

**TURKEY'S COMPLIANCE WITH ITS OBLIGATIONS
TO THE ECUMENICAL PATRIARCHATE
AND ORTHODOX CHRISTIAN MINORITY**

A LEGAL ANALYSIS

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SUMMARY

The principle of secularism has dominated the Turkish state since the fall of the Ottoman Empire in 1923, but within Turkey's secularism, not all religious groups enjoy equal treatment. Non-Muslim religious minorities face different regulation—of their private primary schools, institutions of higher education, appointment of religious leadership, property ownership and transfer, and religiously-affiliated foundations—than other groups, and the state has failed to prevent or sanction pervasive violence against some religious minorities. The failure to protect the rights of non-Muslim religious minorities is a violation of the Turkish Constitution, the Treaty of Lausanne, and international human rights law. This memorandum examines the situation of the Orthodox¹ Christian minority and of the Ecumenical Patriarchate, the spiritual center of Orthodox Christianity.

The Turkish Constitution guarantees freedom of religion and belief and the right to be free from discrimination on the basis of religion or belief. The rights of religious minorities are guaranteed by Articles 10 (equality before the law) and 24 (freedom of worship and from exploitation or abuse by others because of religion) of the Constitution.

The Lausanne Treaty of 1923, incorporated into Turkish national law, specifically governs the rights of non-Muslim religious minorities. The treaty enshrines the protected status of non-Muslim religious minorities (Art. 44), protecting freedom of religion (Arts. 38, 43); equality of rights, freedom of establishment, management and control of all religious institutions (Art. 40); individual non-discrimination (Arts. 38-40); freedom to associate in religious

¹ Although this group historically has been ethnically Greek, this memorandum does not refer to the group as “Greek Orthodox,” because a growing proportion of Orthodox Christian adherents in Turkey are immigrants from Georgia, Romania, Russia, Serbia, Ukraine, and other countries.

institutions (Art. 42); freedom of instruction and education (Arts. 40-41); freedom of language (Arts. 39-40); and freedom of movement (Art. 38).

Turkey is a member of the Organization for Security and Cooperation in Europe (OSCE), which commits each member state to equality for minorities. Under the European Convention on Human Rights and Fundamental Freedoms, Turkey has obligations to protect religious freedom and the peaceful enjoyment of possessions. Turkey has also ratified major international human rights instruments, binding it to international norms protecting religious freedom, the rights of minorities, and freedom of association.

Turkey's treatment of the Ecumenical Patriarchate and the Orthodox minority violates its obligations under international human rights law. All religious minorities in Turkey have the internationally protected rights to practice their religion, appoint religious leaders, own and use property, operate religious schools, and associate in religiously affiliated foundations. The Turkish government also has an obligation to protect the security of non-Muslim minorities and religious institutions. The Turkish government systematically proscribes lawful activities of the Patriarchate—from the election of bishops and Patriarchs to the operation of religious schools and the possession of property.

Although the international community has criticized Turkey's infringement on religious freedom and the rights of religious minorities, neither the United Nations, the OSCE, the Council of Europe, the European Union, nor the United States have taken effective measures to sanction these violations.

On December 17, 2004, the European Council announced that the European Union would open formal accession negotiations with Turkey on October 3, 2005. The accession process has led Turkey to carry out reforms that have improved somewhat the legal position of religious

minorities, but they have not yet had significant implementation. The E.U. decision to open formal negotiations indicated approval of Turkey's compliance with the human rights criteria of the accession process, but the European Union emphasized that it will continue to monitor closely Turkey's implementation of human rights reforms. European Commissioner Romano Prodi was adamant in October 2004 that his recommendation to the European Council to open accession negotiations was a "qualified yes," and that Turkey has not yet demonstrated compliance with all of the human rights issues of concern to the Commission, including in the areas of minority rights. Although the December 2004 decision was significant, accession negotiations will take place over many years. Turkey's recent legal reforms and treaty ratifications are welcome, but the continued violation of the rights of its Orthodox and other religious minorities require a renewed international commitment to monitor the human rights situation and to press Turkey to fulfill its obligations.

I. PERSECUTION OF THE PATRIARCHATE AND ORTHODOX MINORITIES

A. Background

The Ecumenical Patriarchate, located in Istanbul (formerly, Constantinople), is the spiritual center of the Eastern Orthodox Church.² From this site, the Ecumenical Patriarch, the highest authority of the Church, leads the world's 250 million Orthodox Christians.

From a historical viewpoint, the Patriarch was the bishop of Constantinople, the capital of the Byzantine Empire, and the second most important Christian leader after the Pope in Rome, according to the Second Ecumenical Council of Constantinople in 381. . . . The proper title of the Patriarchate, as recognized by all Christian institutions, is the Ecumenical Patriarchate of Constantinople. It should be noted that, since 1453, the Patriarchate has been under Turkish rule, and that the constituencies of the Patriarchate include the Orthodox Greeks of Turkey, the archdiocese of America, the Athos Peninsula, the Greek Orthodox churches of Western Europe and the Orthodox Church of Australia.³

In 1923, the Lausanne Treaty⁴ officially ended the war between the Allies and Turkey.

The Lausanne Treaty permitted the Patriarchate to remain in Istanbul and specified protections for all non-Muslim religious minorities. This Treaty will be examined in further detail in Part II.

The Turkish government asserts that Turkey is committed to a principle of constitutional secularism,⁵ insisting that restrictions on religious institutions are non-discriminatory and

² *The International Status of the Ecumenical Patriarchate*, Basil S. Giannakakis, Cambridge, MA (1959), 3, 59, n. 124 (hereinafter "Giannakakis").

³ *Interim Report of the UN Special Rapporteur of the Commission on the Elimination of all forms of intolerance and of discrimination based on belief*, (hereinafter "Report of the Special Rapporteur") Addendum I: Situation in Turkey, prepared by Abdelfattah Amor, U.N. Special Rapporteur on the Question of Religious Intolerance, dealing with his visit to Turkey from November 30 to December 9, 1999, U.N. Doc. A/55/280/Add.1, August 11 2000, para. 70. "The Greek Orthodox Church has three other Patriarchs, besides the Patriarch of Constantinople, at Antioch, Alexandria, and Jerusalem. Canonically the four are all equal, but the last three allow an honorary precedence to the Patriarch of Constantinople [Istanbul]." *Id.* "After the break between Rome and the Eastern Churches in the 11th century, the churches of the East, now called the Orthodox Churches, retained the title of Patriarch. Constantinople (Istanbul since 1453) remains the 'ecumenical patriarchate,' with its bishop the 'first among equals' of Orthodox bishops." Thomas Hopko, *Patriarch*, in 21 *ENCYCLOPEDIA AMERICANA* 535 (Grolier ed., 1997). *See also*, Giannakakis, *see* note 2, at 1, n.2.

⁴ *See*, Part II for discussion of the Lausanne Conference and Treaty.

⁵ The Constitution protects the principle of secularism as a fundamental principle of the State. The Constitutional Court has provided the following definition of secularism: "From a legal point of view, in the classical sense, secularism means that religion may not interfere with State (affairs) and the latter not with religious affairs." According to the Constitutional Court, secularism in Turkey is based on the following four points:

i.) Religion is not to be effective and dominant in State affairs.

“necessary” to control the threat of religious fundamentalism.⁶ Although the non-Muslim minorities recognized in the Lausanne Treaty enjoy autonomous legal status, the Turkish state is directly responsible for administering Muslim religious affairs through the Department of Religious Affairs. “According to Law No. 429, the purpose of the Department is to carry out works relating to beliefs, worship and moral principles in Islam, to enlighten the public in respect of religion and to manage places of worship. . . . In other words, this is a case where a political system based on secularism entrusts public institutions with State prerogatives to handle matters relating to one religion, Islam.”⁷

Restrictions specifically targeted against the Orthodox minority in Turkey seriously limit rights to which the church and the community are entitled under international as well as Turkish law. Centuries of Turkish discrimination against and persecution of the Patriarchate and the Orthodox minority have been well documented.⁸ Therefore, this memorandum will address only incidents and developments of modern times, particularly those during the last half century.

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- ii.) Where religion relates to the spiritual life of the individual, a constitutional guarantee recognizes unlimited freedom without any discrimination.
 - iii.) Where religion goes to the spiritual life of the individual and relates to actions and behavior which affect societal life, restrictions may be imposed and the abuse and exploitation of religion may be prohibited, with a view to protecting public order, public safety and the public interest.
 - iv.) As the guardian of public order and public rights, the State may be given the power to control and supervise with respect to religious rights and freedoms.

Report of the Special Rapporteur, *see* note 2, para. 14. Representatives of Turkish human rights NGOs and independent experts told the Special Rapporteur: “Turkish policy in the area of religion and belief and the national religious situation are characterized in fact by complexity and paradox. Secularism is proclaimed as the cornerstone of Turkish policy, but it must be noted that this secularism does not involve a strict separation between State and religion. To the contrary, it is a militant secularism whereby the State has completely taken over religious affairs in order to prevent them from having any political influence.” According to these experts, “secularism, which is the real State religion, is not based on the principle of neutrality. . . .” *Id.* paras. 59-60.

⁶ Report of the Special Rapporteur, *see* note 2, para. 47-48.

⁷ Report of the Special Rapporteur, *see* note 2, para. 16. The Department was established in 1924 within the office of the Prime Minister and recognized as a constitutional institution in 1961.

⁸ “Out of 159 Patriarchs who have held office between the 15th and 20th centuries, the Turks have on 105 occasions driven Patriarchs from their throne; there have been 27 abdications, often involuntary; 6 Patriarchs have suffered violent deaths by hanging, poisoning, or drowning; and only 21 have died natural deaths while in office. During the 17th century, the Patriarch changed 61 times (many Patriarchs served more than once, returning to their post after having been exiled or deposed).” Joanna Balaskas, *Note: The International Legal Personality of the Eastern*

B. Interference with Orthodox Leadership

Since the founding of the Turkish Republic, the government authorities have interfered with the internal process for selection of the Ecumenical Patriarch.

On December 6, 1923, the governor of Istanbul issued a memorandum (*teskeren*) reaffirming an Ottoman-era concordat from 1858 requiring that the Ecumenical Patriarch and his bishops be Turkish citizens born in Turkey. The governor of Istanbul is an appointed position that is not mentioned in the constitution or in statutes. This 1923 memorandum, as an administrative decree, has no basis in the Turkish Constitution, the Lausanne Treaty, or Turkish statutes. Despite this questionable legal status, the Turkish government continues to impose the requirement on the Patriarchate. In March 2004, Patriarch Bartholomew appointed six non-Turkish-citizen bishops to the Holy Synod; the bishops have attended Synod meetings since their unprecedented appointment, but the Turkish government is still reviewing the matter.⁹

In addition to imposing the Turkish-citizenship requirement, the government has interfered in the election of the Ecumenical Patriarch throughout the 20th century, either by removing the names of candidates prior to elections or by forcing the Patriarchate to submit its candidate list for approval.¹⁰ In 1970, the governor of Istanbul issued a memorandum (*teskeren*) reminding the Patriarchate that the local prefect had the last word in the appointment of the Ecumenical Patriarch, as well as reaffirming the Turkish-citizenship requirement.

The state has not only sought to control the appointment of the Patriarchate leadership; it has also limited the number of candidates *eligible* for leadership. On August 12, 1971, Turkey

Orthodox Ecumenical Patriarchate of Constantinople, 2 Hofstra L. & Pol’y Symp. 135, 140 (hereinafter “Balaskas”), citing Timothy Ware, *The Orthodox Church*, Penguin Bks. 1993.

⁹ U.S. Department of State International Religious Freedom Report for 2004, released September 15, 2004,

¹⁰ Human Rights Watch/Helsinki Watch, *Denying Human Rights and Ethnic Identity, The Greeks of Turkey* (1992), 19 (hereinafter “HRW”).

passed a law that nationalized—and closed—most private institutions of higher learning.¹¹ This law also closed the Halki (Heybeliada) Theological Seminary, the only training facility for Orthodox clergy in Turkey. In order to continue its operation, Halki would have been forced to teach in Turkish and follow the curriculum promulgated by Turkey’s Ministry of Education, which is unworkable for an Orthodox seminary. Thus, new clergy must train abroad, and most do not return to Turkey. The absence of an operating seminary directly threatens the Patriarchate’s survival, as the church cannot minister to its members without clergy.¹² Because Turkey requires the Ecumenical Patriarch and all other clergy to be Turkish citizens, the closing of the Halki Seminary and the subjection of Orthodox educational institutions to state control means that the few available candidates have no opportunity to study in Turkey.¹³

A 1992 Human Rights Watch report indicated that Turkish Prime Minister Suleyman Demirel said he would “give favorable consideration to the Patriarch’s request to reopen the Halki Seminary.”¹⁴ In response to a 2000 report on Turkey by the European Commission against Racism and Intolerance (ECRI), a mechanism of the Council of Europe, the Turkish government stated that the seminary was closed along with all other private institutions of higher religious education by ruling of the Constitutional Court. According to the Turkish government:

It is true that private universities are now permitted, but only state higher education institutions are permitted in the fields of religious and military education. This grievance of the Greek Orthodox community (also shared by the Armenian community) is now under consideration by the authorities and a solution is being searched for the re-opening of those non-Muslim theology seminars in the

¹¹ U.S. Department of State Human Rights Country Report, Turkey, 2000, released March 4, 2002 (hereinafter “U.S. State Dept. Human Rights Report”); Report of the Special Rapporteur, *see* note 3, para. 72.

¹² Statement of Sen. Olympia Snowe, in Congressional hearings for Sen. Res. 25 – Relative to the Eastern Orthodox Ecumenical Patriarchate, August 11, 1995, page S12413.

¹³ HRW, *see* note 10, at 2-3, 19.

¹⁴ HRW, *see* note 10, at 21.

institutional framework of Istanbul University. A solution acceptable both to these communities and to prevailing laws should not be too far.¹⁵

In August 2004, Turkey's National Security Council voted to put a freeze on the reopening of the school.¹⁶ To date, no resolution has been reached, and the Halki seminary remains closed.¹⁷

In addition to interfering with the training and appointment of the Patriarchate leadership, the government has also restricted their activities. Patriarchate officials who come from outside Turkey to work for the Patriarchate must obtain tourist visas, requiring them to leave the country for a week every three months to renew their visas. The Patriarchate has repeatedly requested either Turkish citizenship or work permits for non-Turkish personnel and non-Turkish metropolitans,¹⁸ so that they may work in Istanbul and vote in Ecumenical Patriarch elections. The government has not responded.

On December 29, 2000, the government held an official funeral for the son of Papa Eftim;¹⁹ Eftim was a former Orthodox priest who had curried favor with the government to avoid being transferred as part of the population exchange with Greece in 1924. He then broke away from the Orthodox Church to form his own "Turkish Orthodox Church" in 1922. Eftim was defrocked. Although anyone in Turkey has the right to join or leave the religion of their choice,

¹⁵ European Commission against Racism and Intolerance (ECRI), *Second Report on Turkey*, CRI (2001) 37, adopted 15 December 2000, para. 18 (hereinafter "2000 ECRI Second Report"); Appendix, Observations provided by the Turkish Authorities concerning ECRI's Report on Turkey, para. 2.

¹⁶ Memorandum from Emmanuel G. Demos, General Counsel, Greek Orthodox Archdiocese of America to Professor James Silk, Yale Law School, Nov. 12, 2004, on file with Lowenstein Clinic (hereinafter "Demos Memo Nov. 12, 2004").

¹⁷ The New York Times reported on November 21, 2004, "[S]enior Turkish officials . . . have broached the idea of allowing the Greek Orthodox patriarchate to reopen" the Halki Seminary. See Susan Sachs, *Some Hard-Liners in Turkey See Diversity as Divisive*, N.Y. TIMES, November 21, 2004, at A10.

¹⁸ Metropolitans are bishops who rank next below the Patriarch.

¹⁹ Demos Memo Nov. 12, 2004, see note 16

the secular government's honoring of Papa Eftim constituted a symbolic challenge to the Patriarch and his legitimacy.²⁰

C. Restrictions on Religious Schools for Non-Muslim Minorities

The Lausanne Treaty established that all religious minorities in Turkey and Greece are entitled to their own schools and other religious and social institutions.²¹ However, in 1961, Turkish Law 222 placed all minority schools under the private schools department of the Ministry of Education, thus removing their designation as “communal schools” entitled to protection under the Lausanne Treaty.²² In 1964, a government decree prohibited Orthodox clerics from entering the premises of Greek minority schools (Protocol 410/16) and required that Orthodox schools be administered by Turkish headmasters recruited by the Ministry of Education; a second decree banned morning prayer and Greek-language textbooks and encyclopedias from Orthodox schools (Protocol 3885). That same year, the Turkish government began refusing permission to repair dilapidated Orthodox school buildings and withdrew recognition of elected school boards of the Orthodox community. In 1965, Turkey passed a law prohibiting the establishment of private educational institutions for religious education (Law No. 625 on Private Higher Educational Institutions, June 8, 1965).²³ Patriarchate schools must be administered by a “Greek headmaster” of Turkish nationality, seconded by a non-Orthodox Turkish assistant headmaster. “The authorities often fail to appoint a headmaster, thereby leaving the school’s management in the hands of the Turkish assistant headmaster. Moreover,

²⁰ For a history of Papa Eftim and his significance, see Harry J. Psomiades, *The Ecumenical Patriarchate Under the Turkish Republic: The First Ten Years*, BALKAN STUDIES, 1961, 47-70, available at http://www.orthodoxchristianity.net/texts/Psomiades_ecupat.html (last visited Nov. 20, 2004).

²¹ Article 40 guarantees the equal right of non-Muslims “to establish, manage and control, at their own expense, any kind of charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use of their own language and to exercise their own religion freely therein.” See also, 2000 ECRI Second Report, see note 15, para. 18.

²² HRW, see note 10, at 15.

²³ HRW, see note 10, at 15, 17.

according to Turkish regulations, for a child to be enrolled, he or she must have a Greek second family name and at least one Greek parent. In other words, children of parents belonging to other Christian confessions are not allowed to attend the schools of the Patriarchate.”²⁴ Only students with “Rum Ortodoks” on ID cards may enroll—this includes only Greek Orthodox children who are Turkish citizens and Arabic-speaking, Syrian Orthodox students in southern Turkey.²⁵ The Ministry of Education prohibits clergy and graduates from theological seminaries from teaching religion in schools.²⁶

The government also completely shut down the Ecumenical Patriarchate’s only school of higher education, the Halki Seminary (*see* Part I.B).

D. Restrictions on Property and Foundations of the Patriarchate

The Lausanne Treaty (Article 40) recognizes the legal status of religious, charitable, educational, and social institutions belonging to all non-Muslim minorities. Nonetheless, Turkey places restrictions on the ability of religious and charitable institutions to use, transfer, and administer their property, which has a direct and significant impact on the Patriarchate’s ability to sustain itself; because the Patriarchate is not permitted to have corporate legal status, foundations and property are the Patriarchate’s only sources of revenue.

In 1936, the Law on Foundations No. 2762 placed Orthodox property under the administration of a General Directorate of Foundations (or General Direction of Vakifs), which exists to this day. This agency has the power to dissolve foundations, seize foundation property, dismiss foundation boards of trustees without judicial decisions, and intervene in the

²⁴ Report of the Special Rapporteur, *see* note 3, para. 76.

²⁵ *Rum Ortodoks* is the Turkish word for Greek Orthodox. “Rum” means “roman,” and it goes back to the old concept that the Christian inhabitants of Constantinople were descendants of the Byzantine Empire, which originally was the eastern portion of the Roman Empire. Demos Memo Nov. 12, 2004, *see* note 16.

²⁶ 2003 Regular Report on Turkey’s Progress Towards Accession at 35-36 (hereinafter “2003 E.U. Regular Report”).

management of foundation assets and accounts.²⁷ These foundations are “becoming increasingly ineffective because of the attitude of state institutions and the courts: the General Directorate of Foundations has been unilaterally confiscating the property of foundations, and other authorities have been preventing the election of boards of directors. The properties . . . are thus in a position where their future is very much in doubt, and indeed some have been confiscated, thereby depriving [the community] of [its] principal source of revenue.”²⁸

The government typically seizes Orthodox property by exploiting a provision in the Law on Vakifs that allows the government to seize property ungoverned by a board of directors. By dissolving or preventing the replacement of the boards of directors of the various foundations, the government can seize the “abandoned” property.

The U.N. Special Rapporteur reported:

The authorities, through the General Directorate of Foundations, have taken advantage of the legislation on unused properties to appropriate the properties and places of worship of the Greek Orthodox community, in a unilateral and often arbitrary manner, and have been using some of these properties for revenue-generating purposes. For example, the Patriarchate had sought to transform its orphanage on Princes’ Island into a hotel. The General Directorate of Foundations dismissed the establishment’s board of directors and declared that the Patriarchate had no rights to this foundation. Legal proceedings on this matter are now under way. Similarly, in the Galata quarter of Istanbul, four Greek Orthodox Churches were reportedly expropriated by this same authority. It was noted that in most cases the Patriarchate has lost its case in litigation proceedings. It should be added that the boards of directors of the Patriarchate’s institutions (schools, hospitals, places of worship) face serious difficulties. From 1968 to 1991, and again since 1992, the authorities have failed to authorize elections, thereby making it impossible to replace board members who have died or who have left Turkey. This has posed problems for the management of these institutions, and

²⁷ 2004 Regular Report on Turkey’s Progress Towards Accession, COM(2004) 656 final at 43-44 (hereinafter “2004 E.U. Regular Report”). The Commission of the European Community submits Regular Reports to the European Council on progress achieved by each country in preparing for accession. The reports serve as a basis for the Council’s decisions on the conduct of negotiations or their extension of membership to other candidates on the basis of the accession criteria.

²⁸ Report of the Special Rapporteur, *see* note 3, para. 150.

could be interpreted by the General Directorate of Foundations as non-utilization of property.²⁹

Law No. 2007 in 1935 specifically prohibited the donation of property to churches or to Greek charitable institutions. A 1967 law established that communal property chartered by a group and aimed at the “enforcement of a certain race or minority” would no longer be recognized as a charitable foundation.³⁰ In 1971, the Turkish Supreme Court ruled that minority foundations no longer had the right to acquire new property.

A 1974 Supreme Court decision allowed the government to prevent existing foundations from investing in any real property at all, since, as Turkish authorities explained to the Special Rapporteur, “it is not possible for a foundation to invest in real property unless such powers are included in its charter.”³¹ But since several minority foundations were not legal entities before the early 20th century, they did not have charters; nor were they ever asked to submit charters. In response, the courts arbitrarily interpreted the financial statements that the foundations submitted to the government in 1936 as the foundations’ charters.³²

In 1974, as the Special Rapporteur noted, the courts

stipulated that the declarations submitted in 1936, which were merely listing each foundation’s estate and finances for the previous year without any mention whatsoever pertaining to their mission, line of activities, administration, or other details commonly found in such documents were to be considered as charters. As a result of this reversal, all real estate property acquired after 1936 reverted to its previous owners, long since dead. In a few cases, relatives inherited properties, while in the vast majority of cases, the State assumed possession of the “abandoned” property. Appeals to the Turkish Government during the last 25 years have extracted promises to introduce legislation that will reinstate ownership of the lost properties albeit with no concrete results so far. Meanwhile, litigation is still continuing although most legal means have been exhausted. . . .³³

²⁹ Report of the Special Rapporteur, *see* note 3, para. 75. As of December 10, 2004, the Supreme Court has upheld the decision of the General Directorate of Foundations. A motion to reconsider the decision is pending.

³⁰ Vakif (charitable foundation) Law No. 903/1967, Article. 74, para. 2. HRW, *see* note 10, at 23.

³¹ Report of the Special Rapporteur, *see* note 3, para. 49.

³² Report of the Special Rapporteur, *see* note 3, para. 74.

³³ Report of the Special Rapporteur, *see* note 3, para. 74.

The European Commission against Racism and Intolerance, part of the Council of Europe, has expressed concern over this situation, noting that on the basis of “a 1974 Court of Cassation [Supreme Court] ruling which forbids the buying or selling of real estate acquired by [minority] foundations after 1936 . . . property belonging to these foundations and acquired since that time has reportedly been reverted to the State without remuneration.”³⁴

In 1989, Prime Minister Turgut Ozal lifted the ban on Greeks selling their property, but “after 25 years, [confirming legal title is] a complicated court procedure [and] many of these cases are still pending.”³⁵ Foundations’ property seized as a result of the 1974 Supreme Court ruling and property seized in 1936 still have not been returned.

During the past few years, however, the government has gradually relaxed some of its restrictions on Orthodox foundations. In September 1999, the government decided that, in order to further enable religious communities to act in a more independent way, articles 46 and 48 of the Law on Foundations would not be enforced for religious community foundations. This meant that such foundations would no longer be required to inform authorities in writing when they wanted to hire a lawyer, initiate legal proceedings, or otherwise protect the rights of the foundation; nor would they be required to seek permission of the General Directorate of Foundations before starting new construction or repair of existing buildings.³⁶ In August 2002, community foundations were allowed to acquire and dispose of property “regardless of whether

³⁴ 2000 ECRI Second Report, *see* note 15, para. 26. “The Greek and Armenian communities appear to have been particularly affected by this situation. There have been complaints on the existence of legal restrictions affecting the functioning of these foundations as well as of administrative obstacles to the construction of new Greek Orthodox churches.” *Id.* *See* Part III.D.2 for discussion of European Convention on Human Rights law on the peaceful enjoyment of possessions (Protocol 1, Article 1).

³⁵ HRW, *see* note 10, at 9.

³⁶ Report of the Special Rapporteur, *see* note 3, para. 30.

or not they have the [status] of foundations.”³⁷ These communities may also register the property they use as long as they can prove ownership.³⁸ In 2003, the government extended the deadline to register such property from six months to eighteen months.³⁹ In June 2004, the government expanded the geographical area within which elections to foundation boards can be held, although enlargement of the area is still subject to the approval of local authorities. Therefore, some foundations’ ability to replace their boards to avoid government seizure is still at the mercy of local authorities.⁴⁰ Moreover, despite these reforms, Orthodox foundations are still required to obtain permission from the Directorate General of Foundations in order to acquire real property, a rule not imposed on other Turkish foundations.⁴¹

E. Recent Attacks Against the Patriarchate

The Treaty of Lausanne specifically guarantees the security and protection of the Orthodox minority and its religious institutions.⁴² However, attacks and threats “aimed directly” at the Patriarchate compound and the Ecumenical Patriarch’s residence have been regularly reported. In response to religious strife in Greece in 1991, a mob gathered outside the Patriarchate, threatened to storm the gates, and set up a five-day “blockade”, damaging the exterior perimeter.⁴³ A 1993 report noted that attacks and threats were “almost daily” occurrences.⁴⁴ On March 30, 1994, a molotov cocktail was thrown into the compound. On May 28, 1994, three bombs were found inside the Ecumenical Patriarch’s residence but were defused

³⁷ 2002 Regular Report on Turkey’s Progress Towards Accession, COM(2002) 700 final at 38 (hereinafter “2002 E.U. Regular Report”).

³⁸ 2002 E.U. Regular Report, *see* note 37 at 38.

³⁹ 2003 E.U. Regular Report, *see* note 26 at 34.

⁴⁰ 2004 E.U. Regular Report, *see* note 27 at 43.

⁴¹ 2003 E.U. Regular Report, *see* note 26 at 34.

⁴² *See* Article 40 and Article 42, para. 3, *see* Part II.B.

⁴³ Athens News Agency reports, *Siege Ends Unsatisfactorily*, ORTHODOX OBSERVER, Oct. 1991, *excerpt available at* <http://www.geocities.com/tziakas/patriarch.html> (last visited Nov. 20, 2004).

⁴⁴ Balaskas, *see* note 8 at 148, *citing Daily Telegraph* (London), Nov. 30 1993: “Greeks attacked in Turkey,” *Zaman*.

before they exploded.⁴⁵ An underground organization calling itself the Islamic Raiders of the East left a message claiming responsibility and threatening the life of the Ecumenical Patriarch. Despite the Patriarch's request for protection, the Turkish government did nothing. On September 29, 1996, a hand grenade exploded inside the Patriarchate compound, permanently maiming a deacon.⁴⁶ In December 1997, a cluster bomb was thrown into the compound, severely injuring a priest and damaging buildings.⁴⁷ On October 7, 2004, a hand grenade was thrown into the compound, damaging windows and the church of the Patriarchate.⁴⁸

Looters, vandals, and bombers regularly target Orthodox churches, cemeteries, and schools in Turkey. In August 1992, looters raided thirty graves in the cemetery at Buyukdere.⁴⁹ In March 1993, looters stole icons and vandalized the altar at the Cathedral of the Virgin Mary on the island of Imvros.⁵⁰ In the summer of 2003, vandals desecrated the Greek Orthodox cemetery at Yenikoy and other Christian cemeteries several times.⁵¹ In 1994, cemeteries at Sisli and Macrohorion were vandalized, and bombings occurred in two Orthodox schools.⁵² In 1998, the caretaker at the church at Therapia was murdered. In the same year, the cemeteries at Egricapi and Tatouli were vandalized. A school at Tastaoulu was also bombed. In 1999, a bomb was placed on the outer wall of a Greek minority high school. In 2002, thieves stole icons and religious items from the St. Paraskevy church.⁵³ The November 2003 bombing of the British

⁴⁵ Associated Press, June 6, 1994.

⁴⁶ Demos Memo Nov. 12, 2004, *see* note 16.

⁴⁷ Balaskas, *see* note, 8 at 148-149. *See also*, Report of the Special Rapporteur, *see* note 3, para. 77.

⁴⁸ Reuters Alertnet, *Grenade Rocks Istanbul's Orthodox Patriarchate*, Oct. 7, 2004, available at http://www.kosovo.com/news/archive/2004/October_08/1.html (Oct. 8, 2004).

⁴⁹ Marios D. Dikaiakos, *Denying Ethnic and Religious Identity to the Greeks of Turkey, 1992-1995*, at http://www.anemos.com/Diaspora/gr_turkey/GRTURK.html (1995) (hereinafter "Dikaiakos").

⁵⁰ Dikaiakos, *see* note 49.

⁵¹ Balaskas, *see* note 8 at 148.

⁵² Memorandum from Emmanuel G. Demos, General Counsel to the Greek Orthodox Archdiocese of America to Professor James Silk, Yale Law School, Sept. 26, 2004, on file with Lowenstein Clinic (hereinafter "Demos Memo Sept. 26, 2004").

⁵³ Demos Memo Sept. 26, 2004, *see* note 52.

consulate in Istanbul also damaged the neighboring Panagia Greek Orthodox Church, and the General Directorate of Foundations has not yet granted the church permission to carry out repairs.⁵⁴

Prior to his visit to Turkey in 1999, the U.N. Special Rapporteur on Religious Intolerance sent a communication to the Turkish government regarding some of these incidents. In response, “Turkey claimed that some of the incidents were linked to thefts and not to acts of religious intolerance, and that investigations were underway. . . . [Furthermore,] all institutions of the Greek Orthodox minority and the Patriarch himself are under the close protection of the Turkish security forces.”⁵⁵ The government insisted that these criminal acts could not be attributed to the state. Noting that he had not meant to suggest that the authorities were involved in anti-Christian acts, the Special Rapporteur pointed out that the police investigations had been unsuccessful. He stated that, nonetheless, “it is clearly established in international law that the State is responsible for the security of its citizens and, more generally, for all persons living on its territory, even when acts committed against them are allegedly carried out by non-State entities.”⁵⁶ The European Commission on Religious Intolerance has urged the Turkish authorities to “remain vigilant in dealing with these situations.”⁵⁷

Finally, Turkey has still not compensated the victims of the anti-Greek riots of 1955 for their loss of property. On September 6 and 7, 1955, “in an extensive and well-organized manner that lasted for several hours with the Turkish government doing little to intervene,” riots broke

⁵⁴ 2004 E.U. Regular Report, *see* note 27, at 44.

⁵⁵ *Civil and Political Rights, Including Religious Intolerance*, Report submitted by Mr. Abdelfattah Amor, Special Rapporteur on Religious Intolerance, Commission on Human Rights, U.N. Doc. E/CN.4/1999/58 (January 11 1999), para. 101 (hereinafter “Civil and Political Rights”).

⁵⁶ *Civil and Political Rights*, *see* note 55, at para. 101. During his 1999 mission, the Special Rapporteur was told by the Interior Minister that these attacks were “isolated acts, often motivated by theft.” Report of the Special Rapporteur, *see* note 3, para. 53.

⁵⁷ 2000 ECRI Second Report, *see* note 15, para. 27

out in Istanbul⁵⁸ in response to the bombing of the Turkish consulate in Greece.⁵⁹ During these riots, 73 Orthodox churches and 23 schools were vandalized, burned, or destroyed; 1,004 houses of Orthodox citizens were looted; 4,348 stores, 110 hotels, 27 pharmacies, and 21 factories were destroyed.⁶⁰ This pogrom resulted in a mass emigration of Greeks,⁶¹ whose loss of property awaits compensation.

F. Summary

Although threats and attacks against the Patriarchate, the Ecumenical Patriarch himself, and members of the Greek minority community in Istanbul cannot all be attributed to the government of Turkey, the myriad of Turkish laws and government decrees affecting non-Muslim religious minorities systematically violate the rights of both individual members of the Orthodox minority community and the institution of the Patriarchate.

The Orthodox minority is not only a victim of restrictions that apply to all religious minorities, but is also specifically targeted.⁶² Despite Turkey's denials, Human Rights Watch concluded a decade ago that the Patriarchate and the Orthodox minority community in Turkey had been denied their religious freedom, the right to control their own religious and charitable

⁵⁸ Steven Stavros Skenderis, *The Ethnic Greeks of Turkey: The Present Situation of the Greek Minority and Turkey's Human Rights Obligations Under International Law*, 16 ST. THOMAS L. REV. 551, 564 (Spring 2004). "The American Consul-General telegraphed the Department of State, '[T]he destruction was completely out of hand with no evidence of police or military attempts to control it. I personally witnessed the looting of many shops and the police stood idly by or cheered on the mob.'" *Id.* at 565-66.

⁵⁹ Skenderis, *see* note 58, at 564, argues that then-prime minister Adnan Menderes had ordered the bombing of the Turkish consulate in Greece in order to justify and incite anti-Greek violence.

⁶⁰ Dikaiakos, *see* note 49.

⁶¹ "The net affect of these riots however, was that thousands of Greeks left Istanbul following the violence." Skenderis, *see* note 58, at 565.

⁶² This was a conclusion of the European Commission against Racism and Intolerance, as well. *See* 2000 ECRI Second Report, *see* note 15, para. 53: "ECRI notes that discrimination or disadvantage may not only follow from ethnic, cultural, linguistic or religious background *per se*; forms of intolerance may also be manifested against individuals or groups of individuals who publicly express their ethnic, cultural, linguistic or religious background."

organizations and institutions, and the right to express their ethnic identity—in violation of the Lausanne Treaty and international human rights agreements.⁶³

II. THE PATRIARCHATE IN THE LAUSANNE CONFERENCE

Following the Turkish military victory over Greece in the war of 1922, an international conference was convened at Lausanne, Switzerland. One purpose of the conference was to establish the rights of the Greek Orthodox minority in Turkey and the Muslim minority in Greece. Turkey sat on one side of the negotiations, while Britain, France, Italy, and Greece sat on the other. During the Lausanne Conference, the Turkish delegation argued that the Patriarchate had always been a political organ and demanded that the Patriarchate be removed from Turkey with all its organizations and constituent bodies.⁶⁴ The Turkish government was eager to expel the Patriarchate for several reasons.⁶⁵ The reigning Ecumenical Patriarch, Meletios IV, had engaged in anti-Turkish statements and activities.⁶⁶ Turkey also sought the expulsion of the Patriarchate as a concession for permitting the Greek minority to remain in Istanbul, having originally demanded the expulsion of both. Although the Patriarchate serves a dual role as both Archbishop of Istanbul and head of the Orthodox Church, it symbolized—and from a Turkish perspective still does today—the last remnant of Greek presence and imperial aspirations in Turkey.⁶⁷ Finally, the Turkish government saw the expulsion of the Patriarchate as an important aspect of its objective to abolish the Muslim Caliphate.⁶⁸ The Patriarchate had been the second most important religious institution in the Ottoman Empire after the Caliphate. The

⁶³ HRW, *see* note 10, at 22, 25.

⁶⁴ Harry J. Psomiades, *The Eastern Question: The Last Phase* (Pella Publishing Co, 2nd ed., 2000), 81-82 (hereinafter “Psomiades”); Giannakakis, *see* note 2, at 22.

⁶⁵ Psomiades, *see* note 64, at 83-84.

⁶⁶ Psomiades, *see* note 64, at 85. Patriarch Meletios IV abdicated in September 1923.

⁶⁷ Psomiades, *see* note 64, at 99 n.38.

⁶⁸ The Caliphate was the theocratic monarchy that had ruled the Ottoman Empire for nearly five centuries.

Turkish government wanted to demonstrate to the Muslim population that the abolition of the Caliphate was part of a general policy for all religious institutions and not directed solely against Muslims.⁶⁹

In response to Turkey's position, the European powers proposed instead that the Patriarchate abandon any political and administrative authority but retain its religious role. The Turkish delegation accepted that the Patriarchate would remain, provided that it limit itself to purely religious matters.⁷⁰ A contemporary commentator observed, "All agreed that the Patriarchate should in future lose its political and administrative character and that it should remain a purely religious institution."⁷¹

The 1923 Lausanne Peace Treaty contains mutual protections for the Greek minority in Turkey and the Muslim minority in Greece,⁷² as well as several provisions guaranteeing freedom of religion and protection of religious institutions to all non-Muslim minorities in Turkey (*see below* Part II.B). The Treaty was accompanied by the Convention Concerning the Exchange of Greek-Turkish Populations ("the Convention").⁷³

Turkey claims that issues concerning the Patriarchate are purely domestic matters, and that the Patriarchate is a domestic institution governed by Turkish law.⁷⁴ However, the Lausanne Treaty and Turkey's assurances at the conference affirm the international nature of the Patriarchate's protection. Article 44 of the Treaty makes explicit that "in so far as the [provisions of the Treaty] affect non-Muslim nationals of Turkey, these provisions constitute obligations of international concern." Since the Patriarchate as the Archdiocese of

⁶⁹ Psomiades, *see* note 64, at 83-84.

⁷⁰ Psomiades, *see* note 64, at 83; Giannakakis, *see* note 2 at 28-29.

⁷¹ Stephen P. Ladas, *The Exchange of Minorities. Bulgaria, Greece and Turkey*, 344 (MacMillan, 1932) (hereinafter "Ladas").

⁷² Treaty of Peace, July 24, 1923, Gr. Brit.-Fr.-Italy-Japan-Greece-Rom.-the Serb-Croat Slovene State-Turk., 28 L.N.T.S. 11.

⁷³ Convention Concerning the Exchange of Greek and Turkish Populations, Jan. 23, 1923, 32 L.N.T.S. 76.

Constantinople/Istanbul comprises “non-Muslim nationals”,⁷⁵ the provisions protecting the Patriarchate are international obligations. Moreover, Turkey’s pledge at Lausanne to retain the Ecumenical Patriarchate in Istanbul may be regarded as a binding international commitment.⁷⁶ A 1930 settlement between the two countries solidified that pledge.⁷⁷

A. The Dispute in the 1920s over the Patriarchate Arising from the Convention Concerning the Exchange of Populations

The Convention Concerning the Exchange of Populations mandated a compulsory exchange of Muslims living in Greece and Greek Orthodox citizens of Turkey, but included an exception in Article 2 for Muslims established in Western Thrace and Greeks residing in Constantinople/Istanbul.⁷⁸ It identified the exempted Greek inhabitants as “all Greeks who were already established before the 30th October, 1918, within the areas under the Prefecture of the City of Constantinople, as defined by the law of 1912.”

Notwithstanding the Treaty of Lausanne, the status of the Patriarchate remained unsettled throughout the 1920s. In 1925, Greece brought the issue to the League of Nations, hoping that the League would clarify once and for all the international character of the Patriarchate.⁷⁹ Prior to that, however, a conflict had arisen over the meaning of “Greeks . . . already established” in Constantinople who were exempt, under Article 2, from the population exchange. This dispute led the Council of the League of Nations in December 1924 to ask the Permanent Court of International Justice for an advisory opinion as to the meaning and scope of the word

⁷⁴ Report of the Special Rapporteur, *see* note 3, para. 70.

⁷⁵ *See* Part I.B. above for discussion of Turkish citizenship requirements for Patriarchate officials.

⁷⁶ Giannakakis, *see* note 2, at 29, 49-50, Psomiades, *see* note 64, at 84.

⁷⁷ The Greek-Turkish Convention of Ankara, June 10, 1930. *See* text below at note 82.

⁷⁸ The Convention defined Greeks compelled to leave as “Turkish nationals of the Greek Orthodox religion” (Article 1), which – absent the exemption of Article 2 – would have included the Ecumenical Patriarchate. Ladas, *see* note 71, at 377, 383.

⁷⁹ Ladas, *see* note 71, at 415; Psomiades, *see* note 64, at 94-95.

“established.”⁸⁰ During the proceedings, the status of the Patriarchate was also raised, but the Court declined to rule on that issue as it was not among the questions placed before it for advisory opinion.⁸¹

In 1930, as a result of negotiations between Turkey and Greece, the two governments announced to the League of Nations that they had settled the dispute over the right of the Patriarchate to remain in Constantinople. The status of the Patriarchate as established during the Lausanne Conference was reaffirmed,⁸² and the right of the Patriarchate to remain in Istanbul was recognized. The requirement that the Ecumenical Patriarch be *persona grata* to the Turkish government and that he refrain from political activity was confirmed.⁸³

Article 16 of the Convention stipulated special protection of the rights of the Greek and Turkish populations exempt from the exchange:

No obstacle shall be placed in the way of the inhabitants of the districts exempted from the exchange under Article 2 exercising freely their right to remain in or return to those districts and to enjoy the full liberties and rights of property in Turkey and in Greece.

During the 1920s, these rights had been violated extensively on both sides.⁸⁴ The 1930 Convention of Angora between Greece and Turkey purported to finally settle all claims arising

⁸⁰ The League of Nations Council was approached by the Convention’s Mixed Commission. Article 11 of the Convention provided that a mixed commission be composed of four members representing each of the High Contracting Parties and three members chosen by the Council of the League of Nations from among nationals of powers that did not take part in the war of 1914-1918. It had full power to take the measures necessitated by the execution of the Convention and to decide all questions to which the Convention may give rise. Giannakakis, *see* note 2, at 30, n.63, and 31. *See also*, Ladas, *see* note 71, at 401-08.

⁸¹ Advisory Opinion No. 10, Exchange of Greek and Turkish Populations, 1925 P.C.I.J. (ser. B), No. 10, at 6, 17. The following questions were referred to the Court: “What meaning and scope should be attributed to the word ‘established’ in Article 2 of the Convention of Lausanne of January 30, 1923, regarding the exchange of Greek and Turkish populations . . . ? And what conditions must the persons who are described in Article 2 of the Convention of Lausanne under the name of ‘Greek inhabitants of Constantinople’ fulfill in order that they may be considered as ‘established’ under the terms of the Convention and exempt from compulsory exchange?” Ladas, *see* note 71 at 414-15; Giannakakis, *see* note 2, at 31-33.

⁸² More specifically, Turkey agreed that the members of the Holy Synod, the electors of the Patriarch, would not fall under the compulsory population exchange. Ladas, *see* note 71, at 416; Giannakakis, *see* note 2, at 55, n.116.

⁸³ Psomiades, *see* note 64, at 98; *see also* Giannakakis, *see* note 2, at 55-56.

⁸⁴ *See* Ladas, *see* note 71, at 476-512.

from the population exchange and included a clause requiring the abolition of all restrictive measures against the respective Turkish and Greek minorities.⁸⁵

B. The Protection of Minorities under the Peace Treaty of Lausanne

Provisions of the Lausanne Peace Treaty regarding the protection of minorities apply to both the Patriarchate and the Orthodox minority community in Istanbul. The Lausanne Treaty, which is still in force, has been characterized by a Turkish commentator as “the basic international document which stands as the foundation of our Republican foreign policy.”⁸⁶ The U.N. Special Rapporteur, however, noted that the Turkish government recognizes the Treaty as applying to only three minority groups: the Greek Orthodox, the Armenians, and the Jews, despite the fact that the Treaty explicitly applies to all “non-Muslim minorities.”⁸⁷ The effect of this discriminatory policy is further exacerbated by the fact that the number and proportion of Orthodox adherents who are not Greek is increasing.⁸⁸

As explicitly stated in Article 37, the minority rights contained in the Lausanne Treaty have the force of “fundamental laws” and take precedence over conflicting legislative or administrative acts.⁸⁹ Article 90 of the Turkish constitution specifically states, “International agreements duly put into effect carry the force of law.” Furthermore, Article 90 prohibits any constitutional challenges to international agreements, suggesting the supremacy of international treaties over the Turkish constitution. However, the nature and extent of the Lausanne Treaty

⁸⁵ Ladas, *see* note 71, at 577.

⁸⁶ Türkkaya Ataaöv, Editor’s Note, 23 *The Turkish Yearbook of International Relations*, at v (1993).

⁸⁷ Report of the Special Rapporteur, *see* note 3, para. 25.

⁸⁸ “After the Lausanne settlement, there were . . . in Istanbul, 125,046 Orthodox Christians, of whom 108,725 were Greeks.” Psomiades, *see* note 64, at 63. “There are only about 3,000 Greek Orthodox Christians left in Turkey, and most of those inhabitants are elderly.” Balaskas, *see* note 8 at 146. *See also* 2004 E.U. Regular Report, *see* note 27, n.13 (noting population of Greek Orthodox as 3,000). On the other hand, there are 20,000 Syriac Orthodox Christians. 2004 E.U. Regular Report, *see* note 27, n.13.

⁸⁹ Article 37 of the Peace Treaty states: “Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with

rights do not seem to be further defined in Turkish jurisprudence; nor has their enforceability been established in Turkish courts.⁹⁰

The rights enumerated in the Lausanne Treaty apply to all non-Muslim minorities, including both Greek and non-Greek Orthodox minorities.⁹¹ These are:

a) Religious freedom (Art. 38, para. 2; Art. 43): Freedom of exercise of religion in the private and public spheres is guaranteed to all inhabitants of Turkey. However, the observance of these rights must “not be incompatible with public order and good morals.”⁹²

Turkey violates this provision through its interference with Orthodox leadership, as discussed in the above sections.

b) Equality of rights; freedom of establishment, management and control of religious institutions (Art. 40):

Turkish nationals belonging to non-Muslim minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expenses, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

Turkey violates this provision through its restrictions on religious schools (especially the Halki Seminary), its restrictions on the Patriarchate’s foundations and property, and its failure to prevent or sanction the attacks against the Patriarchate, as discussed in the above sections.

these stipulations, nor shall any law, regulation, nor official action prevail over them.” *See also*, Report of the Special Rapporteur, *see* note 3, para. 24.

⁹⁰ Nor are the minority rights of the Lausanne Peace Treaty referred to in Turkish academic writing available in English; *See*, e.g., Introduction to Turkish Law (Tugrul Ansay & Don Wallace eds.) (4th ed. 1996); E. Yasemin Özdek, *The Turkish Constitutional Court and the International Human Rights Instruments*, 14 Turkish Yearbook of Human Rights 25, 26-32 (1992).

⁹¹ Article 45, Peace Treaty.

⁹² Article 38, para. 2 stipulates: “All inhabitants of Turkey shall be entitled to free exercise, whether in public or in private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.” Article 43 guarantees a more specific right of non-Muslim minorities not to be compelled to perform acts contrary to their religion.

c) Individual non-discrimination (Art. 38, para. 1; Arts. 39 and 40): Article 38, para. 1

states:

The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

Turkey violates this provision through its failure to prevent or sanction the attacks against the Patriarchate, as discussed in the above sections.

d) Protection of religious institutions (Art. 42, para. 3):

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned [non-Muslim] minorities. All facilities and authorization will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities. . . .

Turkey violates this provision through its interference with Orthodox leadership, its restrictions on charitable foundations and property transfer, and its failure to prevent or sanction the attacks against the Patriarchate, as discussed in the above sections.

e) Freedom of instruction and education (Arts. 40 and 41): While Article 40 guarantees a right to *private* instruction, Article 41 commits the government to provide for *public* instruction of minorities (“in towns and districts where a considerable proportion of non-Muslim nationals are resident”) in their own language in primary schools. It does not guarantee such instruction above the primary level.⁹³

Turkey violates these provisions through its restrictions on religious schools, as discussed in the above sections.

⁹³ See Yilmaz M. Altug, *Turkey and Some Problems of International Law*, 144 (Yenilik Basimevi, 1958).

f) Freedom of language (Arts. 39, 40, and 41): Freedom of language is guaranteed in religion, commerce, the press and publications, and private and public meetings. Article 41 guarantees public education in minority languages in primary schools.

Turkey violates these provisions through its restrictions on religious schools, as discussed in the above sections.

g) Freedom of movement (Art. 38, para. 3): Non-Muslim minorities enjoy freedom of movement.

Turkey violates this provision through its policies on visas and residence permits for Orthodox bishops and the Patriarchate, as discussed in the above section on interference with the Orthodox leadership.

While Article 37 of the Lausanne Treaty clarifies the status of minority rights within Turkish law, Article 44, paragraph 1, confers international status on them and provides for an internationalized system of protection and dispute resolution:

Turkey agrees that, in so far as the preceding Articles of this Section affect non-Muslim nationals of Turkey, these provisions constitute obligations of international concern . . .

Furthermore, Article 44 placed these rights “under the guarantee of the League of Nations” and authorized the League to take appropriate action against violations.⁹⁴ These specific guarantees reflect the League’s approach, according to which minority rights were regarded as a concern of the world community.⁹⁵ With the dissolution of the League of Nations,

⁹⁴ Article 44, para. 1 stipulates that the minority rights could only be modified with “the assent of the majority of the Council of the League of Nations.” Paragraph 2 provides: “Turkey agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.”

⁹⁵ Giannakakis, *see* note 2, at 33. The rights of the Greek minority in Turkey under the Lausanne Treaty were, thus, not owed to Greece primarily, but rather to the world community, embodied in the League of Nations. *See also* Giannakakis, *see* note 2, at 38.

the system of protection contemplated by the Lausanne Treaty ceased to exist, and the United Nations did not formally succeed to the tasks and powers of the League.⁹⁶ Although the United Nations Charter falls short of express protection of minorities, it nonetheless embraces, under the general protection of human rights, the principles that should govern minority rights.⁹⁷

European human rights law and international human rights treaties expand Turkey's obligations to protect religious minorities. In 2003, Turkey ratified three major international human rights instruments: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Racial Discrimination. Thus, Turkey's duty under the Lausanne Treaty to respect minority rights as an obligation of international concern is not only still in effect but is also affirmed in subsequent international agreements that extend this duty to all minorities, without limiting it to specific groups.

III. TURKEY'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

A. The Conference on Security and Cooperation in Europe (CSCE)

The Agreements of the Conference on Security and Co-operation in Europe (CSCE) further establish Turkey's obligations to protect and guarantee the rights of national minorities. The CSCE was a diplomatic process involving 35 countries (including all European states except Albania, plus Canada and the United States) that concluded in 1975 with the signing of the Final

⁹⁶ Nothing in the UN Charter provides for UN succession of the tasks and obligations of the League.

⁹⁷ Giannakakis, *see* note 2, at 39. Article 1, para. 3, of the Charter calls upon its members "to achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Further, the General Assembly in its First Session on Nov. 19, 1946, adopted a resolution calling upon governments "to put an immediate end to religious and so-called racial persecution and discrimination." *Id.* at 39, n.86.

Act of Helsinki (Helsinki Accord).⁹⁸ Principle VII of the Helsinki Accord provides broad guarantees for human rights. It requires participating states to respect the rights of national minorities within their territories to equality before the law; it also requires states to “afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms.”⁹⁹

Since the Helsinki Accord, the CSCE process continued in the form of conferences designed to follow up and elaborate on its obligations. Several dealt with the rights of minorities, as reflected in the CSCE’s Concluding Documents, which Turkey also signed. The 1989 Vienna follow-up meeting set forth the rights of individuals and religious communities to organize their own religious structures, to select, appoint, and replace their personnel, and to solicit and receive voluntary financial and other contributions (paragraph 16.4). The meeting also allowed the training of religious personnel in appropriate institutions (paragraph 16.8), ensured the rights of national minorities, and declared that signatory countries will “protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory. They will respect the free exercise of rights by persons belonging to such minorities and ensure their full equality with others” (paragraph 19).¹⁰⁰ The Copenhagen follow-up meeting in June 1990 set forth the rights of national minorities to exercise their human rights without discrimination and in full equality before the law (paragraphs 30-40.7).¹⁰¹

⁹⁸ The standards of the CSCE are non-binding. This may have enabled the CSCE standard-setting process to yield more detailed and innovative standards than those adopted by the UN and the Council of Europe.

⁹⁹ Conference on Security and Cooperation in Europe, Final Act, Aug. 1, 1975, Principle VII, 14 ILM 1292, 1295 (1975) (hereinafter Helsinki Final Act). Turkey signed the Final Act on Aug. 1, 1975.

¹⁰⁰ Concluding Document of the Vienna Meeting on the follow-up to the CSCE, January 15, 1989, *reprinted in Human Rights in International Law, Basic Texts*, Council of Europe Press (1997), 409-10.

¹⁰¹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 29, 1990, *reprinted in Human Rights in International Law, Basic Texts*, Council of Europe Press (1997), p. 442-47, *see also* HRW, *see* note 10, at 35. Note, in particular, paragraph 32.2: Persons belonging to national minorities have the right to “establish and maintain their own educational, cultural and religious institutions, organizations or associations,

All CSCE states, including Turkey, signed the Charter of Paris in November 1990.¹⁰² It has particular influence because it was signed at the level of heads of state.¹⁰³ The Charter of Paris expressly provides for the protection of minorities.¹⁰⁴ In a section entitled *Guidelines for the Future, Human Dimension*, the signatory states declared:

Determined to foster the rich contribution of national minorities to the life of our societies, we undertake to improve their situation. We reaffirm our deep conviction that friendly relations among our peoples, as well as peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created. We declare that questions related to national minorities can only be satisfactorily resolved in a democratic political framework. We further acknowledge that the rights of persons belonging to national minorities must be fully respected as part of universal human rights.¹⁰⁵

As envisioned in the Charter of Paris, a follow-up meeting was convened in Geneva in 1991 expressly to consider the “urgent need for increased cooperation on, as well as better protection of national minorities.”¹⁰⁶ The Geneva meeting produced a detailed report on the rights of minorities, including “the right to establish and maintain their own educational, cultural and religious institutions, organizations and associations.” The participating states, which included Turkey, agreed to adopt laws prohibiting acts that constitute incitement to violence based on “national, racial, ethnic or religious discrimination, hostility or hatred, and to develop policies to enforce such laws.”¹⁰⁷

which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation.”

¹⁰² Conference on Security and Co-operation in Europe: Charter of Paris for a New Europe, Nov. 21, 1990, reprinted in 30 I.L.M. 190 (1991) (Hereinafter “Charter of Paris”).

¹⁰³ HRW, *see* note 10, at 36.

¹⁰⁴ “We affirm that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law.” Charter of Paris, 30 I.L.M. 190, 193 (1991).

¹⁰⁵ Charter of Paris, *see* note 104, 199.

¹⁰⁶ Charter of Paris, *see* note 104, 199.

¹⁰⁷ HRW, *see* note 10, at 37, *excerpt from the Report of the CSCE Meeting of Experts on National Minorities – Geneva, July 1991.*

In 1992, the CSCE created an Office of the High Commissioner on National Minorities, whose mandate is to identify and resolve ethnic tensions that threaten peace and security.¹⁰⁸ The High Commissioner made an official visit to Turkey for the first time in January 2003 but has neither reported nor issued any recommendations on the situation of religious minorities in Turkey.¹⁰⁹ In 1995, the CSCE was officially transformed into the Organisation for Security and Co-operation in Europe (OSCE), of which Turkey is a participating state.¹¹⁰

B. The European Convention on Human Rights

Article 9 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) guarantees the right to freedom of religion,¹¹¹ Paragraph (2) of Article 9 permits limitations on the right to practice and manifest religious belief only when “necessary in a democratic society.”¹¹² Turkey, a state party to the ECHR, entered a declaration under Article 34 (formerly Article 25)¹¹³ accepting the right of individuals to file applications with the European Court of Human Rights alleging a state party’s violation of rights protected by the European

¹⁰⁸ *International Human Rights in Context*, 2nd edition, Henry J. Steiner, Philip Alston, eds. (Oxford University Press, 2000), 793. *See also*, website of the Organisation for Security and Cooperation in Europe, www.osce.org/hcnm/mandate, visited August 19, 2002.

¹⁰⁹ 2003 European Commission Regular Report on Turkey’s Progress Towards Accession (Nov. 5, 2003), 38.

¹¹⁰ “Participating states,” rather than “member states” comprise the OSCE. Countries become participating states by signing the Helsinki Final Act. *See* “The United States Mission to the OSCE,” available at <http://www.usosce.rpo.at/archive/misc/info.htm> (last visited Nov. 21, 2004).

¹¹¹ European Convention on Human Rights and Fundamental Freedoms, Article 9:

- (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- (2) Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

¹¹² *Id.*

¹¹³ Article 34 of the European Convention on Human Rights and Fundamental Freedoms provides the right of individual application:

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Convention on Human Rights and Fundamental Freedoms. Thus, individuals may petition the European Court regarding alleged violations of Turkey's obligations under the Convention.

The freedom to manifest religion is not exclusively an individual right. It also has a collective dimension, recognized in Article 9(1) through the words "in community with others." Religious institutions, such as churches, are beneficiaries of this right, whether directly or indirectly:

When a Church body lodges an application under the Convention, it does so in reality on behalf of its members. It should therefore be accepted that a church body is capable of possessing and exercising the rights contained in Art. 9(1) in its own capacity as a representative of its members.¹¹⁴

Protocol 1, Article 1, of the ECHR guarantees the right to peaceful enjoyment of possessions.¹¹⁵ This Article expressly protects not only natural, but also legal persons. The European Court of Human Rights has given broad meaning to the notion of "person" under the Convention, also allowing churches, as non-governmental organizations but not commercial entities, to sustain claims under Article 1 of Protocol 1.¹¹⁶ However, the text of this Article does not explicitly guarantee claims to compensation as a result of interference with property rights.

The present Article 34 was Article 25 until the entry into force of Protocol No. 11 on 1 Nov. 1998.

¹¹⁴ Appl. 7805/77, *Pastor X and Church of Scientology v. Sweden*, Yearbook XXII (1979), 244. *But cf.* P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed., Kluwer Law International (1998), 552 (hereinafter "van Dijk"), arguing that the case law of the European Commission on Human Rights does not indicate clearly whether a church possesses the right itself or only indirectly as a representative of its members.

¹¹⁵ European Convention on Human Rights and Fundamental Freedoms, Protocol 1, Article 1:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

¹¹⁶ Donna Gomien, David Harris, Leo Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe Publishing, 1996, at 311, *c.f.* *Holy Monasteries* judgment of 9 December 1994, Series A. no. 301-A (hereinafter "Gomien").

1. Analysis of Violations of ECHR Article 9, Freedom of Religion

In order to determine whether a violation of Article 9 has occurred, the European Court of Human Rights has followed a three-step analysis. The Court

- 1) evaluates whether the challenged governmental action concerns Article 9 and freedom of religion;
- 2) evaluates whether the challenged governmental action restricts the practice or manifestation of religion; and
- 3) analyzes whether Article 9, paragraph 2, permits the restriction.

With respect to the first step, the Ecumenical Patriarchate has suffered direct and indirect mistreatment by the Turkish government for many years. The closing of the Halki Seminary, the expropriation of property owned by the Patriarchate and other Orthodox religious foundations, and the restrictions placed on the nationality of the Patriarch and of those who serve on the Synod are examples of Turkish governmental actions that concern freedom of religion and Article 9 of the ECHR (*see supra*, Part III.B).

With respect to the second step, the question is whether Turkey's treatment of the Ecumenical Patriarchate restricts rights protected under Article 9. The freedom to manifest religion encompasses a broad range of acts and may be exercised either individually or in community with others, both in public and in private. It includes actions integral to the basic affairs of religious groups, including the freedom to choose religious leaders, priests, and teachers; the freedom to establish seminaries or religious schools; and the freedom to prepare and distribute religious texts and publications.¹¹⁷ The U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief expressly includes within the freedom to manifest religion the freedom "to train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or

¹¹⁷ U.N. Human Rights Committee, General Comment No. 22, *The right to freedom of thought, conscience and religion (Art.18)*: 30/02/93.

belief.”¹¹⁸ The following are among the acts of the Turkish government that restrict the practice or manifestation of religion for Orthodox Greeks:

- placing restrictions on the issuance of travel and residence documents to bishops of the Patriarchate,¹¹⁹ which has inhibited the ability of the Patriarchate to minister directly to its members outside Turkey;¹²⁰
- requiring lists of candidates eligible to be elected Patriarch to be approved by Turkish authorities, and the government’s exercise of veto power over candidates submitted in the past; and
- the closing of the Halki Seminary as an educational facility.

General regulations, applied neutrally, may restrict the freedom of religion in specific circumstances. For example, planning and land-use laws that limit the use of buildings to particular purposes appear to be neutral. However, such legislation may implicate Article 9, especially if a particular building is already used for a religious purpose.¹²¹ These laws must be analyzed according to Article 9(2) to determine whether such an act is merely a matter of land use or constitutes a violation of the right to freedom of religion.

The various and combined actions of the Turkish government clearly restrict the freedom of religion of the Ecumenical Patriarchate.

The third question, then, is whether the restrictions are permitted by Article 9, paragraph 2. The European Court of Human Rights has undertaken a three-part inquiry to determine whether Article 9, paragraph 2, permits such interventions by a government.¹²² To illustrate the application of the Court’s evaluation criteria, the following analysis will examine whether the

¹¹⁸ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN General Assembly Resolution 36/55, 1981), Article 6.

¹¹⁹ The 2004 European Commission Regular Report on Turkey’s Progress Towards Accession states, “Non-Turkish Christian clergy continue to experience difficulties with respect to the granting and renewal of visas and residence and work permits.” 44 SEC (2004) 1201 (6 October 2004).

¹²⁰ See discussion in Part I.B, *see*.

¹²¹ van Dijk, *see* note 114, at 557.

¹²² *Kokkinakis v Greece*, 260 Eur. Ct. H.R. (ser. A) at 18 (1993).

closing of the Halki school was permissible under paragraph 2. According to paragraph 2, the closing of the school by the Turkish government must fulfill the following three requirements to be deemed a permissible intervention:

- 1) Was the act “prescribed by law”?
- 2) Did the act advance one of the “legitimate aims” enumerated in Article 9(2)?¹²³
- 3) Was it “necessary in a democratic society”?¹²⁴

The closing of the Halki Seminary was prescribed by Turkey’s Law on Private Higher Institutions (No. 625, June 8, 1965) and by a Constitutional Court Decree (January 12, 1971) that nationalized most private institutions of higher learning.¹²⁵ The Turkish government has argued that Halki was closed for the protection of public order as part of a policy of nationalizing all private institutions of higher education.¹²⁶ Even if the government’s nationalizing of higher education can be considered to advance a legitimate aim by furthering secularism (as the justification for protecting public order), the result of the closing – the lack of equal access for Orthodox Christians – raises questions about the closing’s legitimacy. While no higher religious educational institutions exist for Orthodox Christians, options are available for Muslims to pursue religious education at various state universities. For example, students who complete the eight-year primary school may study the Qur’an in government-sponsored schools.¹²⁷ Nonetheless, it may be difficult to conclude definitively that the closing did not advance a legitimate aim.¹²⁸

¹²³ The aims enumerated in Article 9(2) are: “in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” Article 9(2), ECHR.

¹²⁴ *Kokkinakis v. Greece*, at 36 (1993).

¹²⁵ HRW, *see* note 10, at 19.

¹²⁶ HRW, *see* note 10, at 20.

¹²⁷ U.S. State Dept. Human Rights Report, *see* note 11, 37.

¹²⁸ The European Court is generally quite deferential to the state with regard to the “legitimate aim” test and will defer to any reasonably legitimate aim the state puts forth, including one as vague as “upholding secularism.” *See, e.g. Sahin v. Turkey*, Judgment of 29 June 2004, 82-84 (Application no. 44774/98) (holding that upholding the constitutional value of secularism is a legitimate aim of the ban on headscarves in universities).

Whether or not the closing advanced a legitimate aim, it may not satisfy the third question—whether the closing was “necessary in a democratic society.” Turkey may argue that, for the protection of public order and/or the maintenance of secular neutrality, it does not want to allow any religious schools in Turkey. In situations like this, the European Court of Human Rights attempts to determine whether the measure is justified in principle and proportionate to the aim pursued.¹²⁹ As stated above, the closing has left the Ecumenical Patriarchate without an adequate number of clergy to perform its functions. It also effectively prevents the Patriarchate from training clergy and potential successors to the position of Patriarch, because the Halki Seminary is the only school for training the leadership of Orthodox Christianity in Turkey.¹³⁰ The closing of Halki has made it very difficult for the Patriarchate to survive. Weighing the gravity of the problem that the government’s policy is intended to address against the consequences of the policy, the closing seems neither justified nor proportionate. Furthermore, the fact that Muslims may study the Qu’ran in public schools undermines Turkey’s proffered interests in maintaining public order and maintaining secular neutrality.

Thus, the closing of the Halki Seminary arguably constitutes an impermissible restriction of the manifestation of religion, which is a violation of ECHR Article 9.

2. Violations of ECHR Protocol 1, Article 1, Peaceful Enjoyment of Possessions

Article 1 of Protocol 1¹³¹ sets out three distinct but connected rules. The first, established in the very first sentence, is the principle of peaceful enjoyment of property. The second, in the second sentence, makes interference with this right subject to certain conditions (“in the public

¹²⁹ Keturah A. Dunne, *Addressing religious intolerance in Europe: the limited application of Article 9 of the European Convention on Human Rights and Fundamental Freedoms*, 30 Cal. W. Int’l L. J. 117, 135 (1999).

¹³⁰ Balaskas, *see* note 8 at 143.

¹³¹ Article 1 – Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however,

interest and subject to the conditions provided for by law”). The third rule, contained in the second paragraph, recognizes that the state may “control the use of property in accordance with the general interest” by enforcing laws necessary for that purpose.¹³² The case law of the European Court has clarified the meaning and application of the specific terms “possessions” and “in the public interest” and the notion of enjoyment of one’s property or the ability to use and control it. Although the European Court of Human Rights has a six-month statute of limitations for claims, a claim alleging that Turkey violated Protocol 1(1) by closing the Halki Seminary would not necessarily be deemed inadmissible under the six-month rule. The Court recognizes “continuing violations” as exempt from the statute of limitations. In 1996, the Court held that state prevention of access to private property can be regarded as a violation of a continuing nature.¹³³

Among the specific actions of the Turkish government that give rise to alleged violations of Protocol 1, Article 1, are:

- the closure, since 1971, of the Halki Seminary, depriving the Patriarchate and the community of its use as an educational facility;
- restrictions on the use, repair, transfer, and administration of Patriarchate and Greek Orthodox community property, resulting in a loss of both use and revenue; and
- confiscation of property by the state without compensation.

The general rule of the peaceful enjoyment of possessions implies that where state actions, such as restrictions or refusal to issue permits, deny a person the opportunity to use her

in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

¹³² van Dijk, *see note 114*, at 618-19. Gomien, *see note 116*, at 312.

¹³³ *See, e.g., Loizidou v. Turkey*, E.C.H.R. Case No. 15318/19, Judgment of December 18, 1996, para. 41 (finding a breach of Protocol 1 (1) where Turkish forces in Northern Cyprus prevented Cypriot landowner from “peacefully enjoying” her property). Turkey did not pay the just satisfaction awarded by the European Court in *Loizidou* for several years, but the E.U. reported in October 2004 that Turkey had made payment in the preceding year. *See* 2004 E.U. Regular Report, *see note 27*, at 30.

property, the provision may have been violated.¹³⁴ This would apply to the restrictions placed on the use of religious foundations' property and on the confiscation of property, and it may apply to the closure of the Halki Seminary.¹³⁵ In evaluating the effect of such restrictions, the Court considers whether the relevant legislation pursues a legitimate aim "in the public interest" and whether the control exercised under the legislation is proportionate to that aim.¹³⁶ In one important case, *Sporrong and Lonnroth*, the applicants complained about the effects of long-term expropriation of their property, accompanied by prohibitions on construction, all of which they claimed were excessive.¹³⁷ Although the applicants had not been formally and definitively deprived of their property, "[t]he Court agreed and found that the measures at issue affected the very substance of ownership. . . . Whether such an interference is justifiable or amounts to a breach of the right to peaceful enjoyment . . . depended on whether a reasonable balance had been struck between concern for the public interests involved and the need to protect the rights of the individual."¹³⁸

Where persons are deprived of the enjoyment of their property, the Court has generally recognized a right to compensation.¹³⁹ Protocol 1, Article 1, "does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of 'public interest' such as those pursued through measures of economic reform or designed to achieve greater social justice, may call for less than reimbursement of full market value."¹⁴⁰ The case of *Holy Monasteries v. Greece* (holding Greece in breach of Protocol 1, Article 1, where a new law

¹³⁴ *Gasus Dossier- und Forertechnik GmbH*, Judgment of 23 February 1995, A.306-B, 46, 625.

¹³⁵ Although the Ecumenical Patriarchate is barred from using the Halki Seminary for religious education, it may use the property for other purposes, such as meetings. Conversation with Mr. E.G. Demos, New Haven, CT, November 18, 2004.

¹³⁶ Gomien, *see* note 116, at 319.

¹³⁷ Judgment of 23 September 1982, Series A no. 52, *cited by* Gomien, *see* note 116, at 312, 321.

¹³⁸ Gomien, *see* note 116, at 321.

¹³⁹ Gomien, *see* note 116, at 317. *Lithgow and Others* Judgment of 8 July 1986, Series A no. 102, p. 47.

¹⁴⁰ Gomien, *see* note 116, at 317-318.

transferred to the state the real property of several Greek Orthodox monasteries) has similarities to the Ecumenical Patriarchate's situation in Turkey. The Court noted:

Although the [s]tate had taken no action to have the monasteries evicted from the properties in question, it had the power to do so at any time. The statute governing these transactions made no provisions to compensate the monasteries for the loss of their property. In finding a violation of Article 1 of Protocol 1, the Court considered prior compensation paid in an analogous expropriation, and rejected the government's argument that the means by which the applicants had originally obtained the property justified the lack of compensation.¹⁴¹

The Ecumenical Patriarchate in Turkey has not expressed interest in compensation, adequate or otherwise, for the restrictions placed on the use of Patriarchate property. The claim is, quite simply, the restoration of full use and enjoyment of their properties.

The most important restriction that the authorities are permitted to impose is expropriation in the public interest.¹⁴² In order for an act of expropriation to be deemed "in the public interest," a court must examine whether

- (1) a public interest aim was involved;
- (2) expropriation was a proportionate means of achieving that public interest; and
- (3) the expropriation was undertaken according to law.¹⁴³

Although "the notion of 'public interest' is necessarily extensive and . . . [s]tates have a certain margin of appreciation to frame and organise their fiscal policies,"¹⁴⁴ there are limits on

¹⁴¹ Gomien, *see note 116*, at 318. *Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A. *See also, Yagtzilar and others v Greece*, judgment of 6 December 2001, no. 41727/98. The facts in this case are also interesting in light of the Patriarchate's situation: "In 1925, the state (Greece) occupied a private-owned plot of land with the aim of installing on it refugees from Asia Minor following the compulsory exchange of minority communities agreed with Turkey in the Treaty of Lausanne. No compensation was paid to the landowners, of whom the applicants are the heirs. In August 1933, the [s]tate expropriated the land." Despite a series of legal proceedings, no compensation was paid, and eventually the state contended that the right to compensation had lapsed. The European Court found a violation of Article 1 of Protocol 1, concluding that "the government had not provided a convincing explanation of the reasons why the authorities had not at any time paid compensation to the owners of the land. . . . The lack of any compensation had upset the fair balance that had to be struck between protection of the applicants' property and the requirements of the general interest." *See www.echr.coe.int/Eng/InformationNotes/INFONOTENo37.html* (visited August 5, 2002)

¹⁴² Gomien, *see note 116*, at 317.

¹⁴³ *See, e.g., Hentrich v. France*, [1994] ECHR 13616/88 (hereinafter "Hentrich").

¹⁴⁴ Hentrich, *see note 143*.

what qualifies as a “public interest.” The European Court will reject a state’s judgment that a public interest justified its action if it finds “that judgment [to] be manifestly without reasonable foundation.”¹⁴⁵ Although the pursuance of “legitimate . . . social, economic or other policies may be ‘in the public interest’ even if the community at large has no direct use or enjoyment of the property taken,” this does not extend to “a deprivation of property effected for no reason other than to confer a private benefit on a private party. . . .”¹⁴⁶

If an act of expropriation is found to be in the public interest, it must then be deemed proportionate. Proportionality is a more exacting inquiry than an analysis of the “public interest,” requiring that a “fair balance” be struck between the public’s interest in expropriation and the individual’s right to property, such that “there [is] a reasonable relationship of proportionality between the means employed and the aim sought to be realized. . . .”¹⁴⁷ There is a strong presumption against proportionality if (1) the expropriation places an “individual and excessive burden” on a particular person or group, or (2) adequate compensation for the expropriation is not given.¹⁴⁸

Under these standards, it is quite likely that the expropriation of Church property and the closing of the Halki Seminary constitute a violation of Article 1 of Protocol 1. There is little question that these acts were undertaken according to law, and it is likely that, under the Court’s case law, a “public interest” would be found,¹⁴⁹ especially since it is not clear that the expropriation was solely for the benefit of private parties. It is doubtful, however, that the expropriation would be found proportional. First, the closing of the Halki Seminary placed an

¹⁴⁵ James v. United Kingdom, [1986] ECHR 8793/79 (hereinafter “James v. United Kingdom”).

¹⁴⁶ James v. United Kingdom, *see* note 145.

¹⁴⁷ James v. United Kingdom, *see* note 145.

¹⁴⁸ James v. United Kingdom, *see* note 145. *See also*, Lithgow v. United Kingdom, [1986] ECHR 9006/80.

¹⁴⁹ Indeed, Halki Seminary was closed pursuant to a more general policy of nationalizing the state’s educational system and, thus, Turkey could almost certainly assert a “public interest” justification.

“individual and excessive burden” on the Patriarchate, because it foreclosed any possibility of the Patriarchate training its religious leaders in Turkey in order to meet Turkey’s citizenship requirement. Furthermore, no compensation was given for any of the expropriated properties. Because such a taking does not appear to be proportionate, the Court could likely find that it violates Article 1 of Protocol 1.¹⁵⁰

C. U.N. Human Rights Instruments

Other conventions and treaties protect rights and freedoms implicated by the Turkish state’s treatment of the Ecumenical Patriarchate. Although some binding human rights instruments lack an enforcement body such as the European Court to interpret and enforce their provisions, an analysis of Turkey’s compliance with its international obligations clarifies and reinforces the assessment of the Ecumenical Patriarchate’s position under the European Convention.

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Universal Declaration on the Elimination of Religious Intolerance, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child each protect rights that Turkey has violated in its treatment of the Orthodox Greek minority.

¹⁵⁰ It is unlikely that restrictions on the use of Church property would be deemed a violation of Article 1 of Protocol 1, insofar as these properties have not been expropriated. A leading treatise notes that under the article, the power of states to “impose restrictions on the use of property in accordance with the general interest” is “almost unlimited”. van Dijk, *see* note 114, at 638. The Court has noted that it will accept most assertions of the “general interest” in limiting the use of property, so long as the assertion is not “manifestly without reasonable foundation.” *See, e.g., Mellacher v. Austria*, [1989] ECHR 10522/83. Having established that there is a general interest in the restriction, the Court almost always defers to national determinations of the necessity of the restriction, though this is subject to a very deferential proportionality review. *See, e.g., Fredin v. Sweden*, [1991] ECHR 12033/86. Challenges to state decisions restricting the use of property are almost always rejected by the Court, and it is unlikely the Patriarchate could demonstrate the level of blatant unreasonableness and disproportionality required to show a violation.

1. Universal Declaration of Human Rights and Customary International Law

The Universal Declaration of Human Rights (UDHR) guarantees that all persons are equal before the law and entitled to equal protection of the law without discrimination or distinction (including on the basis of religion, national origin, or language) (Articles 2 and 7). It also guarantees the right of all persons to freedom of thought, conscience, and religion and to manifest one's religion or belief in teaching, practice, worship, and observance—either alone or in community with others, in public or private (Article 18).

While the UDHR is not a binding treaty *per se*, it is widely viewed as having binding force because it embodies customary international law. Customary international law results from a general and consistent practice of states followed out of a sense of legal obligation (*opinio juris*).¹⁵¹ *Jus cogens* principles are peremptory norms of international law for which no derogation is permitted, making it superior to both customary international law and treaties between and among states.¹⁵²

The right to freedom from discrimination on the basis of religious belief or practice may be considered a principle of customary international law, although it has not achieved the status of a *jus cogens* principle.¹⁵³ This is relevant primarily for analyzing whether past Turkish

¹⁵¹ *Restatement (Third) of Foreign Relations Law of the United States*, § 102.

¹⁵² *Jus cogens* norms might be considered rules of international morality, and although there is no general agreement on what is included, examples of widely recognized *jus cogens* norms include the prohibitions on slavery, piracy, genocide, and extrajudicial killing, and the principles of the equality of states and of self-determination.

¹⁵³ Even as customary international law, however, it is not settled, since some would argue that the extent of the problem indicates that non-discrimination is not a general and consistent practice of states. “Section 702 of the Restatement (Third) of Foreign Relations Law of the United States (1988) does not include religious discrimination among the customary norms that it lists. *See, however*, comment j. Although generalized references to the freedom of religion or belief appear in the UDHR, Art. 18, GA Res. 217A, UN Doc. A/810, at 71 (1948), the International Covenant on Civil and Political Rights, Art. 18, GA Res. 2200, 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), and regional human rights instruments, the UN Declaration on the Elimination of Religious Intolerance and Discrimination is the only instrument that addresses the subject in specific terms. For a compilation of the general provisions relevant to the freedom of religion or belief and freedom from discrimination based on religion or belief contained in international and regional instruments, see UN Doc. E/CN.4/L.1417 (1979).” Donna Sullivan, *Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 A.J.I.L.487, n.7 (July 1988).

conduct violates international law, because Turkey has recently ratified the major relevant international human rights instruments.¹⁵⁴ Some of these treaties' provisions, however, may be considered to have been binding as *jus cogens* or customary international law principles for the purpose of evaluating Turkey's conduct before it ratified the instruments.¹⁵⁵ In any event, Turkey has been obligated for decades to respect the rights of religious minorities as a result of its ratification of the European human rights instruments; analyzing Turkey's treatment of its Orthodox minority in light of the similar provisions in other international instruments illustrates, at least, the nature and extent of its violations of European law.¹⁵⁶

2. International Covenant on Civil and Political Rights

Article 18 of the International Covenant on Civil and Political Rights (ICCPR) states that everyone shall have the right to freedom of thought, conscience, and religion. The Human Rights Committee, the body charged by the ICCPR to interpret it and monitor states' compliance, has issued a General Comment interpreting the rights contained in Article 18. It describes the content of the freedom to manifest religion or belief, including the practice and teaching of religion.¹⁵⁷

The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private." The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial

¹⁵⁴ In 2003, Turkey ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights. In 2002, Turkey ratified the International Convention on the Elimination of All Forms of Racial Discrimination.

¹⁵⁵ However, as a general rule, provisions of international treaties are not retroactively enforceable. Vienna Convention on the Law of Treaties, Article 28, opened for signature May 23, 1969, entered into force January 27, 1980.

¹⁵⁶ Turkey ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms on May 5, 1954.

¹⁵⁷ Human Rights Committee, Gen. Comment No. 22, *see* note 117, para. 4.

acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. *In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.* (emphasis added)

Turkey signed the ICCPR on August 15, 2000, and ratified it on October 23, 2003; the Convention entered into force in Turkey on December 23, 2003. In August 2004, Turkey ratified the First Optional Protocol to the ICCPR, which grants the right to individual petition to the Human Rights Committee. However, Turkey maintains a reservation¹⁵⁸ to Article 27 of the ICCPR, which protects the rights of religious minorities.¹⁵⁹ The reservation¹⁶⁰ purports to allow Turkey to interpret the provisions of Article 27 regarding religious minorities in accordance with relevant provisions of the Turkish Constitution and the Treaty of Lausanne. Only one state, Cyprus, has lodged an objection to Turkey's reservation. Note, however, that Turkey did not make a reservation to the provisions of Article 18.

3. International Covenant on Economic, Social and Cultural Rights

Turkey signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2000 and ratified it in September 2003; the ICESCR entered into force on

¹⁵⁸ Under the Vienna Convention on the Law of Treaties, a state may make a reservation to a treaty unless that reservation is incompatible with the purpose and object of the treaty. Within a period of twelve months, other states party to the treaty may object to that reservation, with or without objecting to the entry into force of the treaty. An objection affects the relevant provisions only as between the reserving and objecting parties. If no objections are made within twelve months, the reservation is considered accepted. Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, art. 19, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969) (entered into force Jan. 27, 1980).

¹⁵⁹ "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." ICCPR Article 27.

¹⁶⁰ "The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes." Accessed via the U.N. High Commissioner for Human Rights website, 19 October 2004.

December 23, 2003. However, Turkey entered a reservation to Article 13, paragraphs 3 and 4,¹⁶¹ which concern the right to education. Paragraphs 3 and 4 state:

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Turkey reserves its right to apply paragraphs 3 and 4 in accordance with Articles 3 (Integrity of the State), 14 (Prohibition on the Abuse of Fundamental Rights and Freedoms), and 42 (Education) of the Turkish constitution. Thus, despite its ratification of the ICESCR, Turkey has entered a reservation to preserve the restrictions it placed on religious education in Article 42 of the 1982 constitution, which maintains state supervision and control over all educational institutions and disallows instruction in a language other than Turkish.¹⁶²

4. UN Declaration on the Elimination of Religious Intolerance and Discrimination

In 1981, the UN General Assembly adopted, by consensus, a declaration regarding the right to religion. The UN Declaration on the Elimination of All Forms of Intolerance and of

¹⁶¹ “The Republic of Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural Rights in accordance to the provisions under the Article 3, 14, and 42 of the Constitution of the Republic of Turkey.” Committee on Economic, Social, and Cultural Rights, “Status of the International Covenant on Economic, Social, and Cultural Rights and reservations, withdrawals, declarations, and objections under the Covenant.” U.N. Doc. E/C.12/1993/3/Rev.6, February 9, 2004.

¹⁶² Article 42:

No one shall be deprived of the right of learning and education. The scope of the right to education shall be defined and regulated by law. Training and education shall be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods, under the supervision and control of the state. Institutions of training and education contravening these provisions shall not be established . . . Primary education is compulsory for all citizens of both sexes and is free of charge in state schools . . . No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of

Discrimination Based on Religion or Belief gives specific content to the right to freedom of religion or belief and the right to freedom from discrimination based on religion or belief contained in the major human rights instruments.¹⁶³ The Declaration is not a binding international agreement, but it elaborates the well-established right of freedom of religion and belief.¹⁶⁴ “As the Declaration acquires concrete material content through its implementation, [it is anticipated that] it will contribute to the acceptance of the customary law status of this important principle.”¹⁶⁵ In his 2003 Interim Report, the UN Special Rapporteur of the Commission on Human Rights on freedom of religion or belief reported that in 2002, Turkish security police allegedly closed a Christian church, the New Testament Church in Hatay, “because the church did not have a ‘legal basis’ and its activities were harmful to society.”¹⁶⁶ Although this was not a Greek Orthodox church, the closing illustrates the precarious position of Christian churches in Turkey.

training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved.

¹⁶³ UN General Assembly Resolution 36/55 of Nov. 25, 1981. Article 1:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

¹⁶⁴ Donna Sullivan, *Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 A.J.I.L.487, 488 (July 1988) (hereinafter “Sullivan”). See, e.g., UN Doc. E/CN.4/1988/44/Add.2, at 1 (statement by the United States Government). See also UN Doc. E/CN.4/Sub.2/1987/26, at 48-49 (asserting that declarations adopted by the General Assembly imply “obligations of conduct” and contain “values” governing conduct that cannot be taken away by political action, although they do not give rise to “rights” from a strict legal standpoint). Sullivan at n.4.

¹⁶⁵ Sullivan, see note 164, at 488.

¹⁶⁶ U.N.G.A. A/58/296, 19 August 2003. “Elimination of all forms of religious intolerance.”

5. *International Convention on the Elimination of All Forms of Racial Discrimination*

Turkey signed the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) on October 13, 1972, and ratified it on September 9, 2002.¹⁶⁷ CERD bars all forms of discrimination on the basis of race, color, descent, or national or ethnic origin.¹⁶⁸ However, as of October 6, 2004, Turkey had not submitted its first periodic report as required by the Convention.¹⁶⁹ The report was due in October 2003. In 2004, the Turkish Parliament adopted a new Penal Code, which will come into force in April 2005. The Penal Code prohibits discrimination on various grounds, including gender, ethnicity, race, religion, marital status, political ideas, philosophical belief, and trade union membership.¹⁷⁰ It remains to be seen whether the Code's language is implemented in practice.

6. *Convention on the Rights of the Child*

The Convention on the Rights of the Child (CRC), a binding international treaty unanimously adopted by the UN General Assembly in 1989, has been ratified by more states than any other human rights treaty in history. Somalia and the United States are the only two countries in the world that have not ratified the CRC.¹⁷¹ Turkey signed the CRC on September 14, 1990, and ratified it on April 4, 1995, and the Convention entered into force on May 4, 1995. Turkey ratified the CRC with reservations to the provisions of Articles 17, 29, and 30.¹⁷² Article

¹⁶⁷ The Convention entered into force in Turkey on October 16, 2002.

¹⁶⁸ See, e.g., Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination.

¹⁶⁹ See European Commission, 2004 Regular Report on Turkey's Progress Towards Accession, 33 SEC(2004) 1201 (Brussels, October 6, 2004).

¹⁷⁰ However, Turkey has not yet protected against discrimination by ratifying Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms, which prohibits discrimination by public authorities on grounds of "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Protocol No. 12 (1) to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.2000.

¹⁷¹ UNICEF web page, <http://www.unicef.org/crc/faq.htm#009>, last visited Nov. 9, 2004.

¹⁷² The reservation reads, "The Republic of Turkey reserves the right to interpret and apply the provisions of articles 17, 29 and 30 of the United Nations Convention on the Rights of the Child according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923." Website

17 concerns the mass media and children's access to information;¹⁷³ Article 29 concerns the goals of children's public education and includes a statement affirming the liberty of individuals and bodies "to establish and direct educational institutions;"¹⁷⁴ and Article 30 concerns the right of children who are members of ethnic, religious, or linguistic minorities, affirming their right to "profess and practice his or her own religion."¹⁷⁵ In its reservations, Turkey stated that it would interpret the relevant articles of the CRC only in terms of the requirements of the Turkish Constitution and the Treaty of Lausanne. As it has in its ratification of other major human rights treaties, Turkey ratified the Convention while preserving state control over the role of religion in education and religious minorities. Three countries – Ireland, the Netherlands, and Portugal – have objected to Turkey's reservations.¹⁷⁶

IV. TURKEY'S ACCESSION TO THE EUROPEAN UNION

A. The E.U. Accession Process

In December 1997, the European Commission recommended that the European Union (E.U.) launch an "overall enlargement process," for all countries wishing to join the E.U.¹⁷⁷ The overall enlargement process, launched in Brussels on March 30, 1998,

of the United Nations High Commissioner for Human Rights,
http://www.unhchr.ch/html/menu3/b/treaty15_asp.htm, accessed Nov. 9, 2004.

¹⁷³ Although this memorandum has not focused on media law, Turkey previously had a media law banning broadcasts in Kurdish and some other languages, which was changed in the legal reforms of August 2002. The new Regulation on the Languages of Radio and TV Broadcast permits the state broadcasting corporation, TRT, to broadcast in languages other than Turkish, although implementation of this reform has been minimal. See 2003 EU Regular Report, p. 31.

¹⁷⁴ Convention on the Rights of the Child, Article 29(2), ratified Nov. 20, 1989, entered into force on September 2, 1990.

¹⁷⁵ Convention on the Rights of the Child, Article 30, ratified Nov. 20, 1989, entered into force on September 2, 1990.

¹⁷⁶ Status of reservation available on U.N. High Commissioner for Human Rights website,
<http://www.unhchr.ch/tbs/docs.nsf/73c66f02499582e7c1256ab7002e2533/3a9980922085873fc1256b90003921ef?OpenDocument>, (last visited Nov. 16, 2004).

¹⁷⁷ *Enlargement of the European Union, An Historic Opportunity*, "The Accession process from negotiation to ratification," published by the European Commission (edition 2001), at 23. The European Union was established

is an evolving and inclusive process in the sense that all [candidate] countries are destined to join the E.U. on the basis of the same criteria. The main principles behind the accession negotiations are fourfold. Firstly, the negotiations focus specifically on the terms under which candidate countries adopt, implement and enforce the *acquis*.¹⁷⁸ Secondly, transitional agreements may be possible, but these must be limited in scope and duration and should not have a significant impact on competition or the functioning of the internal market. In addition, they should be accompanied by a plan with clearly defined stages for the application of the *acquis*. A third underlying principle in the negotiations is the concept of differentiation. The decision to enter into negotiations simultaneously with a group of countries does not imply that these negotiations will be concluded at the same time. The negotiations with the candidate countries are conducted individually; the pace of each negotiation depends on the degree of preparation by each candidate country and the complexity of the issues to be resolved.¹⁷⁹

The European Union currently consists of 25 member states. Ten new states joined the European Union in 2004 after the conclusion of their accession processes: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Four countries are current candidates: Turkey, Bulgaria, Croatia, and Romania. Bulgaria and Romania have begun accession negotiations and expect to join the European Union by 2007, whereas neither Turkey nor Croatia has a target date yet.

after World War II by six constituent countries (Belgium, Germany, France, Italy, Luxembourg, and the Netherlands) to create ‘the first concrete foundation of a European federation.’ After four waves of accessions (1973: Denmark, Ireland, and the U.K.; 1981: Greece; 1986: Spain and Portugal; 1995: Austria, Finland, and Sweden) and before the 2004 accessions, the European Union had fifteen members. *The European Union at a glance*, Europa website, http://www.europa.eu.int/abc/index_en.htm (visited Nov. 11, 2004). The Council of the European Union is the European Union’s main decision-making body, comprising representatives of the Member States who meet regularly at the ministerial level. It is the European Union’s legislative body, and it exercises legislative power in codecision with the European Parliament. It concludes, on behalf of the European Union, international agreements with states and international organizations. The European Commission initiates draft legislation and presents legislative proposals to the Parliament and the Council. Together with the European Court of Justice, it ensures that E.U. law is properly applied. It also represents the European Union on the international stage, negotiating international agreements, chiefly in the field of trade and cooperation. *Institutional Affairs of the European Union*, Europa website, http://www.europa.eu.int/pol/inst/index_en.htm (last visited Nov. 11, 2004).

¹⁷⁸ “The expression *acquis (acquis communautaire)* is used to describe the E.U.’s rules and policies. It comprises the entire body of European Community [European Union] legislation that has accumulated, and been revised, over the last 40 years. It includes the founding Treaty of Rome as revised by the Single Act and the Maastricht and Amsterdam Treaties; all the regulations and directives passed by the Council of Ministers; and the judgments of the European Court of Justice.” *Enlargement of the European Union, An Historic Opportunity*, “The Accession process from negotiation to ratification,” published by the European Commission (edition 2001) at 33 (hereinafter “Enlargement of the E.U.”).

¹⁷⁹ Enlargement of the E.U., see note 178, at 23.

In order to begin accession negotiations with the European Union, candidate countries must meet the “Copenhagen criteria,” decided upon at the 1993 Copenhagen European Council.

These criteria include:

- 1) stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;
- 2) the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union; and
- 3) the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.¹⁸⁰

The Copenhagen criteria do not enumerate more specific human rights or minority rights requirements for candidate countries. However, Article 6 of the Treaty of the European Union states, “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.” These principles were emphasized in the Charter of Fundamental Rights of the European Union, which was proclaimed by the European Council at Nice in December 2000.

During the accession process, the European Commission produces regular “Accession Partnerships,” reports evaluating the candidate country’s progress toward meeting the Copenhagen criteria and setting out goals for achieving full compliance with the criteria.¹⁸¹ In turn, candidate countries produce National Plans for the Adoption of the Acquis. Thus, the requirements for each candidate country are individually tailored.

¹⁸⁰ The European Council at Copenhagen on June 21-22, 1993, stated these conditions, which are set out in 26 E.C. Bull., no.6, at 13 (1993).

¹⁸¹ To date, the European Commission has written two Accession Partnerships for Turkey, the first in March 2001 and the second in May 2003. *See* European Union website, Enlargement: Relations with Turkey, at http://europa.eu.int/comm/enlargement/turkey/docs.htm#accession_partnerships, (last visited Nov. 16, 2004).

B. Turkey's Progress Toward Accession

At its 1999 meeting in Helsinki, the European Council confirmed that Turkey should be considered for accession to the European Union. The Council stated that Turkey was a candidate whose application would be judged on the basis of the same criteria as other candidate countries. The European Union adopted an Accession Partnership for Turkey in March 2001,¹⁸² which sets out in a single framework the steps Turkey must take to achieve E.U. membership, the financial means available to help Turkey implement these priorities, and the conditions that will apply to that assistance. Like other candidate states, Turkey benefits from a pre-accession strategy to stimulate and support its necessary reforms. According to the European Council decision on the Accession Partnership, E.U. pre-accession assistance is conditional on the fulfillment of essential conditions and, in particular, on progress toward fulfillment of the Copenhagen criteria.¹⁸³

In the 2001 Accession Partnership, the Council identified the following short- and medium-term priorities concerning human rights and freedom of religion (part of the Copenhagen political criteria) for Turkey:

Short-term priorities:

- Strengthen legal and constitutional guarantees of the right to freedom of association and peaceful assembly and encourage development of civil society.
- Strengthen opportunities for legal redress against all violations of human rights.
- Intensify training on human rights issues for law enforcement officials in mutual cooperation with individual countries and international organizations.

Medium-term priorities:

- Guarantee full enjoyment by all individuals, without discrimination as to language, race, color, sex, political opinion, philosophical belief or religion, of all human rights and fundamental freedoms. Further develop conditions for the enjoyment of freedom of thought, conscience and religion.

¹⁸² The Partnership was published as the Annex to the Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey (2001/235/EC) (hereinafter "Council Decision of 8 March 2001").

¹⁸³ Council Decision of 8 March 2001, *see* note 182.

- Review the Turkish Constitution and other relevant legislation with a view to guaranteeing rights and freedoms of all Turkish citizens as set forth in the European Convention on Human Rights; ensure the implementation of such legal reforms and conformity with practices in European Union Member States.
- Ensure cultural diversity and guarantee cultural rights for all citizens, regardless of their origin; abolish any legal provision preventing the enjoyment of these rights, including in the field of education.
- Ratify the International Covenant on Civil and Political Rights and its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights.¹⁸⁴

In the spring of 2001 in response to the Accession Partnership, the Turkish government adopted a National Plan for Accession. According to Human Rights Watch, the Accession Partnership document was “vague and omitted significant elements of reform needed to bring Turkey in line with European and international standards. The Turkish government’s National Plan for accession . . . exploited all the gaps in the E.U. document and attempted to bargain down the European Union’s human rights demands.”¹⁸⁵

In November 2001, the European Commission reported its evaluation of the readiness of each candidate country to assume the rights and obligations of E.U. membership.¹⁸⁶ In its Regular Report on Turkey, the Commission stated that E.U.-Turkey relations had gained further momentum and that Turkey now was fully involved in the pre-accession strategy on the same basis as all the candidate countries.¹⁸⁷ The Commission deemed the constitutional amendments “narrowing the grounds for introducing limitations to freedom of expression and communication, freedom of the press, and freedom of association,” adopted by the Turkish Parliament on October

¹⁸⁴ Council Decision of 8 March 2001, *see* note 182.

¹⁸⁵ Human Rights Watch Analysis of the 2001 Regular Report on Turkey (December 2001), 1.

¹⁸⁶ *Making a Success of Enlargement – Strategy Paper and Report of the European Commission on the Progress Towards Accession by Each of the Candidate Countries* (Brussels, 13.11.2001, COM(2001) 700 final) (hereinafter “Making a Success of Enlargement”).

¹⁸⁷ *Regular Report on Turkey’s Progress Towards Accession*, Brussels, 13.11.2001, SEC (2001), 1756, 8 (hereinafter “2001 E.U. Regular Report”). Enlargement of the E.U., *see* note 178, at 21.

3, 2001, a significant step toward guarantees in the field of human rights and fundamental freedoms.¹⁸⁸

The reforms related to economic, social and cultural rights contain a number of positive elements [relevant to the rights of the Greek Orthodox minority in Turkey]. The provisions forbidding the use of languages prohibited by law, in Articles 26 and 28, have now been abolished. This could pave the way for the use of languages other than Turkish.¹⁸⁹

The Commission reported signs of increased tolerance toward certain non-Muslim religious communities in 2000 and 2001. Charitable foundations run by religious minority groups such as the Ecumenical Patriarchate were no longer required to obtain official permission to carry out restoration of churches and other buildings. However, the Commission concluded that Christian churches continued to face difficulties, particularly with respect to ownership of property. The Commission also reported no progress in the case of the closure of the Halki Seminary. According to the Commission, the lack of recognition of the legal status of various churches still constrained the activities of the Patriarchate in several ways; those included denying ecclesiastic personnel outside Turkey access to the Ecumenical Patriarchate.¹⁹⁰

In November 2001, the Commission included the following conclusions in its Report:

Though it is beginning to make progress in some areas, Turkey does not yet meet the Copenhagen political criteria and is therefore encouraged to intensify and accelerate the process of reform to ensure that human rights and fundamental freedoms are fully protected in law and practice, for all citizens, throughout the country. . . .¹⁹¹

Despite these changes, a number of restrictions on the exercise of fundamental freedoms have remained. The extent to which individuals in Turkey will enjoy real improvement in the exercise of freedoms will depend on the details of implementing legislation, and the practical application of the law.¹⁹²

¹⁸⁸ Enlargement of the E.U., *see* note 178, at 13, 71.

¹⁸⁹ Enlargement of the E.U., *see* note 178, at 72.

¹⁹⁰ 2001 E.U. Regular Report, *see* note 187, 27 n.109.

¹⁹¹ Making a Success of Enlargement, *see* note 186, at 73.

¹⁹² Enlargement of the E.U., *see* note 178, at 72.

The Commission urged Turkey to make substantial improvements, not only in constitutional provisions and the laws concerning the protection of human rights, but, above all, in the practical implementation of human rights protections.

The Report noted that the Turkish Parliament was finalizing a package of draft legislation needed to implement the constitutional reforms. A reform package concerning foundation property, discussed previously, was passed on August 3, 2002. It includes a provision that permits non-Muslim religious foundations to own property. Applications for existing properties must be filed within eighteen months of the law's promulgation. Minority religious foundations established in Turkey can become members of foundations established abroad if such cooperation is "deemed useful" and approved by the Council of Ministers. It is still too early to tell what, if any, effect these provisions will have on the efforts of the Patriarchate to regain control of its expropriated property.

The 2003 Accession Partnership includes a section on Enhanced Political Dialogue and Political Criteria, which refers to the first Copenhagen criterion on human rights and rule of law. This section does not differentiate between short- and medium-term priorities, although priorities in other subject areas are divided into short- and medium-term. The Accession Partnership includes the following as priorities for Enhanced Political Dialogue and Political Criteria, 2003/2004:

- Ratify the International Covenant on Civil and Political Rights and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights. Ratify Protocol 6 of the European Convention on Human Rights. Comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including respect of the judgments of the European Court of Human Rights (section II of the Convention).
- Guarantee in law and in practice the full enjoyment of human rights and fundamental freedoms by all individuals without discrimination and irrespective of language, race, colour, sex, political opinion, religion or belief in line with relevant international and European instruments to which Turkey is a party.

- Pursue and implement reforms concerning freedom of association and peaceful assembly. Lift legal restrictions in line with the European Convention on Human Rights, in particular on both foreign and national associations, including trade unions (Articles 11, 17 and 18). Encourage the development of civil society.
- Adapt and implement provisions concerning the exercise of freedom of thought, conscience and religion by all individuals and religious communities in line with Article 9 of the European Convention on Human Rights.
- Establish conditions for the functioning of these communities, in line with the practice of E.U. Member States. This includes legal and judicial protection of the communities, their members and their assets, teaching, appointing and training of clergy, and the enjoyment of property rights in line with Protocol 1 of the European Convention on Human Rights.
- Ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin. Ensure effective access to radio/TV broadcasting and education in languages other than Turkish through implementation of existing measures and the removal of remaining restrictions that impede this access.¹⁹³

In June 2004, the European Council, meeting in Brussels, concluded that the May 2004 constitutional amendments and other “continued and sustained efforts of the Turkish Government to meet the Copenhagen political criteria” amounted to “significant progress.” However, the Council underscored the need for further work toward full implementation of the *acquis* in some areas, including “the exercise of fundamental freedoms (association, expression, and religion).”¹⁹⁴ The Council set December 17, 2004, as the date when it would make a recommendation on Turkey’s compliance with the Copenhagen criteria. A positive recommendation would open formal accession negotiations.¹⁹⁵

On October 6, 2004, the European Commission released its annual Regular Report on Turkey’s progress toward accession, the final report before the European Council’s December 2004 recommendation. Presenting the Report to the European Parliament, Romano Prodi, President of the European Commission, stated that the Commission found that Turkey had made

¹⁹³ Council Decision of 19 May 2003, 2003/398 EC, published in L 145/40 Official Journal of the European Union 12.6.2003, pp. 4-5.

¹⁹⁴ Council of the European Union, Presidency Conclusions: Brussels, 17 and 18 June 2004, 10679/2/04 Rev 2, para. 27-28.

¹⁹⁵ *Id.*, para. 29.

sufficient progress in compliance with the Copenhagen criteria and recommended opening accession negotiations with Turkey.¹⁹⁶ Prodi was clear, however, that the Commission's recommendation was a "qualified yes,"¹⁹⁷ and the report is critical of Turkey's limited progress on the fight against discrimination and on religious freedom. The Report summarizes the situation of non-Muslim religious minorities as follows:

[A]lthough freedom of religious belief is guaranteed in the Constitution and freedom to worship is largely unhampered, non-Muslim religious communities continue to encounter obstacles. They lack legal personality, face restricted property rights and interference in the management of their foundations, and are not allowed to train clergy.¹⁹⁸

As previously discussed, the Report notes that religious foundations "continue to be subject to the interference of the Directorate General for Foundations, which is able to dissolve the foundations, seize their properties, dismiss their trustees without a judicial decision and intervene in the management of their assets and accountancy."¹⁹⁹ Specifically with regard to the Greek Orthodox minority, the Report notes that the Halki Seminary has not been reopened, legal proceedings for the seizure of a Greek Orthodox orphanage on the island of Buyuklada have been initiated, public use of the title of Ecumenical Patriarch is still banned, and Christian clergy still have difficulties with visas and with residence and work permits.²⁰⁰ The Report makes clear that the European Commission is still not completely satisfied with Turkey's progress in the area of freedom of religious belief:

While *freedom of religious belief* is guaranteed in the Constitution, non-Muslim religious communities continue to experience serious problems, including difficulties connected with legal personality, property rights,

¹⁹⁶ Romano Prodi, "The Commissions Report and Recommendation on Turkey's application," Presentation to the European Parliament, Brussels, October 6, 2004. available at: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/04/440&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited Nov. 10, 2004).

¹⁹⁷ *Id.*

¹⁹⁸ 2004 E.U. Regular Report, *see* note 27.

¹⁹⁹ 2004 E.U. Regular Report, *see* note 27, at 43.

²⁰⁰ 2004 E.U. Regular Report, *see* note 27, at 44.

training of clergy, schools and internal management, which could be remedied through the adoption of appropriate legislation.²⁰¹

The Report also recognizes Turkey's ratification of the ICCPR and the ICESCR, but notes:

The measures adopted in the area of cultural rights represent only a starting point as considerable restrictions remain. In this regard, Turkey's reservations to UN human rights covenants on the right to education and protection of minorities are of concern.²⁰²

On December 17, 2004, the European Council announced that the European Union would open formal accession negotiations with Turkey on October 3, 2005, implicitly acknowledging Turkey's fulfillment of the Copenhagen criteria. While the European Council welcomed Turkey's progress on reform, it also stated, "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."²⁰³ Moreover, the Council stated that the Commission can recommend the suspension of negotiations "in the case of a serious and persistent breach . . . of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law."²⁰⁴

C. Prospects for the Accession Process Improving Turkey's Human Rights Record

Turkey's efforts to comply with the Copenhagen criteria launched important reforms in human rights and the rule of law. The first years of Turkey's candidacy (1999-2001) did not result in significant strides toward greater human rights protection. Initially, watchdog groups such as Human Rights Watch were fairly pessimistic about meaningful reform coming out of the

²⁰¹ 2004 E.U. Regular Report, *see* note 27, at 175.

²⁰² 2004 E.U. Regular Report, *see* note 27, at 175.

²⁰³ Council of the European Union, Brussels European Council Presidency Conclusions, December 17, 2004, para. 18, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf.

²⁰⁴ *Id.*, at para. 23.

accession process,²⁰⁵ but there is reason to believe that Turkey's desire to join the European Union has begun to drive its human rights policies towards reform. In October 2004, prior to the release of the European Commission's 2004 Regular Report, Human Rights Watch wrote:

By 2004 the situation has improved markedly, but there remain areas of serious concern Since 1999 the promise of E.U. membership has supported a dynamic process of reform. Progress has been halting, and occasionally disappointing, but when there has been movement, it has been consistently in the direction of improvement.²⁰⁶

In the same briefing paper, Human Rights Watch described several areas of human rights protection that still require improvement, including freedom of association, freedom of religion, and minority rights.

Now that Turkey has secured a commitment to open formal accession negotiations in October 2005, there is concern that the pace of reform may slow dramatically. Commissioner Prodi was clear in October 2004 that the Commission's recommendation was a "qualified yes," and on December 17, 2004, the European Council announced continuing close monitoring of Turkey's implementation of and compliance with human rights law. Because Turkey has not yet made all of the necessary reforms to bring protection of religious minorities in line with international standards, advocates must continue to be vigilant throughout the accession negotiations.

That said, since becoming a candidate for E.U. accession, Turkey has signed and ratified three major international human rights treaties: the ICCPR, ICESCR, and the CRC, all of which bind Turkey to human rights obligations, including protection of religious minorities. It also

²⁰⁵ "Unfortunately, the 2001 report records little more than superficial signs of reform on these issues." Human Rights Watch Analysis of the 2001 Regular Report on Turkey (December 2001), 1. "In the two years since Turkey became an official candidate for E.U. membership, we have seen little but superficial and half-way measures. . . ." *Turkey: Violations block road to the E.U.*, HRW new release, Dec. 14, 2001.

²⁰⁶ Human Rights Watch, "Advisory Note to Journalists Covering the Release of Regular Report on Turkey and its Recommendations," October 4, 2004. Available at <http://hrw.org/english/docs/2004/10/04/turkey9433.htm> (last visited Nov. 9, 2004).

signed several Optional Protocols: the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, the Optional Protocol to the CRC on the involvement of children in armed conflict, and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (all on September 8, 2000), and the First Optional Protocol to the ICCPR (in August 2004).²⁰⁷ The 2003 changes to the Law on Foundations are important steps toward allowing civil society to operate freely. The constitutional reforms of October 2001 were a positive development, as were the reforms of February 2002, although implementing legislation must still be enacted. In August 2002, the Turkish Parliament approved a package of rights reforms widely reported to be “aimed at increasing its chances of joining the European Union. . . . The package lifts certain restrictions on people’s right to associate and form civic organizations, and it . . . allows non-Muslim minority communities such as Greeks, Armenians and Jews greater rights over religious property like churches and synagogues.”²⁰⁸ Still, the European Union’s reaction to the reforms has been cautious; the Commission has “already asked for clarification on several points including the rights of religious minorities.”²⁰⁹

A Greek member of the European Parliament, Stavros Xarchakos, has posed several written questions to the European Council regarding the situation of the Ecumenical Patriarchate in Turkey. He asked whether the Council, in considering Turkey as a candidate for accession, had raised the issue of respect for cultural diversity and religious freedom. Mr. Xarchakos

²⁰⁷ Status of Ratification of the Principal International Human Rights Treaties, as of June 9, 2004, Office of the UN High Commissioner for Human Rights, available at www.unhcr.ch/pdf/report.pdf (last visited Nov. 11, 2004).

²⁰⁸ “Turkish Parliament, Looking to Europe, Passes Reforms,” *New York Times*, Aug. 4, 2002, p. 12.

²⁰⁹ “Turkey Faces E.U. Membership Hurdles,” *Associated Press*, Aug. 5, 2002. Available at <http://www.siliconvalley.com/mld/bayarea/3803950.htm>. “‘The principle is great. Now we have to see the implementation in everyday life,’ said E.U. Commission spokesman Jean-Christophe Filori.”

specifically mentioned what he considered the unilateral and arbitrary closing of the Halki Seminary for more than 30 years.²¹⁰

In its November 2001 reply to Mr. Xarchakos, the Council underscored the medium-term Copenhagen priorities on religious freedom and cultural diversity. According to the Council, it is self-evident that the right to freedom of religion applies to all minorities living in Turkey and that the right should be fully respected in practice. The Council views the situation of the Halki Seminary in this context and indicated that, until the school is reopened, the Copenhagen criteria will not be fulfilled. The Council also stated that Turkey will have to fully enforce human rights protection. It concluded that the implementation of the Accession Partnership will be closely monitored through the competent Council bodies to which the Commission reports regularly.²¹¹

Mr. Xarchakos also asserted that Turkey has, in fact, expropriated part of the Patriarchate's property.²¹² The Council answered in December 2001 that the European Union clearly and repeatedly communicates to Turkey that it is expected to comply with all human rights obligations. The Council also stated that the priorities set out in the Accession Partnership include the guarantee and implementation of the rights and freedoms set forth in the European Convention on Human Rights.²¹³

²¹⁰ *Official Journal of the European Communities*, Vol. 45, April 4 2002, European Parliament – Written questions and answers, C81 E/16-17. Written Question E-1267/01 by Stavros Xarchakos (PPE-DE) to the Council (April 27, 2001).

²¹¹ Reply to Written Question E-1267/01 by Stavros Xarchakos (Nov. 20, 2001).

²¹² *Official Journal of the European Communities*, Vol. 45, April 4 2002, European Parliament – Written questions and answers, C81 E/117-118. Written Question E-2151/01 by Stavros Xarchakos (PPE-DE) to the Council (July 20, 2001).

²¹³ Reply to Written Question E-2151/01 by Stavros Xarchakos (December 6, 2001).

V. CONCLUSION

The Ecumenical Patriarchate seeks redress and remedies for the continuing violations of the rights of the Christian Orthodox community and the Patriarchate itself in Turkey. These violations include, but are not limited to:

- the closing of its educational institutions, particularly the Halki Seminary, and restrictions on religious education;
- the inability of the Patriarchate to minister to all Orthodox Christians in Turkey and within its jurisdiction abroad;
- restrictions placed on the succession of the Patriarch and on the nationality of those who may serve on the synod;
- expropriation of and restrictions on property of the Ecumenical Patriarchate and members of the Orthodox community;
- restrictions on the right to control its religious and charitable organizations and institutions; and
- the failure of the government to protect the Patriarch, Patriarchate property, and the property of the Greek Orthodox community from threats, vandalism, and other criminal acts.

The Turkish government asserts that it is a secular state with a majority Muslim population. As such, it states that it must carefully control the activities of religious organizations and individuals in the public sphere, and it points to the Lausanne Treaty as establishing the only exception in Turkish law that distinctly recognizes a minority. The government's treatment of the Orthodox minority and the Patriarchate has violated the letter and the spirit of the Lausanne Treaty. The Orthodox Christian community in general and the Ecumenical Patriarchate as its representative also have a distinct claim against the state based on discrimination. Although the Turkish government claims to treat all religions equally before the law, non-Muslims are, in fact, subject to far greater restrictions and discrimination than are Muslims.

Turkey's treatment of non-Muslim religious minorities is in violation of the rights to be free of discrimination, to freedom of association and of religion, to education, and to peaceful enjoyment of possessions. These rights are protected in treaties such as the ICCPR, ICESCR, ECHR, and CERD. Although Turkey has ratified these and other international treaties in accordance with the Copenhagen criteria, it has maintained reservations to many of the key provisions affecting the rights of religious minorities. Perhaps due to the number and the magnitude of legal and human rights reforms Turkey has undertaken since 1999 as an E.U. candidate country, the protection of non-Muslim religious minorities has not emerged as a major focus of E.U. or international attention. Nevertheless, international bodies, the European Commission, the U.S. State Department, and the international human rights community continue to find violations of international human rights law in Turkey's treatment of the Greek Orthodox minority. Turkey's recent legal reforms and treaty ratifications are welcome, but the continued violation of the rights of its Orthodox and other religious minorities require a renewed international commitment to monitor the human rights situation and to press Turkey to fulfill its obligations.