

**Faculdade de Direito da Universidade Católica de Lisboa
LLM. Law in a European and Global Context**



**“Turkey’s Accession Process as a European Union
Political Stance?”**

”The Value and Impact of the First Copenhagen
Criteria for Accession during Turkey’s Accession
Process”

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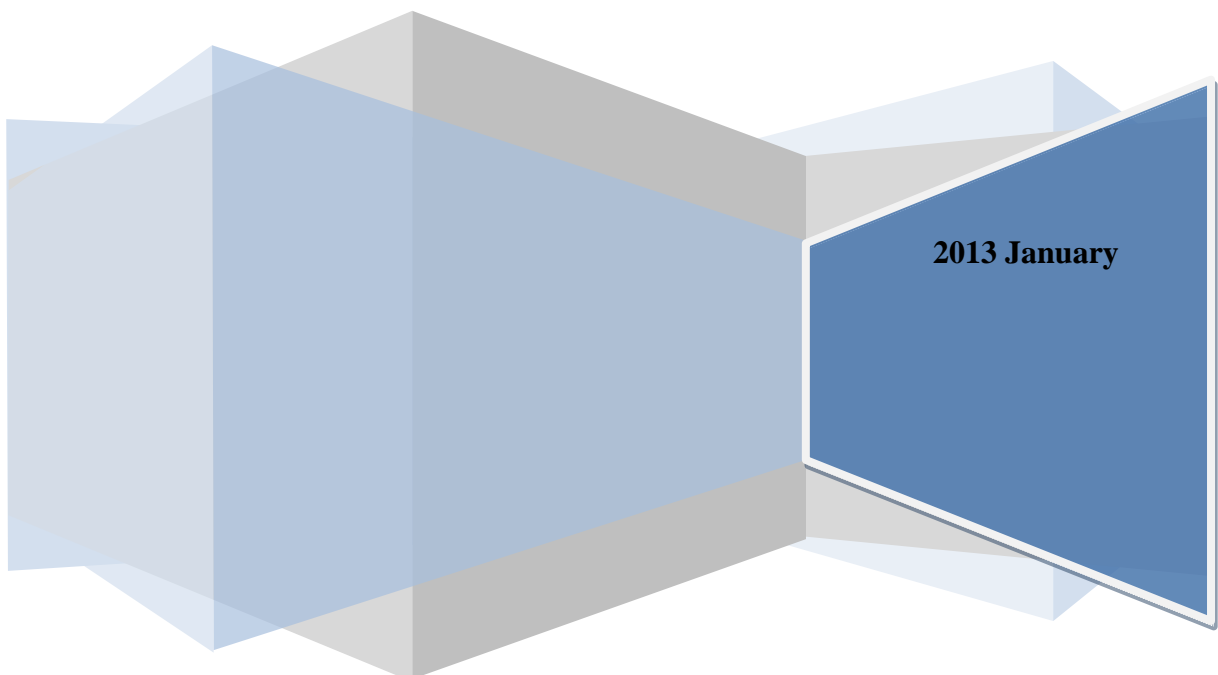


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Introduction

The first criteria for accession to the EU, designed during the European Council in 1993, becomes a secondary concern for the EU when in contact with a highly politicized environment, leaving the values of rule of law, democracy, human rights and rights of minorities to fade into the background.

The enlargement process chosen to corroborate this thesis is Turkey.

Turkey's intention to be part of the western world was born in 1923, the year of the declaration of the Republic of Turkey. 50 years after, the dream of becoming a full member of the EU remains to be concretized.

This dissertation will focus on the intertwining of three factors: the first criteria for accession to the EU¹, Turkey's accession process and EU's enlargement policy, with the objective of providing an answer to the question: what does the first criteria for accession entail and is Turkey's accession process on deadlock due to concerns under the first criteria?

I start by narrating an overview of the historical relations between Turkey and EU, , then analyzing the concerns related with Turkey's membership, followed by an exposition of EU's perceptions on Turkey's progress under the first criteria, ending with a schematic view of strategic and political advantages and disadvantages for both entities.

¹ *Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union, an excerpt from European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency, 13, para. 2*

I. Historical overview of EU-Turkey Relations

One year after the EEC was created in **1958**, Turkey decided to apply for associate membership, becoming one in **1963** with the signing of “Ankara Agreement”. This agreement meant to prepare Turkey’s economy and trade for the creation of a customs union between the two entities, ultimately aiming at future membership.²

In **1973**, an Additional Protocol was established that would eliminate any tariff and quantitative barriers to Turkey’s imports.

Turkey’s application for full membership to the EEC finally occurred in April **1987**.

In **1989**, the Commission of the EEC issued its conclusions on the application for membership³, by assessing Turkey’s political context, thereby concluding that after the military coup in 1980, the Turkish government has enacted reforms that have brought Turkey closer to the Community model.

However, such reforms have not been sufficient to accept pluralism and democracy to its full extent, because “Although there have been developments in recent years in the human rights situation and in respect for the identity of minorities, these have not yet reached the level required in a democracy.” One permanent request by the EU throughout the accession process has been: The Turkish government has to accept the Cyprus sovereignty to its full extent.

In **1994**, after Turkey’s efforts to implement the Ankara agreement, conversations recommenced, leading to the signing of a Customs Union one year later⁴.

In the Luxembourg European Council of **1997**, the Institution shows its intention on declaring Turkey as a candidate for membership, being officially recognized three years later during the Helsinki European Council.

In **2001**, an Accession Partnership was signed between Turkey and EU.

In **2002**, the Copenhagen European Council promised opening negotiations in 2004, provided they would fully fulfill the “political criteria” by then— “*The Union*

² http://ec.europa.eu/enlargement/candidate-countries/turkey/relation/index_en.htm

³ Commission opinion on Turkey's request for accession to the Community, Commission of the European Communities SEC (89) 2290 final, Brussels, 20.12.1989

⁴ Decision 1/95 on the completion of the Customs Union between Turkey and the EU in industrial and processed agricultural goods of 31 December 1995, *Official Journal of the European Communities (OJEC)*. 13.02.1996, n° L 35. [s.l.].

encourages Turkey to pursue energetically its reform process. If the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the European Union will open accession negotiations with Turkey without delay”⁵, repeated in 2004.

In **2004**, the Commission issues its regular report on Turkey’s accession process⁶, exposing the recent developments and discussing issues like human rights, the European Security and Defense Policy, Turkey’s participation in Community programmes, the success of the Association Agreement and its failure to comply with certain commitments displayed in the Customs Union agreement.

Finally in **2005**, The European Council officially opens the negotiations stage, setting its conditions in a “Negotiation framework” and allowing the commencement of the screening process.

In **2006**, the Council suspends negotiations of eight chapters, which are not to be opened until Turkey applies the Additional Protocol of the Ankara Agreement to the northern region of Cyprus⁷, demanding that Turkey opens its ports to traffic from Cyprus, lifting the embargo on the community controlled by Turkey in Cyprus.⁸

That same year, the Commission requests the total suspension of negotiations, due to Turkey’s unwillingness to apply the additional protocol of the Ankara agreement to the Turkish Cypriot community and to recognize the cypriot government⁹, which the Turkish Prime Minister Erdogan called as “unacceptable”.

In **2007**, on its second report on women's role in social, economic and political life in Turkey, the MEPs raised a concern about this issue¹⁰, asserting that the respect of

⁵ Recommendation of the European Commission on Turkey’s progress towards accession Communication from the Commission to the Council and the European Parliament, Brussels, 6.10.2004, COM(2004) 656 final, URL: <http://eur-lex.europa.eu/lexuriserv/lexuriserv.do?Uri=COM:2004:0656:FIN:EN:PDF>

⁶ Regular Report on Turkey’s progress towards accession 2004, Commission of the European Communities, Brussels, 6.10.2004 SEC(2004) 1201, {COM(2004) 656 final}

⁷ Note 2 supra

⁸ “EU warning on Turkey reforms”, BBC News, Published: 2006/09/27 16:04:55 GMT, <http://news.bbc.co.uk/2/hi/europe/5385954.stm>

⁹ “EU urged to freeze Turkey talks”, BBC News, Published: 2006/11/29 17:10:38 GMT, <http://news.bbc.co.uk/2/hi/europe/6194492.stm>

¹⁰ “Women's rights in Turkey: meps say improvements still needed”, Women's rights/Equal opportunities”, European parliament, Plenary sessions, press release, 13-02-2007 - 14:06, URL:

human rights, namely rights of women is fundamental for a future approval of Turkey membership.

In Berlin in 2009, Nicholas Sarkozy and Angela Merkel proposed that Turkey remained a “privileged partner”, ruling out the idea of Turkey’s membership, being both against Turkey’s accession and arguing any further expansion of the EU would compromise the effectiveness of its system,¹¹ which caused turmoil in Turkey. Turkish believed it would be “a downgrade of the Turkish-EU relationship”.

So far thirteen chapters have been opened and only one has been closed (chapter 25 on science and research)¹², the EU Council has revised the Accession Partnership more than twice and the Commission has issued thirty-three screening reports.

However, chapter 23 on judiciary and fundamental rights and chapter 24 on justice, freedom and security are not amongst the chapters undergoing negotiations and “*out of a total of 33 screening reports, one has still to be delivered to the Council by the Commission, whilst nine are being discussed in the Council.*”¹³

Even though the Commission sees some progresses, such as: “The enhanced political dialogue between the EU and Turkey has continued.”, “Turkey has become more active in its wider neighborhood and is a leading regional player.”, “The EU-Turkey Customs Union continues to boost bilateral trade between the EU and Turkey” and “The EU is providing guidance to the authorities on reform priorities under the Accession Partnership adopted in February 2008.”¹⁴, the Commission reiterates: Turkey has not implemented the Customs Union fully and “maintains legislation that violates its commitments under the Customs Union”, which has forced the EU to delay and rethink Turkey’s accession, leaving this relationship somewhat stagnated...

<http://www.europarl.europa.eu/sides/getdoc.do?Language=EN&type=IM-PRESS&reference=20070208IPR02887>

¹¹ “Merkel and Sarkozy Call for Privileged Partnership Angers Turkey”, Saban Kardas, Publication: Eurasia Daily Monitor Volume: 6 Issue: 92, May 13, 2009 05:32 PM, URL: http://www.jamestown.org/single/?No_cache=1&tx_ttnews%5Btt_news%5D=34983

¹² Note 2 supra

¹³ Turkey 2011 Progress Report Accompanying the document Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012, SEC(2011) 1201 final

¹⁴ Ibid.

II. The First Copenhagen Criteria for Accession

Having started with the founding six – Italy, France, Luxemburg, Belgium, Netherlands and Germany, the Union is now constituted by 27 states, on the way to 28 with Croatia's future accession.

However, its growth is far from over. This process of expanding the EU involving new states in this system was meant to exist ever since the European Coal and Steel Community in 1952. Even prior to that event, in 1946, Winston Churchill prepared the Europeans for an idea of a growing organization with his vision of cohesiveness and expansion of the European ideals, even though it was through the taboo notion of “European United States”¹⁵.

The “Schuman Declaration” in 1950 already mentioned the need for a gradual growth with several steps and stages, opening the organization to the other European countries. The quote of the French Minister for the Foreign Affairs: *‘L'Europe ne se fera pas d'un coup, ni dans une construction d'ensemble’*¹⁶ became a principle adaptable to the idea of successive enlargements that the EU has been facing. One step further, the French government actually proposed the creation of an organization¹⁷ opened to other countries, creating the gateway for the idea of accession.

With this tool the EU has developed itself into a complex organization simultaneously dependent and independent from its own member states, with a sometimes unclear road, which to this moment is more than an economical version of an international organization, focused on values such as tolerance, rule of law, democracy alongside with capitalism and single market.

¹⁵ “Discurso de Winston Churchill, in “The Sinews of Peace”, Cassel, London, 1948, in “60 anos de europa, Os Grandes Textos da Construção Europeia”, (60 Years of Europe, The Great Textes of the Construction of Europe), European Parliament Gabinet in Portugal, Europress Lda., Legal deposit n° 284627/08, I.S.B.N.: 978-972-99471-8-6, November 2008, n° 1

¹⁶ DECLARAÇÃO SCHUMAN, in Paris, by Robert Schuman, on 9th May 1950, in “Les États Unies d'Europe ont commencé”, Jean Monnet, 1955, in “60 anos de europa, Os Grandes Textos da Construção Europeia”, (60 Years of Europe, The Great Textes of the Construction of Europe), European Parliament Gabinet in Portugal, Europress Lda., Legal deposit n° 284627/08, I.S.B.N.: 978-972-99471-8-6, November 2008, n° 1, pág. 147

¹⁷ At the time to create a union based on French and German efforts on production of coal and steel, under the guidance and control of the High Authority

An enlargement process is an opportunity to gain greater access to other economies and to allow EU values to spread not just for the candidate state but also for the member states.

To join the European family, there are several requirements to be fulfilled that have been developed and transformed to better serve the purposes and the spirit of the European Union.

Firstly, the country has to be European, which might seem irrelevant to establish as criteria, but it does become a concern when addressing cases such as Turkey, although most official documents and political debates do not focus on this factor.

Secondly, the possibility of becoming a member state only belongs to European states that respect the common values established for the Union of respect for human dignity, freedom, democracy, equality, rule of law and human rights, referred in article 2 of the European Treaty and brought by the article 49 of TEU.

Thirdly, the States have to respect the triad of criteria set forth by the European Council in 1993 during the Copenhagen Summit:

- ❖ It is asked of the candidate country to develop and achieve a strong and cemented institutional structure that ensures democracy, rule of law, human rights and minorities rights –later mentioned by the Commission as the “political criteria”;

- ❖ The candidate country has to ensure the establishment of a market economy up to par with the member states economies, to allow them to interact competitively – “economic criteria”;

- ❖ The candidate country must comply with all its obligations on a political, economic and monetary union level, negotiated during the first stages of the accession process and listed by the Accession Treaty later on signed and ratified, convincing the Commission it has adopted all chapters of the *Acquis Communautaire*¹⁸ - called as “The ability to take on the obligations of membership”¹⁹.

¹⁸ There are 35 chapters of the *acquis communautaire*. These form a list of varied areas of European law, which are of significance to the EU, serving also as criteria for accession. Chapter 23 usually relates to “Judiciary and fundamental rights”.

¹⁹ “Understanding Enlargement - The European Union’s Enlargement Policy”, European Commission, Directorate General for Enlargement, 2011 © European Union 2011 Manuscript completed in June 2011, ISBN 978-92-79-20163-9, DOI 10.2794/35903, Catalogue number : NI-30-11-093-EN-C

The third criteria is also of extreme interest to this thesis, since the chapter 23 is occasionally about “judiciary and fundamental rights” and its assessment is most of the times correlated with the first criteria.

Finally, during the European Council in Madrid of 1995, the institution extended these criteria to application of administrative law. The state has to be able to apply EU regulation and procedures, meaning its accession process requires the state to be ready administratively for integration of all EU law, not just primary legislation.

Although there may be several sources to take from the main criteria for accession, most European documents often call the Copenhagen criteria as “the membership criteria”.

Briefly, the process of negotiations follows a series of procedural steps:

- ❖ An application for membership must be filed, which the Commission is entitled and called for to give its opinion;
- ❖ If that recommendation is in fact positive, the Council will then vote on it;
- ❖ If the Council votes unanimously in favor, the negotiations may start, guided by specific conditions for accession set within an individual framework. There are some conditions that the candidate country may negotiate but overall, the Copenhagen criteria for accession are to be fully met, nonnegotiable;
- ❖ If at the end of that stage, the institutions believe that country has been successful in applying and molding its policies according to European law and values, the final stage is set into motion;
- ❖ The EU and the State agree on the provisions to make part of the Accession Treaty, which will then have to be signed and ratified by all member states, EU institutions and the candidate country.

➤ **Is the First Criteria for Accession a real “Political Criteria”?**

The first criteria established and designed by an EU institution to assess whether a state can be accepted as a new member of the EU requires that state to respect and act in accordance with core European values, namely democracy, rule of law, human rights and respect for and protection of minorities.

These concepts are neither objective nor clear in their definitions. Although it is not the place to fully extend on this matter, a sketch definition of these concepts is in order.

Democracy is a system of distribution of power as well as a means of governance of a country based on certain values and principles developed over the years. Etymologically democracy means the “power of the people”, originated from the Greek notion of *Demokratia*. The Council interprets it as: *Though democratic systems may vary in forms and shape, democracy has evolved into a universal value. Democracy ensures that rulers can be held accountable for their actions. Governments with democratic legitimacy must deliver on the basic rights and needs of people or they risk losing legitimacy and public support*²⁰.

Rule of law is an extremely broad concept that may apply to any system of governance that follows a set of general and universal rules. In a simplistic way, it means a state has as limits and framework of action the “law”, which may exist in multiple ways, whether in the form of common law or civil law societies or pertaining to other civilizations such as the Arab. The wideness and subjectivity of the content of this concept depends solely on the conception of “law”, being adaptable to different legal families. The article 52 of the CFR of the EU may well explain the scope of the rule of law principle:

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

The definition of Human rights in the European sphere though it has been evolving through the years, it remains unclear and not objective at times. It goes from accepting fundamental rights as European law worthy of being enforced with cases like *Kadi*²¹ to the creation of its own legal instrument with a serious binding force – the Charter of Fundamental Rights.

The EU definition of human rights in its broad sense is based on several legal documents, such as the CFR of the EU and the Convention for the Protection of Human

²⁰ Council Conclusions on “Democracy Support in the EU’s External Relations – Towards Increased Coherence and Effectiveness”, Council of the European Union Annex 1, Brussels, 18 November 2009, 16081/09, URL: <http://register.consilium.europa.eu/pdf/en/09/st16/st16081.en09.pdf>

²¹ CJEU, C-402/05, *Kadi*, par. 281 et seq

Rights and Fundamental Freedoms, to which the EU has ratified, alongside with other international human rights instruments like the Universal Declaration of Human Rights.

However, its birth came from jurisprudential courage by the ECJ starting by Stauder²² and peaking with cases like Nold²³ and Handelsgesellschaft²⁴. In these past years, European primary law has consolidated the human rights policy by inserting the article 6 of the Treaties, among others.

Nonetheless, some questions linger: the universality of human rights in the European forum; their real scope when encountered with different levels: national, international or European; the democratic legitimacy of the European fundamental rights; the peculiar and extraordinary nature of these fundamental rights which are neither national nor international. It is my belief, the chapter on EU human rights is a chapter “to be continued”.

Minorities rights are closely connected with the universal prohibition of discrimination - established in the EU through article 21 of the CFREU - whether they are based on types of distinction such as gender, race, ethnicity, social class, language or sexual tendencies. The list of minorities however, is not exhaustive. The definition of minority can simply rely on the fact that a group chose not to be part of the majority.

On a European level, this right includes minorities such as children²⁵, elderly²⁶, persons with disabilities²⁷, women and different religions.

And how can we determine the content of political? I believe it is necessary to first distinguish between “political” and “politics”, two concepts intrinsic but differentiable. “Politics” is the art/science of governing or ruling of country, also associated to concepts like authority and power, usually related to negotiations, webs and exchange of interests to retain power or achieve certain goals. “Political” is the adjective of what is related to the governance of a country or the adjective of “politics”, including secondary concepts such as government, parliament, negotiations, authority, power, undeniably interconnected with democracy.

²² CJEU, 29/69, Stauder, 1969, par.7

²³ CJEU, 4/73, Nold, 1974, par. 13

²⁴ CJEU, 11/70 Handelsgesellschaft, 1970, par. 3-4

²⁵ Article 24 of CFREU

²⁶ Article 25 of the CFREU

²⁷ Article 26 CFREU

Although it is reality that human rights were inserted through political will and political movement, it is my personal conviction that human rights and minority rights have to remain above all political environment. A perception that is reasonable assuming that human rights are universal and nonnegotiable concepts guarded by international instruments. It is not reasonable to compare these values with the political perspective, when political necessarily means “extremely flexible points of view”. Nothing about political is universal, general and nonnegotiable...

➡ Premise I: Political criteria means criteria related to the governance of a country. It is possible to conclude the first criteria for accession is a political criteria, insofar as we are discussing the way the candidate state governs its country democratically and accordance with the principles of rule law, leaving the protection of minorities and human rights as “hitchhikers” of this criteria.

III. Issues Raised by Experts and Public Opinion on Turkey’s Accession Process

Turkey has been so far the state with the most controversial and longest process to join the EU family. Hence, many experts speculate on which the main concerns and issues the Turkish accession process faces are, which I depict below.

I question whether these concerns are related to the fundamental values of democracy and human dignity, i. e. the first criteria for membership? And if so, are those the real reasons for the deadlock of Turkey’s negotiations?

A. Religious and Cultural Issues

It is claimed the secularism installed in Turkey is nothing but a mere “sham”. The real state is an Islamic state, where the law may seem secular but the people are not. In reality, fundamental rights that the EU proudly considers its own, like freedom of religion are not fully respected.

The supporters of thesis do not intend on objecting to Turkey’s accession. The real issue is not that it is an Islamic state, but the fact that some Sharia rules are

incompatible with European values, while stressing that “Europe is not a Christian club”²⁸.

However, some actually believe the “*Europe ends where Western Christianity ends and Islam and Orthodoxy begin*”²⁹. It is a reality that most of the European States claim Christian values and several support religious institutions, like the UK, being the rest completely secular.

This position is heavily fought by some opinions. Some experts defend that an Islamic and secular state is possible. Turkish liberals claim that democracy is part of the Koran – ideology called as Kemalism, where human rights and democracy are not strange concepts.

Another opinion in this segment is concerned with the governance of Turkey by the Justice and Development Party (AKP), a party known for its Islamic ideologies, although his leader declared to be committed to abiding to secularist ideals and reform towards democratic values³⁰. This leaves some skeptics with the question: could the Turkish accession cause “a clash of civilisations”?

Nevertheless, alongside with the Dutch Foreign Affairs Minister, some defend that “It would be extremely inappropriate if (religious) arguments were to play a role in the discussions about Turkey’s accession to the EU... Turkey has organized the secular character of the state very clearly. In this respect only France could be compared to it. Other European states could even take it as an example.”

²⁸ *A few important aspects of Turkey’s uneasiness towards the EU’ from the Europe*, Daily Bulletin (11 January 2005), Source: Bulletin Quotidien Europe. 11.01.2005, n° 8863. Brussels: Agence Europee., Copyright: (c) Agence Europe S.A., Publication date: 18/09/2012,

URL:

<http://www.cvce.eu/obj/a-few-important-aspects-of-turkey-s-uneasiness-towards-the-eu-from-the-europe-daily-bulletin-11-january-2005-en-91145133-ca7e-447a-b8ed-98d331e9769c.html>

²⁹ *Beyond Enlargement Fatigue?, The Dutch debate on Turkish accession*, European Stability Initiative, Part I, 24 April 2006, Berlin-Brussels-Istanbul,

URL: http://www.esiweb.org/pdf/esi_document_id_74.pdf

³⁰ *The case of Turkey*, Centre Virtuel de la Connaissance sur l’Europe (CVCE), Publication date: 11/09/2012, URL: http://www.cvce.eu/content/publication/2005/1/26/97eb9c0b-c49c-4111-86ab-52d33c5ece94/publishable_en.pdf

B. Relationship with the Asian Continent

Turkey plays an important role in the Asian continent. For some it might create advantages and for others it might create risks.

Turkish external relations policy is not oblivious to the benefits Asia could bring to this country, hence elaborating a campaign to “promote the Turkish model”³¹, not based on military aspects but on language, media and dual nationality, influencing 60 million people. Some argue this challenges EU’s objectives of action.

For supporters of Turkey’s accession, it is imperative that Turkey and EU conciliate efforts towards the Middle East, operating as an intermediate geopolitically, while for the skeptics this should be built in a partnership scheme, so that Arab countries do not become weary of the rise of a new potency³².

Another line of thought mentions how this expansion of the EU could in fact compromise its survival, as it happened with the Austro-Hungarian Empire.

Some politicians warn of the dangers of welcoming a country of massive proportions and population and one of the poorest into the EU and how it can propel other countries such as Moldova, Ukraine or Belarus to apply for membership, which could transform the EU into “little more than a glorified customs union”³³.

From my point of view, the geographical location of this country may hinder the trust consolidation process between EU and Turkey, meaning it could turn the relationship with EU and Turkey fragile when the neighbor states (non-members) are going through critical and extremely turbulent times. With Turkey’s accession, the EU would share borders with problematic and conflictive countries, such as Iran, Iraq, Syria and Georgia, which could lead to instability in Europe³⁴.

³¹ Note 28 supra

³² Note 30 supra

³³ Note 29 supra

³⁴ *For or against membership: five questions under discussion* from Le Figaro (16 December 2004), Source: Le Figaro. 16.12.2004. Paris, Copyright: (c) Translation Centre Virtuel de la Connaissance sur l'Europe (CVCE), Publication date: 18/09/2012, URL: http://www.cvce.eu/obj/for_or_against_membership_five_questions_under_discussion_from_le_figaro_16_december_2004-en-e83abd12-cd65-43bf-9ae5-8cf49aa863a3.html

C. Democracy, Rule of Law, Human Rights and Protection of Minorities

Nicholas Moussi, on EU accession process³⁵, emphasizes that the pace of the process depends on the rhythm to which Turkey takes on their reforms to accommodate the *acquis* and satisfy the European council guidelines for accession, which has not been without hurdles, thereby suffering political consequences. He believes the slow pace of Turkey's accession has been due to what he calls as "democratic deficiencies" in Turkey, which were ignored and a Customs Union was formed.

Even though the Council recognized Turkey as a candidate, the institution did not completely ignore the need for Turkey to continue reforms to comply with the Copenhagen criteria, namely the "political criteria" for accession before membership can be approved.

The EU however, has shown a serious concern about Cyprus, by trying to provide instruments to protect this minority and ensure full application of the *acquis communautaire* to all Turkish territory³⁶.

Some articles provide a glance on human rights situation in Turkey. The article published in "Courrier International" written by Ahmet Insel³⁷, extends on the threats that the Prime Minister Erdogan made against the media after the news on a scheme of fraud and corruption involving his party, which led to a policy of repression of media communications that could harm the image of AKP-Party. For the author, the freedom of expression is still "fragile", although he does not believe that fascism has taken over, because this attitude seems an "uninterrupted authoritarian tradition", without ignoring the danger that it may have for democracy in Turkey.

³⁵ Moussis, Nicholas, Access to the European Union, law, economics and policies, "Candidates for accession to the EU", 19th edition, 25.2, Euroblog

URL: http://europedia.moussis.eu/books/Book_2/7/25/02/?all=1

³⁶ Regulation 866/2004 creating a special regime on rules on goods, services and people crossing the green line between the two areas of the island, 9.6.2004 Official Journal of the European Union L 206/51; COUNCIL REGULATION (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction, 7.3.2006 Official Journal of the European Union L 65/5

³⁷ *Authoritarianism Still Lives Here*, Excerpt Journal Radikal in Istanbul, author Ahmet Insel, date 28.09.2008, Courrier Internacional (Portuguese Edition) n° 154, December, 2008, page 40 and 41

Another article, written by Zülfü Livanelli,³⁸ a Turkish singer and writer, disserts on how the criminality has increased over the years in Turkey and on the fact that violent and seriously disturbing crimes such as kidnapping, raping and murders have become banal, affirming Turkey is ruled by a feeling of terror. Several violent episodes scare the population while the government attributes them to “political terrorism” ignoring and acting passively to the real impacts.

Others warn that the steps toward democracy, such as the decriminalization of female adultery, were only taken due to international and European pressure and also warn about the precarious life of the Kurdish minority and the human rights violations they endure, not recognized and ignored by the Turkish leaders³⁹.

Related to this matter, is another concern of human rights defenders: the role the military has in Turkey. Although some recognize their importance in enforcing secularism, its scope of action is too broad and unacceptable in a democratic state. This issue however, is not as discussed as others⁴⁰.

Although among these opinions there are optimists, who proudly believe this will transform Turkey into a democratic state, where human rights and rule of law will be respected and will give credibility to the enlargement process, most call for a close monitoring by the EU of the fulfillment of accession criteria, namely the first one.⁴¹

In the sequence of these concerns, another issue has to be confronted: the double-standard regarding the EU Human Rights regime and policies⁴². Several experts invoke a different treatment from the EU when dealing with member-states and non-member states (including candidate countries), regarding the respect and implementation of EU human rights regime. Assuming this is a true claim that creates a paradox. The fact that human rights protection is less controlled after accession makes its control even more important during the pre-accession phase, thereby justifying the importance of the tight

³⁸ *Our Culture Fabricates Criminals*, excerpt Journal Vatan Istanbul, author Zülfü Livanelli, Courier Internacional (Portuguese Edition) February 2008, 04.01.2008, page 36

³⁹ Note 30 supra

⁴⁰ Note 28 supra

⁴¹ Note 29 supra

⁴² Paul Craig and Gráinne de Burca, *EU LAW, TEXT, CASES, AND MATERIALS*, Oxford University Press, Fourth Edition, 2008, pages 407 and 408

control over human rights agenda and respect in acceding, candidate or potential candidate states and reinforcing the double-standard condemned by experts.

D. The Cyprus Issue

Turkey's accession process is dependent on its own non-compliance with the full and non-discriminatory application of the Association Agreement to Cyprus, more specifically an additional protocol to the Ankara Agreement signed in November 1970. There is a real political impasse blocking this process, on which Turkey is inflexible⁴³ and the EU will not budge. The Turkish government does not allow the Turkish Cypriot community to the same conditions to its own inhabitants. Evidently, the full application of EU law becomes hindered with the position of the Turkish government.

The Cypriot island is mainly governed by the Cyprus government (Greek), therefore member of the EU since 2004, but some areas especially in the north are still controlled by Turkey and remain outside EU jurisdiction according to the Protocol 10 of the Accession Treaty of Cyprus signed in 2003.

The fact that the island was divided in two communities also divided the island in terms of policies, preventing the Turkish community from acceding also in 2004 to the EU and leaving a huge gap in the same territory.⁴⁴

The two areas were officially divided by a European Council called as "green line regulation"⁴⁵, which determined which areas are effectively controlled by the Cypriot government and the ones by the Turkish government, to be able to accurately apply EU law, namely the ones related to movement of goods and people.

In April 2004, the Kofi Anan tried to pass a "Comprehensive Settlement of the Cyprus Problem" which was approved by the Turkish Cypriot electorate but rejected by the Greek Cypriots.

A few days after the UN proposal was rejected the Council invited the Commission to elaborate a comprehensive and reasonable set of measures that would be able to settle this issue and bring closer the idea of reunification. The Commission then proposed a set of aid and trade measures to end the isolation of the Turkish Cypriot community, in

⁴³ Note 28 supra

⁴⁴ http://ec.europa.eu/enlargement/projects-in-focus/communicating-enlargement/index_en.htm

⁴⁵ COUNCIL REGULATION (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession, 9.6.2004, Official Journal of the European Union L 206/51

order to reunify the island once and for all, through the idea of economic strengthening of the Turkish Cypriot community and more contact between these two communities, to which the enlargement Commissioner Günter Verheugen applauded⁴⁶.

Secondly the commission suggested the elaboration of a regulation that would allow an easier and increase of direct the trade between the northern part and EU member states, as well as a regulation for intra-island trade.

In 2006, the EU also approved to be given financial support to the isolated communities of Turk Cypriot with the hope one day the island might become reunited. This aid had as objectives not only to develop this part of the island socially, economically and its infrastructures but also to ease the way of reunification and close the gap between the EU and the Turkish Cypriots, by building a civil society and approximating their policies to EU *acquis communautaire*⁴⁷.

The prediction that eventually there would be an agreement between the two communities that would allow full implementation of EU law to the entire island has not yet become reality.

E. Economical Issues

Vicent Morelli on its article on Turkey's accession to the EU⁴⁸, states the EU faces serious budgetary issues. The accession of a country which would cause great impact to the European finances may render the EU's structures weak and unmanageable, meaning the EU must refrain itself from allowing the accession of such states until 2014, when the new budget is discussed and refocused, which he believes it has affected the status of Turkey's accession.

⁴⁶ "Commission Proposes Comprehensive Measures to End Isolation of Turkish Cypriot Community", IP/04/857, Brussels, 7 July 2004, URL: <http://europa.eu/rapid/pressreleasesaction.do?Reference=IP/04/857&format=HTML&aged=0&language=EN&guiLanguage=en>

⁴⁷ http://ec.europa.eu/enlargement/turkish_cypriot_community/index_en.htm

⁴⁸ Morelli, Vincent, UNION ENLARGEMENT - A STATUS REPORT ON TURKEY'S ACCESSION, TURKEY'S INITIAL PATH TO EUROPEAN UNION ACCESSION, September 9, 2011, Congressional Research Service, URL: <http://www.fas.org/sgp/crs/row/RS22517.pdf>

Others add to this, arguing that the impact in Turkey's economy is not entirely beneficial, since they could lose part of their dominance in trade with the Mediterranean and Asian countries, as is the oil transportation case⁴⁹.

Some people question Turkey's role in European agriculture. Turkey is highly agricultural. However, its efficiency levels are very low in comparison with European, since its main actors are small or family-owned farms. Others actually question whether Turkey is too poor to become a member.⁵⁰ It is also argued that this will harm the cohesiveness of major policies on which the EU is based on: agriculture and regional relations⁵¹.

F. A Collection of Intertwined Factors

Mahir Ilgaz, a Turkish EU Expert and İlke Toygür, a researcher of an Economic development Foundation from Istanbul, in an article on EU-Turkey Accession Negotiations⁵², argue there are concurring obstacles in the Turkey-EU negotiations.

Firstly, the impasse in Cyprus comes partially from EU's inflexible demand to have the additional protocol make full effect also in the island territory as well as from the stubborn statements by Turkey, claiming they have abolished all restrictions on goods produced in the south part of the island and that there is only a transportation block from the ports of Republic of Cyprus, which the EU insists it is the same as a customs restriction. In the meanwhile, the member states skeptical of Turkey's accession take advantage of this blockage.

Secondly, the EU economical crisis forces the EU to rearrange its policies and become more protective of its own funds. In some way the author hints the EU has become

⁴⁹ Note 28 supra

⁵⁰ Note 29 supra

⁵¹ *Disagreement over Turkey's membership becomes more radical*, Source: Bulletin Quotidien Europe. 07.01.2005, No 8861. Brussels: Agence Europe., Copyright: (c) Agence Europe S.A., Publication date: 18/09/2012, URL:

[Http://www.cvce.eu/obj/disagreement over turkey s membership becomes more radical from the eu rope daily bulletin 7 january 2005-en-e49ba6b8-2b20-4e01-a92f-45b79ff11ed2.html](http://www.cvce.eu/obj/disagreement%20over%20turkey%20s%20membership%20becomes%20more%20radical%20from%20the%20eu%20daily%20bulletin%207%20january%202005-en-e49ba6b8-2b20-4e01-a92f-45b79ff11ed2.html)

⁵² *EU-Turkey Accession Negotiations: the State of Play and the Role of the New Turkish Foreign Policy* (WP), Mahir Ilgaz and İlke Toygür, WP 8/2011 - 4/4/2011, URL:

http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/dt8-2011

hostage of personalities like Merkel and Sarkozy who show signs against Turkey's accession.

Thirdly, Turkey still has to face as a state a myriad of internal problems such as reforms and harmonization that need time to take effect and impact Turkey's status and much needed changes in its Constitution.

Finally, the idea of membership is becoming more of a dream than reality, which led to uncertainties and doubts among the Turkish leaders, delaying and hesitating on pursuing EU reforms, leaving the desire for EU membership on a lower pedestal.

This strain of opinions believes this entire impasse has affected public expectations, the population and the Turkish government.

On the same note, an article on the Yale Journal of International Affairs exposes two expert opinions on the real factors for the stalling of Turkey and EU negotiations - Burak Akçapar (a Turkish diplomat) and Denis Chaibi (member of the team of Kristalina Georgieva, a member from the European Commission)⁵³.

When asked "What are the most pressing challenges Turkey faces in the EU accession process?" Denis Chaibi argues Turkey's membership may well modify the European model, pushing it to a new role and perspective, calling attention to the third criteria, "its size, its GDP per capita, and its religion should not be the stumbling blocks on the road to accession". The deciding factor is indeed the way they face all these issues.

Bukar predicts a process full of distractions, since it calls for serious political and legal changes to a State, demanding an extensive and grinding effort to implement a wide package of EU law.

Vicent Morelli⁵⁴ states that despite all the transformations that Turkey may have gone under from 2006 to 2011, there is still a cloud of skepticism hovering Turkey's membership and the process has continued in slow motion or "comatose". Up to 2011 no other chapter had been opened or closed, the Cyprus issue was still an obstacle to overcome. Like others, he believes that a myriad of factors have poisoned Turkey's accession process, namely:

⁵³ *Turkey's EU Accession: The Long Road from Ankara to Brussels*, Roundtable with Burak Akçapar and Denis Chaibi, Yale Journal of International Affairs, Winter | Spring 2006, URL: <http://yalejournal.org/wp-content/uploads/2011/01/061204akcapar-chaibi.pdf>

⁵⁴ Note 48 supra

- ❖ *the EU believes has been too slow of a pace for implementing critical reforms within Turkey and possibly even a few steps backward in the area of press freedoms;*
- ❖ *Turkey's continued refusal to extend diplomatic recognition to Cyprus or to live up to its agreement to extend the benefits of its customs union with the EU to Cyprus;*
- ❖ *continued skepticism on the part of many Europeans whether Turkey should be embraced as a member of the European family;*
- ❖ *the implications of the growing Muslim population in Europe and the impact Turkey's admission into the Union would have on Europe's future;*
- ❖ *Comments among some Turks questioning Turkey's need to join the EU have begun to be heard on a more public and regular basis while discussions of the EU seem to have become less regular in the internal Turkish debate over its future.*
- ❖ Although the EU institutions show concerns, especially on matters like freedom of expression, the media and religion, they also have shown support to Turkey for the waited national elections and democratic reforms to the Turkish Constitution, not enough for Turkish, who show already some signs of discontent with the pace of negotiations, calling it as “unequal treatment”.

However, he stresses that although many experts believe they will undergo ten years more and the Turkish Prime Minister has allegedly affirmed they do not want to be part of an association that shows no sign of wanting them as members, the EU and Turkey have not shown any sign of intention to give up on this partnership.

➤ **What are the main concerns raised by experts and public opinion on Turkey's accession to the EU? Can they all be considered as reasonable and well-founded?**

The negative issues raised by experts and public opinion on Turkey's accession to the EU can be divided into thematic issues: “Religious and Cultural Issues”, “Relationship with the Asian Continent”, “Democracy, Rule of law, Human Rights and Protection of Minorities”, “The Cyprus Issue” and “Economical Issues”, while others claim Turkey's accession is poisoned by a myriad of interrelated factors.

of a human rights regime, on democratic shortcomings and incompatibility of the Sharia with European values are the most raised. However, opinions seem to be on two distinct sides either of blind optimism or skepticism, without a middle term.

Under this theme, I cannot affirm the Sharia is effortlessly compatible with the European values. Some values are irremediably against the occidental perspective on democracy and more so I believe compromises are not healthy nor desired, since the EU proudly considers itself today as a portal for human rights, equality and no discrimination. Perhaps some experts might refute this idea by arguing the occidental version of these values is not exclusive and insurmountable. How blunt it may be, the fact is the EU was born in this environment and will always be related to the European idea of democracy.

Regarding the concerns about Cyprus, I perceive these as well-founded, since most of the Commission's communications denounce this problem - to be analyzed later.

The economical issues seem to be the same ones as the EU faced when deciding whether Spain and Portugal would be able to compete with European economies⁵⁶. Other member states have gone through economical hurdles to join the EU. The fact is all of them are now members. I believe economic factors may seem important at the moment but irrelevant, due to its mutable character. I state: economic factors should never be the decisive factor to exiting or joining the EU. Economy grows and falls. It is a constant victim of speculation and contexts.

The concerns raised by most are of disperse nature, mostly foreign to the human rights agenda. I believe all of them have their own value and all seem legitimate to invoke as negative factors of Turkey's accession. However, unfortunately I do not consider that Human rights are considered as a decisive factor. Human rights concerns have become a

⁵⁶ See: Commission Opinion on Portugal's application for accession (19 May 1978), Source: Bulletin of the European Communities. May 1978, No Supplement 5/1978. Luxembourg: Office for Official Publications of the European Communities, Copyright: (c) European Union, 1995-2012, Publication date: 01/09/2012, URL:

http://www.cvce.eu/obj/commission_opinion_on_portugal_s_application_for_accession_19_may_1978-enc35acf9-2712-451e-b725-6599f4673ac7.html.; European Parliament resolution on Mediterranean agriculture and enlargement towards the south (17 November 1982), Source: Official Journal of the European Communities (OJEC). 20.12.1982, No C 334. [s.1.], Publication date: 06/09/2012, URL:http://www.cvce.eu/obj/european_parliament_resolution_on_mediterranean_agriculture_and_enlargement_towards_the_south_17_november_1982-en-0a9d403d-8ec0-4a41-b636-8b44bd16e568.html,

cover for other discriminating and political concerns, as the religious concern, the economical and the Cypriot. Some use Human Rights violations as excuses for Turkey's slow accession process, when that does not seem to be the case. I do not believe Turkey has a healthy human rights regime. It has serious democratic and human rights deficiencies. However, the EU institutions seem to focus on other factors than human rights, underestimating its real impact.

➡ Premise II: The concerns raised by most people are related to diverse matters, not necessarily referent to the first accession criteria. The concerns on religious matters do not seem to be completely supported by many other experts, the ones on Turkey-Asia relations tend to be speculative and the ones under the first criteria either have their origins in skepticism or optimism. Concerns with human rights are well-founded but underestimated.

IV. The Impact of the “First Criteria” in Turkey’s Accession Negotiations

A. Analysis of EU Official Documents on Turkey’s Accession

Turkey has been a candidate country since the Helsinki European Council of 1999, prior to which it was part of a customs union with the European Economic Community, with financial and customs benefits and duties, enshrined by the “Ankara Agreement”. On 12th September 1963, in Ankara, the EU and Turkey agreed on the terms by which Turkey would become an associate member aiming for a customs union and an eventual membership⁵⁷.

The agreement establishing an Association between the EEC and Turkey⁵⁸ not just acknowledged an economic purpose but also a political agenda, namely: “Resolved to preserve and strengthen peace and liberty by joint pursuit of the ideals underlying the Treaty establishing the European Economic Community.”

⁵⁷ http://ec.europa.eu/enlargement/countries/detailed-country-information/turkey/index_en.htm

⁵⁸ Decision 64/733/CEE, Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963, Official Journal of the European Union 64/732/CEE, also called as “Ankara Agreement”

Such customs union between Turkey and the EEC was to “cover all trade in goods”, requiring the elimination of any customs duties and quantitative restrictions between the member states and Turkey as well as the adoption of common tariffs when in commerce with third-countries⁵⁹.

It was not until the year of 2005 that the negotiation process started between the Commission and the Turkish Government⁶⁰.

In 2008, the Council revised the Accession Partnership for Turkey⁶¹, where it established the rules, the principles and conditions for Turkey during its partnership with the EU, in order to fulfill the Criteria of the Copenhagen European Council 1993 and Criteria of the Council’s negotiating framework of 2005.

The Council determined as priorities the implementation of European law measures that can ensure democracy and the rule of law, human rights and the protection of minorities, civil and political rights, economic and social rights and regional issues and international obligations.

The Accession partnership, although revised several times, focuses mostly on issues such as the ratification and implementation of international human rights instruments, on the lack of impartiality of the public administration as well as the judicial system, on the obscure borders of the military competences and power, on the discrimination towards cultural, religious and gender minorities. Amongst the concerns are core rights such as the prohibition of torture, the right of access to justice, the freedom of assembly and association, the right of participation of civil society and the respect of freedom of religion. The Cyprus issue is catalogued as a “regional issue and international obligations”. These concerns were listed as short-term concerns.

On a medium-term perspective, the Council expanded neither on the principles and objectives to be attained by Turkey concerning the political criteria nor on the chapter on “justice and fundamental rights” of the *Acquis Communautaire*, which in my opinion is one of the real factors that impede the effectiveness of the first criteria in Turkey. It has been mentioned at some point by the that Turkey’s accession process has shown the errors being, one being that the first criteria is not approached as an essential and constant factor operating since the beginning of all relations.

⁵⁹ Article 10, Customs Union, “Ankara Agreement”

⁶⁰ http://eur-lex.europa.eu/en/dossier/dossier_07.htm

⁶¹ Note 57 supra

During all these years of negotiations, several “progress reports” were issued by the Commission. These are pre-accession strategy instruments highly important to the EU, since it lists all the progress made and exposes all the reforms still needed for Turkey to become a member state.

The first of a series of reports was in 1998. The three Copenhagen criteria were already in motion. Regarding the first criteria, the Commission discerns as focal issue that infect the Turkish democracy and respect for human rights, the dangerous interaction between military and civilian power. The EU requested a separation between the military and civilian sphere and a non-interference of the army in political issues. The partiality of the public authorities is first noticed here and continues to be a serious concern over the years.

The problems with the lack of impartiality and independence of the judicial system, unclear military-civilian relations and the conflict in Cyprus persist in 2003. However, the Commission adds other issues, one being the lack of respect for fundamental freedoms.

In 2004⁶², the Commission concludes Turkey had made considerable progresses since 1999, with institutional changes as well as legislative reforms to better apply European law and European standards, becoming a glimpse of hope for turkey’s accession process. The progresses listed by the Commission went from reforms that “improved civil liberties and human rights to enhanced civilian control of the military” to the ratification of international conventions on human rights. The EU institution states that albeit progress was made to respect freedom of religion, some measures are still in order, mostly to reduce the discriminatory reaction towards minorities. The Cyprus issue is still in the agenda and has remained all these years – a jammed matter.

In its regular report in 2005⁶³, after assessing the status of the implementation of the European law and standards to the functioning of the three state powers: legislative, judiciary and executive, the Commission concludes “Turkey continues to sufficiently fulfill the Copenhagen political criteria”. Interestingly enough, while saying that, the institution also states Turkey remains beyond what is expected and desired on the promotion and enforcement of human rights. My reading of this statement would be that Turkey seems to be eligible to become eventually a member state, as a preliminary

⁶² Note 6 supra

⁶³ Turkey 2005 Progress Report, Brussels, 9 November 2005, {COM (2005) 561 final}, SEC (2005) 1426

reading of prophetic nature. To affirm that Turkey fulfills the Political criteria would be a serious judgment error, since all reports raise serious issues that need to be surpassed to consider Turkish democracy as a serious example of a pluralist democratic experience.

Serious infractions persist, such as the constant violation of freedom of expression and of press, with several cases of prosecution of journalists and other individuals manifesting their non-violent opinion, albeit it is assured by the Commission that Turkey has made efforts to align its democratic experience with the European.

In addition, contradictions from the Turkish government are starting to emerge, since and as stated by the Commission “On 29 July 2005, Turkey signed the Additional Protocol adapting the EC Turkey Association Agreement to the accession of 10 new countries on 1 May 2004. At the same time, Turkey issued a declaration stating that signature of the Additional Protocol did not amount to recognition of the Republic of Cyprus”.

Four years later⁶⁴, the EU found democratic inconsistencies functioning in the party in power and expressly states a stagnation of progress overall, when it came to the first criteria. Moreover, the Commission exposed that Turkey had been charged with violations of human rights by the European Court of Human Rights in over 26 judgments, although it had shown compliance with Court’s decisions.

In reality, the promotion and enforcement of human rights is still in slow motion and impartiality continues to be a principle foreign to the Turkish public authorities. It seems tiring to stress over the same issues over all these years of progress reports, when progress was not so evident. The critical areas seem to be the same every year: lack of impartiality of public authorities, violation of fundamental freedoms, especially of expression and religion, discrimination against minorities and finally, the mindboggling issue that affects the Cypriot island, stating that “Since the Council's decision of December 2006, Turkey has made no progress towards fully implementing the Additional Protocol”.

⁶⁴ Turkey 2008 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council on Enlargement Strategy and Main Challenges 2008-2009 {COM(2008) 674}, Brussels, 5.11.2008, SEC(2008) 2699, URL: http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf

In the latest progress report⁶⁵, although the Commission believes there were signs of real progress and respect for democracy, since the elections that took place last year were held with no democratic deficiencies, it still stresses the need for further progress in the same areas already listed. The European standards have yet to be achieved.

Regarding the Cyprus, I believe the Commission finally expresses itself in a way that is clear and straight to the point by stating “despite repeated calls by the Council and the Commission, Turkey still has not complied with its obligations (...) It has not met its obligation to ensure full, non-discriminatory implementation of the Additional Protocol to the Association Agreement and has not removed all obstacles to the free movement of goods, including restrictions on direct transport links with Cyprus.”

B. Analysis of other Relevant Documents

The EU seems to be attentive to the human rights situation in Turkey even before the negotiation process for accession had begun. In 1985, the EP’s Political Committee issued a report on the human rights situation in Turkey⁶⁶, not just due to the military coup occurred which imposed martial law in Turkey in 1980 but also due to complains about human rights to the Council of Europe involving Turkey in 1983.

The EP presents a motion for resolution on human rights situation in Turkey, requesting that Turkey *move rapidly towards a restoration of human rights in the country, particularly as regards: (a) the right to life, [...] (b) the right to integrity of the person; [...] (c) the right to a fair trial [...] (f) the removal of the restrictions on freedom of political activity, trade union rights and expression of opinion; [...] (g) the rights of minorities, notably as regards religion, language and history and their right to take part in cultural and social activities*, concluding that although Turkey faces serious

⁶⁵ Note 13 supra

⁶⁶ “Political Affairs Committee on the Human Rights Situation in Turkey” (9 October 1985) – European parliament, Source: BALFE, Richard. Report drawn up on behalf of the Political affairs Committee on the human rights situation in Turkey, PE 98. 572/fin. Luxembourg: European Parliament, 1985. 47 p.

(Working Documents A 2-117/85 A Series), Copyright: (c) European Parliament, Publication date: 06/09/2012, URL:

[Http://www.cvce.eu/obj/report_by_the_european_parliament_on_the_human_rights_situation_in_turkey_9_october_1985-en-52c199b9-aa2f-4327-8b25-148ae27ab5e2.html](http://www.cvce.eu/obj/report_by_the_european_parliament_on_the_human_rights_situation_in_turkey_9_october_1985-en-52c199b9-aa2f-4327-8b25-148ae27ab5e2.html)

challenges in terms of political stability and economic recovery, it does not excuse the neglect of human rights.

Nonetheless, in 1997, the European Council sets the task of projecting a “European Strategy for Turkey”⁶⁷, where it concretized a strategy to include Turkey in the European environment, while acknowledging that Turkey may not be considered yet a candidate state.

This strategy led to the developing of the Ankara agreement, of a customs union and a financial cooperation between the EU and Turkey.

On June of that same year, the EP brings other human rights issues to the negotiation agenda. It proposed a resolution on a political solution to the Armenian question⁶⁸, bringing to attention the crime of genocide that took place in Ottoman territory from 1915 to 1917, also called as the Armenian Holocaust⁶⁹, arguing that “recognition of the identity of the Armenian people in Turkey as an ethnic, cultural, linguistic and religious minority follows on from recognition of its own history”, also proposing that incident to be covered during membership negotiations.

Interestingly, the EP believes Turkish position on this matter could be “insurmountable obstacles to consideration of the possibility of Turkey's accession to the Community”.

Therefore, the EU institutions seem to be taking different directions when it comes to Turkey’s candidacy for membership.

In the meanwhile, in 1999, the Council proceeds with its agenda to bring Turkey into the Union, by including it in the Helsinki European Council⁷⁰ agenda and addressing the Cyprus issue, stating “The European Council welcomes the launch of the talks aiming at a comprehensive settlement of the Cyprus problem on 3 December in New York and

⁶⁷ “A European strategy for Turkey”, Luxembourg European Council, Presidency Conclusions, 12 and 13 December 1997, URL: http://www.europarl.europa.eu/summits/lux1_en.htm

⁶⁸ “European Parliament Resolution on a Political Solution to the Armenian Question”, Doc. A2-33/87, June 18, 1987, URL: http://www.europarl.europa.eu/intcoop/euro/pcc/aag/pcc_meeting/resolutions/1987_07_20.pdf

⁶⁹ <http://www.dailymail.co.uk/news/article-479143/The-forgotten-Holocaust-The-Armenian-massacre-inspired-Hitler.html>

⁷⁰ Helsinki European Council 10 and 11 December 1999, Presidency Conclusions, URL: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/ACFA4C.htm

expresses its strong support for the UN Secretary-General's efforts to bring the process to a successful conclusion".

The force behind Turkey's accession process seems to be the Council. Over the years and especially in 2004⁷¹, with the conclusions of the president of the Council, repeating the need for Turkey to continue its efforts on implementation of European law on all levels – "To ensure the irreversibility of the political reform process and its full, effective and comprehensive implementation, notably with regard to fundamental freedoms and to full respect of human rights, that process will continue to be closely monitored by the Commission, [...]".

The Commission's role has been to give light to the Council's strategies and the Council's opinions, while providing recommendations and opinions, as it occurred in that same year, when the Commission proposed a set of recommendations on Turkey's accession process⁷², stating "the Commission considers that Turkey sufficiently fulfils the political criteria and recommends that accession negotiations be opened", opening the way for an official accession process.

Among those recommendations, the Commission did not forget to mention crucial and repetitive issues that have clouded Turkey's accession process, namely the respect to the freedom of the country's south-east minorities, namely the Kurds and non-Muslim communities and the fulfillment of the "Copenhagen political criteria".

In 2005⁷³ a different step was taken forward. The Council, when elaborating the negotiation framework for Turkey, addressed again issues related to the first criteria - "respect of the principles of liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, including relevant European case law; to consolidate and broaden legislation and implementation measures specifically in relation to the zero tolerance policy in the fight against torture and ill-treatment and the implementation of provisions relating to freedom of expression, freedom of religion, women's rights".

However, this time the Council drew a line, asserting if those improvements are not met the Council would be forced to suspend or even resume negotiations.

⁷¹ Turkey, Presidency Conclusions – Brussels, 16/17 December 2004, URL: http://ec.europa.eu/enlargement/pdf/turkey/presidency_conclusions16_17_12_04_en.pdf

⁷² Note 5 supra

⁷³ "Principles governing the negotiations", Negotiating Framework, Luxembourg, 3 October 2005, URL: http://ec.europa.eu/enlargement/pdf/st20002_05_tr_framedoc_en.pdf

In the year of 2011, the European Commissioner for Enlargement and European Neighborhood Policy stated that 2011 represented another mark on enlargement history of the EU with positive and negative notes⁷⁴. The positive being that Croatia completed its negotiations for membership and the International Criminal Tribunal to the former Yugoslavia has finished its mission and the negative that relationships between Kosovo and Serbia have continued sour and the deadlock between Turkey and Cyprus remains.

In that same year, the Commission states that the main concern when it comes to the Commission is the unwillingness to fully apply laws that respect and accommodate the fundamental rights defended by the EU, namely the infamous freedom of expression⁷⁵, while still believing that Turkey “continues to sufficiently fulfill the political criteria”, without ignoring there are still reforms set by the Constitutional reform package of 2010 that the Turkish government has not yet elaborated, including fundamental rights reforms. And adds that although Turkey has shown intent to settle the dispute on Cyprus, it still maintains conditions that go against the Customs Union designed by the Ankara agreement and its respective Additional Protocol, meaning in practice there has been no progress in the relationship between the Republic of Cyprus and Turkey, reiterating the ultimatum: negotiations with Turkey will only recommence when Turkey has fulfilled all obligations derived from the Additional Protocol to the Association Agreement of 2001.

In 2012, with the “Enlargement Strategy and Main Challenges 2011-2012”⁷⁶, the Commission congratulated the free and democratic elections that took place on 12th June 2011 and recognized the positive reforms on a constitutional level. It also noted the need for more dialogue between the political forces as well as more transparency; it repeated that progresses on human rights and protection of minorities are still slow and

⁷⁴ Enlargement Package 2011: Address to the Committee on Foreign Affairs (AFET) of the European Parliament, Štefan Füle European Commissioner for Enlargement and European Neighborhood Policy, Brussels, SPEECH/11/652, 12/10/2011, URL:

<http://europa.eu/rapid/pressreleasesaction.do?Reference=SPEECH/11/652>

⁷⁵ “Key findings of the 2011 progress report on Turkey”, MEMO/11/694, , Brussels, 12 October 2011, URL:

<http://europa.eu/rapid/pressreleasesaction.do?Reference=MEMO/11/694&format=HTML&aged=0&language=EN&guiLanguage=en>

⁷⁶ Conclusions on Turkey, extract from the Communication from the Commission to the European Parliament and the Council, COM(2011)666 final

far from the European and the international standards, especially in the areas of freedom of speech and religion and stressed that Cyprus deadlock remains and has become a serious concern for the EU, since tensions between the two entities have grown higher.

Conclusively, it is worth mentioning that since 2005, when the screening phase started only 13 of 33 chapters have been opened and once provisionally closed, being all in suspension mode, concluding evidently that full membership is still on hold for the candidate state.

Throughout the analysis of all these documents, it seems the EU institutions have become silent on certain issues and problematic. The religious issue is completely ignored. The real impact of human rights violations is under-examined. The concerns displayed by EU experts and public opinion earlier mentioned seem to be ignored and unattended.

Conclusively, all the EU institutions seem to be tackling constantly the issues raised by the Copenhagen first criteria, although ones more vigorously than others and leaving behind secondary issues as religion. For some that might seem positive but in reality it is a constant reminder of Turkey's reluctance to align its human rights policies with the European standards and dare I say of the EU's inability to integrate Turkey as another member state. With this, conflicts seem to be escalating every year that accession is delayed, relations become bitter and impatience grows in the mind of the Turkish population and governors.

The recommendations and the issues rose by the Commission when assessing the first criteria have been more or less the same since negotiations started, meaning the constant approaches by the EU institutions have been either wrongly formulated or simply ignored.

C. Analysis of other Relevant Factors

Another issue worth analyzing, is the public opinion on Turkey's accession.

Among the Turkish population, the general opinion seems to be favorable to their accession to the EU, with 62% of Turkish believing that EU membership would bring

nothing but benefits to their country⁷⁷ and a majority of the Turkish (67%) responds well to the idea of having a completely unified Europe under a European Constitution.

I also found to be interesting that when surveying the Turkish public opinion on EU matters⁷⁸, the majority believes that the most important aspect that links all the European countries is in fact religion and not culture or economy, as answered by EU citizens. The most important issues in EU integration for the Turkish are religion and history...A completely different perspective on European relations. Can the two civilizations (Turkish and EU) coexist as a cohesive and unified front?

Jean-Louis Bourlanges⁷⁹ former Chairman of the European Parliament's Committee on Citizens' Freedoms and Rights, who has said that accepting Turkey as a member would be to create separation and not cohesion, also believed that "Massive cultural, economic and social heterogeneity in the future EU will prevent it from becoming a united and democratically organized political community, and the Institutions - including the Commission and Parliament - will be transformed into as many closed areas provided for national rivalry and confrontation between States", claiming also that the religious argument is nothing but a mere excuse for the real fact that with Turkey the EU would be nothing more than an intergovernmental organization.

Independent of the outcome of this problematic, in reality relations between the Turkish government and the EU seem to be gradually fading and becoming exhausting for both entities, since Turkey decided in 2011 to suspend all relations with the Presidency in the second half of 2012.

In addition, Turkey remains intransigent and unwilling to abide to all obligations and conditions set by the EU, being one the refusal to "fulfill its obligation of full, non-

⁷⁷ Eurobarometer 67, Public Opinion in the European union , First Results, Standard Euro Barometer 67 / Spring 2007 - TNS Opinion & Social, European Commission, Publication: June 2007,

URL: http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf

⁷⁸ Eurobarometer 67, Public opinion in the European Union, National Report, Executive Summary, Turkey, Spring 2007

URL: http://ec.europa.eu/public_opinion/archives/eb/eb67/eb67_tr_exec.pdf

⁷⁹ Note 51 supra

discriminatory implementation of the Additional Protocol to the Association Agreement towards all Member States.”⁸⁰.

Recep Erdogan, the Turkish prime minister, has been in power since 2003, after having founded the AKL party in 2001⁸¹, a party known for a Muslim ideology and has issued several statements on the European issue. Although Erdogan shows a constant interest in participating in the western world politics⁸², he seems to be losing patience and be wearied with the accession process.

The fact he has set himself a deadline for the ending of negotiations has caused great tensions⁸³ and perhaps Erdogan’s controversial statements have made the EU hesitant and unsure of his true commitment to the European agenda. In the meanwhile, Erdogan is facing tensions also with the Middle East with news of cut relations with Israel⁸⁴ and Syria⁸⁵.

I would say it is vital all member states have their priorities in tune, whether they are of economic or of other sort, in order for the community to fully develop and to act through one voice. I would also say the fact that Turkey has a different take on what connects the EU members is not troublesome.

What is troublesome is the importance is given to the religious factor, a factor that should be outside but not underestimated of all European negotiations. Moreover, I find troublesome that the Turkish leader shows signs of intolerance and dubious political stand, whether that is with the Middle Eastern countries or with European ones, such as Greece.

⁸⁰ Council Conclusions on Enlargement and Stabilization and Association Process, 3132nd GENERAL AFFAIRS Council meeting, Brussels, 5 December 2011, URL:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/126577.pdf

⁸¹ http://topics.nytimes.com/topics/reference/timestopics/people/e/recep_tayyip_erdogan/index.html

⁸² http://www.youtube.com/watch?v=y_fveLt6axY

⁸³ <http://www.spiegel.de/international/europe/turkish-prime-minister-erdogan-sets-deadline-for-eu-admission-a-864579.html>

⁸⁴ <http://world.time.com/2011/09/26/exclusive-time-meets-turkish-prime-minister-recep-tayyip-erdogan/>

⁸⁵ <http://www.aljazeera.com/indepth/features/2012/07/20127465430838203.html>

➤ **What is/are the main reason/s provided by the EU institutions that justify the protracted negotiations on Turkey's accession?**

During 54 years of conversations and negotiations between the EU and Turkey, several official declarations and opinions as well as assessments were issued, which I collected and described supra.

From those documents and opinions, I could conclude there are five major concerns, which has prevented a successful opening and closure of the negotiation/*Acquis* chapters and regarding the first criteria for accession:

- ❖ Respect for the freedom of religion and expression is far from the European standards;
- ❖ Minorities remain neglected and unprotected by Turkish law (Roma more mentioned than Kurds);
- ❖ The maintenance of a biased judiciary system, where justice is only partially exercised;
- ❖ A political party in power tainted by certain democratic “inconsistencies”;
- ❖ The obstinate stand by the Turkish government on not allowing the same conditions for the community of the north-Cyprus.

Although the Commission believes the EU “continues to sufficiently fulfill the political criteria”, the rhythm of negotiations has suffered serious setbacks and delays, being postponed twice in ten years⁸⁶.

I have realized that although the Commission exposed several concerns on human rights and fundamental rights violations and set a tone of great importance for this category during the accession process, namely by stating in case such violations are not deemed the negotiations can be suspended or even resumed, the reality is that so far such threats have not come to true.

The constant thread, the only deterrent factor that has so far caused the suspension of negotiations was the “the Cyprus issue” in 2006, “because Turkey refused to apply to Cyprus the Additional Protocol to the Ankara Agreement, Council decides that eight chapters will not be opened.”⁸⁷

The Commission claims *Despite repeated calls by the Council and the Commission, Turkey still has not complied with its obligations (...) It has not met its obligation to*

⁸⁶ Note 6 supra

⁸⁷ http://ec.europa.eu/enlargement/countries/detailed-country-information/turkey/index_en.htm

*ensure full, non-discriminatory implementation of the Additional Protocol to the Association Agreement and has not removed all obstacles to the free movement of goods, including restrictions on direct transport links with Cyprus⁸⁸ and the European Commissioner for Enlargement implies that *The pace of accession negotiations would gain new momentum if Turkey proceeded to the full implementation of its Customs Union obligations with the EU, and made progress towards normalization of relations with Cyprus⁸⁹.**

However, adding to the concerns listed by the EU institutions I would also focus on certain events, namely the one occurred in March 2012, when a MEP representing the UK Independence Party called for suspension of negotiations “until Turkey terminates the visa free agreement which it was signed in 2009 with the Regime of the president of Syria”⁹⁰, objected by 40 MEPs, hence rejected⁹¹, as well as the behaviors Erdogan shows over the years. These outside factors provide a real political reading on the relations between the EU and Turkey. I believe the Council and the Commission have joined efforts to review Turkey’s accession process in a “politically correct” way, leaving aside certain “details” not to create real frictions and political debates, where the EU would be forced to take a firm and serious political stance.

➡ Premise III: From the reports and communications of the EU, the main reason for the stagnation of negotiations between the EU and Turkey seems to be the fact that Turkey has not fully applied to all Turkish territory the measures agreed in the Ankara Agreement. However, some of the real factors, including Human Rights protection and political agendas have become hidden not to create real political frictions and debates, where the EU would be forced to take a firm and serious political stance.

⁸⁸ Note 13 supra

⁸⁹ Note 74 supra

⁹⁰ <http://www.youtube.com/watch?v=JyN166B7HoA>

⁹¹ “40 meps hinder EU Parliament's Majority to Vote on Suspending EU - Turkey Negotiations...”,

Eurofora, ACM, Thursday, 29 March 2012, URL:

<http://www.eurofora.net/newsflashes/news/euparliament2012turkeyresolution.html>

V. Strategic and Political Advantages for the EU with Turkey's Membership

Despite all concerns, the EU and Turkey have not quitted from this journey. Strategically, Turkey remains the hope for stability and democracy in the Middle East as well as security insurance for the European Union⁹². May this be the real reason why Turkey's negotiations continue although slowly, or the real reason why they have become stagnated?

As stated by the Commission in 2004, "For major periods of European history, Turkey has been an important factor of European politics. Turkey is member of all important other European organizations and has since the Second World War played an important role in contributing to the shaping of European policies"⁹³.

This relationship has showed very promising and beneficial for both entities. Trades between Ankara and EU have increased exponentially over the years. The EU covers half of the Turkish trade. Although Turkey imports energy mainly from non-EU countries, it imports machinery, automotive products and iron and steel from the EU. The exports of textiles and cloth, machinery, and transport equipment for the EU increase each year and EU foreign direct investments (FDI) have almost surpassed €9billion in the year 2007.

It is not surprising the Commission also states "Turkey is a key country for the European Union. This has been highlighted by the current regional and global political and economic developments. Turkey has continued EU-relevant reforms, but significant further efforts are required, including on guaranteeing core fundamental rights. Regrettably, accession negotiations have not moved on for more than one year"⁹⁴.

Turkey's process is unlike any other enlargement process, submersed in political questions and inevitable suspicions on the real intent which drives negotiations. Some of which I describe hereafter.

⁹² Issues Arising from Turkey's Membership Perspective, Commission of the European Communities, Brussels, 6.10.2004, SEC(2004) 1202, {COM(2004) 656 final}, URL: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/issues_paper_en.pdf

⁹³ Note 5 supra

⁹⁴ Note 76 supra

1) The Strategic and political benefits for the EU and Turkey identified by the European Commission itself ⁹⁵

- The EU will have the “capacity to contribute to regional and international stability”, especially in the Middle East and the south Caucasus;
- Turkey’s democratic transformation will serve as a repertoire for EU’s enlargement process and as another credibility factor – *Turkey is at present going through a process of radical change, including a rapid evolution of mentalities. Turkey would be an important model of a country with a majority Muslim population adhering to such fundamental principles as liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law;*
 - Allowing Turks to become European citizens might assist the EU in the fight against ageing in Europe, due to its population numbers, higher than the European;
 - “Turkey’s accession would help to secure better energy supply routes for the EU. It would probably necessitate a development of EU policies for the management of water resources and the related infrastructure”;
 - With Turkey’s cooperation the EU would have a better chance of effectively fighting organized crime, terrorism, trafficking of human beings, drugs and arms smuggling;
 - It is also of the member states interest to have Turkey join the organization;
 - “With its large military expenditure and manpower, Turkey has the material capacity to make a significant contribution to EU security and defense policy”;
 - It would create a sense of trust towards the EU among the Arab Muslim countries as well as provide proof that European values do not exclude Muslim states.

2) Turkey’s contribution in EU’s Common Foreign and Security Policy

Turkey could actually be a positive example for all member states of democratization; it could function as a long waited intermediate between the EU and Muslim states; it could allow the EU to actually give its input in the Middle East; not to mention the possibility of bringing actual multiculturalism to the EU and finally, it could provide a stronger defense mechanism due to the Turkish military strength.

However, it could also bring conflicts in international matters, seen by some as an insertion of American agenda in the European configurations. On the other hand, it can

⁹⁵ Note 92 supra

be a productive tool for the stabilization of neighbor countries, accentuating the power that the EU could have in the Middle East region, becoming a global actor in the name of democracy and rule of law⁹⁶.

3) The EU gains a worldwide political voice

It is also defended by some that having Turkey as a member states will enable the EU to finally assert its values and positions geopolitically, since its size and spectrum of action would increase considerably, easily reaching new parts of the world and new political systems⁹⁷.

➤ **The strategic or political benefits the EU and Turkey may gain with this accession are related to the first criteria? The ones that are related, are the most expected and desired?**

During the European Council of Copenhagen in 1993, besides the settlement of the “accession criteria”, in the annex II of the Conclusions on this Council⁹⁸, the institution takes a stand on future enlargement by expressly affirming such negotiations and conversations must be based on “matters of common interest”, which the Council lists as:

- a) *Community areas, especially with a trans-European dimension, including energy, environment, transport, science and technology, etc.;*
- b) *Common foreign and security policy;*
- c) *Home and judicial affairs.*

In 2011, the Council concludes that the enlargement process carried out by the EU “continues to reinforce peace, democracy and stability in Europe and allows the EU to be better positioned to address global challenges”⁹⁹. Although such statement seems legitimate, it is important to pay attention to the fact that the EU was not founded on a human rights agenda. It was founded as a means to provide an economic push along with peace and stability to a continent devastated by war a second time.

⁹⁶ Note 53 supra

⁹⁷ Note 51 supra

⁹⁸ European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency, URL: http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf

⁹⁹ Note 80 supra

Notwithstanding, it became a serious and renowned organization that prides itself on being a campaigner for human rights and democracy, turning Human Rights as one of the most important values in the EU, starting with a jurisprudential introduction that later on infected all primary law, forcing the European Treaties to enshrine the values of human rights and democracy as key factors to the EU's action.

However, it does not impede the EU of transforming the enlargement process as a tool for concretization of EU's, candidate country's and member states' interests.

Some people might disguise the actual intent of EU actions with statements like “*Why did we enlarge the Union toward the Mediterranean countries? Because we wanted to anchor Spain, Portugal and Greece in democracy. This will also be the case for the Balkan Republics, to put an end to the cruelty of the nineties. It is exactly for these same reasons that we should do this with Turkey*”¹⁰⁰, which I cannot consider as a serious argument, when having encountered several telegrams by the Portuguese Foreign Affairs Ministry as well as documents concerning Portugal and Spain's accession, where the main worries were not in fact fundamental rights but mostly economic and strategic issues, where the relationships with African and south-American countries was a key-word.¹⁰¹

It does not go unnoticed the affirmation by the Commission: *From the point of view of the EU's role in foreign affairs, Turkey's accession brings both advantages and challenges. It could help to stabilize the conflict-prone zone of the Middle East, but it would bring the EU into more direct involvement with the difficult political and security problems of the region. Turkey being a member would give the EU greater weight in regional and world affairs, but it could also make decision-making, especially under unanimity, more complicated. Summing up, Turkey could be a factor for enhancing stability and the role of the EU in the region, but its membership would present challenges as well as opportunities in the field of foreign affairs*¹⁰².

¹⁰⁰ Note 51 supra

¹⁰¹ Several sources provide an insight on Portugal process of accession and how economic and strategic interests have determined their membership: Telegram by the CEE 65_TEL.18.06.82, source: EuroHspot, Mission of Portugal in Brussels, By Rodrigues Lopes, 18 June 1982, URL: ; 71_INFORMAÇÃO 17.11.83, Negociações de Adesão – Ponto de Situação em 17 Novembro de 1983, 17.11.183, URL: http://www.eurohspot.eu/site/index.php?option=com_docman&task=doc_details&gid=100&Itemid=9999

¹⁰² N. 74 above

Likewise, it is no novelty that the EU has established as one of the main objectives for its external relations policy the “Developing an ambitious and coherent external agenda with global outreach”¹⁰³. The main focus of this objective is to create an external relations policy that ensures a “coherent and influential European Union”.

Over the last years, the EU has concerned itself greatly with the notion of becoming a serious contender in geopolitics. The EU intends on becoming a “global player”. Of that the Lisbon Treaty is proof, due to its new external arrangements that try to achieve the balance of economic greatness and power in political world wide movements.

Another factor that hovers over the external relations policy and in a way influences EU’s decisions and actions when relating to candidate countries, is the fact that the key word in the enlargement policy is “credibility”. The EU institutions have stressed that for this policy to work, the whole process needs to be credible and show advantages and real progress not just to the member states but also to the European citizens, as is example an informative package on the European’s Enlargement Policy¹⁰⁴ issued by the European Commission in 2011, where the European Commissioner for Enlargement and European Neighborhood Policy stated: “The Community was created to foster peace and stability on the continent, and its purpose is as relevant today as it was then. New members have joined the endeavor along the way and the EU has become more prosperous, stronger and more influential.”

“A Union that builds cooperation between former rivals, while upholding the highest standards of human rights, will maintain the influence needed to shape the world around it.” – states the Commissioner.

On one hand, this credibility is only achievable if the enlargement countries show the member states that they are willing to comply with all obligations and fully prepared to take the role of a member state with solid democratic governance respectful of all EU values and a steady and strong economic pulse. On the other hand, to ensure credibility in the enlargement process the EU has to also show the candidate countries that it is willing to fulfill the bargained, to show serious negotiation skills that cannot resume

¹⁰³ “Time to act”, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2010, , Brussels, 31.3.2010, VOL. I, COM(2010) 135 final

¹⁰⁴ Note 19 supra

bluffing. Both the EU and the candidate countries have a weigh on the credibility that this process may eventually have.

Which is why in the informative pamphlet the “The commitment towards the enlargement process will be the determining factor in ensuring that this is a win-win policy for all countries involved.”

➡ Premise IV: The background reasons or better yet, the “mutual interests” on which the external policy, including the enlargement policy, is driven by are not entirely based on the values the first criteria require. The enlargement process is “victim” of objectives such as “credibility”, “win-win policy” and “coherent and influential European Union”.

Conclusion

The enlargement process is not in fact an end in itself¹⁰⁵. This process transforms countries according to the European standard, for them to be able to once a member state compete with other members on the same political, economic and social level.

However, its policies and approaches may not be subject of consensus among experts, member states or even citizens of the EU. My approach to this issue is not intended as the absolute truth but as a reflection of events, opinions, declarations and communications by representatives of the EU institutions, EU institutions, EU and Turkish experts and European and Turkish public opinion, delivering the following premises:

➤ PREMISE I: Political criteria means criteria related to the governance of a country. It is possible to conclude the first criteria for accession is a political criteria, insofar as we are discussing the way the candidate state governs its country democratically and accordance with the principles of rule law, leaving the protection of minorities and human rights as “hitchhikers” of this criteria.

➤ Premise II: The concerns raised by most people are related to diverse matters, not necessarily referent to the first accession criteria. The concerns on religious matters do not seem to be completely supported by many other experts, the ones on Turkey-Asia relations tend to be speculative and the ones under the first criteria either have their origins in skepticism or optimism.

➤ PREMISE III: From the reports and communications of the EU, the main reason for the stagnation of negotiations between the EU and Turkey seems to be the fact that Turkey has not fully applied to all Turkish territory the measures agreed in the Ankara Agreement. However, some of the real factors, including Human Rights protection and political agendas have become hidden not to create real political frictions and debates, where the EU would be forced to take a firm and serious political stance.

¹⁰⁵ http://europa.eu/legislation_summaries/enlargement/index_en.htm

➤ PREMISE IV: The background reasons or better yet, the “mutual interests” on which the external policy, including the enlargement policy, is driven by are not entirely based on the values the first criteria require. The enlargement process is “victim” of objectives such as “credibility”, “win-win policy” and “coherent and influential European Union”.

These premises led to the following thesis: Turkey’s accession process demonstrates how the EU enlargement process may surrender to “politics”, leaving the real “political criteria” in a secondary level, where democratic, rule of law, human rights and protection of minority’s values lose focus and spotlight.

The so-called “political criteria” have become refugees of real political agendas.

I believe the Cyprus issue has become a cover for other decisive factors, some of which I consider to be of important nature such as violations of Human Rights and democratic values and others of pure political nature.

However, in my opinion the EU shies away from openly approaching Turkey’s accession as a political debate due to the extremely difficult issues it raises such as the human rights real impact in the EU, revealing the “double-standard”; whether the EU belongs to any kind of religion; the delicate relations between the EU and its own member-states, regarding to the Cyprus issue and whether there would be a “clash of civilizations”, among others.

In reality, the application for membership from Turkey became an opportunity for the EU to prove important points while not expressly addressing them, namely:

- ❖ Islamic States are accepted in the EU;
- ❖ The respect of the European standards is a mandatory criteria;
- ❖ The compliance of European guidelines and “demands” are to be followed;
- ❖ Assertion by the EU of its supremacy over national law;
- ❖ The EU has in consideration the other member states, especially Greece and the Republic of Cyprus.

In fact, opening membership to Turkey *"is a fundamental break in the history of European construction. Turkey's planned membership tolls the bell for two ambitions*

which, over the past fifty years, have been the foundation of our undertaking: political affirmation of a unity of civilization and common ability to act in a federal manner.”¹⁰⁶

Therefore, the statement that Turkey’s accession journey is a political stand from the EU seems simplistic, may be a cliché but cannot be closer to the truth.

However, it seems also necessary to reveal what is the relevance of such thesis.

Jean Monet in a speech at a world congress in 1962¹⁰⁷ approaches the real reasons why Europe has become a Community and developed as one. Years after the Second World War, Monet stresses the importance of setting aside all suspicions and grudges and of negotiating the joining of states as equals in the bosom of the same community. For him the unification of Europe comes out of pure necessity to adapt to mutable situations.

However, Monet argues that it is not because of violence or wars that real accomplishments are made in society, as it is Europe’s unification. Monet stresses that people tend to think to link international interactions with violence, battles, conquests and revolutions. On the contrary, for Monet, the pacific changes that Europe underwent through those years are in fact a powerful factor in geopolitics. Monet believed that most changes that molded Europe took place in a constitutional setting and parallel to democratic methods.

Monet also explained that after 1945, in an environment of division and close extinction, where national resources were not sufficient for survival, States had to decide how and where to go and the countries that came to the same conclusion decided to surpass all trusting issues and leave all those years of conflict and notions of winners and losers behind. The concept of national interest had to be replaced by “common European responsibilities”.

This “revolution”, which he called as “a silent revolution among the human behavior¹⁰⁸”, was not accomplished in one single day.

Monet’s perspective over the European phenomenon as it started was that the perception of potencies had to be and was abolished, paving way for new models of governance and international relationships, allowing a peaceful and malleable way for states to interact and solve their problems as a community.

¹⁰⁶ Note 51 supra

¹⁰⁷ Monnet, Jean, *Allocution à la Cérémonie d'Ouverture du Deuxième Congrès Mondial du Comité International de la Rayonne et des Fibres Synthétiques*, Londres, 1er Mai 1962

¹⁰⁸ « C'est cette méthode qui a causé une révolution silencieuse dans le comportement des hommes. »

He believed that the history of the European community exposes the following theory - when men convince themselves that a new situation is going to be developed, human beings revise their point of view to welcome such change even when such change has not been completed. Monet expressed it in his own words: “one impression dominates all others in my spirit.”¹⁰⁹»

Monet stressed as do I now, that the European Community was not created to create a new potency. That is an outdated concept, worthy of the 19th century, but uncomfortable and unnecessary in the 20th century. The key word is not potency but responsibility – responsibility before the world.

As a human rights defender it seems imperative, to take on strong and determined political stance on the importance of human rights, especially during accession negotiations.

The key to negotiations’ success has to be the firm position and Will from the EU, even if such stance means informing Turkey that accession may not become possible when serious infringements and inconsistencies prevent Turkey from achieving the European standards - *For the time being, the question is not to discuss whether and to what extent Turkey will be able and will want to meet the demands of the European Parliament but rather of making clear that these demands are not presented as choices but for the main part are obligations resulting from the status of being a "Member State", often subject to the monitoring of the Community institutions (as for all Member States)*¹¹⁰.

It is a fact the EU was not initially created as a mechanism to promote and expand respect for human and fundamental rights, however, it became so.

If the EU chose as preliminary criteria¹¹¹ and “first criteria”¹¹² the observance of a State democratic and respectful of human rights, it is imperative and the EU’s

¹⁰⁹ « Une impression domine toutes les autres dans mon esprit. »

¹¹⁰ ‘Is Turkey up to meeting European Parliament accession conditions?’ from the Europe, Daily Bulletin (6 January 2005), Source: Bulletin Quotidien Europe. 06.01.2005, n° 8860. Brussels: Agence Europe, Copyright: (c) Agence Europe S.A., Publication date: 18/09/2012,

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¹¹¹ Articles 2, 6 and 49 TEU

“responsibility”¹¹³ to decide accordingly, remaining uninfluenced by “political interest”, which I dare to call as “outside distractions”.

¹¹² *Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, excerpt from European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency, 13, para. 2*

¹¹³ Note 107 supra

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