fails to reach a friendly settlement with a defendant state. The Turkish declaration (of 1987) with regard to the individual right to petition was accompanied by a number of provisos. First, Turkey sought to limit the territories in which the right could be invoked to that of Turkey proper. This was presumably intended to exclude the possibility that this complaint procedure might be resorted to by Greek-Cypriots in relation to the acts committed by Turkish troops in Cyprus. Second, Turkey declared that it could derogate from its obligation under special circumstances by virtue of Article 15 of the Convention. This Article allows Member States to derogate from their obligations in exceptional circumstances, such as "war" and "public emergency". In Turkey's view, moreover, "the special circumstances" had to be interpreted in the light of Articles 119 to 122 of the Turkish Constitution. These Articles state that the exercise of human rights and liberties can be restricted in times of "martial law" and "state of emergency" -in addition to "war" and "public emergency" (85). Because of these "conditions", Turkey's declaration was perceived by the depository, Greece and some other Member States as a "reservation" which was inadmissible under Article 25 of the Convention.

In the *Chrysostomos* case, the Commission (of the Council of Europe) found these conditions, except the temporal one, to be incompatible with Article 25 of the ECHR (86). In the Commission's view, this did not however affect the validity of the recognition of the individual right to petition. The Turkish Government has recently promised, to a delegation of the Council of Europe, that these conditions, with the exception of the territorial one, will be lifted soon (87). The delegation was also assured that the present derogation relating to the non-applicability of the individual right to petition in areas under the state of emergency -mainly Kurdish provinces-, which Turkey had sought to justify on the basis of Article 15 of the Convention, would also be lifted (88).

A number of individuals have already made use of the individual right to petition. Some cases have been declared admissible by the Commission (89). It can be anticipated that, once Turkey has lifted the derogations, Kurdish citizens will be able

to challenge domestic court rulings by launching complaints to the Commission with regard to human rights violations committed in south-eastern Turkey. However, in most probability, the plaintiffs will not be able to rely on the Commission of Human Rights for alleged violations of *specific minority rights* since Turkey has not accepted to be bound by any of the European Convention provisions relating to this matter.

The Council of Europe has recently adopted a European Charter for Regional or Minority Languages (opened for signature on 5 November 1992) (90). This Charter was specifically designed to protect and promote regional or minority languages in the Member States of the Council of Europe. The preamble celebrates interculturalism and multilingualism as representing "an important contribution to the building of a Europe based on the principles of democracy and cultural diversity". Under the Charter, states undertake to create an atmosphere of tolerance towards minority languages in education and encourage the mass media to pursue the same objective (Article 7). They are also under an obligation to allow the use of regional or minority languages during judicial and administrative proceedings in areas where "the number of residents justifies" these measures (Articles 9 & 10). So far, the Charter has been signed by twelve Member States. Turkey is not however among the signatories (91).

Soon after the adoption of the European Charter for Regional or Minority Languages, the Parliamentary Assembly of the Council of Europe passed a recommendation on an Additional Protocol on the Rights of Minorities to the European Convention on Human Rights (1 February 1993) (92). This new initiative was particularly prompted by the emergence of serious minority problems in the post-communist central and eastern European states. Its preamble states that "international protection of the rights of minorities is an essential aspect of the international protection of human rights and, as such, a domain for international co-operation". Article 1 gives an account of the prerequisites necessary to qualify as a "national minority" : first, its members must hold the citizenship of the state concerned and have lasting ties therewith; second, they must "display distinctive ethnic, cultural, religious or linguistic characteristics" as distinct from the rest of the population of a state; third, they must have a common desire to preserve their identity. By setting both an objective and a subjective criteria, this definition clearly precludes from its ambit both migrant workers and those communities, although having the characteristics of a minority, are willing to assimilate into the dominant society. For the most part, the text restates what has already been adopted in other international instruments. However it also contains some new rights and advantages which are

worth examining. Under Article 5, "Deliberate changes to the demographic composition of the region in which a national minority is settled, to the detriment of that minority, shall be prohibited". Article 6 states that "All persons belonging to a national minority shall have the right to set up their own organisations, including political parties". The third paragraph of Article 7 states that "in the regions in which substantial numbers of a national minority are settled, the persons belonging to a national minority shall have the right to use their mother tongue in their contacts with the administrative authorities and in proceedings before the courts and legal authorities".

In comparison with the UN Declaration on the Protection of Minorities, the Recommendation of the Parliamentary Assembly of the Council of Europe appears more detailed and systematic. Besides, it is more sensitive to the threats posed by government policies, such as transfer of populations, against the existence of national minorities. However, not unlike other international instruments, the Recommendation only speaks of "persons belonging to national minorities"; hence, it fails to guarantee group rights. By extension, the Recommendation fails to address the national minorities directly. Instead, it relies on the national governments for dispensing the rights contained in the Recommendation. Hence, in case of violations against the rights protected in this Recommendation, the remedy has to be sought in national courts (Article 9). Besides, the exercise of these rights and freedoms are subject to restrictions or conditions which may be imposed by national laws on numerous grounds : national security, territorial integrity, public safety, public order, public health and so forth.

It has to be stated that Recommendation 1201 is not legally binding on the Member States of the Council of Europe. The Parliamentary Assembly, unlike national parliaments, is not a legislative body. It role is confined to making proposals to the Committee of Ministers which may or may not adopt a given recommendation. The Committee of Ministers, which is composed of individual government representatives, has not yet discussed the proposal. It is known that some Member States -including France- are reluctant to accept the concept of a legally binding text on minority rights. Only after its adoption by the Committee of Ministers by a two-thirds majority could this text become binding on Member States. Even before it becomes binding, this text is likely to constitute an essential reference by which to gauge the extent to which minorities are protected in individual Member States of the Council of Europe.

Given its past record, it would indeed be overoptimistic to expect Turkey to sign the document. Perhaps, not unexpectedly, the Parliamentary Assembly of the Council of Europe has repeatedly called on Turkey to recognize the Kurds as a minority and guarantee their rights accordingly (93). Although Turkey has taken some steps towards recognizing "the Kurdish reality", as the former Prime Minister, whose successor is from the same Party, had declared soon after taking office in the autumn of 1991, the situation in south-eastern Turkey still remains precarious. Repeated claims have been made, both by Turkish human rights activists and international observers, of large-scale human rights violations, such as torture, extra-judicial killings and unlawful detentions in south-eastern Turkey. The Council of Europe has been urging Turkey to respond to Kurdish terrorism within the rule of law. A major step in this direction, it is argued, could be the lifting of the state of emergency which has been in force in the south-eastern regions since 1987 (94).

Under Article 90 of the Turkish Constitution, international treaties to which Turkey is a party are approved by the Turkish parliament by enactment of a law. Therefore international treaties rank equal to statutes and accordingly become enforceable after having been published in the Official Gazette. However, unlike other statutes, their constitutionality may not be challenged. This means that other parties to the treaties may rely on their validity once they become law (95). One implication of this procedure is that the European Convention of Human Rights can legitimately be resorted to by national courts. One Turkish scholar suggests that its provisions may also be invoked by national courts to give a broad interpretation to the fundamental rights and freedoms guaranteed under the Turkish Constitution (96). Other treaties to which Turkey is a party may also be resorted to by national courts. Cardinal among them is the Conference on Security and Co-operation in Europe (CSCE). It is interesting to note that when reviewing an expulsion order by the Ministry of Domestic Affairs against a group of foreign journalists and camera crew, the Council of State *(Danistay; Conseil d'Etat)* considered, *inter alia*, the Helsinki Final Act of 1975 -with regard to its provisions relating to greater freedom of information and improved conditions for journalists from participating states- when accounting for the illegality of the expulsion order (97). Although, technically speaking, the Helsinki Final Act is not binding since it is not a treaty but a declaration of intent, a political programme to guide foreign policies of participant states, it can nonetheless be regarded as constituting part of customary international law, since it reaffirms some of the established principles of human rights (98). It may therefore be relied upon by Turkish courts when reviewing cases of human rights violations against the Kurdish minority in Turkey.

The same also holds true for the recently adopted CSCE documents, to which Turkey is also attached, on the specific protection of minorities. Suffice it to note that the new Turkish coalition Government promised, among its "principles of declaration, that "the legal and practical shortcomings, obstacles and limitations our citizens are facing...in the protection and development of their ethnical, cultural and linguistic identity will be eliminated in accordance with the spirit of the Charter of Paris to which Turkey is a party" (99). In other words, Turkey recognizes the relevance of the CSCE process, not only in matters of security, but also in relation to human rights and minority protection. Therefore, one is tempted to hope that the high courts in Turkey will rely on the CSCE documents to enforce the specific rights and freedoms of the Kurdish minority -linguistic, educational and other cultural rights. Nonetheless, given that the language of CSCE documents is not forceful enough, this may well prove illusory.

There is a fundamental contradiction in the Turkish attitude towards the question of minorities when one recalls, for instance, its active posture over the fate of the Turkish minorities in Bulgaria and Greece. Indeed, it has rightly protested at the assimilationist pressures imposed on them by the Greek and Bulgarian governments (For a detailed analysis of this subject, see Chapter 7). However one could not help but to draw on the similarity between the plight of the Turkish minority in Bulgaria and that of the Kurdish minority in Turkey. As has been discussed, under international law, ethnic or linguistic groups, as distinct from the rest of the population, are entitled to minority protection too. The fact that the Turkish Constitution and legal codes regard this otherwise, cannot be justified under international law. There exists a set of rules and principles which seek to place both the *individual* and *collective* protection of minorities into the domain of international law.

Strictly speaking, Turkey is not under any international duty to recognize Kurds as a minority and guarantee their rights accordingly, since it is not party to any of the internationally binding instruments dealing with this question. Nonetheless it has a moral and political responsibility towards the international community. The method of its implementation, however, is a matter for Turkey. Thus far Turkey has sought to satisfy Kurdish demands by giving a broader interpretation to the principle of non-discrimination, and by lifting restrictions on the Kurdish language. However even these limited measures are not always transformed into reality. Kurds in eastern Turkey still suffer human rights violations and economic poverty which further strain the already tense confrontation between Kurdish activists and the government.

Furthermore, even if the Kurds in Turkey were *in effect* treated equally with the rest of the population, this would still fall short of guaranteeing their rights as a distinct minority group.

It is presumably through international pressure that Turkey will succumb to these demands. Already the European Community (EC) has made it clear that Turkey's oppressive policy towards its Kurdish citizens is a stumbling block in the latter's attempts to gain membership of the EC. Indeed the EC Commission's report of December 1989 which considered the viability of Turkish application for membership (April 1987), noted that "within Turkey...minority rights still fell short of EC norms despite improvements" (100). This was probably one of the motives behind the Turkish move towards lifting the ban on the Kurdish language.

It is only to be hoped that the Turkish government will sooner or later take the courageous step of legally recognizing Kurds as a "minority". It is no more convincing to portray Kurdish demands as a "threat to national unity". Perhaps in the 1920s and 30s the policy of forcible assimilation was the only solution for the preservation of the territorial integrity of the country. However since then Turkey has made significant strides towards the creation of a national identity. Today there is ample evidence to suggest that non-Turkish ethnic groups, other than the Kurds, have already assimilated into the dominant society. Not surprisingly, the demand for minority recognition only comes from the Kurds. Therefore, both as an essential requirement of democracy and human rights to which Turkey subscribes, and as a matter of statecraft, Turkey is bound to recognize the Kurds as a "minority" and guarantee their rights accordingly.

As for Turkish fear of Kurdish irredentism, it does not easily reconcile with existing realities. It is not certain whether all Kurds share a sense of nationhood irrespective of the countries they live in. Although it is true that Kurds have their own language, the differences in dialect make it difficult for Kurds to understand one another. The Kurdish experience in each host country has greatly varied, which implies that the extent and intensity of Kurdish nationalism differs among them. The feeling of separate nationhood is also unevenly distributed among the members of the Kurdish community within same states. For instance, although the PKK advocates outright independence from Turkey, not many Kurds in Turkey share this vision. A majority of Turkey's Kurds live outside the predominately Kurdish provinces of the south-east. Istanbul has become the city with the largest Kurdish population anywhere in the world. Many of the Turkish Kurds do not harbour any hopes of union with their

compatriots across the border. Moreover they are well aware that an independent Kurdistan is unlikely to present any considerable economic rewards in the short or medium-term. What the Kurds of Turkey *really* aspire for, is well put by *The Economist* : "...freedom from repression, a degree of devolution, the right to learn and read in Kurdish and to hear Kurdish on radio and television" (101).

Through recognizing them as a 'minority', Turkey is expected to grant the Kurds a number of cultural, educational and linguistic rights while enforcing existing laws in a non-discriminatory manner. This could possibly marginalize the secessionist factions within the Kurdish movement, hence allowing the government to 'contain' the Kurdish problem. Otherwise, a full-scale civil war cannot be ruled out.

To be sure, these are minimal prerequisites for a democratic solution to the Kurdish problem, which nonetheless satisfy international law and moral standards. Of course one might also suggest the granting of autonomy for the predominantly Kurdish areas. This might bring about self-government for Kurds in various areas of public life, like cultural and religious autonomy; executive, legislative and judicial authority in internal matters; police powers; control over public finances and so forth. The delegation of limited powers to Kurds would not in any way infringe upon Turkey's territorial integrity. However, autonomy would presumably impose some limitation on Turkish sovereignty (102). Turkey is unlikely to accept Kurdish autonomy as a viable option, at least in the short term. Neither is it legally bound to do so, for "autonomy is not widely perceived as an obligation in general international law" (103).

NOTES TO CHAPTER 8

1.*Keesing's Contemporary Archives*, July 1991, p. 38366.

2.*Ibid.*, September 1991, p. 38458.

3.United Nations General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Resolution 47/135 adopted without a vote on 18 December 1992, in 14, *Human Rights Law Journal*, No. 1-2, 1993, 54-56.

4.Recommendation 1201 (1993) on an Additional Protocol on the Rights of Minorities to the European Convention on Human Rights, 14, *Human Rights Law Journal*, No.3-4, 1993, 144-148.

5.*The Economist*, November 7-13, 1992, p.82.

6.*Keesing's Contemporary Archives*, Vol.38, 1992, Reference Supplement, p.R.127.

7.Indeed the Turkish Parliament extended the mandate for another six months on December 24, 1992.

8.*The Times*, 2 November 1992.

9.*Keesing's Contemporary Archives*, April 1992, p.38873.

10.*Id.*

11.Dilys M. Hill, "Human Rights and Foreign Policy : Theoretical Foundations", in *Human Rights and Foreign Policy* (ed.Hill) (Southampton, MacMillan Press, 1989), 3-20, p.14

12.Patrick Thornberry, "Self-determination, Minorities, Human Rights : A Review of International Instruments", *International and Comparative Law Quarterly*, Vol.38, 1989, 867-889, p.868.

13.Ian Brownlie, *Principles of Public International Law* (Oxford, Clarendon Press, 1990), Fourth Edition, p.595.

14.Michla Pomerance, *Self-Determination in Law and Practice* (The Hague/Boston/London, Martinus Nijhoff Publishers, 1982), p.93.

15.Felix Ermacora, "The Protection of Minorities before the United Nations", *Recueil des Cours* (Collected Courses), Academie de Droit International, Vol.182, 1983, 251-370, p.328.

16.This was the definition of the United Nations Commission on Human Rights when dealing with the Capotorti Report, in Ermacora, *ibid.*, p.292.

17.Ermacora, *ibid.*, p.300.

18.A. Cristescu, *The Right to Self-determination. Historical and Current Development on the Basis of United Nations Instruments* (New York, 1981). Paragraph 271 of his report, in Ermacora, *ibid.*, p.326.

19.Brownlie, *op.cit.*, pp.597-8.

20.James Crawford, "The Criteria for Statehood in International Law", *The British Yearbook of International Law*, Vol.48, 1976-77, 93-182, pp.171-72.

21.Pomerance, *op.cit.*, p.68.

22.*Ibid.*, pp.40-42.

23.James Crawford, "The Rights of Peoples : Some Conclusions", in Crawford (Ed.), *The Rights of Peoples*, (Oxford, Clarendon Press, 1992), 159-175, p.162. See also Sally Morphet, "Article 1 of the Human Rights Covenants : Its Development and Current Significance", in Hill, *op.cit.*, 67-88. Morphet draws on a quasi-consensus among a diverse bloc of states which assume that self-determination applies to the whole population of states; hence excluding the possibility of claims laid by secessionist movements. As for 'internal' self-determination, it is "a concept which is still being developed". (p.85)

24.A. A. Cruickshank, "International Aspects of the Kurdish Question", *International Relations*, Vol.3, 1966-71, 411-430, pp.411-412.

25.Ismail Besikci's works include *Turk Tarih Tezi ve Kurt Sorunu* (Ankara, Komal Yayinlari, 1977); *Dogu Anadolu'nun Duzeni : Sosyo-Ekonomik ve Etnik Temeller* (Istanbul, E Yayinlari, 1969).

26.Baskin Oran, *Ataturk Milliyetciligi*, second edition (Ankara, Bilgi Yayinevi, 1990), pp.192-193.

27.Cruickshank, *op.cit.*, p.416.

28.Treaty of Peace Between the Allied Powers and Turkey, Signed at Sevres, August 10, 1920, in *American Journal of International Law,* Vol.15, 1921, Supplement, 179-295.

29.Turkkaya Ataov, a Turkish professor of international relations, likens the Armenian quest for independence in the aftermath of the First World War to that of the Jewish quest for sovereign statehood in Palestine. In his view, just as the Jews forced the Arabs to flee Palestine, the Armenians sought to collaborate with the victorious European Powers in an attempt to force the departure of the Muslim majority in eastern Turkey which would eventually end up with an Armenian majority there. (Ataov, "Azinliklar Ustune Bazi Dusunceler", *A.U.S.B.F. Dergisi*, Vol.42, Ocak-Aralik 1987, No.1-4, 49-66, pp.60-61.) The author expresses not only his own view, but one which is generally shared by other scholars and public opinion at large.

30.Oran, *op.cit.*, pp.193-94.

31.Treaty of Lausanne and other Instruments signed at Lausanne, July 24, 1923, in *League of Nations Treaty Series*, 1924, Vol.28, 11-113.

32.Oran, *op.cit.*, p.193.

33.Article 39 of the Treaty of Lausanne, p.14.

34.Oran, *op.cit.*, pp.195-206.

35.Abdul Rahman Ghassemlou, *Kurdistan and the Kurds* (Prague, Publishing House of the Czechoslovak Academy of Sciences, 1965), pp.57-58.

36.Oran, *op.cit.*, pp.187-204.

37.Nezan Kendal, "Kurdistan in Turkey" in *People without a Country: The Kurds and Kurdistan,* Gerard Chaliand (ed.), (London, Zed Press, 1980), 47-106, p.65.

38.Oran, *op.cit.*, pp.204-205.

39.*Ibid.*, pp.201-203.

40.International Covenant on Civil and Political Rights, adopted on 16 December 1966 by the General Assembly Resolution 2200 A(XXI), *Yearbook of the United Nations,* 1966, 423-432.

41.Yoram Dinstein, "Collective Human Rights of Peoples and Minorities", *International and Comparative Law Quarterly*, Vol.25, 1976, 102-120, p.118.

42.General Assembly resolution 260 A(III) of 9 December 1948, *Yearbook of the United Nations,* 1948, 959-960.

43.Convention No.111 Concerning Discrimination in Respect of Employment and Occupation, Adopted on 25 June 1958 by the General Conference of the International Labour Organization, in *Human Rights : A Compilation of International Instruments of the United Nations* (New York, United Nations Publication, 1983), 32-33.

44.Convention against Discrimination in Education, Adopted on 14 December 1960 by the General Assembly of the United Nations Educational, Scientific and Cultural Organization, in *UNESCO's Standard-Setting Instruments*, 3-10.

45.General Assembly resolution 1904 (XVIII) of 20 November 1963, *Yearbook of the United Nations,* 1963, 344-346.

46.General Assembly resolution 2106 A(XX) of 21 December 1965, *ibid.*, 1965, 440-446.

47.General Assembly resolution 2200 A(XXI) of 16 December 1966, *ibid.*, 1966, 418-423.

48.Conference on Security and Co-operation in Europe, Final Act, Helsinki, 1975, in John J. Maresca, *To Helsinki-The Conference on Security and Cooperation in Europe 1973-1975,* (USA, Duke University Press, 1985), 227-283, p.231.

49.Thornberry, *op.cit.*, p.886.

50.Ermacora, *op.cit.*, p.295.

51.*Loc.cit.*, note 49.

52.*Id.*

53.*Human Rights Law Journal*, Vol.11, No.3-4, 1990, 379-389.

54.*Ibid.*, Vol.11, No.1-2, 1990, 232-246.

55.*Keesing's Contemporay Archives*, June 1990, pp.37550-51.

56.*Human Rights Law Journal*, Vol.12, No.8-9, 1991, 332-334.

57.The UN Declaration on the Rights of Persons Belonging to National..., *op.cit.*

58.During discussions in the Sub-Commission regarding minorities, Turkey accused western governments of hypocrisy, arguing that they exclusively lend their efforts on minority problems in non-western countries, while ignoring the situation of minorities in their own countries, particularly migrant workers. The Turkish delegate also accused western human rights activists for acting in a politically biased way by aligning themselves with minorities and extreme left-wing ideological groups in developing countries. Furthermore, in his view, human rights activists fail to understand the need of states regarding territorial integrity, peace, and stability. Karen Reierson and David Weissbrodt, "The Forty-Third Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities : The Sub-Commission Under Scrutiny", *Human Rights Quarterly*, Vol.14, No.2, 1992, 232-277, p.52.

59.Dinstein, *op.cit.*, p.102.

60.*Id.*

61.Ermacora, *op.cit.*, p.346.

62.*Ibid.*, p.307.

63.A. H. Robertson & J. G. Merrills, *Human Rights in the World*, Third Edition (Manchester and New York, Manchester University Press, 1989), p.288.

64.Ermacora, *op.cit.*, p.296.

65.Peter R. Baehr & Leon Gordenker, *The United Nations in the 1990s*, (London, The Macmillan Press, 1992), p.101.

66.These reports can be found in the *Yearbook of the United Nations*.

67.Baehr & Gordenker, *op.cit.*, p.117.

68.Peter Malanczuk, "The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War", *European Journal of International Law*, Vol.2, No.2, 1991, 114-132, pp.127-129.

69.*Ibid.*, p.126.

70.Gudmundur Alfredsson & Alfred de Zayas, "Minority Rights : Protection by the United Nations", in *Human Rights Law Journal*, Vol.14, No.1-2, 1993, 1-9, p.5.

71.Ermacora, *op.cit.*, p.337.

72. Antonio Cassese, *International Law in a Divided World* (Oxford, Clarendon Press, 1986), p.314.

73.*Id.*

74.Ermacora, *op.cit.*, 299.

75.*Ibid.*, p.298.

76.Neil MacCormick, "The Determinancy of Selves", in W.J. Allan Macartney (Ed.), *Self-determination in the Commonwealth* (Aberdeen, Aberdeen University Press, 1988), 112-118, p.116.

77.Ermacora, *op.cit.*, pp.309-310.

78.Soysal, *op.cit.*, pp., 181-83.

79.Ergun Ozbudun, "Constitutional Law", in Tugrul Ansay & Don Wallace Jr.,(eds.) *Introduction to Turkish Law*, third edition (Deventer/Netherlands, Kluwer Law and Taxation Publishers, 1987), 23-60, p.34.

80.However this must be understood with the proviso that under the Treaty of Lausanne, which confirmed Turkey's international boundaries in 1923 in the aftermath of the Turkish War of Independence, the non-Muslim citizens of Turkey are recognized as minorities. (Treaty of Lausanne, *op.cit.*) Turkey is still attached to the Lausanne arrangement according to which religion is the sole criteria in the determination of the status of the minorities in Turkey.

81.Ozbudun, *op.cit.*, p.37.

82.The Report of the Commission of the Council of Europe on the Friendly Settlement between France, Norway, Denmark, Sweden and Netherlands on the one hand, and Turkey on the other, *Yearbook of the European Convention on Human Rights*, Vol.28, 1985, 150-159.

83.*Human Rights Law Journal*, Vol.11, No.3-4, 1990, 456-58.

84.*Ibid.*, 458-459.

85.Ozbudun, *op.cit.*, pp.37-38.

86.Decision of 4 March 1991 concerning the admissibility of applications Nos. 15299/89, 15300/89 and 15318/89 -Chrysostomos, Papachrysostomou, Loizidou against Turkey, in *Human Rights Law Journal*, Vol.12, No.3, 1991, 113-124.

87.Addendum to the Report on the Situation of Human Rights in Turkey, Doc.6553 of 12 June 1992, in *ibid.*, 1992, Vol.13, No.11-12, 476-479, para.26.

88.*Ibid.*, para.27.

89.See the decision on the admissibility of applications nos.16311/90 et al in *ibid.*, Vol.13, No.3, 1992, 131-136.

90.*Ibid.*, Vol.14, No.3-4, April 1993, 148-152, not yet ratified as at 30 April 1993.

91.*The Scotsman*, 6 November 1992.

92.Recommendation 1201 on an Additional Protocol on the Rights of..., *op.cit.*

93.See for instance Resolution 985 (1992) on the situation of human rights in Turkey, adopted on 30 June 1992, in *Human Rights Law Journal*, 1992, Vol.13, No.11-12, 464-465.

94.*Ibid.*, p.465.

95.Adnan Guriz, "Sources of Turkish Law", in Ansay & Wallace Jr., *op.cit.*, 1-22, pp.7-8.

96.Munci Kapani, *Insan Haklarinin Uluslararasi Boyutlari* (Ankara, Bilgi Yayinevi, 1987), p.53.

97.*Ibid.*, pp.62-63.

98.Brownlie, *op.cit.*, p.578.

99.Quoted in para.14.3. of the Report on the Situation of human rigths, adopted by the Parliamentary Assembly of the Council of Europe on 30 June 1992, *Human Rights Law Journal*, Vol.13, No.11-12, 1992.

100."Commission Opinion of Turkey's request for accession to the Community", SEC (89) 2290 (not formally published).

101.*The Economist*, October 31-November 6, p.18.

102.Hurst Hannum & Richard B. Lillich, "The Concept of Autonomy in International Law", *American Journal of International Law*, Vol.74, 1980, 858-889.

103.Thornberry, *op.cit.*, p.888.

CHAPTER 9

TURKEY AND THE 'PROGRESSIVE' THEMES IN INTERNATIONAL LAW

The concept of sovereignty corresponds to no set of facts or behaviour given that states are a part of an increasingly interdependent world. The linkage of societies are manifested by activities like commerce, transportation and communication. Never before has the pace of communication among individuals and societies become so quick and penetrating. However classical international law, based on the absolute notion of sovereignty and a detached conception of inter-state relations, was not equipped with the required legal tools to impose positive obligations on states in tackling the complex network of global problems. The task of progressively developing international law has been undertaken by the United Nations. Indeed the UN has had to find ways of encouraging international co-operation which was designed to cope with certain economic, political and social problems which could not be resolved by individual nation-states alone. These problems are varied, and are subject to an evolutionary legal process. They range from human rights issues to the protection of the environment, from self-determination to the rights of women, from a search for a new international economic order to the rights of refugees and displaced persons, and so on. This section however deals with three of the outstanding issues which fall into the category of 'progressive' international law : a/decolonization and the principle of self-determination ; b/search for a new international economic order; c/human rights. The exclusion of other issues from analysis has two reasons : first, due to the lack of space; second, these three themes have had far more impact on the conduct of international relations than the others. Besides, there has been much controversy around these subjects since the foundation of the United Nations. This section accordingly tries to explore Turkey's distinct approach towards these questions within a chronological framework.

The main crux of the analysis made here centre around the UN General Assembly discussions over various resolutions, declarations and decisions. It is generally agreed that the voting behaviour in the General Assembly is a clear expression of a given state's foreign policy orientation. It indicates the way in which the ruling elites define the nation's goals and expectations, and reflects "its actual behaviour rather than its claims or pretensions" (1). However it is also generally agreed that the UN General Assembly resolutions are devoid of binding force. They carry political and moral

force, and at most contribute, by their cumulative effect, to the crystallization of customary international law. But it is equally true that even those states which refrain from adopting a certain resolution are expected to avoid actions contradicting its fundamental purposes (2). It is often observed that states refer to the General Assembly resolutions to justify their international actions (3). Be that as it may, the main concern of this chapter is Turkey's understanding of progressive international norms and principles irrespective of their legal value. Besides, during the exposition of this section, reference will also be made to the conventions and treaties to which Turkey is a party.

The three themes that constitute the scope of this section are dealt with separately; that is, under separate headings. However, a general overview of the preceding issues will be made in the concluding section.

This chapter will start off with an analysis of the UN instruments relating to the process of decolonization. The principle of self-determination has been of cardinal importance in this process.

9.1.Decolonization and the Principle of Self-Determination

It was typical of the post-Second World War era that organized political groups in Africa, then Asia, began fighting on behalf of a whole 'people' against colonial powers. This struggle also included liberation movements, particularly in Africa, fighting against racist regimes and alien domination. Many of these movements eventually acquired statehood, while some others, like the Palestine Liberation Organization (PLO), are still struggling to achieve an independent state. The fundamental principle upon which these struggles are granted legitimacy is the right of peoples to self-determination. In the UN era, this principle was first enunciated under Article 1 of the United Nations Charter which declared that one of the principal purposes of this organization was "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". This reference was later invoked by certain non-western states (including socialist states) on behalf of colonial peoples to speed up the process of decolonization. Accordingly, soon after the foundation of the United Nations, colonial issues began to be discussed in the UN General Assembly with increasing pace. What has been Turkish attitude in regard to self-determination?

To start off, Turkey remained neutral or voted in favour of the French position at the UN General Assembly regarding the independence of Algeria, Tunisia, and Morocco in the 1950s. In Turkey's view, France's relations with these territories were a matter for France, and therefore they were not within the competence of the United Nations (4). Turkish scholars tend to attribute this approach to Turkey's close alignment with the western world after World War II (5). Turkish statesmen at the time believed that geographically and strategically, Turkey could not afford to become a part of the Non-Aligned movement. Since the imperatives of Turkish security in a bipolar world was guaranteed by the western world, in Inonu's words, Turkey was not "inclined to seek political advantage through non-alignment" (6). Turkish foreign policy-makers had another immediate and specific concern however. Greece brought the question of Cyprus, which was then under British mandate, before the UN in General Assembly in 1954. Greece argued that the people in Cyprus had the right to exercise their right to self-determination, and, accordingly, Cyprus should become an independent state (7). This was however an anathema to Turkey since the Greek majority of the island might then decide to unite with mainland Greece. Therefore in order avoid such an eventuality, Turkey argued in the General Assembly that this was a matter for Britain alone (8). When the discussion in the Assembly was suspended, the Turkish Foreign Minister expressed satisfaction. A former Turkish ambassador writes that the Turkish position had been prepared in close consultation with its western allies (9).

Indeed, throughout the 1950s, with few exceptions, (10) Turkey either sided with western countries or abstained on questions relating to Non-Self Governing Territories and the International Trusteeship System. The questions involved economic and social issues, transmission or examination of information, the future political status of these territories, etc. For instance, Turkey abstained when a 1952 resolution, which called for the granting of independence to Non-Self Governing and Trust Territories, reaffirmed the principle of self-determination of "all peoples and nations" (11). This resolution was generally advocated by developing and communist states. Even in 1959, when decolonization was becoming a pressing issue in international relations, Turkey abstained when some Asian and African states proposed the question of Algeria, which was at the time a French colony, to be included in the agenda of the General Assembly (12).

The process of decolonization, it is argued, helped relieve pressure coming from strong countries over the voting behaviour of already independent small nation-states. The influx of new states enhanced the freedom of action enjoyed by small countries (13). This factor may in part account for Turkey's cautious co-operation with non-

western countries on decolonization after the 1960s. For instance, Turkey was a co-sponsor to the celebrated UN General Assembly resolution no. 1514, adopted in 1960 and entitled the "Declaration on the Granting of Independence to Colonial Countries and Peoples". This declaration was adopted on 14 December 1960 by a vote of 89 to 0, with 9 abstentions (14). This change of heart was partly a by-product of regime change in Turkey, when the army overthrew the pro-American right-wing government on 27 May 1960. The same year, Turkey voted in favour of Resolution 1573(XV) which called on France to ensure the effective implementation of the principle of self-determination in Algeria. This resolution, adopted on 19 December 1960, was voted by 63 to 8 with 27 abstentions (15).

However, despite growing *rapprochement* between the non-western world and Turkey on the question of decolonization after the 1960s, the Turkish approach towards the principle of self-determination continued to be determined by political considerations. In accordance with Turkey's perceived interests, this principle was given conflicting interpretations in different situations. This unprincipled approach occasionally amounted to undermining the Turkish position over Cyprus. For instance, Turkey supported the implementation of the principle of self-determination for the overwhelmingly Muslim province of Kashmir which was part of India, in order to show its support for Pakistan and to strengthen the CENTO links with this country (16), although it opposed the implementation of this principle in the determination of the future status of Cyprus (17).

On questions regarding the granting of independence to colonial peoples, Turkey has voted favourably unless the resolutions specifically condemned some western governments, particularly the USA with which Turkey had established close military, political and economic ties after its inclusion among the European beneficiaries of Marshall Aid in 1948. Indeed during the 1960s, Turkey generally voted in favour of granting of independence to colonies in southern Africa, Fiji, Spanish Sahara, Namibia, territories under Portuguese domination -Angola, Mozambique and Guinea [Bissau] and some other territories-, as well as to Non-Self Governing Territories. By the same token, Turkey did not hesitate to join in a 1971 resolution which condemned Portugal and its NATO allies for "waging war against the national liberation movements of the colonies and against certain independent States of Africa and Asia". The resolution also confirmed :

> "...the legality of the peoples' struggle for self-determination and liberation from colonial and foreign

> domination and alien subjugation, notably in southern Africa and in particular that of the peoples of Zimbabwe, Namibia, Angola, Mozambique and Guinea [Bissau], as well as of the Palestinian people by all available means consistent with the Charter of the United Nations" (18).

Over the years, Turkey has retained its posture favouring self-determination of peoples living under colonial, alien or racist domination.

The question of the *apartheid* regime in South Africa has frequently entered the agenda of the UN General Assembly over the years. Although Turkey consistently voted in favour of resolutions condemning the racist regimes in southern Africa throughout the 1960s and 1970s, when it came to condemning specific group of countries -certain western governments- for continuing to collaborate with these racist minority regimes, the Turkish posture was not as clear-cut. This was the case when Turkey abstained in the face of a resolution which specifically criticised the three permanent members of the UN Security Council for vetoing proposals intended to impose effective sanctions against South Africa and Southern Rhodesia -France, the UK, and the US (19). Again Turkey abstained when a similar resolution, condemning western governments as well as Israel and Japan, was adopted in 1977 (20). Meanwhile, Turkey abstained when a 1973 resolution, *inter alia,* declared that the armed struggle of a people against colonial or alien domination must be regarded as international conflict in the sense of the Geneva Conventions of 1949 (21). Here one can see the traces of Turkey's attachment to 'classical' international law which sees states as the supreme sovereign in their territory, and, accordingly, perceives them as the main subject of international society.

Turkey's politically motivated voting pattern was most clear in the case of East Timor. Turkey has since 1975 voted against, and occasionally abstained from, resolutions which condemned Indonesia's occupation of East Timor (soon after the Portuguese left the island in 1975), and called on respect for the right of the East Timorese people to self-determination (22). The Turkish action was clearly a political one, in that both Turkey and Indonesia were close allies of the US, and the US also opposed these resolutions.

Turkey's policy towards the Palestine question, an ever-present dish alongside South Africa on the menu of the UN General Assembly and the Security Council, had been

another captive of Turkey's redoubtable pro-western voting in the 1950s. Although Turkey had voted against the partition of Palestine between a Jewish and an Arab state in the General Assembly in 1947 which was in tune with the position of the Arabs, it later became the first Muslim country to formally recognize Israel in 1949. Turkey declined to take an active stance on the rights of Palestinians and on the Palestinian refugees which had been expelled or were forced to flee from their lands after the Arab-Israeli war in 1948. Even in 1965, when Turkish diplomats had claimed to have launched a multidimensional and active foreign policy which would have been more in tune with the aspirations of the developing world and the Islamic countries, Turkey abstained when Pakistan and Somalia submitted amendments to the United States' draft resolution on Palestinian refugees. The amendments included the recognition and restoration of full Palestinian rights, as well as the right of the refugees to return to their homes (23).

Indeed, until the 1970s, Turkey refrained from mentioning the right of Palestinians to self-determination and independence. Instead the Turkish official line was limited to declaring occasional sympathy for 'the refugees of Palestine' which was intended to alleviate their plight "in accordance with law and justice" (24). On the Palestinian issue, the Turkish posture was aligned to that of the western governments to such an extent that it did not hesitate to abstain when a 1966 resolution criticised the inadequacy of the previous relief efforts regarding Palestinian refugees, and called for greater efforts to remedy the situation (25).

However, after the 1967 war, which ended with a complete defeat of the Arabs, Turkish policy underwent a radical shift in favour of the Palestinians. For instance, in 1968, Turkey voted for a resolution which condemned the violation of human rights in the Arab territories captured by Israel in the 1967 War. The resolution also reaffirmed the right of the Arab refugees to return to their homes and recover their property in territories occupied by Israel (26). The following year, a more significant resolution was passed by the Assembly which referred to the Palestinians as a 'people', and received Turkish approval. This resolution condemned Israel's oppressive policies in the Occupied Territories, and reaffirmed "the inalienable rights of the people of Palestine" (27). Some years later, in 1975, Turkey voted in favour of a resolution which declared that Zionism was a form of racism and racial discrimination (28). In this case, the western bloc of countries declined to endorse the resolution which was indicative of Turkey's adoption of a more independent and assertive approach to the Palestinian issue. Turkey has since voted in favour of all resolutions condemning Israel and endorsing the right of the Palestinian people to

self-determination and independence. It must however be said that Turkey's consistent pro-Palestinian stance is partially an outcome of growing public pressure, as well as its foreign policy interests and historical and cultural identity as a Muslim *and* Middle Eastern country. This is not to deny that Turkey has been an advocate of the right of peoples to self-determination for over two decades. However, this statement is made with two qualifications : first, even when Turkey supported the resolutions advocating the right to self-determination, its ambivalent posture was still in evidence. Indeed the specification of a western group of countries for criticism has frequently prompted Turkey to abstain from, and occasionally vote against, resolutions calling for speedier implementation of decolonization. This conflict of loyalties has remained a major dilemma of Turkey's voting behaviour in the UN over progressive issues of international law. Second, Turkey has supported the principle of self-determination insofar as it applied to colonial, racist or alien (foreign occupation) regimes. Any situation outside this framework was not recognized by Turkey as relevant to self-determination in the sense of independence, excepting of course Turkey's support for the self-determination claims in northern Cyprus and Kashmir which are a matter of political expediency.

The Turkish attitude regarding self-determination is not uncommon however. As discussed earlier, self-determination outside the colonial context is a controversial matter. It is generally agreed that the right to self-determination as was enunciated, for instance, in Article 1 of the Covenant on Civil and Political Rights (the same Article is also contained in the Covenant on Economic, Social and Cultural Rights - both adopted in 1966) also applies to situations outside the colonial context (29). But a major problem is that colonial self-determination since 1945 naturally gave an impression of independence as the usual outcome of self-determination. This is the major obstacle to a wider view of self-determination (30). Scholars generally agree that self-determination has two dimensions. 'External' self-determination concerns the international status of a people as an independent political unit. 'Internal' self-determination relates to the freedom of choosing the desired form of government (31). 'External' self-determination has remained the main focus of Third World strategies in the United Nations, while 'internal' self-determination has been downplayed by most states for fear of secessionary demands from disaffected minorities. They have generally maintained that the new states emerging out of colonialism must have a right to territorial integrity, and that the form of its political regime and its human rights record are not central to the principle of self-determination (32). As has been seen in the preceding section, Turkey has generally

subscribed to this thesis by denying the relevance of self-determination to groups within well-established nation-states.

Turkey's posture on the question of self-determination generally remained unchanged in the 1980s. Turkey continued to advocate the self-determination of peoples living under colonial, racist or alien domination. Accordingly, it joined in the condemnation of South Africa and Israel, and agreed on the necessity to impose sanctions against them. However, in cases which involved the condemnation of western collaboration with South Africa, the Turkish position became ambivalent. Three such cases from 1987 are illuminating, and show the extent to which Turkey's global approach differs from most of the other non-western countries. Case one : Turkey abstained when a resolution called for the prohibition of mercenaries whose activities violated human rights and impeded the right of peoples to self-determination (33). Case two : Turkey abstained again when a resolution, *inter alia,* urged for the halting of relations between the UN agencies, like the International Monetary Fund and the World Bank, and the South African government. The Turkish delegate objected to such reference, on the grounds that it infringed upon the autonomy of these international institutions and the principle of universality of their membership (34). Case three : Turkey voted in favour of a resolution which called for a cessation of the occupation of foreign economic interests which were believed to impede the independence of Namibia and all other Territories under colonial domination. The Turkish delegate argued, however, that the draft resolution failed to recognize that some of these activities could be beneficial to the people living in these territories. He also objected to the singling out of certain western states for condemnation and criticism (35). In all these cases, Turkey was among the very few countries which advocated the position taken by most of the western group of states (countries in western Europe, the USA, Canada, Australia etc.) which favoured the continuation of economic relations with South Africa. On the other hand, although it was well-known that foreign mercenaries, particularly from South Africa, were disrupting the political and economic stability in some newly independent countries in southern Africa, Turkey declined to endorse the resolutions, mentioned in cases 1 and 3, alongside western states. Even when endorsing resolutions on decolonization, Turkey did not cease to object to the "continued selective criticism of western countries".

Turkey's ambivalent attitude towards the adoption of concrete measures designed to bring about the self-determination of peoples under colonial or racist rule, or foreign occupation, was still in evidence during the 1991 session of the UN General Assembly discussions. While supporting the General Assembly resolution calling for an oil

embargo against South Africa (36), as well as the resolution which condemned those states which continued to violate the mandatory arms embargo and collaborated with South Africa (37), Turkey abstained when a resolution specifically condemned Israel for engaging in military and nuclear collaboration with South Africa and, accordingly, requested the Security Council to take 'appropriate measures' against Israel (38). Similarly, Turkey abstained when a General Assembly Resolution drew attention to the linkage between the right of peoples to self-determination and the effective protection of human rights. The resolution specifically reaffirmed the right of Palestinian people to self-determination, condemned Israel for its acts of aggression against Lebanon, and called on the international community to support the transition to a non-racial and democratic South Africa. The resolution, *inter alia*, called for an end to the practice of using mercenaries against sovereign states and national liberation movements. An overwhelming majority of non-western states supported the motion (39).

9.2.The Search for a New International Economic Order

The gradual dissolution of colonial empires in the aftermath of the Second World War, which unveiled the real conditions of colonial territories, highlighted the urgent need of the latter for comprehensive assistance. These newly independent countries, as well as other underdeveloped countries in Asia, Africa and Latin America, were characterized by low living standards and relatively low levels of labour productivity due to the shortage of capital, machinery, managerial competence etc., and high levels of unemployment and underemployment. This meant that they depended on developed countries for flows of foreign exchange in the form of export earnings, foreign loans, and foreign aid, which made them vulnerable (40). Their backwardness was partially the result of European colonialism and the *de facto* economic domination of industrialized countries.

As a result, the developing countries, which are also described as the Third World, evolved an increasing awareness of their moral right to achieve better living conditions and greater say in international relations. Accordingly, they have developed a pattern of international solidarity, and sought to gear international legal institutions to the needs of development. Not surprisingly, therefore, these countries have been at the forefront of demands for a new international economic order (hereinafter referred to as NIEO). In this context, they have used the UN platform, as

well as other multinational forums, to press for the elaboration of new legal norms which would be responsive to the acute problems faced by their backward economies.

However, over the years, it has become clear that the western group of states and Japan, which are the main addressees of these demands, have been reluctant to accept any radical shift in this direction. They have argued that these attempts are neither desirable nor possible since it is premature to try to codify this topic, while the international community has not agreed on the main principles applicable in this area. In their view, this field of international law has not been sufficiently identified or accepted to be codified. Therefore, they argue, the existence of political agreement is a prerequisite for any progressive development of the principles relating to the NIEO. As a result of this disagreement over the desirability or the credibility of standard-setting for a NIEO, it is difficult to speak of an 'international development law' as a separate legal discipline. At most, one can speak of the existence of 'soft' law, composed mainly of international resolutions, charters and declarations. Therefore the focus of this section will generally be directed at the legal instruments adopted within the UN General Assembly, with special reference to Turkey's voting behaviour therein.

Due to the numerical weakness of non-western states in the UN during the 1950s and to the immediate concerns of decolonization until the 1970s, the discussions on NIEO were at their incipient stage in the first two decades of the UN era. Before the 1960s, leaving aside the economic issues relating to Non-Self Governing Territories and the International Trusteeship System, General Assembly resolutions focused on the question of financial and technical aid from the rich to the poorer countries, as well as on the need to give due consideration to the terms of trade in primary products of developing countries the price of which was subject to fluctuations in the market. In the 1950s, many of the resolutions on economic and social questions were adopted without objection, due mainly to the essentially unspecified and abstract nature of the adopted texts. When the resolutions imposed a concrete set of legal obligations, the Turkish position was generally in tune with that of western states (41). Turkish delegates at the time were too careful to avoid any confrontation with western powers, particularly, with the US. When, in 1954, an amendment made by Brazil, Peru and the US to a proposed resolution on self-determination and permanent sovereignty over natural resources, requested the Commission on Human Rights to have due regard to "the rights and duties of states under international law", Turkey voted for this resolution which was finally adopted, despite a large number of abstentions and some opposition from communist and Afro-Asian countries (42).

This amendment in fact diluted the real significance of the resolution, by reaffirming one of the very principles against which the resolution was launched in the first place.

From the early 1960s to 1973, the focus of Third World strategies shifted from financial and technical aid to issues of trade. Three developments were conclusive in this new approach : first, it became clear that the existing international machinery and standards were inadequate for coping with the far-reaching problems of developing countries; secondly, the prices of the primary commodities were steadily declining in the face of steady increase in the price of manufactured or semi-manufactured goods. This worsened the balance of payments deficit in developing countries. It became necessary to reconsider the whole international economic system, and propose substantive remedies accordingly; thirdly, many African and Asian countries gained political independence in the 1950s and 60s which increased the self-confidence of the Third World groupings. All these factors contributed to "the emergence of a wholesale 'doctrine' of development, a doctrine which poor nations soon endeavoured to translate into international standards and institutions" (43).

Among the main principles of the new development strategy were the following : a/Development of less advanced countries should be the concern of the whole international society. These countries were entitled to international help, particularly from industrialized countries; b/Existing trade barriers against primary commodities originating in the developing countries had to be eliminated by developed countries; c/Developing countries requested to enjoy the most-favoured-nation treatment in their commercial dealings with developed countries. However this ought not be reciprocal on the part of the developing countries. Developed countries were also asked to make preferential concessions, both tariff and non-tariff, to developing countries. These principles clearly represented a departure from the basic principles of classical international law, such as the sovereign equality of states and the principle of reciprocity, since they were premised upon 'positive discrimination' in favour of the less developed countries (44).

In the 1960s, the Turkish position shifted towards supporting the resolutions which sanctioned positive discrimination in favour of developing countries. For instance, Turkey voted for the General Assembly resolution 1803 (XVII) of 14 December 1962, on 'Permanent sovereignty over natural resources' (45). The same year Turkey voted in favour of a resolution which incorporated "The Cairo Declaration of Developing Countries". This declaration spoke of the ways in which to realize speedy economic progress in developing countries (46). Similarly Turkey voted for a

proposed draft of the Economic and Social Committee in 1969 which stated, *inter alia,* that "the concept of reciprocity. . . is not equally valid where contracting states are at greatly different stages of economic development" (47). Finally, Turkey did not hesitate to vote for the readjustment of the International Monetary Fund so as to give the developing countries a larger share in its total quotas, despite opposition from western and communist countries (48).

As is well-known, during the 1970s, having achieved their independence and striving to exert greater influence in the conduct of international politics, the Third World countries turned their attention towards the establishment of a NIEO. The new strategy that had been adopted in the 1960s was later expounded in 1973-74 to cover not only a specific sector (international trade) but a whole group of existing economic relations between North and South. This new 'normative' framework came about as a result of a complex set of factors. To start with, the Arab oil boycott which was mainly directed at the industrialized world in the aftermath of the 1973 Arab-Israeli war, was very effective. This encouraged other developing countries to put forward more radical proposals in the reshaping of international economic relations. On the other hand, the relaxing of international tensions arising out of the Cold War allowed the Third World countries to play a more assertive role in international relations. Finally, by 1973, traditional colonialism had nearly come to an end, which encouraged the developing countries to turn their attention to neo-colonialism (49).

A major step in this direction was taken when the Algiers Conference of Non-Aligned Countries of September 1973, *inter alia*, drew on the significance of the association of oil-exporting countries (OPEC) as a model for concerted action in other products. In their view, such an association held vital significance in "the establishment of a new international economic order which would meet the requirements of genuine democracy" (50). The following year, the General Assembly adopted two resolutions which formulated the basic principles of a NIEO. Resolution 3201-S. VI, of 9 May 1974 containing a Declaration on the Establishment of NIEO, and Resolution 3202-S. VI, of 16 May 1974 containing a Programme of Action on the Establishment of a NIEO were adopted by consensus, despite serious misgivings expressed by western countries. However these two texts were loosely formulated and contained general guidelines and objectives for future action. It was with the Charter of Economic Rights and Duties of States, adopted by the General Assembly on 12 December 1974 (51), that these guidelines were turned into specific obligations. Although not claiming to be binding, the language of this text was more akin to legislation (52).

Not surprisingly, therefore, this Charter aroused intense opposition from western industrialized countries and Japan.

As far as the main tenets of the NIEO are concerned, the proposals specifically affirmed the need to gain permanent sovereignty over natural resources by regulating and controlling the activities of multinational corporations and/or by naturalizing or expropriating foreign property upon the payment of equitable compensation. Another main tenet of the NIEO was the concern with achieving more equitable conditions of trade that favoured developing countries. This new strategy did not however do away with earlier practices in that the resolutions reiterated the need to continue with 'traditional' economic and technical assistance from the industrialized countries (53). All these deliberations make up a set of standards which have political and moral, if not legal, value as regards the process leading to the NIEO.

As far as Turkey was concerned, it was well aware that there existed striking similarities between its interests and aspirations, and those of the countries in Asia, Africa and Latin America. In spite of its commitment to the western alliance, the extent of Turkey's economic problems and domestic public pressure prompted it to join this novel process (54). Indeed Turkey has since supported resolutions on trade and development which were often proposed by Third World and communist states, and adopted with an overwhelming majority. However it was then clear that when the duties of rich countries were specified within a resolution concerning the questions of social and economic development, Turkey tended to take a more guarded approach, like abstaining or voting against such resolutions.

To start with, Turkey was not a co-sponsor of the 1974 "Declaration on the Establishment of a New International Economic Order", proposed by the Non-Aligned bloc of countries, and adopted unanimously. Meanwhile, it voted in favour of the "Charter of Economic Rights and Duties of States", the principal purpose of which was to establish an improved system of international economic relations with due consideration to the development needs of poor countries. The following year, Turkey voted in favour of a resolution which called on states to take appropriate measures for implementing the aims laid down in the Charter of Economic Rights and Duties of States. Those abstaining or voting against belonged to the western bloc of states (55).

Continuous attempts have been made by developing countries to turn the postulates of the NIEO into legally binding rules through adoption of a multilateral convention.

However, they have aroused vigorous opposition, particularly from western governments. This has equally been true of the General Assembly resolutions intended to codify the norms relating to the NIEO. All along, the Turkish posture regarding codification has been an ambivalent one. In 1980, Turkey abstained when a resolution called on the UN bodies to prepare a study of existing and evolving international norms and principles for the progressive development of international economic law (56). However Turkey voted for identical resolutions in 1982 and 1985, while abstaining once again a few years later (57).

Turkey has equally been ambiguous regarding initiatives intended to link economic issues with other global questions, like disarmament. Indeed Turkey abstained when a resolution, adopted in 1981, declared that scientific and technological progress should be used for the peace and benefit of mankind, and called on all states to make use of science and technology in such a way as to promote peaceful social, economic and cultural development (58). However Turkey supported the two General Assembly resolutions in 1982 and 1983, the first of which called for a halt to the arms race, while both resolutions urged for measures to ensure that the results of scientific and technological progress are used for peaceful purposes, such as social, economic and cultural progress (59). Turkish policy was reversed once again in 1984 when Turkey abstained in the face of a resolution calling for an end to the arms race. The resolution further stressed that the additional resources released by disarmament should be utilized for social and economic development, particularly for the benefit of the developing countries (60).

All along, Turkey has been reluctant to endorse any resolutions which implicated western governments for criticism or singled them out for specific action, as well as those which seemed to refer to politically sensitive issues. The problem of economic coercion against weaker countries is a case in point. In 1984, Turkey voted against a resolution which reaffirmed Article 32 of the Charter of Economic Rights and Duties of States, by declaring that no state could exercise coercive economic measures against other states. As a result, the resolution called on the developed countries to refrain from threatening or applying trade restrictions, blockades, embargoes and other economic sanctions against developing countries as a form of political and economic coercion which would be inimical to their economic, political and social development. Turkey was among the few non-western countries not to have voted in the affirmative (61). In the face of similarly worded resolutions adopted between 1985-1991, Turkey either voted against, or abstained (62). Meanwhile, in 1984, Turkey abstained when a resolution, entitled "Confidence building in international

economic relations", called, *inter alia*, "on structural adjustments in the international financial and trading system" which was declared as a necessary step for the improvement in the economic situation of the developing countries. Turkey was one of the few non-western countries to abstain (63).

However in cases which involved abstractly worded guidelines for prospective action, Turkey has taken a more positive attitude, even if they were opposed by western governments. For instance, Turkey voted in favour of a 1984 resolution which stressed the need to promote the access of the developing countries to information. In this context, the resolution stressed the demand for the development of communication capacities in developing countries as a major step towards the establishment of a new world information and communication order. Western states declined to vote in favour of the resolution (64). The same year, Turkey voted for greater industrial development co-operation between developed and developing countries. In this context, the resolution emphasized the importance of facilitating the transfer of technology to developing countries (65). In 1986, Turkey voted in favour of a resolution which reaffirmed the urgent need to halt the net transfer of resources from developing to developed countries (66).

Turkey has also advocated the principle of the 'right to development' which, as a legal concept, emerged in the beginning of 1970s, and since has been embodied in a number of resolutions. It did not, for instance, hesitate to vote for a 1986 resolution entitled "Declaration on the right to development". The resolution stressed that all human rights and fundamental freedoms were indivisible and interdependent. Accordingly, equal attention should be given to the protection of civil, political, economic, social and cultural rights. The resolution declared that the right to development was an inalienable human right, and that the funds released by disarmament should be used for comprehensive development, in particular that of the developing countries. States were also asked to take all necessary measures to realize the right to development for every individual on their territory (67).

In concluding this section, the Turkish attitude towards matters relating to the NIEO may be described as one of 'unprincipled sympathy' for the long fought struggle of the Third World nations towards a fairer share of world economic resources. Excepting the 1950s, Turkey has generally sided with non-western countries on the question of the NIEO, unless the resolutions in question did not fundamentally undermine the confines of its pro-western foreign policy. However Turkey has not been actively involved in the North-South dialogue : it has hardly co-sponsored any resolutions

calling for the establishment of a NIEO. Besides, it has often sided with the western bloc of countries when the latter pursued a strategy of playing down substantial issues and preferred to question the validity of UN resolutions as *legal* instruments. Turkey is not a member of the G77 group of countries. Instead it has been a part of the OECD since its foundation in 1948. This may have played some part in Turkey's apparent conflict of loyalties, and its frequent change of heart regarding the search for a NIEO. Turkey's position becomes all the more dubious when one recalls that most of these resolutions have been adopted by an overwhelming majority of non-western states. It may be predicted that this ambivalence will continue to prevail in the foreseeable future unless Turkish foreign policy undergoes a dramatic change.

9.3.Human Rights

The classical formulation of human rights standards suggests that group rights would be duly protected by guaranteeing the rights of individuals. This is for instance the idea behind the Universal Declaration of Human Rights (1948) and the two human rights Covenants of 1966. They provide for two sets of human rights : civil and political rights; and economic, social and cultural rights. However due to social, political and historical reasons, collective categories like 'people' and 'minorities' are also accorded certain rights under international law. Meanwhile non-western states insist that the right to development is an essential part of human rights. However this view is generally rejected by western states. Since collective human rights have already been discussed in the preceding sections, the main focus of this section will be on individual human rights, although occasional reference will also be made to other aspects of human rights.

As far as Turkey is concerned, civil and political rights, as well as the economic, social and cultural rights -albeit within the confines of available public funds-, and the principle of non-discrimination towards individual citizens are expressly enunciated in the Turkish Constitution. It has also been a signatory to various multinational conventions and UN resolutions which aim to protect aspects of human rights and/or prohibit any discrimination by states against their citizens on the basis of race, language, religion, and so forth. Among them are the following instruments : Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948); Universal Declaration of Human Rights (10 December 1948); Convention relating to the Status of Refugees (28 July 1951); United Nations Declaration on the Elimination of All Forms of Racial Discrimination (20 November

1963); International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965); Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (10 December 1984). Turkey has also endorsed a UN General Assembly decision of 1984 which called on states to abolish the death penalty (68), although the death penalty was not, and, still, is not, proscribed under Turkish laws.

However, Turkey has thus far declined to adopt internationally *binding* instruments which, *inter alia*, include the rights of peoples to self-determination and/or reaffirm the rights of minorities as a distinct legal category. Among them are the following : Convention against Discrimination in Education (14 December 1960); International Covenant on Economic, Social and Cultural Rights (16 December 1966); International Covenant on Civil and Political Rights (16 December 1966); Optional Protocol to the International Covenant on Civil and Political Rights (16 December 1966). Since, as has been seen, minorities are not recognized under the Turkish Constitution (of course with the exception of the Christians and Jews whose rights are guaranteed under international treaties), Turkey's reluctance to accede to these documents is understandable. However Turkey has also failed to endorse some international human rights instruments which are of utmost significance for the protection of civil and political rights. They are : Convention relating to the Status of Stateless Persons (23 September 1954); Standard Minimum Rules for the Treatment of Prisoners (30 August 1955); Convention on the Reduction of Statelessness (30 August 1961). In the absence of any formal declaration regarding Turkish motives, it is thought that Turkey's failure to endorse these instruments can be attributed to the frequency of internal political strife there. Particularly at times of interim military regimes, many individuals have been convicted on grounds of political subversion. Many of those who were convicted fled the country, and eventually lost their citizenship under various decrees. The Turkish governments might have been reluctant to accept international obligations to restore their citizenship. As far as the treatment of prisoners is concerned, Turkey's record in this area is, in most probability, below international standards. However given that Turkey finally signed the 1984 Convention against Torture, it may soon be expected to join in the document on the Treatment of Prisoners.

Another prominent human rights document which has not yet been adopted by Turkey is the International Convention on the Suppression and Punishment of the Crime of Apartheid (30 November 1973). It is interesting to note that, in 1979, Turkey voted in favour of a resolution which condemned those governments which

continued to collaborate with the South African regime, and which invited all member states to accede to the International Convention on the Suppression and Punishment of the Crime of Apartheid (69). Turkish reluctance to sign the Convention was based on its reservations on some "legal problems" relating to the Convention (70). It is presumably due to the fact that this Convention, *inter alia,* condemned the continued collaboration of certain western states with the racist minority regime in South Africa. The fact of its binding character might have made it a more compelling case for refusal.

It is now time to examine the Turkish attitude towards the UN General Assembly resolutions concerning human rights. This topic had, until the 1970s, mostly been discussed in colonial contexts. Outside the colonial context, resolutions on human rights were generally adopted without any objection since they imposed no clearly defined obligations, excepting those conventions which have already been referred to. However in those cases which involved opposition -through abstention or negative voting- from western governments, Turkey did not hesitate to endorse resolutions on human rights. This was the case when Turkey endorsed a resolution which condemned the *apartheid* regime in South Africa, and called for the elimination of racial discrimination wherever it occurred (71). Similarly Turkey voted for a 1970 resolution which affirmed that members of national liberation movements should be treated as prisoners of war in case of their arrest. The resolution also reaffirmed the prohibition of air bombardments against civilians, and of chemical and biological weapons in times of war (72).

In the 1970s, the violation of human rights, particularly in certain non-western countries, became an international concern, and received growing attention in UN bodies. To start with, in 1970, Turkey voted in favour of a resolution which urged member states to eliminate all forms of racial discrimination in their territory (73). On the other hand, during the period between 1974 and 1980, Turkey consistently participated in resolutions which condemned gross and systematic violations of human rights in Chile, and called on the Chilean government to restore and guarantee basic human rights and fundamental freedoms (74). It must be pointed out that the USA voted in the same way during the adoption of these resolutions. It is also worth noting that, although in November 1978, Turkey joined in the condemnation of gross human rights violations in Chile (75) despite large-scale opposition or abstention from other parties, it abstained when a resolution welcomed the founding of an Ad Hoc Working Group which had been set up to investigate, on the spot, the human rights situation in Chile (76). This posture may be attributed to Turkey's fear that human

rights issues might gradually lead to wide-ranging derogations from its sovereignty, and that they might justify external intervention in the domestic affairs of countries like itself. Granting that Turkey's human rights record has been problematic all along, Turkey's cautious handling of international 'supervision' is understandable.

In the 1980s, Turkey frequently declined to vote in favour of resolutions which took issue with human rights abuses in various countries. To start with, Turkey failed to condemn the continuing human rights violations in Chile by abstaining from a 1981 resolution (77). Similarly Turkey voted against a resolution which condemned human rights violations in El Salvador and invited the Government of El Salvador to ensure full respect for human rights in its territory (78). Turkey also voted against a resolution which invited the Government of Guatemala to co-operate with the Secretary-General of the UN for the improvement of human rights in this country (79). This new posture may be attributed to the military take-over in September 1980, and the pro-American orientation of the new Turkish regime whose human rights record turned from bad to worse. At the time, Turkey happily signed the NATO documents which condemned the human rights abuses in communist Poland, while angrily reacting to Norway's criticism of the human rights violations in Turkey (80).

Although free elections were held and multi-party democracy was restored in 1983, the Turkish position regarding the human rights situations in Chile, El Salvador and Guatemala remained the same. Indeed, throughout the 1980s, Turkey consistently abstained regarding resolutions condemning the gross and systematic human rights violations in these countries (81). In all these cases, the USA voted against the resolutions or abstained.

The Turkish perception of human rights, as far as their content is concerned, has generally been more akin to the 'individualistic' western position than the 'collectivist' and 'multidimensional' approach adopted by many developing countries and the ex-communist countries in eastern Europe and the ex-Soviet Union. This Turkish position could be highlighted when regard is made to some UN General Assembly resolutions in the 1980s. For instance, in 1982, Turkey abstained when a resolution (No.37/199), *inter alia,* reaffirmed that the right to development was an inalienable human right, while calling for greater disarmament as an essential element for the realization of human rights (82). The same day, a group of western states drafted a resolution whose content was identical to Resolution 37/199, with the exception that while Resolution 37/199 focused on the "collective" aspects of human rights, this resolution (No.37/200) emphasized the "individual" protection of human rights (83).

During discussions in the General Assembly, the Turkish representative expressed the view that Resolution 37/199 failed to provide a balance between individual and collective aspects of human rights. He stressed that Resolution 37/199 should have emphasized the independence of human rights from all other issues. As a result, Turkey voted in favour of the western-sponsored Resolution 37/200 on grounds that it maintained a balance between individual and collective rights, i.e. civil and political rights on the one hand, and economic and social rights on the other (84). The following year, Turkey abstained once again when another resolution similarly emphasized collective human rights and the relevance of peace and the establishment of a new international economic order for the furtherance of human rights (85). Finally, in 1987, Turkey declined to endorse a resolution which emphasized the need for greater international efforts to advance economic, social and cultural rights. It is meaningful to note that, together with Chile which was a client of the US, Turkey was the only non-western state to have abstained (86).

It is likely that this Turkish position will remain consistent in the 1990s. A 1991 resolution may be referred to as an indication of this trend. Indeed Turkey abstained when a resolution reaffirmed that human rights are indivisible, and that equal consideration should be given to the protection of civil and political rights on the one hand, and of economic, social and cultural rights on the other (87).

9.4.Conclusion

It can be asserted that Turkey has not been an active participant of international attempts aimed at *transforming* international law with a view to creating and elaborating international norms to assist in the establishment of a more peaceful and equitable international system. Turkey has generally remained inactive towards 'progressive' issues like human rights, the protection of minorities, the principle of self-determination and demands for a NIEO. It is however also true that Turkey has generally sided with other developing countries on the question of self-determination and NIEO, albeit not with much enthusiasm. Turkey is outside the Non-Aligned group of nations, frequently the sponsors of draft proposals on these two topics, which has inevitably set it apart from other developing nations. However its status within the western bloc of countries has equally been dubious. Human rights standards in Turkey have been far below than those of any other country in western Europe. Besides, it is economically poorer than any of the countries that are categorized as being part of the 'western world'. Therefore, not surprisingly, the way Turkey perceives the rules and principles of the 'progressive' international law has oscillated between western and non-western approaches.

NOTES TO CHAPTER 9

1.Kul B. Rai, "Foreign Policy and Voting in the UN General Assembly", *International Organization,* Vol.26, 1972, 589-594, p.590. For a fuller discussion of international organizations, see Richard A. Falk, Samuel S. Kim, and Saul H. Mendlovitz (eds.), *The United Nations and a Just World Order*, (Boulder, Westview Press, 1991); Clive Archer, *International Organizations*, second edition, (London, New York; Routledge, 1992); Werner J. Feld and Robert S. Jordan, *International Organizations : a Comparative Approach,* second edition, (New York, London; Praeger, 1988); Philip Alston (ed.), *The United Nations : a Short Political Guide,* second edition, (Basingstoke, Macmillan, 1989).

2.G. K. Dmitrieva and I. I. Lukashuk, "The Role of the UN General Assembly Resolutions in the International Norm-Making", *Indian Journal of International Law* Vol.28, No.2, April-June 1988, 236-248, p.243.

3.*Ibid.*, p.246.

4.See for instance, *Yearbook of the UN,* 1952, pp.266-78 for Tunisia; year 1954, pp.85-86 for Morocco; year 1955, p.68 for Algeria.

5.See for instance, Orhan Soysal, *An Analysis of the Influence of Turkey's Alignment with the West and of the Arab-Israeli Conflict upon Turkish-Israeli and Turkish-Arab Relations,* (Unpublished PhD dissertation, Princeton University, 1983), p.70.

6.*Ibid.*, p.54.

7.*Yearbook...*, 1954, pp.94-96.

8.*Ibid.*, 1955, p.77.

9.Haluk Gerger, *'Mayinli Tarla'da Dis Politika* (Istanbul, Hil Yayin, 1983), p.58.

10.Such as UN General Assembly Resolution 1188(XII), adopted by Assembly on 11 December 1957, *Yearbook...*, pp.205-206.

11.General Assembly Resolution 637 A(VII), *ibid.*, 1952, pp.444-445.

12.*Ibid.*, 1959, pp.51-56.

13.Bedjaoui, *Towards a New International Economic Order* (Paris, UNESCO, 1979), p.147.

14.*Yearbook...*, 1960, pp.44-50.

15.*Ibid.*, 1960, pp.132-136.

16.Both Turkey and Pakistan, together with Iran, Iraq and Britain, had been a member of this military pact since 1955. While initially, the official name of this alliance was the Baghdad Pact, it was renamed as CENTO when Iraq left the pact following a revolutionary regime change in this country in 1958.

17.Mahmut Dikerdem, *Ucuncu Dunya'dan* (Istanbul, Cem Yayinevi, 1977), p.115.

18.General Assembly Resolution 2787(XXVI), adopted on 6 December 1971, *Yearbook...*, pp.423-24.

19.General Assembly Resolution 31/33, adopted on 30 November 1976, *ibid.*, pp.581-82.

20.Resolution 32/35, adopted by the General Assembly on 28 November 1977, *ibid.*, pp.858-860.See also Resolution 33/40, adopted on 13 December 1978, *ibid.*, pp.844-46; Resolution 33/183 G, adopted on 24 January 1979, *ibid.*, pp.210-11. The latter resolution called on the termination of nuclear collaboration between France, Federal Republic of Germany, Israel and the United States, on the one hand, and South Africa, on the other.

21.Resolution 3103(XXVIII), adopted by the General Assembly on 12 December 1973, *ibid.*, pp.552-53.

22.Resolution 3485(XXX), adopted on 12 December 1975, *ibid.*, pp.865-66; Resolution 31/53, adopted on 1 December 1976, *ibid.*, pp.754-55; Resolution 33/39, adopted on 13 December 1978, *ibid.*, p.869, and etc.

23.Draft Resolution rejected by Special Political Committee on 17 November 1965, *ibid.*, pp.223-26.

24.Mahmut Bali Aykan, *Ideology and National Interest in Turkish Foreign Policy towards the Muslim World : 1960-1987,* (Unpublished PhD dissertation, University of Virginia, 1988), p.123. See for instance, Resolution 1725(XVI), adopted by Assembly on 20 December 1961, *Yearbook...*, pp.160-61; Resolution 1856(XVII), adopted by Assembly on 20 December 1962, *ibid.*, p.144; Resolution 2052(XX), adopted by Assembly on 15 December 1965, *ibid.*, pp.226-27; Resolution 2341 A(XXII), adopted by Assembly on 19 December 1967, *ibid.*, pp.266-68.

25.Resolution 2154 (XXI), adopted by the General Assembly on 17 November 1966, *ibid.*, pp.186-87.

26.Resolution 2443(XXIII), adopted by the General Assembly on 19 December 1968, *ibid.*, pp.555-56.

27.Resolution 2535(XXIV), adopted by the General Assembly on 10 December 1969, *ibid.*, pp.241-42.

28.Resolution 3379(XXX), adopted by the General Assembly on 10 November 1975, by roll-call vote of 72 to 35, with 32 abstentions, *ibid.*, pp.599-600.

29.See for instance James Crawford, "Self-Determination outside the Colonial Context", in W. J. Allan Macartney (ed.), *Self-Determination in the Commonwealth* (Aberdeen, Aberdeen University Press, 1988), 1-22, pp.3-6.

30.*Ibid.*, p.2.

31.Michla Pomerance, *Self-Determination in Law and Practice* (The Hague/Boston/London, Martinus Nijhoff Publishers, 1982), p.37.

32.*Ibid.*, pp.40-41.

33.Resolution 42/96, 7 December 1987, *Yearbook...*, pp.750-51.

34.Resolution 42/75, 4 December 1987, *ibid.*, pp.961-64.

35.Resolution 42/74, 4 December 1987, *ibid.*, pp.964-68.

36.Resolution 46/79 E, 13 December 1991, *ibid.*, pp.115-116.

37.Resolution 46/79 C, 13 December 1991, *ibid.*, pp.118-119.

38.Resolution 46/79 D, 13 December 1991, *ibid.*, p.120.

39.Resolution 46/87, 16 December 1991, *ibid.*, pp.545-548.

40.Michael P. Tadoro, *Economic Development in the Third World,* fourth edition (New York, Longman, 1990), pp.27-44.

41.See, for instance, Resolution 623(VII).of 1952, *ibid.*, pp.377-78; and Resolution 1317(XIII) of 1958, *ibid.*, p.142.

42.Resolution 837(IX), 1954, *ibid.*, pp.211-212.

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45.*Yearbook of the UN*, 1962, *ibid.*, pp.498-504.

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47.Resolution 1430(XLVI), adopted by Economic and Social Council on 6 June 1969, *ibid.*, p.367.

48.Resolution 2565(XXIV), adopted by the General Assembly on 13 December 1969, *ibid.*, pp.271-72.

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50.*The Third World Without Superpowers : The Collected Documents of the Non-Aligned Countries,* Edited by Odette Jankowitsch & Karl P.Sauvant (Dobbs Ferry, New York; Oceana Publications; 1978), Vol.1, 214-226, p.222.

51.Resolution 3281(XXIX), *Yearbook...*, pp.402-407.

52.Cassese, *op.cit.*, p.365.

53.Resolution 3281, *op.cit., Yearbook...*, pp.365-66.

54.Gerger, *op.cit.*, p.27.

55.Resolution 3486(XXX), adopted by the General Assembly on 12 December 1975, *Yearbook...*, pp.390-91.

56.Resolution 35/166, adopted by 15 December 1980, *ibid.*, pp.532-33.

57.General Assembly Resolution 37/103, 16 December 1982, *ibid.*, p.1405; Resolution 40/67, 11 December 1985, *ibid.*, pp.1195-96; Resolution 42/149, 7 December 1987, *ibid.*, pp.1083-84.

58.Resolution 36/56 A, 25 November 1981, *ibid.*, pp.977-78.

59.Resolution 37/189, 18 December 1982, *ibid.*, pp.1141-42; Resolution 38/112, 16 December 1983, *ibid.*, pp.904-905.

60.Resolution 39/134, 14 December 1984, *ibid.*, pp.885-86.

61.Resolution 39/210, 18 December 1984, *ibid.*, pp.397-98.

62.Resolution 40/185, 17 December 1985, *ibid.*, pp.422-23; Resolution 41/165, 5 December 1986, *ibid.*, pp.397-98; Resolution 42/173, 11 December 1987, *ibid.*, pp.380-81; Resolution 46/210, 20 December 1991, *ibid.*, p.348.

63.Resolution 39/226, 18 December 1984, *ibid.*, pp.396-97.

64.Resolution 39/98 B, 14 December 1984, *ibid.*, pp.352-54.

65.Resolution 39/232, 18 December 1984, *ibid.*, pp.562-63.

66.Resolution 41/180, 8 December 1986, *ibid.*, pp.491-92.

67.Resolution 41/128, 4 December 1986, *ibid.*, pp.717-19.

68.Decision 42/421, *ibid.*, p.760.

69.Resolution 34/27, adopted on 15 November 1979, *ibid.*, pp.813-14.

70.*Ibid.*, p.811.

71.Resolutions A and B(XXI), adopted by the General Assembly on 26 October 1966, *ibid.*, pp.450-51.

72.Resolution 2674(XXV), adopted by the General Assembly on 9 December 1970, *ibid.*, pp.538-39.

73.Resolution 2647(XXV), adopted by the General Assembly on 30 November 1970, *ibid.*, pp.507-508.

74.Resolution 3219(XXIX), adopted by the General Assembly on 6 November 1974, *ibid.*, p.687; Resolution 3448(XXX), adopted on 9 December 1975, *ibid.*, pp.627-28; and etc.

75.Resolution 33/175, adopted by the General Assembly on 20 December 1978, *ibid.*, pp.707-708.

76.Resolution 33/176, adopted by the General Assembly on 20 December 1978, *ibid.*, p.709.

77.Resolution 36/157, 16 December 1981, *ibid.*, pp.954-55.

78.Resolution 36/155, 16 December 1981, *ibid.*, pp.962-63.

79.Resolution 36/435, 16 December 1981, *ibid.*, pp.964-65.

80.Gerger, *op.cit.*, p.62.

81.Chile : 1982, Res.37/183; 1983, Res.38/102; 1984, Res.39/121; 1985, Res.40/145; 1987, Res.42/147. El Salvador : 1982, Res.37/185; 1983, Res.38/101; 1984, Res.39/119; 1985, Res.40/139. Guatemala : 1982, Res.37/184; 1983, Res.38/100; 1984, Res.39/120; 1985, Res.40/140.

82.Resolution 37/199, 18 December 1982, *Yearbook...*, pp.1097-98.

83.Resolution 37/200, 18 December 1982, *ibid.*, pp.1098-99.

84.*Ibid.*, pp.1096-1097.

85.Resolution 38/124, 16 December 1983, *ibid.*, pp.858-860.

86.Resolution 42/102, 7 December 1987, *ibid.*, pp.770-71.

87.Resolution 46/117, 17 December 1991, *ibid.*, pp.572-73.

CHAPTER 10

CONCLUSION

This study has been an attempt to show that international law should not be seen as a consistent, all-comprising and absolutist system of law which has the merit of being 'scientific' and 'objective'. States themselves define the way in which they perceive general rules and principles of international law and their application into concrete situations. Carty is right in arguing that:

> "...the very multiplicity of effective actors in international society makes it all the more necessary for doctrine to accept a subjective, personal and relative role for itself, where the authority it enjoys rests upon the quality of its argument rather than upon a pseudo-objective professionalism" (1).

For their part, the Turkish-Greek disputes testify to the significance of the subjective context in which a particular legal discourse takes place. The historical animosity between these two nations is perpetuated by their conflicting views of the legal issues involved in the Cyprus dispute or the disputes concerning the delimitation of the Aegean. Each of these states perceives the other as a 'national enemy', and draws its conclusions and impending strategies accordingly. The arguments put forward by each party, in their own context, appear perfectly legitimate and convincing. From a Turkish point of view, the dispute over Cyprus can only be resolved on the basis of the recognition of the Turkish-Cypriots as a separate 'nation' with corresponding rights. This is the starting point for the establishment of a bizonal and bicommunal federation in Cyprus. Turkish 'intervention' in Cyprus, the argument goes, was not 'illegal' in view of the fact that it relied on the Treaty of Guarantee which authorized such a move under Article 4. In contrast, Greece asserts that the Cyprus *crisis* was caused by Turkey's 'illegal occupation', and the following *de facto* partition, of the island.

Similarly, the contending parties have conflicting views over the legal issues involved in the Aegean dispute. Since both sides perceive the Aegean dispute predominantly from a 'national security' perspective, apparently trivial matters, like the control of the FIR line, frequently escalate into military confrontation. Here too it is difficult to take

an 'impartial' and 'definitive' position with regard to their respective claims. In the Turkish view, the Aegean is a 'semi-enclosed sea' which, granting the sheer number of Greek islands many of which are situated a few miles from the Turkish coast, warrant an equitable demarcation of the maritime areas in question. Greek claims for extended territorial waters and continental shelf are, as Turkey sees it, a testimony to Greek 'expansionism'. Conversely, for Greece, Turkish 'intransigence' cannot be justified in the light of the rights accorded to the coastal states under the new law of the sea.

As the Greco-Turkish disputes reveal, often, beyond seemingly perfect, would-be-universalistic rules and principles of international law, lies a multiplicity of approaches, in regard to their interpretation and/or application, among states. The absence of a supranational system of law and a world court which could serve as supreme arbiters among disputing states is, moreover, a testimony to this crude reality. However liberal jurists pretend that there are always universally applicable and valid positive standards in stock to which recourse can be made to remedy the 'anomaly' of legal disagreements or disputes. As for the subjective context which prompt the disputants to behave the way they do, in their view, they can simply be dismissed as 'irrelevant'.

It has to be accepted that states have their own views of what international law ought to be and how it should be applied. This is often a function of their notion of themselves, and not of an extrinsic legal or moral imperative which is of a higher order than their own. It is the contention of this thesis that Turkey's handling of the questions relating to the law of the sea, minority rights or the principle of self-determination testifies to the fragmentary nature of the present system of international law. Nations have a particular vision of international society and of its legal framework derived from their peculiar political and legal culture. In this sense, international society is still composed of a relatively closed systems of self-referential nation-states in spite of the encroachments of globalization. International law is but a reflection of this state of affairs; and this has to be taken on board before making any critique of international law.

It is hoped that the preceding arguments adequately convey the rationale behind the adoption of a subjectivist approach in expounding and explaining Turkey's conception and practice of international law in this study. To that end, Turkish nationalism and national identity have been deployed as frames of reference for Turkey's behavioural strategy. It has been argued that the nationalist ideology often requires the existence

of an 'other', or 'others', against which it defines and legitimates itself. The resort to a nationalist language serves as a useful device to cohere the members of the 'nation', which is often composed of various nationalities, around a common and uniform identity. The process of nation-building is never complete, since, first, the internal and external economic and political constraints in which the nation-state operates is in constant flux, secondly, the impact of these changes on the members of the nation are difficult to predict. Not unexpectedly, then, governments are tempted to mobilize 'national identity dynamic' in cases -mostly international disputes- which are perceived to involve the 'national interests' or 'prestige' of the nation.

It is thought that this broad frame of analysis applies to Turkey *par excellence*, as the Turkish-Greek disputes reveal. As discussed in Chapter 3, Turkey's painful transition from an Islamic empire to a secular nation-state has been a relatively late phenomenon -in the aftermath of the First World War. The new 'Turkish' state has sought to construct a 'national' identity among various ethnic groups on the basis of the language, culture and ideals of the majority 'Turks'. To that end, the Turkish state, built around the Jacobin traditions of authoritarianism, elitism and paternalism, has pursued a policy of assimilation since the foundation of the Turkish Republic in 1923. Turkey's authoritarian notion of itself and its fear of heterogeneity has left little scope in which, say, the Kurdish community could freely express its own identity and culture. Indeed, from the outset, as Turkish nationalist leadership saw it, the integrity and welfare of the state was the main *raison d'être* of the 'sovereignty of the people'. Since one of the fundamental premises of the classical doctrine on the law of territory was -and still is, for the most part- the absolute sovereignty of states over their territory, the relationship between the Turkish state and the people was a matter for domestic law.

Turkish nationalism defined itself not only in terms of its liberationist and developmentalist mission, but also in contradistinction to various external and internal 'enemies'. First, there were the foreign invaders who had sought to force the 'Turkish nation' into submission in the aftermath of the First World War. The 'invaders' included quite a few countries and/or minority movements in search of statehood, including the Greeks, the European imperial powers like Britain and France, and Armenians. The abundance of those which could be categorized as 'external enemies' has, in the hands of the Turkish political establishment, become a flexible source of mobilizing 'national identity dynamic' at times of internal and external crisis. Secondly, there were the 'internal enemies' who had either sought to undermine the territorial integrity of the 'homeland', namely the Kurdish

separationists, or wanted to destroy the secular foundations of the new state, namely the Islamic movement, or opposed the ideological and economic programme of the new state, namely the communists, who were, moreover, perceived as agents of Turkey's historic arch-enemy, the Russians.

The broad framework of Turkish nationalism, as defined by Ataturk, the first President and founder of the Turkish Republic in 1923, still marks the contours of the official ideology in contemporary Turkey. First, the state is still fearful and intolerant of -though to a lesser extent- discordant elements within the social and political fabric of the system -Kurdish activists, Islamic and radical left-wing groups, human rights campaigners, peace movements, critics of the army and so forth. Secondly, Turkish ruling elites still define 'national interests' predominantly from the perspective of the state. In other words, 'national interest' is equated with the 'interest of the state'. Finally, the primary external objective of Turkish nationalism is still perceived by the ruling elites to be Turkey's co-option into western standards of civilisation. Turkey's membership in various Western political, military, economic and cultural organizations in the post-Second World War era is presented by the same group of people as a logical corollary of Ataturk's vision of a modern and secular Turkey: capitalist economic strategy -although diluted with etatism- as the basis for economic development; modernism and liberalism as the basis for progress; secularism as the basis for identity; and humanism as the basis for ethics and morality.

This, as is believed, is the starting point for an understanding of the rationale behind Turkish behaviour in international society. In Chapter 3, it was argued that the Turkish image of the world order is still afflicted by a frame of mind which perceives Turkey as struggling to survive in a hostile environment. Indeed, one of the main recurring themes of Turkish foreign policy discourse is the belief -almost a mythical one- that Turkey is surrounded by hostile countries which incessantly try to undermine the country's national unity, territorial integrity and, ultimately, its political sovereignty. This perception may partially be attributed to Turkey's strategic location between two continents and important waterways. However it should also be related to the fact that the Turkish army wields undue power in foreign policy decision-making which tends to highlight the 'security' dimensions of international relations at the expense of other considerations. Turkey's xenophobic view of the outside world tends to reproduce itself in cases when, for instance, it is criticised for violating international law, as in the case of Cyprus. In the present author's view, part of the problem lies in Turkey's problematic identity -as defined by the official ideology in relation to the external world.

Indeed, the Turkish sense of insecurity can partially be attributed to the absence of an international constituency with which Turkey can identify. Although aspiring to become a full member of the European Union, it is frequently blamed for deviating from its standards of behaviour -human rights, rule of law, minority recognition. In any case, geographically in the margins of Europe, and with a distinct history and culture of its own, Turkey is hardly regarded -by European observers and public opinion alike- as an integral part of the western world. Indeed, most Turks are convinced that 'the west' does not perceive Turkey as one of 'them'. The Turkish paradox is further complicated by the simple fact that it "is in reality a developing country yet is also closely associated with the industrialized West" (2). Turkey's relations with the Islamic countries are not less problematic. For most of the Muslim countries, Turkey has betrayed the Islamic cause by adopting a Western secular model which was, as it were, a clear indication of its abandonment of its Islamic heritage. Therefore, in their eyes, Turkey is not really 'Muslim'. As a well-known Turkish academic puts it, "although Turkey has pursued a more 'Islamic' foreign policies since the 1960s and supported the Arabs in their struggle with Israel, the Arab perception of the Turks has not changed much" (3). On the other hand, in the eyes of the Third World nations, Turkey is not a part of the anti-colonialist, anti-imperialist struggle, because it has aspired to align itself with the very nations against which the Third World movement is essentially directed. Turkey is part of NATO, OECD, and has close military and political ties with the USA, none of which help to enhance Turkey's image for Third World countries. Furthermore, the fact that Turkey acted like a mouth-piece of the West in the Bandung Conference in 1955, which brought together many Asian, African and Latin American countries as a political grouping for the first time, has barely been forgotten by the Non-Aligned countries (4). Conversely, for Turkey, the struggle of the Third World countries to establish a New International Economic Order does not necessarily coincide with its own priorities, since the language of decolonization is not particularly appealing to Turkey's sense of 'greatness' -due to its imperial past- and to the Western orientation of its foreign policy. Turkey's lack of interest in this respect can also be attributed to the absence of expected economic gains from the largely underdeveloped Third World countries, excepting the OPEC countries with which Turkey has extensive economic and political ties. The Turkish dilemma which has been considered here was well expressed by a former Turkish President in 1989 : "Turkey is bound to be strong, for it has very few friends" (5).

Turkey's isolationist view of international society has also its roots in Turkey's perception of itself. As Robins rightly points out, there is a mystical belief in 'Turkishness' and the Turkish army, among the elite and the masses alike (6). This self-reliance is underpinned by the fact that despite its NATO membership, Turkey has not relinquished its own ability to defend the country by maintaining a large, labour-intensive, conscript army reminiscent of the days of the war of independence (7). Besides, the grandeur of the pre-Islamic Turkic states in Central Asia and of the Ottoman Empire still lives in the collective memory of the people, which makes it difficult for Turkish diplomacy to adjust itself to a 'second-rate power position' (8).

In line with its suspicion of the outside world, Turkey has been reluctant to accept restrictions on its sovereignty arising out of international law. As expressed by Turkey's official representatives to various international organizations and conferences, the Turkish view is that states are not legally bound by treaties and other international instruments unless they consent to them. Even within the European fora, which is the gravitational centre of Turkish foreign policy, it has been reluctant to accept the delegation of part of its sovereignty to the European Union or to the Council of Europe. By the same token, as the Greco-Turkish disputes testify, Turkey's strategy of resolving international disputes is based primarily on direct negotiations, rather than third-party involvement. Turkey's apparent preoccupation with sovereignty has a lot to do with its past grievances. Indeed, Turkish political elites are still profoundly affected by memories of the semicolonial period which preceded the emergence of Turkish national state. The humiliating infringements imposed on Ottoman sovereignty by the colonial powers in Europe, particularly during the nineteenth and early twentieth centuries, are still fresh in the minds of the decision-makers.

As the objectives of Turkish foreign policy are generally defined within a negative framework, such as the preservation of its territorial integrity and political independence, and non-intervention in the affairs of other states, Turkish foreign policy has all along lacked a sense of purpose and dynamism required for a constructive role in the larger international community. It has, for instance, failed to come to terms with the massive political, social and intellectual changes that have irreversibly altered the nature of international relations in the post-Second World War era. As a result, Ataturk's dictum "Peace at home; peace in the world" has fossilized into reactive legal formalism. Turkey has hardly taken any initiative in international affairs, excluding matters pertaining to military and security co-operation. This 'bureaucratic foreign policy', as Gonlubol puts it, fails to respond appropriately to

changes in the international system. This Turkish inertia was clearly witnessed during the historic changes taking place in Eastern Europe and the Soviet Union following the demise of the communist regimes when Turkey passively watched the events as an 'outsider' (9). It is only natural that when international society is viewed from the rigid spectrum of 'security considerations', other aspects of international relations - economic, social, cultural, intellectual and so forth- are ultimately subordinated to them. Within such a frame of mind, the external world can easily be presented as 'threatening'. This, in turn, justifies the belief that the conduct of foreign policy should solely be left to professional diplomats and military strategists.

Perhaps, in the light of the preceding discussions, it should not come as a surprise to observe that Turkish multilateral diplomacy has concentrated more on the established norms and principles of international law such as the sovereign equality of states, the right to collective self-defence, and the principle of non-intervention, rather than on the creation of new norms and structures in the evolving process of a new international legal order. Indeed, it has been a party to only a fraction of the multilateral treaties conceived under UN auspices dealing with progressive issues of international law. In Chapter 9, it was argued that, contrary to an overwhelming majority of states, particularly those belonging to the Third World, Turkey has rarely contributed to legal endeavours pertaining to the codification or the progressive evolution of matters relating to 'human rights', 'the principle of self-determination', 'the establishment of a New International Economic Order' and so forth. Indeed, the Turkish foreign policy establishment is inclined to see the United Nations as a forum for defending Turkish national interests rather than, *inter alia,* a vehicle for norm-creation. It can therefore be asserted that Turkey is yet to fully accept that the United Nations system in general and the General Assembly in particular are not merely designed to preserve international peace and security as defined in military terms, but they are equally entrusted with the task of mobilizing world public opinion on major issues of global concern, such as underdevelopment, food, human rights, disarmament, technology, law of the sea, and the distribution of culture and information.

As suggested earlier, a main conceptual and normative barrier in this respect lies in Turkey's official identification with the western group of countries (This is discussed in pp.92-93). Indeed, the western-orientation of Turkish foreign policy dictates that Turkey follow suit only after a near-consensus among states has been reached on a particular international question -mostly with the participation of the western group of countries-. For instance, Turkey did not hesitate to join the international sanctions

imposed against South Africa in the 1980s for its systematic practice of racist policies or the sanctions against Iraq after the latter invaded Kuwait in August 1990. Similarly, it was active in supporting the independence of Namibia, which it gained in 1990, over which there existed a universal consensus. Meanwhile, Turkey has consistently drawn on the UN resolutions No.242 and 243 as the legal basis upon which the Palestinian problem should be resolved -which is also the posture of the western countries. Finally, Turkey discreetly chose to follow the posture taken by the United States before recognizing Peoples Republic of China in the 1970s.

Turkey's status-quo oriented approach to the international legal order must also be linked to its fear of upsetting the military and strategic equilibrium established between Greece and Turkey by the Treaty of Lausanne of 1923. Under this treaty, Turkey's present boundaries were drawn, and, with few exceptions, its past disputes with Greece were resolved, largely to its satisfaction. Under the Lausanne arrangement, the Greek islands close to the Turkish coasts were demilitarised. As far as Cyprus was concerned, Turkey legally recognized the British sovereignty over the island which had been effectively ruled by Britain since 1878. Turkey was not necessarily disgruntled with this arrangement, since at least it denied any Greek presence in the Mediterranean. The equilibrium established by the Treaty of Lausanne has since become a major frame of reference for Turkish diplomats. It can be argued that, their fear that new developments in international law might upset the Lausanne balance, has played a major role in Turkey's reluctance to come to terms with the 'progressive' issues of international law.

Indeed, to Turkey's dismay, various developments in international law since the end of the Second World War have seriously undermined the Lausanne equilibrium. First, the 1958 Geneva Conventions on the Law of the Sea extended the sovereignty of coastal states, both in respect of their land territory and of their islands, over the adjacent maritime areas and their sea beds. Some twenty five years after their adoption, the new Convention on the Law of the Sea of 1982 provided the coastal states with a 12-mile limit for territorial seas, including those of the islands. In addition, the islands were included in the delimitation of the continental shelf. These developments, of which Greece wants to make full use, have led to the emergence of the Aegean conflict. Turkey, for its part, has all along objected to an uncritical application of these rules to 'semi-enclosed seas', such as the Aegean, which, in its view, would be tantamount to declaring the Aegean as a Greek 'lake'. Not unexpectedly, Turkey is not a signatory to either of the conventions.

Secondly, the emergence of the principle of self-determination which precipitated the process of decolonization has irreversibly upset the balance in Cyprus. The British colonial rule over the island was eventually replaced by the independent Republic of Cyprus in 1960. However, the new status of the island also carried the seeds of friction between the Turkish and Greek communities in Cyprus. The fact that under present international law, sovereignty is exercised by the numerical 'majority' of a particular territory irrespective of its human topography, meant that the Greek majority of the island could either force the Turkish 'minority' into submission and/or seek a union with Greece. Indeed, the alienation of the Turkish- Cypriot community from the political, legal and administrative apparatuses of the new state due, in the Turkish view, to coercive tactics used by the Greek-Cypriot leadership culminated in a pro-*enosis* (union with Greece) military coup in 1974. This prompted Turkey to launch a military intervention which has led to the *de facto* partition of the island. The Turkish action has been condemned by the world community, and strained Turkey's relations with the United States and the European Community.

Thirdly, the adoption of various conventions and resolutions towards the international protection of minority rights from the mid-1960s onwards, mostly under the auspices of the UN, has undermined the assimilationist policies pursued by Turkey towards its Muslim minorities -prime among them are the Kurds. As in most other areas, the Lausanne arrangement had confirmed the Turkish position *vis-à-vis* minority questions. This Treaty guaranteed the rights and freedoms of the Turkish minority in Greece, and precluded any domestic laws or administrative measures which contravened Greece's international obligations -of course the same rights were also accorded to the Greek Orthodox minority in Turkey. Similar guarantees were also provided for the Turkish minority in Bulgaria, mostly through Turkish-Bulgarian treaties signed before the First World War. Under the Lausanne arrangement, to Turkey's satisfaction, the ethnically non-Turkish Muslims of Turkey were merely accorded linguistic rights under the third paragraph of Article 39 of the Treaty of Lausanne, which was later ignored by Turkey and other signatories to the Treaty.

Hence, Turkey was content with the international arrangements regarding minority issues. However, the gradual incorporation of minority issues into the ambit of international law in the aftermath of the Second World War has undermined that balance. Indeed the protective measures brought about for minority groups under the UN system, while bringing no extra benefits for Turkish minorities in Greece and Bulgaria, has fundamentally challenged Turkey's assimilationist policies towards the Kurdish minority in Turkey. For instance, Turkey has long been accused -by the EC,

Council of Europe, Amnesty International and various individual states- of suppressing and denying the linguistic, cultural and political rights of the 'Kurdish minority'. Moreover, some sections of the Kurdish community have claimed that they constitute a separate 'people' as distinct from the 'Turks', and therefore, qualify for self-determination as sanctioned by international law. Hence it is clear that the 'progressive' concepts and principles on self-determination and minority rights have undermined the ideological basis of the Turkish state, as well as its claim that these matters are purely questions of domestic jurisdiction.

Not surprisingly, then, Turkey's lack of assertiveness in international society is also an outcome of the contradictions involved in its position on various disputes in which it has been involved. While, on the one hand, it advocates self-determination of the Turkish community in Cyprus, it denies any such claim to the Kurds of Turkey. The same contradictory position also prevails on minority disputes with Greece and Bulgaria: although refusing to grant minority status to the Kurds, Turkey has continuously called the neighbouring Bulgaria and Greece to respect the minority rights of Turkish community there. Therefore, not unexpectedly, Turkey has often been accused of double standards in its approach to human rights questions. This accusation is most frequently made by the European Union -of which Turkey aspires to become a full member- and the Council of Europe. These contradictions have inevitably compelled Turkish diplomacy to keep a low profile in multilateral forums where human rights questions are discussed.

The preceding arguments sought to locate the Turkish image of the outside world in the context of the specific political and legal culture in Turkey. Accordingly, it was shown that Turkey's self-perception and its conceptions of the outside world are largely 'constructed' by the political elites on the basis of subjective considerations which are often shaped by the prevailing discourse of which these elites themselves are also a part. These considerations, among others, include notions like 'national interests', 'national objectives', 'national prestige', 'historic rights of the nation', 'threats', and so forth. In this scheme of things, the intellectual background and the social psychology of decision-makers also play a decisive role. Indeed, as has been argued in Chapter 3, Turkish ruling elites tend to identify with their counterparts in the west. They have internalized the values and the ideology of an expanding international middle class with their belief in liberal capitalism and its modernist project as a universally applicable model. The intellectual and cultural orientation of these elites are very much rooted in the traditions of the western enlightenment.

Their links with the indigenous culture and the common folk, meanwhile, are extremely tenuous.

These observations also apply to the members of the academic elite whose views reinforce the prevailing discourse with regard to Turkey's place in the larger international society. Indeed, in Chapter 4, it was argued that the substance and the methodological structure of studies in the field of international law and relations have by and large themselves been restrained by the limitations of Turkish foreign policy and the Turkish conceptions of international law. Turkish scholars of international relations tend to overrate the security and economic dimensions of international relations at the expense of social, cultural and humanitarian issues. Besides, since a state-centric perspective pervades legal and political analyses, other subjects of international law, like international organizations, multinational companies, and various collective groups within states, are treated marginally, if not as non-existent. Besides, evolving issues of global concern, such as ecology, human rights, demands for a new international economic, legal, political and cultural order, are largely by-passed as 'irrelevant'. The dominant trend within the Turkish school of international law and relations, then, is towards *describing* existing set of relations and legal norms as 'they are'; hence largely denying the possibility of re-defining -outside the realms of official ideology- the Turkish approach to the outside world which could be the starting point for proposing new directions in that respect. Just as the Turkish diplomats have conventionally evaluated international society through the spectacle of western conceptions, so have the Turkish scholars been overwhelmed by prevalent western analytical attitudes -often their conservative brand. The link between power and discourse (of which the academic establishment is only one of a large array of pressure and interest groups like the media and the press, business circles and others which influence the 'dominant' discourse), then, is clearly visible in the specific context of Turkish conceptions of international society and its legal framework.

The methodological approach employed in this thesis suggests that international disputes, often perceived by positivistic scholars simply as *legal* disagreements over particular issues, cannot possibly be resolved by unique formulae which are there to be 'discovered'. Instead, the mutual *perceptions* of the contending parties of one another as well as their *conceptions* of the dispute in question should be linked to legal analyses. Indeed, inter-state disputes often involve the kind of issues and considerations that are too complex and varied to be delineated in clear and precise legal language. This requires that legal jurists should seek to understand the hermeneutics of the legal, political and cultural contexts of each disputant. It is only

on the basis of such a methodological and analytical framework that legal jurists could afford to propose solutions. As the Greco-Turkish disputes over Cyprus and the Aegean, as well as the confrontation between the Turkish state and the Kurdish activists testify, positive international law is not sufficiently clear and precise to warrant a uniform interpretation of its rules. Besides, states have their own peculiar view of international norms and of the modality of their application to practical cases. These two considerations should suffice to caution us from suggesting 'correct' legal remedies on the basis of the 'objective' rules of international law.

This study has sought to test the validity of a particular method of looking at international law -hermeneutical method- in the context of the Turkish conceptions and practices of international law. Accordingly, such methodology was informed by a concern to *understand* the behaviour of Turkey from *within,* i.e. by focusing on Turkey's peculiar culture and identity. To that end, various case studies have been undertaken to disclose the variety of motives which underlie the legal strategy adopted by Turkey, in regard to various disputes, problems and themes of international law. The findings have shown that international legal norms become less relevant when high political interests of states are at stake. This has been discussed in the context of Turkey's major disputes with Greece. This research has shown that both Turkey and Greece perceive and define the facts relating to the Cyprus dispute and to the question of the delimitation of the Aegean sea from the prism of their peculiar history and political culture. These perceived facts provide the material input of their legal reasoning which is based on their distinctive interpretation of relevant rules of international law. Such a critical hermeneutical approach, which attempts to examine international law in terms of how individual states, rather than international jurists, see it, opens the possibility of integrating law with other social disciplines. This approach also presents a realistic picture of international law as it is perceived and applied by states, and thus contributes to a clearer understanding of its limits and possibilities.

The empirical investigations made in this study are also intended to provide a clearer picture of some of the theoretical problems in international law. The critical hermeneutical position adopted here opens the possibility of a fruitful integration of different theoretical approaches to international law. This is necessary because, as the following discussion illustrates, no single theory, ranging from positivism to postmodernism, is capable of providing answers to all conceivable questions of international law.

This thesis has demonstrated that, contrary to what the positivists suggest, international law is not a complete and coherent system of law providing answers to all conceivable legal problems. The failure of international law in resolving the Cyprus and Aegean problems, referred to above, largely derives from the ambiguous and often inconsistent character of international rules on sovereignty, treaty law, law of the sea and so forth. Positivistic presupposition that it is exclusively the consent of states that is the material source of international law is similarly problematic. To begin with, it fails to grasp some of the fundamental changes in international law. There is an emerging view which emphasizes international solidarity as a potential source. Some scholars, like Richard Falk, emphasize the fact that consensus, in the sense of an overwhelming majority, in place of consent, is becoming the basis of international legal obligations (10). As has been examined in Chapter 9, most of the resolutions of the UN General Assembly, in regard to human rights, self-determination and the international law of development, have been adopted by an overwhelming majority of states. Although these resolutions do not become binding at the time they are adopted, since they are merely recommendations, one should not preclude the possibility that they might gradually crystallize into binding norms (This theme is discussed at greater length in chapters 4 and 9). That the practice of states is not the only source of international law, is also evidenced by the fact that peremptory norms (*jus cogens*) of international law, as has been enshrined in Articles 53 and 64 of the Vienna Convention on the Law of Treaties of 1969, transcend the sovereign will of individual states. These peremptory norms, which are generally deemed to include principles such as the prohibition of the use of force, respect for human rights, the principle of non-intervention, and pacific settlement of disputes, render null and void any international treaty contrary to them. Finally, positivistic conception of international law does not recognize the relevance of natural law as an actual or potential source of international law. This too can be contested. It can be observed that natural concepts of justice, equality, natural rights and fairness frequently inform the normative underpinnings of legal endeavours pertaining to the codification and progressive development of international law. That certain legal developments derive from natural law ideals, irrespective of the practice of states, is demonstrated by the existence of international standards such as the international protection of human rights, the principle of good faith, the principle of self-determination, the principle of international co-operation, and the emerging law of development. Therefore, it can be tentatively argued that natural law has recently been revitalized as a potential source of international law.

While this study confirms the views of critical legal scholars that international law is an incomplete and fragmented system of law, it takes issue with those who accord international law only a marginal role in international relations. Postmodernists, not unlike positivists, take a simplistic view of international law. Postmodernists claim that since social reality and experience is fragmented, there can be no universal values. As a result, they favour decentralised solutions to local problems to the extent of denying the actual or potential role played by international law in the international community. Since, as discussed in Chapter 2, the theoretical and methodological posture adopted in this thesis largely derives from the works of Carty, his particular postmodernist position needs to be reassessed. Although an ardent critic of the positivist theory of international law, paradoxically, Carty, like positivists, locates the development of international law in the practice of states as a matter of *fact*. Since states do not seem to agree on a uniform interpretation of international rules and principles, the argument goes, the system of international law is more a myth than a reality.

The crucial question here is the extent to which critical international lawyers are prepared to accept the authority of international law if the position of social agents are appreciated in terms of their own perceptions. Postmodernists, like Carty, decline to provide a satisfactory answer to this question. One lesson that can be drawn from this study is that international law cannot be adequately understood by approaching it solely from the perspective of a single legal theory. Although, as has been argued throughout, the system of international law is indeed beset by certain fundamental contradictions and ambiguities, this does not justify the denial of its usefulness in co-ordinating international relations or of its instrumental role in promoting international co-operation. Indeed without the existence of a set of minimum rules of co-existence and co-operation, arbitrariness and injustice would almost certainly become a dominant feature of international politics. Moreover, international law and institutions provide the conditions for a rational discourse by providing the participants with equality of status. Through such non-coercive discourse can the merits of different claims be decided. In addition, to argue that international law, as an all-embracing and absolute category, is beset by various theoretical and institutional defects, does not necessarily require the denial of the effectiveness of a great number of international rules and principles. Those who attack international law on grounds of theoretical inconsistency or structural inadequacy tend similarly to ignore law as a dynamic *process*, as well as a transnational *discourse* which influences the political and cultural traditions of states. This is the background to the arguments presented below.

It can hardly be denied that, for a variety of reasons, states, more often than not, try to conform to international law. First, they are conditioned to operate within the framework of established international principles. International law is a normative order which puts restraint on the behaviour of states, not only through the application of its rules, but also through its psychological impact and through the influence of international organizations whose activities include the supervision of the performance of states in particular areas and the publication of country reports. As has been seen in Chapter 8, Turkey's recognition of the linguistic rights of the Kurds was largely due to international pressure. The force of this pressure largely derived its legitimacy from various international instruments dealing with minority rights, although Turkey has not been a party to any of these instruments. States' obedience to international law also derives from a conviction that, apart from its legality, the action is valuable or mandatory in itself. Finally, such action may also be evoked by a sense of reciprocity with other states. According to Bull, actions evoked by reciprocity are exemplified by principles, such as mutual respect for sovereignty, *pacta sunt servanda*, and the laws of war (11). These considerations largely explain why, although international law is not the only commanding value in international society, states tend to justify their international behaviour more through legal justifications rather than those based on morality, ideology, national security, or the balance of power.

While the heterogeneity of the international community cannot be denied, this fact cannot, in itself, preclude the possibility of consent. It has already been argued that there are certain fundamental rules and principles which are recognized by virtually every state. Although they are not interpreted and applied uniformly by all states, which is only to be expected, their very *recognition* invalidates the postmodernist rationale. While states may perceive these universal norms differently, this is not to say that they do not observe these norms. Also, it would be too simplistic to dismiss technically non-binding norms as irrelevant to the behaviour of states. The cumulative effect of non-binding UN resolutions has already been referred to. Moreover, given that the rule of law and the separation of powers have become a prominent feature of most of the world's legal systems, the potential role played by independent judiciary in enforcing international norms cannot be ruled out. Indeed, as discussed in Chapter 8, national courts can resort to international norms in their legal reasoning, as was the case when the Turkish Council of State *(Conceil d'Etat)* repealed an expulsion order against foreign journalists in 1978 on grounds, *inter alia*, that this was a contravention of the Helsinki Final Act of 1975 of which Turkey was also a part. It

should be noted that the Helsinki Accords can be defined as 'soft law' in the sense that they do not qualify as law in the strict sense. They are instead a series of political statements which produce legal effects. This example shows that the traditional distinction between 'binding laws' and 'non-binding laws' has become increasingly problematic.

Having thus disclosed the weaknesses of positivistic and postmodernist approaches to law, it can be suggested that a variety of approaches are needed to present a fuller picture of international law. Indeed rather than operating at the level of generalities, which *a priori* exclude other possible approaches, the scholars of international law should strive to evaluate legal situations and problems in their own particular contexts. The Habermasian paradigm adopted here attempts to resolve this dilemma by drawing on different aspects of international law, as well as its dynamics. This is the context in which the subjectivistic understanding of states becomes meaningful.

In so far as the fundamental weaknesses of present international law are concerned, international lawyers are well advised to start with challenging the primacy of states in present international society. One of the most promising areas of such a critical posture relates to the broad areas which may be called 'human rights'. Indeed, international jurists could make a 'progressive' interpretation of international instruments on issues like human rights, minority rights and the principle of self-determination. Besides, they should strive to challenge the positivist legal theory by adopting a multi-disciplinary approach so as to come to grips with the complexity of international relations. Otherwise, these scholars will confine themselves to a mythic legality which does not necessarily coincide with the real world. The 'external world' is not simply a totality of objective facts on the basis of which states take 'rational' decisions. On the contrary, states perceive the external world from the prism of their own peculiar history, official ideology and cultural identity. The way in which external events are presented to the general public -by the media, diplomats, politicians and so forth- are often a function of the combination of these factors, and so is the response which they evoke from states. While, for instance, positivist legal scholars have hardly anything to say about a concept like 'national identity dynamic', in reality, it plays a central role with regard to matters which are perceived to involve the 'high interests' of the 'nation'. Therefore, the primacy of states, both as subjects of international law and as locus for legal analyses, has to be challenged before making any meaningful critique of international law.

This unorthodox position also necessitates an awareness of the evolving nature of states as political models. Having surveyed the nature of international order since the Vienna Congress of 1815, Clark concludes that its tendency to reform is far more limited than the scope of intellectual speculation suggests. Besides, the theory of inter-state relationships has largely remained static, despite many changes within the state itself (12). As Hinsley observes, the nature and history of nationalism have not simply been influenced by, but significantly contributed to, the developments in the international system (13). Therefore, as asserted by Clark, theories of international order must elaborate on the evolving nature of states, rather than states as static models. Just as international relations emerged as a by-product of the modern nation-state, any restructuring of the international order is contingent on the changes in the state units themselves (14).

The views expressed by Clark are relevant to the critique of the behavioural dimensions of Turkey's interaction with the outside world. Indeed a major proposition of this study is that a radical revaluation of Turkey's role within the larger international society is contingent upon a redefinition of Turkish national identity and a democratization of its political and legal structures. To that end, the decision-making process should cease to be an exclusive preserve of a few institutions and interest groups, like the army, the executive, the diplomatic establishment, and business circles. Instead, it should be accessible to a wider section of Turkish society : trade unions, professional associations, farmers' unions, members of parliament, members of the press, members of minority groups and so forth. The practical realization of 'popular sovereignty' also requires that the excessively centralized political and administrative system in Turkey give way to greater decentralisation. In addition, the official ideology should cease to define national identity exclusively from a 'Turco-centric' perspective. Those living in Turkey are too heterogeneous and varied to be pigeon-holed as simply 'Turks'. Besides, Turkish society has sufficiently matured in co-habitation so that it is no longer necessary to be clustered under a uniform and static identity. Society, as distinct from the state, should be allowed to evolve within its own dynamics, rather than, as has hitherto been the case, being subjected to a programme of 'social engineering' by the self-appointed 'guardians of the nation'. Otherwise, the existing gulf between the state and the people might become unbridgeable.

Finally, the Turkish political establishment should cease to pretend that Turkey is *essentially* a European nation, and that its interests coincide with those of European countries. Identities, particularly when it comes to the enormously complex reality of

nation-states, cannot be reduced to 'one' at the expense of others. This is particularly true of a country like Turkey which is at the cross-roads of two distinct civilisations - western and Islamic-, and whose history is shaped by an irreducible interplay of religious, ethnic and liberal ideological currents. If a label has to be used, there is no denying that Turkey is more a part of the Middle Eastern subsystem than that of Europe, in terms of geography, history and culture. It is, economically speaking, also a developing society with a per capita income of less than $2500 (1993). Therefore its economic prospects may be more intimately linked to those in the Third World than the Turkish political establishment are prepared to admit. Therefore, Turkey is, sooner or later, bound to come to terms with its specific history, geographical location and economic conditions which warrant a rethinking of its exclusive dependence on the western world.

Meanwhile, Turkey's transition from a sovereignty-centred, authoritarian and ethnoculturally-defined territorial unit to a grassroots democracy which accords equal recognition to diverse cultures, identities and ideologies will also remove a major conceptual obstacle to Turkey's problematic attitude to questions of human rights and minority rights. For instance, under such circumstances, Turkish political elites could, without much inhibition, digest the idea of officially recognizing the Kurds as a 'minority'. A more democratic and less ethno-centric Turkey would, furthermore, be less likely to manipulate external disputes in order to mobilize 'national identity dynamic'. Therefore, a healthy and democratic Turkey which is at ease with its past and present alike is a *sine quo non* for an unproblematic posture and constructive role which it might develop *vis-à-vis* international society in the years to come.

NOTES TO CHAPTER 10

1.Anthony Carty, *The Decay of International Law?* (Manchester, Manchester University Press, 1986), p.131.

2.Duygu Sezer, "Turkey's Security Policies", in Jonathan Alford (ed.) *Greece and Turkey : Adversity in Alliance,* (London, The International Institute for Strategic Studies, 1984), 43-89, p.82.

3.Mehmet Gonlubol, in *Olaylarla Turk Dis Politikasi,* seventh edition, (Ankara, Elif Matbaasi, 1989), p.622.

4.*Ibid.*, p.621.

5.*Ibid.*, p.614.

6.Philip Robins, *Turkey and the Middle East,* (London, The Royal Institute of International Affairs, 1991), p.10.

7.*Ibid.*, p.14.

8.Richard Dunlop Robinson, *The First Turkish Republic,* (Cambridge, Massachusetts; Harward University Press, 1963), p.169.

9.Gonlubol, *op.cit.*, pp.631-632.

10.Richard A. Falk, *The Status of Law in International Society,* (Princeton, New Jersey; Princeton University Press, 1970), p.177.

11.Hedley Bull, *The Anarchical Society,* (London and Basingstoke, The MacMillan Press, 1977), pp.139-140.

12.Ian Clark, *The Hierarchy of States,* (Cambridge, Cambridge University Press, 1989).

13.F. H. Hinsley, *Nationalism and the International System,* (London, Hodder and Stoughton, 1973), p.15.

14.Clark, *op.cit.*, pp.211-215.

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The following newspapers, journals and yearbooks were frequently consulted during the writing of this thesis :

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The Independent
The Times
The Economist
Keesing's Contemporary Archives
Turkish Review Quarterly Digest
UN Security Council Official Records