

MINORITY RIGHTS REGIME IN TURKEY AND THE EUROPEAN REGIONAL
ORGANIZATIONS

The Institute of Economics and Social Sciences
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Bilkent University

by

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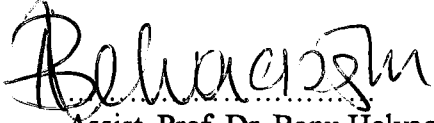
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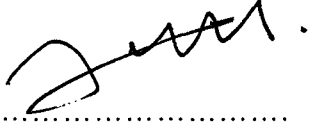
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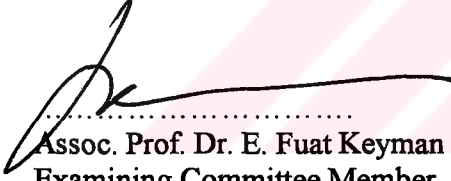
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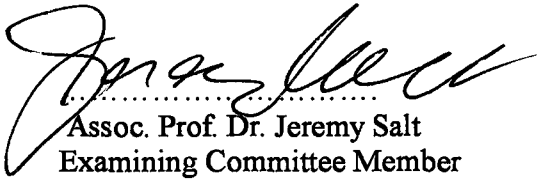
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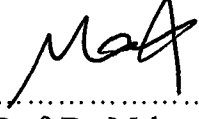
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ABSTRACT

MINORITY RIGHTS REGIME IN TURKEY AND THE EUROPEAN-REGIONAL ORGANIZATIONS

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This thesis examines the framework of minority rights in the context of Turkey and the European-regional organizations focusing on the ways of accommodating two interrelated dimensions of minority conditions: citizenship equality and ethno-cultural particularity. Due to fact that ideological discourse and practices of nation-state system have often conflated “citizenship” (state-membership) and “nationality” (ethno-cultural membership), the possibility of developing genuine equality in ethno-culturally diverse circumstances has depended on the capacity to create a true reconciliation between citizenship equality and ethno-cultural particularity. This thesis affirmed that norms, principles, practices and instruments adopted in the European-regional organizations have largely reconciled citizenship equality and ethno-cultural diversity. The two concepts, however, have often excluded each other in the Turkish context where the principle of equality has usually been conflated with national uniformity while ethno-cultural diversity has frequently been associated with practices of inegalitarian treatment. It is only under the influence of EU integration that legal-political framework and practices of Turkish regime began to take substantive steps in the direction of reconciling citizenship equality with ethno-cultural, religious and linguistic particularities.

Keywords: Minority, Minority Rights, Citizenship, Equality, Diversity.

ÖZET

TÜRKİYE VE AVRUPA BÖLGESEL KURUMLARINDA AZINLIK HAKLARI REJİMİ

B. Ali Soner

Siyaset Bilimi ve Kamu Yönetimi Bölümü

Tez Yöneticileri: Banu Helvacıoğlu ve Ahmet İçduygu

Bu tez, etnik-kültürel farklılıkların eşit vatandaşlık ilkesi temelinde korunması koşulları üzerinde yoğunlaşarak, Türkiye ve Avrupa bölgesel kurumlarında azınlık hakları çerçevesinin genel görünümünü çıkarmayı amaçlamıştır. Modern dönemin egemen siyasi kurumu olan milli-devlet, ideolojik söylemi ve pratiği içinde, “vatandaşlık” (siyasi-hukuki mensubiyet) ile “milliyet” (etnik-kültürel mensubiyet) arasındaki ayrımı aşındırdığından, vatandaşlık kavramında saklı olan eşitlik ilkesi etnik-kültürel farklılıkları dışlamıştır. Oysa, etnik ve kültürel farklılıklar gösteren toplumsal ortamlarda gerçek eşitlik, eşit vatandaşlık adına kültürel farklılıkların dışlanmadığı bir zeminde sağlanabilmektedir. Bu gerçeğe hareketle, azınlık hakları alanındaki çabalar, “eşitlik” ve “farklılık” kavramlarını aynı siyasi-yasal çerçeve içinde bağdaştırmaya çalışmıştır. Bu tez göstermektedir ki Avrupa bölgesel kurumlarında benimsenen değerler, ilkeler ve pratikler, birey-odaklı tanımlanan eşit vatandaşlık hakları ile grup-odaklı şekillenen kültürel farklılıkları önemli ölçüde bağdaştırabilmiştir. Türkiye’de ise bu iki boyut birbirini sık sık dışlamış, eşit vatandaşlık ile ulusal türdeşlik aynı algılanmış ve etnik-kültürel farklılık eşit olmayan bir muamelenin temelini oluşturagelmıştır. Bu geleneksel yapı, Avrupa Birliği ile bütünleşme sürecinin etkisi altında kabul edilen uyum yasaları ile kırılmış, ülkedeki siyasi-hukuki çerçeve ve pratikler, etnik, kültürel, dinsel ve dilsel farklılıkları koruma ve geliştirme imkanlarını, vatandaş eşitliği ilkesini dışlamadan, tanımaya başlamıştır.

Anahtar Kelimeler: Azınlık, Azınlık Hakları, Vatandaşlık, Eşitlik, Farklılık.

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ABBREVIATIONS

ARMHC: Anadolu ve Rumeli Müdafa-i Hukuk Cemiyeti (Defense for Rights Society of Anatolia and Thrace)

AT: Ayın Tarihi (History of the Month)

BTDD: Belgelerle Türk Tarihi Dergisi (Documentary Journal of Turkish History)

CCPR: UN Covenant on Civil and Political Rights

CD: Copenhagen Document

CEC: Commission of the European Communities

CoE: Council of Europe

CUP: Committee of Union and Progress

ECMI: European Center of Minority Issues

EU: European Union

FC: Framework Convention for the Protection of National Minorities

HRW: Human Rights Watch

İHD: İnsan Hakları Derneği (Human Rights Association)

OSCE: Organization for Security and Cooperation in Europe

RG: Resmi Gazete (Official Gazette)

TBMM: Türkiye Büyük Millet Meclisi (Turkish Grand National Assembly)

TTK: Türk Tarih Kurumu (Turkish Historical Society)

UN: United Nations

INTRODUCTION

There has not yet appeared an internationally working definition of the concept of minority. The term, however, has generally been associated with those sections of national citizens who manifested, among others, ethno-cultural, linguistic and religious distinctions as compared to those citizens who belong to the mainstream identity category of a country's population. From this point of view, minority peoples have categorically indicated "different citizens" of a national population whose legal-political and social position, in modern conditions, has been based upon two constitutive sources: universal equality of state-membership (citizenship) and group-specific particularities of ethno-cultural membership.

The discourse and practice of citizenship has been projected upon the similarities of peoples. The concept has generally neglected particularity and difference and given everyone the same status in the public realm in which rules and law were formulated blind and exercised in an indifferent manner with regard to peoples' ethno-cultural, religious and linguistic circumstances (Young, 1994). Grounded in the legal and political spheres of action, citizenship was never conceptually tied to national identity (Habermas, 1994: 23). Yet, the two concepts have usually been conflated in the modern state practices. One came to imply the other (Oommen, 1997a: 15-19). Owing to this fact, the principle of citizenship equality has usually lost its ethno-cultural neutrality in practice and molded as an instrument of national uniformity (Kymlicka and Norman, 2000).

Although egalitarian premises of citizenship status have become the *sine qua non* condition of state-membership in the modern world, the universalist-individualist framework of formal equality has proved insufficient to guarantee achievement of genuine equality, particularly, in those social conditions where population displayed ethno-cultural, linguistic

and religious diversity. Peoples have dissimilar as well as similar characteristics. Because of this, on the part of “different citizens”, treating essentially different groups on the same footing as the majority has equally tended to violate the principle of equality so long as it operated in the form of uniformity. In its broader interpretation, apart from equal treatment, the full-fledged scope of citizenship equality has required measures of differential treatment pertinent to the protection and promotion of ethno-cultural distinctions (Parekh, 2000: 239-263).

Thus, the mere implementation of citizenship equality has tended to level off minority differences in favor of cultural and linguistic characteristics of a majority group. Similarly, group-specific treatment, in the absence of citizenship equality, has usually culminated in the emergence of discrimination, persecution or even oppression on the part of minority peoples (Oommen, 1997a). This thesis argues that the possibility of developing genuine equality between minority and majority sections of population depends upon the capacity to create a working balance between citizenship universality and ethno-cultural particularity. Bearing this fact in mind, this thesis aims at exploring how and to what extent the two notions of citizenship equality and ethno-cultural particularity were accommodated in Turkey and the three major European-regional organizations: the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), and the European Union (EU). In order to achieve this aim, from an historical, political and legal perspective, it focuses mainly on legal-political formulations and policy practices adopted in both contexts.

The thesis suggests that there has existed a traditional divergence between legal-political formulations and practices of the European-regional and Turkish regimes¹ in accommodating two-fold circumstances of minority peoples. This thesis argues that, from the inception of the modern state system, bilateral and multilateral endeavors in the European

¹ In this study, the notion of “regime” is used in a loose way to denote distinct framework of rights and practices adopted in accommodating minority issues in a specific time period and in the context of national and international organizations.

context have sought to create a true reconciliation between citizenship equality and the group-specific particularities. In arguing this, the thesis draws attention to a set of norms, values, principles and instruments developed by the European regional organizations for the protection and promotion of ethno-cultural, religious and linguistic distinctions in an egalitarian framework of citizenship status.

A wide range of studies, conducted on its conceptual, historical, legal, political, social and institutional dimensions, has examined the issue of minority rights in the European-regional context. At the conceptual level, the focus has centered chiefly upon the legal-political implications of the concept of minority on the way of identifying potential bearers of group-specific rights. The attention has been drawn to the fact that although no universally admitted definition has yet been reached on the concept, international law documents have accounted for a number of constitutive criteria, including ethnic, religious, linguistic and cultural distinctions, through which subjects of minority rights would be defined (Ramaga, 1992a; Ramaga, 1992b; Girasoli, 1995, Parker, 1993).

Legal-political analyses, on the other hand, concerned standard-setting acts of the OSCE, CoE and the EU organs as well as the League of Nations and the UN. Drawing attention to the gradual standardization of the minority rights issues in the region, the studies in this category illustrated the development of a regional regime, that is, the framework of norms, rules, principles and instruments of implementation, in the field of minority protection (Benoit-Rohmer, 1996; Cumber and Wheatley, 1999; Bloed and van Dijk, 1991; Neuwahl and Rosas, 1995; Gilbert, 1996; Hillgruber and Jestaedt, 1994; Cuthbertson and Leibowitz, 1993; Parker and Myntti, 1993; Miall, 1994; Pentassuglia, 2001; Preece, 1997; Wright, 1996). This was coupled with several students of international law who have put emphasis on the global dimension of minority issues and addressed the emergence and prevailing scope of minority

rights and freedoms on a universal scale (Macartney, 1968; Akermark, 1996; Capotorti, 1991; Crawford, 1992; Brolman, Lefeber and Zieck, 1993; Smith, 1991, Thornberry, 1991).

It is upon this conceptual and legal-political ground that minority issues, on the one hand, have been assimilated into general scope of human rights protection. Here is where group-specific aspects of minority issues have been disregarded in favor of a universalist-individualist understanding of human rights protection (Donnelly, 1989; Whitaker, 1984; Rosas and Hegelsen, 1992; Jones, 1994; Mullerson, 1997). Following legal-political developments in the field, several advocates of modern political thought insisted, on the other hand, that minority issues has retained a two-dimensional form which contained both universalist-individualist and group-specific aspects. It is at this point that several studies have promoted reconciliation of citizenship universality with ethno-cultural particularities of minority groups (Kymlicka, 1995; Kymlicka and Norman, 2000; Schnapper, 1998; Oommen, 1997; Brubaker, 1992; Hannum, 1990; Hannum, 1999).

In the Turkish context, this thesis draws attention to a deadlock which has inhibited the emergence of a stable reconciliation between two notions of citizenship equality and legal-political accommodation of ethno-cultural distinctions. In comparison with the European-regional case, inclusion/exclusion practices of the Turkish minority rights regime have largely proved the fact that the two foundational dimensions have often excluded each other. Rooted in the traditional practices, socio-political and legal formulations, the Turkish citizenship policies have established a close linkage between citizenship and national identity and developed a Muslim-inclusive and non-Muslim-exclusive practice. The full-fledged scope of citizenship equality has usually been confined to the national citizens, that is, borrowing from Anderson (1991), the “imagined community” of Turkish-Muslim peoples. On the name of unity, the principle of citizenship equality, however, has neglected their ethno-cultural particularities. The non-Muslim citizens, by contrast, have been conferred positive measures

of differential treatment with regard to their ethno-cultural circumstances. Depending upon their national “otherness”, they have often been denied the universal implications of citizenship equality.

Concerning the Turkish case, the overwhelming part of the studies has chiefly concentrated upon case-specific, group-specific and historical analysis. Unlike the conceptual broadness of the European-regional context, the former has generally constituted minority issues around religious distinctions and associated it with the traditional condition of non-Muslim minorities. Here is where the focus has become either on the formulations and practices of the Ottoman millet system and/or treacherous aspirations and activities of non-Muslim minorities (Davison, 1954; İnalcık, 1998; Karpas, 1986; Sonyel, 1993; Eryılmaz, 1990; Eryılmaz, 1992; Bozkurt, 1996a; Lewis and Braude, 1982; McCarthy, 1983). It is upon this limited form of conceptualization that elaborating on specific cases or particular groups, many studies have been undertaken on the ramifications of Ottoman and Republican policies and practices adopted in the treatment of minority peoples (Aktar, 2000; Alexandris, 1992; Arı, 2000; Bali, 2000; Demir and Akar, 1999; Akar, 2000; Akçam, 1995; Galanti, 1995; Gülsoy, 2000, Levi, 1998; Ökte, 1987, Özyılmaz, 2000).

This being the case, there has not yet been any comprehensive study on the Turkish minority rights regime which examines its foundational practices in the context of universal and regional developments in terms of both conceptualizing the concept of minority and legal-political standards of minority treatment. Considering the increasing influence of the European-regional standards on the Turkish regime, it is important today, first, to display the roots and contemporary framework of the norms, principles and practices developed in the European-regional organizations. In order to disclose the underlying logic and general scope of the Turkish minority rights regime, second, historical development and current position of minority issues in the Turkish context is to be investigated. However, Turkish studies on the

issue of minority rights have rarely gone beyond documentary works having little, if any, implication with regard to the general framework of the Turkish minority rights regime (Çavuşoğlu, 1999; Oran, 2001). Most significantly, the issue of minority rights has rarely been situated at the inclusion/exclusion practices of Turkish citizenship policies. Whenever citizenship practices was related to minority circumstances, the concern again remained at the level of group-specific or case-specific analysis (Ekinici, 1997; Ekinici, 2001).

Bearing shortcomings of the previous studies in mind, this thesis follows the reconciliatory approaches promoted in the western liberal tradition. For doing this, it aims, first, at filling the gap that has existed between case-specific/group-specific analysis and the regional framework of the question that would give a general picture of the question, internally in the country, and externally in the regional organizations with which Turkish state has established close links from their inception. In relation to this, the second objective is to delineate contextual dimension of minority issues with respect to the emergence of both European-regional and Turkish regime. The thesis, in this context, suggests that none of the minority rights regimes rested upon a static ground but instead evolved in a dynamic process of production and reproduction with regard to rules, norms, principles and practices of minority-related policies. It is argued that political, ideological, social or demographic changes in the circumstances of peoples have resulted in the emergence of parallel changes in the constitutive parameters of minority issues. Here, historical development of the European-regional regime displays contextual transformations in the norms, practices and instruments in the field of minority protection.

Taking into account the fact that the Ottoman legacy has constrained both the legal scope and policy practices of the Turkish minority rights regime, we will point out historical roots of today's standards and practices. At this point, the objective of the study will be on the major policy areas that drifted the Turkish regime from the general principles of the

European-regional organizations. Having disclosed constitutive parameters of minority circumstances, that is citizenship universality and ethno-cultural particularity, we will examine whether there is a possibility on the part of the Turkish regime to reconcile citizenship and minority particularities in both its legal-political setting and policy practices.

Due to fact that the European standards of minority rights have challenged traditional framework of the Turkish regime, particularly in the new order of the post-Cold War period, the elaboration of the question in the context of both Turkey and the European-regional organizations is expected to give prospective and policy-oriented outcomes. Taking into account the significance of the minority issues in the enlargement process of the EU, we are still in the process of examining the extent to which the Turkish regime would undertake progressive steps in the direction of meeting contemporary European standards. To this end, the thesis indicates how the Turkish state has retained its traditional regime up until the late 1990s and why the Turkish regime now entered under an increasing pressure of transformation.

This thesis follows basically a qualitative research method based upon the content analysis of legal-political documents. For both European-regional and Turkish contexts, official documents (decrees, rules, laws, regulations, statutes, charters, resolutions, reports or declarations) are used as primary sources in assessing foundational networks of both European-regional and the Turkish minority rights regime. For the former, major documents include extracts of the Treaty of Westphalia (1648); *minorities treaties* of the League of Nations (1919-20); the UN Charter (1946), the UN Universal Declaration of Human Rights (1948) and the UN Covenant on Civil and Political Rights (1966); the OSCE Helsinki Final Act (1976) and the OSCE Copenhagen Document (1990); and the CoE Universal Declaration of Human Rights and Fundamental Freedoms (1950), and the Framework Convention for the Protection of National Minorities (1994). Concerning the Turkish case, the thesis relies on the

Imperial Rescript of Gulhane (1839), the Reform Edict (1856), the First Ottoman Constitution (1876), the Republican Constitutions (1924, 1961, 1982) and a set of legislative acts which includes the law on capital tax, the settlement law, law on broadcasting and language education, and the EU reforms. Secondary sources of the study will cover the review of the second-hand data including books, journal articles and conference papers. Secondary sources, concerning historical, political and social aspects of the question, are used in assessing historical dimension and contemporary formulations and practices of the two minority rights regimes. In shaping our ideas on the practices of Turkish minority rights regime, a limited number of interviews were also conducted.

The thesis is divided into seven chapters which cover two main parts, that is, the European-regional and the Turkish contexts. In order to better delineate contemporary framework of the two regimes, preliminary chapters in both parts undertakes historical evolution of today's standards. However, before doing this, chapter I gives an account of major parameters of minority issues, including the definition of the concept of minority; the scope of the rights of minorities; the form of rights and freedoms - whether collective or individual - and implications of the issue of minority rights on the area of state sovereignty. It is argued that as socio-political, legal and diplomatic circumstances changed, a parallel transformation has grown up in the meaning and scope of the norms, rules, standards and the instruments employed in the field of minority rights.

The chapter II examines the emergence of modern state system and minority questions. It suggests that in the absence of modern ruling mechanisms and ideological incentives, though in an inegalitarian order of legal-political stratification, the European *ancian regime* permitted persistence of ethno-cultural and linguistic diversity. The emergence of modern state system, depended largely upon consolidated structures of nation-states, coincided with egalitarian conceptualization of legal, political and social spheres. However,

due to fact that modern political thought and state practices have often conflated those essentially distinct notions of nation, state, nationality and citizenship, legal egalitarianism has proceeded at the expense of minorities' ethno-cultural, linguistic and religious particularities. Bearing this fact in mind, the chapter argues that minority concerns denied both inegalitarianism of the *ancien regime* and abstract universalism of the modern age. The issue of minority rights, instead, has sought to create reconciliation between the universalist-egalitarian aspects of the citizenship status and group-specific dimensions of ethno-cultural differences.

Having given the fact that minority concerns necessitated different accommodation of ethno-cultural distinctions, chapter III sets down national and international precedents to the contemporary norms and instruments in the field of minority rights. Starting from the Treaty of Westphalia, the chapter exhibits historical evolution of the major parameters on minority treatment that progressed in the European context in the direction of creating a true reconciliation between citizenship equality and distinct treatment of ethno-cultural peculiarities. This historical evolution contains three main stages: religiously colored framework of the post-Westphalian system, geographically limited regime of the *minorities treaties* -the context of the League of Nations- and the individualist-universalist scope of the UN regime of the Cold War years.

Chapter IV explains the emergence and the framework of the post-Cold War European regime of minority rights as it relates to two dimensions of citizenship equality and group-specific treatment. The first concern here deals with political incentives that have led the European region to develop a new network of rights, freedoms and instruments pertinent to the protection and promotion of minority circumstances. Starting from the Cold-War approaches, the chapter displays the development of new standards in the major regional organizations in Europe. It is in this context that major parameters of the new regime, those of

the minority definition, minority rights, national sovereignty, territorial integrity, principles of equality and non-discrimination, are examined. It is suggested that the new context of minority protection added an ethno-cultural dimension to the notion of universal human rights protection. This chapter concludes that the post-Cold War standards of the OSCE, CoE and the EU largely reconciled group-specific aspects of minority distinctions with universal scope of citizenship equality.

After the historical unfolding and contemporary framework of the European minority rights regime were laid down, the chapter V examines the legacy of the Turkish *ancien regime* which is based on the legal-political framework and practices of the Ottoman administration. Having been aware of the fact that the Turkish regime inherited many aspects from the past and adopted them to the modern forms of minority treatment, this chapter, first, reviews the main characteristics of religious diversity embedded in the traditional scope of the Ottoman millet system. In this context, legal, political and social implications of the millet system are analyzed as it relates to the issue of protecting the “other” population categories. Second, this chapter focuses on the modern transformation of the millet system that proceeded under the impacts of the nineteenth century modernization projects. The main argument is that although Ottoman administration took a number of legal-political and administrative steps in the direction of reconciling ethno-cultural diversity with a universal formula of citizenship equality, the Ottoman egalitarianism failed due to nationalist aspirations of minority groups.

Chapter VI suggests that having learned much from the failures of the Ottoman administration, the nationalist leaders, from the advent of the Liberation War, renounced pluralist projects of ethno-cultural diversity. Following religious lines of millet demarcations, the founding leaders situated the Muslim adherence in the core of the “imagined nation” of the new regime while consolidating the “other” position of the non-Muslim minorities. The objective of this chapter is to delineate the inclusion-exclusion practices shaped by religious

traits of citizens. After examining the final configuration of the majority/minority categories of the Republican population, this chapter sets forth legal-political and social framework of the modern Turkish minority rights regime incorporated in the political clauses of the Lausanne Treaty. The main argument at this stage is that the Lausanne Treaty integrated the Turkish regime into European context in terms of rights and freedoms accorded to the minority sections of the population. It is also argued that under the far-reaching impacts of the traditional practices, the scope of the Turkish regime largely drifted from its contemporaries in Europe in terms of minority/majority categorization.

Although the Lausanne regime adopted a substantive scope in the sense of reconciling citizenship universality and ethno-cultural diversity, at least for the non-Muslim sections of the population, chapter VII points out that the Turkish practices have been caught in a duality of equality and diversity. In conformity with the majority/minority classification, the Turkish minority rights regime has adopted, on the one hand, a Muslim-inclusive policy in which the principle of citizenship equality has been equated with ethno-cultural uniformity. The legal-political, educational, cultural or administrative policies of the Republican state have denied official accommodation of Turkish-Muslim distinctions. Having conflated the full-fledged scope of citizenship equality with Turkish-Muslim nationality, the same regime, on the other hand, provided non-Muslim citizens with measures of different treatment. However, due to fact that they have remained outside the mainstream identity category of the Republican nation, the latter group of citizens has often been subjected to inegalitarian treatment. The chapter shows that it is only under the pressure of increasing identity claims posed by minorities and enforced by the EU integration process that the Turkish minority rights regime, parallel to the post-Cold War European-regional standards, has begun to develop a conciliatory framework between citizenship equality and ethno-cultural diversity.

CHAPTER I

CONCEPTUAL FRAMEWORK

1.1 Introduction

It is hardly possible to talk about compact regimes in the treatment of minority distinctions. National and international standards and practices relating to the issue of minority protection have underlined a general framework of norms, practices and instruments for a given time and space. It is this general framework that has introduced several parameters, formulation and practices which have marked essential distinctions between different regimes. This chapter aims to clarify implications and the scope of concepts and parameters contained in the field of minority rights. It first examines conceptual and legal-political definitions of minorities. In order to indicate the fact that the question of minority rights has exclusively been associated with the condition of minorities, the second concern of this chapter is on differentiating the concept of “minority” from that of the “peoples”. It outlines the potential beneficiaries of minority rights and lists major categories of rights that have been incorporated and implemented in relation to the issue of minority protection. Given the fact that formulation of minority rights and freedoms have projected different relations between majority and minorities, and between minority groups and their individual members, this chapter then delineates legal-political and moral implications of different categories of minority rights. Lastly, it elaborates on an inherently controversial issue of state sovereignty as it relates to accommodating minority distinctions in the legal-political setting of national-states. In this context, it is suggested that although the issue of minority rights has challenged

internal and external implications of state sovereignty, the prevailing transformation in the concept of sovereignty came to reconcile itself with internal and external aspects of minority rights.

1.2 The Question of Definition

The dictionary of the Turkish Language Association (TDK, 1998: 184) defines the concept of minority as “a group of peoples which differs in many respects from and counts less than the rest of the population”. In this general usage, the concept of minority covers a number of socio-political, legal and economic groupings including feminists, gays, homeless peoples, political Islamists, communists provided that they remain a minority as compared to the rest of the population. Aware of its generality, the Turkish dictionary further indicates that the concept of minority refers to “a population group which belongs to a different ethno-racial origin with regard to the sovereign nationality, and is numerically lesser than the rest”. In a similar manner, another Turkish dictionary (Püsküllüoğlu, 1994: 120) specifies the concept with “a group of citizens who share specific racial, religious and linguistic characteristics distinct from the dominant nationality of the country”. Thus, apart from religious and linguistic distinctions, the definition implied that in order to have minority status, a group must have accomplished legal-political standards of citizenship as well. In parallel to this Turkish usage, the Dictionary of International Human Rights (Gibson, 1996: 183) spells out that “a minority is a collectivity of people in a state sharing a common characteristic, usually one of nationality, religion, ethnicity, language or other identifiable property”.

Thus, as concerned its literary meaning, the conceptual framework of the term seemed to be more or less clear. However, the UN Secretary-General agreed in 1950, “the term ‘minority’ can not for practical purposes be defined simply by interpreting the word in its literal sense. If this were the case, nearly all the communities existing within a state would be styled minorities, including (among others) families, social classes, cultural groups, speakers of dialects” (Capotorti, 1991: 6). Apart from literary meaning, the term has indeed retained legal-political implications as well. Because of this, when the term “minority” is received within a legal-political context, its scope has been elaborated in a restrictive manner in terms of legal inclusiveness or larger area of discretion on the identification of minority peoples has been left to the political arbitration of state actors. The issue of minority protection, therefore, has traditionally put the cart before the horse in stipulating rights without defining the subjects of these rights (Parker, 1993: 50).

Beyond doubt, if minority issues are to be treated rationally, the subject of rights and obligations contained in the legal-political documents should be made transparent. Otherwise, there will appear an ambiguity on the bearers of rights that would render its implementation ineffective and arbitrary at the hands of national and international actors (Parker, 1993). However, taking into account legal-political implications of a possible definition, state authorities and international organizations have refrained from articulating an internationally recognised definition. Partly depending on nation-state concern of ethno-cultural homogeneity and partly in fear of secessionist claims¹, few

¹ The existence of minorities and legal-political articulation of minority rights have often been considered by national authorities as a step towards minority secessionism. The act of creating an internationally working definition has been simply equated with an act of creating secessionist groups within national frontiers. Taking into account these pejorative implications of the concept of minority in the eyes of nation-

states, if any, have recognized the existence of corporate agents, legally and politically defined, between sovereign state institutions and their citizens. Although several states granted official recognition to the existence of ethno-linguistic, religious and cultural minorities and incorporated various measures of group-specific treatment², many others have refrained from doing this (Alfredsson, 1993). As reported by Capotorti (1991), for example, the French Government stated:

France cannot recognise the existence of ethnic groups, whether minorities or not. As regards religions and languages –other than the national language- the French Government points out that these two areas form part, not of public law, but of the private exercise of public freedoms of citizens. The role of the Government is limited to guaranteeing citizens full and free exercise of these freedoms within the framework defined by the law and respect for rights of the individual.

Thus, while the French Government accepted cultural diversity that existed within its population, political-legal categorization of sub-national distinctions has been denied. Social diversity, instead, has been considered within the scope of individual rights and freedoms bequeathed to the private realm of peoples.

Apart from state concerns, diverse circumstances of minorities themselves with regard to their historical, economic, legal, political and social conditions too have contributed to the persistence of disagreement on the concept of minority. Some minority groups, for example, have exhibited a regionally concentrated form while some others evenly scattered over the lands of the hosting country. The problem of “double minority”, those who took part in majority but fell in a minority position in a region of the country where minority population constituted majority, further complicated bearers of minority

states, Lerner (1993: 80-81) argues that national and international documents relating to minority protection should employ a certain word other than the concept of minority. For this end, Lerner proposes using the term “groups” which may be preceded or not by the qualifying ethnic, cultural, religious, or linguistic notions. According to Lerner, in the absence of an internally recognised definition of the concept, this alternative connotation may overcome the prevailing shortcomings.

rights (O'Brien, 1984). Moreover, minorities' needs and demands have changed according to political, legal, geographical and cultural settings they encountered with. An ethnic minority, with its distinct characteristics in linguistic and cultural attributes, for instance, tended to seek extensive protection than religious minorities, who, apart from religious distinction, share mainstream identification of the majority. Depending on this fact, the scope of the concept displayed variations from region to region, country to country as well as from one historical period to the other (Capotorti, 1991: 10-11).

Thus, historical, political, legal and geographical circumstances have rendered a uniform definition globally applicable hardly possible to attain. International or regional documents relating to the issue of minority protection have, therefore, undertaken a tentative attitude in defining their potential bearers. Under these circumstances, one way of developing an approximate conceptualization would be to examine objective features contained in the international human rights documents. In formulating minority provisions, the League of Nations, the UN and the European regional organisations, including the CoE and the OSCE, have resorted to a specific wording of "ethnic", "religious", "linguistic" and "cultural" minorities. Numerical size and ethno-cultural distinctions, here, drew definitional borders of the concept (Gilbert, 1992: 69-80).

The second way in reaching to an indirect definition has been achieved through interpreting the wording of legal-political documents that have been incorporated in international law relating to minority issues. The situation of minorities has been undertaken under international concern earlier in the duration of the post-Westphalian state system. However, since the then prevailing aura remained case-specific and

² Several countries of the former Eastern Bloc, including the USSR, Yugoslavia, Czechoslovakia, had traditionally presented good examples in providing legal-political accommodation of minority distinctions

concerned exclusively with the position of specific minorities, there emerged no need to create an internationally working definition (Gilbert, 1999; Preece, 1997). It was only by the establishment of the UN that minority questions obtained a universal aspect. It was in this context that the Sub-commission on the Prevention of Discrimination and Protection of Minorities (hereafter the Sub-commission) created indirect definitions on what international organizations understood by the term “minority”. An earlier example of this appeared in the Sub-commission in 1950 which provided (Capotorti, 1991: 6):

- a) The term minority includes only those *non-dominant* groups in a population which possess and *wish* to preserve stable *ethnic, religious* or *linguistic* traditions or characteristics markedly different from those of the rest of the population;
- b) Such minorities should properly include a number of persons *sufficient* by themselves to develop such characteristics;
- c) The members of such minorities must be *loyal* to the state of which they are *nationals*.

In the view of the Sub-commission, in order to have minority status, individuals or group of individuals should firstly be in a non-dominant position. Thus, the white minority of the Apartheid South Africa, for example, was not considered within the scope of the term minority. Secondly, they should exhibit ethno-linguistic or religious characteristics distinct from those of the majority. Thirdly, group or individuals should retain an open desire to preserve these distinctions. Fourthly, minority group must have a reasonable size sufficient to preserve its particular characteristics. Next, these peoples should not be in search of secession but be loyal to the state. And lastly, they should be nationals of the country in the sense of citizenship. It follows from these objective and subjective elements that ethno-lingual, religious and cultural distinctions do not necessarily and directly create a minority status. Objective attributes of cultural distinctions, it was affirmed instead, were to be supplemented by legal and subjective conditions. In particular, nationality of the country in the sense of citizenship was

within their national order (Capotorti, 1991:13-15).

considered significant because, as Parker (1993) argued, political rights would be applied only to legal-political members of a polity.

Capotorti, the Special Rapporteur of the Sub-Commission, introduced the second definition on the interpretation of the UN acts. The definition, which relied on the study of the Article 27 of the UN Covenant on Civil and Political Rights (CCPR), has become one of the most respected formulas in international political, legal and intellectual circles, particularly, in the duration of the Cold War era. In his analysis, Capotorti (1991: 96) concluded that a minority is:

{a} group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members -being nationals of the state- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

Thus, Capotorti agreed with the Sub-commission on the constitutive elements of the term. Yet, unlike the Sub-commission's version, Capotorti only implicitly indicated the condition of "citizenship loyalty" as his definition limited minorities' desire exclusively to an act of preserving ethno-cultural peculiarities. In parallel to this, Deschenes, the Canadian Rapporteur of the Sub-commission, entertained a new definition in 1985. For Deschenes, the concept of minority indicated:

{a} group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law (Girasoli, 1995: 94-95).

Having counted those elements of citizenship, numerical inferiority, non-dominance position, ethnic, religious or linguistic characteristics, displaying solidarity for both preserving distinct peculiarities and achieving substantial equality, Deschenes revisited the Sub-commission's tradition. Nevertheless, his version enhanced preceding

approaches in several respects. Firstly, in order to inhibit political manipulation in interpretation, Deschenes replaced the phrase of "numerically inferior" with "constituting a numerical minority". Secondly, the new formula preferred to use "citizens" in place of "nationals of a state" which rendered condition of citizenship rather clear. Thirdly, "equality in fact and in law" appeared in a rather explicit manner in Deschenes's definition while it had implicitly been expressed in Capotorti's.

Beyond doubt, the UN context helped to draw conceptual borders of the term "minority". Nevertheless, the context left many questions relating to the question of definition unsolved. In particular, the UN legacy has not made a differentiation between "minorities by will", who wished to preserve their distinctive characteristics within a legal-political framework, and "minorities by force", who wish to have an integration into a national society under a guarantee of non-discrimination. The distinction is seen imperative because, the latter is satisfied with a guarantee of equal treatment (non-discrimination) while the former looks for a group-specific treatment pertinent the protection and promotion of minority characteristics. On the other hand, the status of foreigners, migrant workers, refugees and stateless persons has generated challenges to this UN tradition. Their exclusion from both minority status and its protective framework has received criticisms (Thornberry, 1991: 9-10). Expansion of the scope of definitions came to be considered a significant task in the field of minority protection. Wolfrum (1993) introduced one example of this new tendency as he divorced the concept from legal-political connections of citizenship. In his view, a formal bond of citizenship is not necessarily one of the constituting elements of minority status which is to be rested on the distinguishing characteristics of subject peoples. Thus, the issue of minority rights, in his

view, is not a part of citizenship rights, but as an integral element of human rights. In doing so, irrespective of citizenship status, Wolfrum insisted that those immigrant groups, that is “the new minorities”, are to be granted affirmative treatment.

Thus, taking into account shortcomings of the traditional definitions, today there appeared a new approach in the direction of developing an inclusive definition compatible with gradually expanding diversity of the contemporary world. In doing this, putting aside those fixed traits of ethno-linguistic and religious distinctions, Parker (1993: 45), for example, entertained a flexible and inclusive definition on the shared desires of peoples distinct from those shared by the majority. In his view, “the or a ‘minority’ is a group of people who freely associates for an established purpose where their shared desire differs from that expressed by the majority rule”. Similarly, Gurr (1993: 3) pointed out that “the key to identifying communal groups (minorities) is not the presence of a particular trait or combination of traits, but rather the shared perception that the defining traits, whatever they are, set the group apart”. Having been aware of the restrictive function of ethno-cultural elements, Andersson (1990: 232-246) went further and proposed to create a shift from definition to a regime of no definition. In place of creating legal-political definition externally applicable to minorities, Andersson favored a form of self-identification.

Since this alternative approach sided with self-identification, it seemed rather just and inclusive as concerned bearers of minority rights. Similarly, despite the fact that ethnic, religious or linguistic precedents were kept intact, the latest institutional definition adopted an inclusive formula. The UN Rapporteur Eide noted in 1993:

{a} minority is *any group of persons* resident within a sovereign state which constitutes less than half of the population of the national society and whose members share common

characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population (Girasoli, 1995: 94).

Here Eide removed subjective elements from among the constitutive criteria of the concept and focused exclusively on such objective traits as numerical inferiority, ethnic, religious and linguistic distinctions. He dispensed with the condition of citizenship too. In so doing, his definition conditioned minority rights not on legal-political membership (citizenship) but on the fact of exhibiting ethno-cultural distinctions different from those of the majority. The “new minorities” of the contemporary world were, hence, considered within its conceptual borders.

Despite the fact that there appeared several definitions, almost none have gone beyond being intellectual endeavors or legal interpretations. Political concerns of states and the complexity of the issue have avoided emergence of a general definition. In particular, state parties have disagreed on the terms of a generally applicable definition, politically and legally recognized, since its absence has usually been used as a “tactical device” in order to deny legal-political accommodation of minority distinctions (Parker, 1993: 26). In most cases, therefore, larger discretion on determining concrete bearers of minority rights has been entrusted to the arbitration of national governments who have exploited the lack of definition to disregard ethno-cultural diversity. Because of this, it is suggested today that in order to establish an effective minority protection, state parties should not be granted any say on the definition of minority groups. Instead, whenever and wherever a group meets objective and subjective criteria, it must be subjected to the norms of minority protection (Alfredsson, 1993: 70).

In conclusion, from literary meaning to the interpretations of international law, the elaboration of the concept has largely revealed qualifying characteristics of the term

“minority”. Although states have continued to disagree on reaching an internationally respected definition, major elements of the concept, including citizenship, ethno-cultural distinctions, numerical inferiority, have drawn a general framework pertinent to identification of those population sections who would be bestowed rights and freedoms facilitating protection and promotion of their particular characteristics. This is why, despite the absence of legal definition, national governments will increasingly feel pressure of this general framework and have to act in a more restricted area in the field of minority protection.

1.3 Minorities and Peoples

Related to the legal-political conceptualisation of the term “minority”, there emerges a practical necessity to make a clear distinction between "minorities" and "peoples". Despite the fact that the two concepts have frequently been confused merely for the sake of political concerns, international law tradition has examined “minorities” and “peoples” in relation to two distinct sets of rights and legal-political status. As they were incorporated into two separate provisions, the CCPR, for example, differently treated the position of peoples and that of the minorities. The distinction is crucial in the minority rights regime, because only peoples were considered to have right to determine their political status and freely pursue their economic, social and cultural development. In particular, the right of self-determination, involving an implication of territorial and political secession, has been restricted to those groups who were accepted as peoples.

Despite this fact, the meaning of the two, in practice, has been sacrificed to political intentions on the part of both minorities and state parties. In order to expand the

scope of rights they enjoyed, for example, several minority groups have identified themselves within the terms of peoples. The reverse also proved to be true. When intended to deny any right of secession or self-determination, governments have delineated peoples as minorities whose claims were to be accommodated within the political borders of a state (Crawford, 1992).

As explained above, minorities have been defined on the basis of the combination of some objective and subjective elements including, among others, citizenship, ethnic, religious and linguistic distinction, and the existence of group solidarity on the preservation of these distinctions. Thus, minorities have been considered first of all integral parts of a larger society constituting a state's population. The issue of minority rights, in this sense, has not completely been divorced from citizenship rights but added to these sets of rights. This means that the term "minority" is relatively defined and, therefore, implied presence of a "majority" expressed in terms of number, ethnicity, religion or language. That is to say, minorities would come to constitute a part of a majority population after they integrated themselves into their ethno-cultural kin through demographic, territorial changes or as a result of migration. However, it is hardly possible to conceptualise the term "peoples" in relation to a majority population or to other minority groups. In other words, peoples themselves, by definition, have been considered to constitute a majority population in the territory they occupied (Ramaga, 1992).

On the other hand, international concern has limited those concepts of "people" and "rights of peoples" to the historical terms of the colonial era. In that sense, the term "peoples" has connoted those population groupings who were taken under colonial occupation. Accordingly, rights of peoples have been associated with the principle of

self-determination presented in the form of having either territorial autonomy or secession from a colonial domination. In the duration of the post-colonial era, the term "peoples" has indicated nothing but populations of already established states, while minorities constituted parts of these populations (Gurr, 1993: 15).

Nevertheless, it is significant to note here that when states steadily denied peaceful accommodation of minority distinctions within their legal-political systems but carried out oppressive policies against minority groups, then the minority groups concerned would eventually obtain in the eyes of international opinion characteristics of peoples. Thus, it has been argued, if existence and rights of minorities were constantly denied for the sake of national interests and subjected to those policies of discrimination or assimilation, their secessionist aspirations would gradually acquire legitimate grounds (Mullerson, 1997: 52-53). The latest example of this appeared in the case of Kosovo where as the Serbian government cancelled minority status of Albanians and embarked intensive policies of assimilation, secessionist cause of the Albanian minority came to be regarded legitimate.

1.4 Rights of Minorities

Conceptual definition of the term "minority" held that minority peoples referred to those sections of citizens who manifested "ethno-cultural, linguistic and religious distinctions" in respect to those citizens who belong to the mainstream identity category of the country's majority population. Thus, the term minority itself implied the establishment of a legal-political system which, apart from securing citizenship equality, would allow equal accommodation of social distinctions in a form of different treatment.

In those states whose population are not homogeneous but differentiate along ethno-cultural, linguistic and religious characteristics, the principle of equality would remain in short of guaranteeing substantive equality between members of minority and majority sections of a population.

As we will broadly explain in the next chapter, citizenship in the modern world constructed basis of state-membership by creating direct linkages between individual members of polity and the state. In doing this, the concept has abstracted individuals from their ethno-cultural circumstances and indicated a certain form of legal-political status having nothing to do with peoples' particularities. Rights and obligations have been formulated on the grounds of equality and allocated universally for the whole of the citizenry. The universal implication of the concept of citizenship, therefore, conferred an equal *locus standi* upon each member of social composition. Thus, since the concept of citizenship underlined legal-political membership to the state, individual citizens, whether they belonged to majority or minority, have been subjected to the same civil and political rights. In regard to citizenship, minorities shared formal equality on the same footing as the majority.

The principle of formal equality has urged national governments to treat like cases alike, that is, to treat individual members of citizenry equally in terms of rights and obligations. Yet, despite the fact that this formal approach would allow different treatment of minority cases, it has in no way compelled state authorities to do it. By contrast, equality and non-discrimination, as defined on civil and political equality, have been two major measures of the formal equality (Wenthold, 1992: 53-54). Because of this, universal implication of citizenship equality has often been practiced in a manner of

uniformity and its legal aspect has been operated as an instrument of ethno-linguistic and religious homogenization (Kymlicka and Norman, 2000).

Beyond doubt, legal equality is the *sine qua non* of citizenship status, but legal equality in itself is not sufficient to guarantee achievement of genuine equality. The principle of citizenship equality is generally described also “as the right to treat like cases alike and different cases differently” (Wenthold, 1999: 53). Thus, despite the fact that formal equality would never be seen insignificant, its mere implementation has tended to remain short of securing true equality in those political entities where population is not uniform but displayed ethno-lingual and religious diversity. It is under these circumstances that treating essentially different groups in an identical fashion, that is, treating minority groups in the same manner with majority, was considered to violate principles of both equality and non-discrimination (Gilbert, 1992: 171). Because of this, the full-fledged scope of genuine equality has sought an additional aspect which has called for “unlike treatment of cases because of their unlikeliness” (Wenthold, 1999: 53). Principles of equality/non-discrimination and of minority protection, thus, signified two different practices. On the two concepts, the Sub-commission in 1947 stated that:

{p}revention of discrimination is the prevention of any action which denies to individuals or groups of peoples equality of treatment which they may wish.

Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population (Capotorti, 1991: 40).

It follows from this argument that the principle of equality, with regard to the distinct position of minority groups, must be interpreted in a broader manner. It should be replaced by a substantive form of equality which prescribes that “unlike cases should be dealt within a manner which reflects their unlikeliness” (Wenthold, 1992: 54). Putting the

matter differently, the principle of citizenship equality in culturally diverse societies should accommodate both similar and distinct circumstances of peoples. In the view of Parekh (2000: 239-240), since “human beings are at once both natural and cultural beings”, that is “they are both similar and different...We cannot ground equality in human uniformity...(which) requires us to treat human beings equally in those respects in which they are similar and not those in which they are different ”. For him, “While granting them equality at the level of their shared human nature, we deny it at the equally important cultural level” (Parekh, 2000: 240). Having pointed out the fact that a theory and practice of equality “grounded in human uniformity is both philosophically incoherent and morally problematic”, Parekh (2000: 240) insisted:

Since human beings are at once both similar and different, they should be treated equally because of both. Such a view, which grounds equality not in human uniformity but in the interplay of uniformity and difference, builds difference into the very concept of equality, breaks the traditional equation of equality with similarity, and is immune to monist distortion. Once the basis of equality changes so does its content. Equality involves equal freedom or opportunity to be different, and treating human beings equally requires us to take into account both their similarities and differences. When the latter are not relevant, equality entails uniform or identical treatment; when they are, it requires differential treatment.

Differential treatment renders specific treatment of minority distinctions not an external to individualist measures of equality and non-discrimination, but an integral norm of it which takes ethno-cultural, linguistic and religious distinctions into account (Wenthold, 1999: 58-60). Differential treatment, in the absence of equal citizenship status, however, is equally dangerous. Since citizenship equality guarantees equal grounds of non-discrimination, the neglect of it bears an immediate danger of inequalitarian treatment to be created between majority citizens and those groups who are entitled to measures of differential treatment. Discrimination, communal isolation, persecution or even oppression is likely to appear in a legal-political setting where full-

fledged scope of citizenship status is denied to any section of population because of their ethno-cultural, religious and linguistic otherness.

Thus, rights of minorities depend upon two essential sources: universal equality inherent in the meaning of the state-membership (citizenship) and the group-specific traits of ethno-cultural membership. Since it seeks to correct shortcomings of the formal equality through creating legal-political grounds of ethno-cultural diversity within citizenship equality, differential treatment intends to reconcile individually enjoyed citizenship rights with those of the group-specific rights of minorities. Therefore, when discussing minority rights, it is significant to accomplish a true congruence between two categories of rights without excluding or separately promoting any part of it.

Historically, when complete integration with or assimilation into ethno-cultural, economic and political structures of the majority has become the objective, minorities have usually contended with minimalist formula of individual equality and non-discrimination. The mere concern here has become to entitle individual members of minority groups with basic rights identical with those of the majority. In this context, there would appear no need to stipulate individual rights with group-specific rights pertinent to the protection and promotion of minority distinctions. While individuals are abstracted from their ethno-cultural particularities into universal scope of citizenship, no legal distinction between minority and majority sections of population is drawn. Under these circumstances, rights, including rights of minorities, are laid down in negative terms without urging states to take positive obligations with regard to the protection and promotion of minorities' ethno-cultural, linguistic and religious distinctions (O'Brian, 1984; Gilbert, 1992: 74-80).

However, identical treatment does not always guarantee actual accommodation of the spirit of the principle of equality. In these circumstances where minorities wish to have isolation from, or to achieve technical, functional and economic integration without renouncing their group-specific particularities, a broader interpretation of the principle of equality comes to the forefront of minority concerns. Substantive implementation of the principle of equality, therefore, becomes significant. It was in this context that in addition to equality and non-discrimination, minority circumstances necessitates creating legal-political grounds of differential treatment (O'Brian, 1984; Alfredsson, 1993). And, here is where states are obliged to undertake positive measures in accordance with the specific interests of minority peoples. In order to correct essentially unequal position of minority citizens, states are expected to consider minority distinctions in regulating their socio-political, cultural, legal, administrative, economic and educational policies (Scarman, 1984; Gilbert, 1992: 74-80).

The group-specific category of minority rights, as defined on the terms of positive rights, generally includes rights to:

- a) learning and/or having education in mother tongues,
- b) using minority languages in press, publications, judicial proceedings, audiovisual productions, and radio/TV broadcasting,
- c) self-administration of minority schools and charitable institutions,
- d) free practice of religious instructions,
- e) have effective participation in those governmental decisions which would directly affect them,
- f) have cross-border relations with kin groups living on the other part,
- g) territorial autonomy.

National governments conceived the right to with caution. More specifically, granting territorial autonomy was generally thought of first step before complete secession (Mullerson, 1997: 58). Yet, right to territorial autonomy was considered apt

merely in those circumstances where a minority is geographically concentrated. Otherwise, that is when minority peoples are geographically scattered or intermixed with majority or other minority groups, internal or personal autonomy, that is granting group-specific rights and freedoms irrespective of geographical criterion, stood more appropriate (Alfredsson, 1993: 67).

As was explained, the notions of secession, disintegration or self-determination has traditionally been reserved to the rights of the peoples. Yet, minority rights are related to the issue of self-determination in the context of its internal interpretation. Thus, despite the fact that external manifestations of self-determination involve a right to secession, its "internal" version, which means civil and political emancipation of individual citizens, is closely associated with the question of minority protection (Thornberry, 1991: 13-14). Concerning the internal implications of the concept of self-determination, the post-Cold War transformation has already recognized rights of the entire population, including minorities, to economic, political, cultural and social rights against its own government (Rosas, 1995).

It should also be noted here that despite it has inherently prompted additional spheres of rights, it is not just to evaluate minority rights within the terms of privileges. By contrast, minority rights must be considered a mechanism through which minorities would have identical circumstances on the same footing as the majority who taken the same circumstances for granted. The major objective of positive rights, thus, aims at facilitating protection, promotion and reproduction of minorities' ethno-cultural differences that are already under protection in the case of majority citizens (Alfredsson, 1993: 62-63).

To conclude, minority rights are crucial to provide minority peoples with legal-political channels through which they would protect and promote their group-specific characteristics. In doing this, the scope of rights seeks to create a true reconciliation between two sources of minority identity: legal-political status of citizenship and ethno-cultural identity of minority group. In addition to universal measures of citizenship equality and non-discrimination, the question urges national governments to provide positive conditions, legally and politically recognized, pertinent to the protection and promotion of minority distinctions.

1.5 The Form of Rights: Collective or Individual

Merely depending on the existence of an essential distinction between citizenship and ethno-cultural identity, minority rights have displayed two major forms in the sense that rights and freedoms have been granted either to individual members of minority groups or to the corporate existence of groups themselves. Since both formulations situated minority interests differently in the socio-political and legal realms, the form of rights has become one of the most contested areas in the fields of political theory, international human rights law, and political and constitutional settings of national states. The problem has rooted not only in the vague definition of the bearers of minority rights, whether minority groups or those individuals who belong to these groups are to be considered beneficiaries, but legal-political implications of the question have also mattered. After all, changes in the form of rights retained an immediate potential to change relations both between state instrument and minority peoples, and minority groups and individual members of these groups.

Rights exist only if the right-holder can drive from it a claim. That is, human beings would be subjected to privileges and obligations of a set of rights only if the content of rights renders them its bearers. In the context of individual rights, rights are bestowed upon every single human being personally making them the bearer and the claimant of rights. Here, individual is entrusted as the sole authority to claim a remedy in case of violations (Brunner, 1996: 292). In the view of van Dyke (1995: 33-36), this is the legacy of the western liberal tradition which has had constituted a pre-communal and group-independent existence for individual human beings rendering them irreducible right-bearing entities. Individual can exercise his or her rights independently, in his name, and in his own authority. The classical liberal rights, those of life, liberty and property as well as the right to equal treatment and non-discrimination has become fundamental rights to be enjoyed and exercised independent of the collective existence of minority groups (Buchanan, 1991: 74-75).

However, van Dyke (1995) added, individual would justly be considered and constituted the locus of rights appropriately in those particular circumstances where state's population exhibited homogeneity in terms of ethno-lingual, cultural and religious characteristics. Otherwise, the legitimacy of government relies not upon the consent of abstract individuals but upon those minority groups and their fellow members seeking different treatment in respect to their communal particularities. It is under these circumstances that governmental authorities are often urged to adopt specific rights pertinent to the distinct characteristics of minority groups. It is again in this context that the question of collective rights arises.

Not surprisingly, unlike the issue of individual rights embedded in the citizenship status of minorities, the notion of collective rights has closely been associated with the second dimension of minority issues, that of the group-specific characteristics of individual citizens. Individuals are not considered independent of groups but within and as members of human groupings. Legal standing of individual, under these circumstances, depends not only upon his or her natural existence or citizenship status, but membership that he or she holds towards a group is also taken into account. Apart from being equal citizens, individuals become subject to rights and obligations for being members of a collective entity.

Group, corporate or collective rights are granted to and exercised by the corporate body of a minority group through which minority individuals are provided with legal-political means allowing protection and promotion of their distinct circumstances. A softer version of collective rights, that is “individual rights having collective dimension”, are bestowed upon individual members of collectivities who are permitted to exercise the given sets of rights in collectivity with other members of the group. In this case, without having corporate recognition, group is regarded as not the holder but the beneficiary of individual rights. In so doing, collective rights are largely secured without creating corporate units between state and individual citizens (Brunner, 1996: 292).

For the sake of political and strategic considerations, collective rights are not clearly recognised in international instruments. However, adequate implementation of group rights has usually invoked the idea of individual rights with collective dimension. Protection of the freedom of expression, for example, often calls for the protection of its means, like media, press and associations, that would, in most cases, be implemented in

the form of collective group rights. Similarly, freedom of religion, or the freedom of education in minority languages is generally exercised in community with other members of the group. Further, right to non-discrimination has a collective dimension in the sense that it takes place because an individual is a member of a religious, linguistic, racial or ethnic community. Thus, individual and collective elements are interdependent so far as minorities' rights and freedoms are concerned (Kardos, 1995).

However, when the object or the interest, addressed in the formula of rights are irreducible to individual human beings but retain a collective nature, it becomes significant to grant rights to the corporate personality of human groupings. Accordingly, collective group itself, independent and outside of its individual members, is recognized legitimate bearer of rights and freedoms (Hartney, 1995: 21). Defined in this form, collective rights are ascribed to corporate personality of groups and exercised collectively or, at least, on behalf of the collectivity concerned (Buchnan, 1991: 74-75). Under these circumstances, rights and freedoms are possessed by a group having a distinct identity and legal standing independent of its members (Jones, 1994: 182-183). Right to self-determination; territorial autonomy; control of immigration policies in a specified region, and right to have control on the use of land and other natural resources where the group inhabits take place among the major examples of collective rights in corporate nature (Buchnan, 1991).

In the view of Jones (1999: 86-88), despite its joint enjoyment and collective exercise, individuals remain exclusive bearers of rights even in the context of collective rights. Individual human beings keep their moral standing in exercising a right in community with other members of the group. Collective dimension, here, stems from the

fact that individuals obtain rights and freedoms for being members of a corporate group. On the other hand, in the context of corporate-collective rights, rights and freedoms are enjoyed not jointly but by the group as a unitary entity. Thus, while collective conception ascribes moral standing directly to the individuals who jointly hold the right, corporate formula ascribes moral standing to the group itself. In the latter, the group is regarded as having a stable identity and legal existence independent of those who make up the group. In the words of Jones (1999: 87-88),

On the corporate conception, a group must possess a morally significant identity as a group independently, and in advance, of whatever interests or rights it may possess. Just as an individual has an identity and a standing as a person independently and in advance of the rights that he possesses, so a group, if it is to be conceived as a corporate entity, must possess a morally significant identity and status independently and in advance of whatever rights it may hold. Its interests and rights follow upon its identity as a group; they are not what identifies the group as a group.

Thus, when it is disassociated from individual rights or those rights which are reducible to individual dimension, the notion of collective rights bequeaths legal-political and moral existence to corporate entities. Consequently, alongside state and individual, minority group concerned becomes an actor having legal and political recognition. In so doing, minority group is entitled to claim legitimate power on the management of its own interests, externally against state and other groups, and, internally against its own members.

Internal aspects of the idea of granting corporate status to minority groups bear a potential to endanger individual rights of those who belong to corporate entity. Donnelly (1989: 143-160) suggested that corporate articulation of collective rights would make the entity a prison for the individual members of the group. In his view, at the hand of group leadership, corporate rights would operate as a tool of justification in denying universal rights of minority individuals on the pretext of corporate interests. In this context, thus,

no reconciliation between universal and particularistic rights of minorities would be attained. Because of this, Donnelly sided with subrogating corporate group rights with an idea and practice of individual human rights having collective dimension. Since individuals are members of groups and their particular interests originate from this membership, the latter, for him, would effectively guarantee basic rights of individuals against both state and their own groups.

However, in some circumstances, protection and promotion of minority differences would still call for corporate rights, for instance, in the issues of territorial autonomy, land use or migration policies. Yet, it is suggested that this would never justify denial of individual rights in the name of corporate interests. In order to overcome possible dangers of corporate conceptualisation, it is believed that corporate-collective rights should not override individual rights. In so doing, it is admitted that neither corporate rights would wholly represent rights and interests of their membership, nor individual rights might be considered sufficient for the preservation of group identity. It is under these circumstances that corporate-collective and individualist concerns would be reconciled in theory and practice without subjecting individual to the absolute authority of the group concerned (Kukathas, 1992a; Kukathas, 1992b).

Thus, Kukathas admitted that minority groups would have unlimited power over their own members so long as their individual members maintained the right to exit the community. In this context, some restrictions on individual freedom with regard to, among others, migration or land selling, were justified on temporary basis for the sake of group solidarity. By contrast, Kymlicka (1992) argued that minority groups would be granted no corporate power over their individual members. He asserted that a distinction

is to be made between collective claims made on behalf of a group against its individual members and a collective claim made on behalf of a group against the rest of the society. While rejecting the former, Kymlicka (1989; 1992) recognised that minority groups would have corporate rights against the rest in order to remove inequalities within the larger community. For Kymlicka, protection of cultural minority aims at protecting autonomy of the members of the minority, while the authorization of the cultural community over its members tends to limit this autonomy. Because of this, the issue of minority protection does not justify, except some extreme cases, exercise of corporate rights against its own members. In his view, it was through this essential distinction that emergence of legal-political and cultural practices violating liberal freedoms of individuals would be avoided.

Given the controversial approaches to the question of “group”, ‘collective’ or “corporate” rights, Green (1991) suggested that exclusively collective definition might neglect, if not oppress, individual members of the community. A minority group having authoritative rights over its members, for him, bears a strong potential to violate basic liberties of individuals that would under no circumstances be admitted in a democratic system. Yet, pointing out the fact that social existence would hardly be composed of isolated or atomistic individuals, Green admitted that a democratic system respecting peoples’ distinctions should not have disregarded cultural traits of individuals. Instead, legal and political practices of democratic systems, for Green, has to seek consolidation of those individual rights having group dimension that has appreciated individual freedom over collective interests.

The issue of group rights has arisen in several international documents relating to the rights of ethnic, religious and linguistic minorities. Similar to the views of Green, many international documents, promulgated in the context of the UN, the OSCE or the CoE, have given priority to individualist concern on the group-specific rights of minorities. Facing strong state oppositions, international institutions have rarely agreed on the corporate articulation of rights. In fear of creating new legal-political actors between individual citizens and the state, the latter parties have fostered individualistic principles of international human rights. Under these circumstances, despite the fact that several instruments have approached, not yet reached, to the level of group or corporate rights, contemporary form of minority rights has been confined, at most, to individual rights having a collective dimension (Oliver, 1984).

1.6 Minority Protection and National Sovereignty

Sovereign existence has become one of the main pillars of modern state. On the contrary to the *ancien regime*, modern state has become the locus of the supreme authority, political, legal and administrative, over the whole population of a demarcated territory. Having been founded on the absolute specification of jurisdictional area, in terms of both special and demographic borders, modern state has recognised partnership of no internal or external actor in legislating or enforcing law. Modern state has become the sole actor in regulating its relations with its own individual citizens, other states, and international organizations (Poggi, 1978: 87-92).

The European *ancien regime* was alien to this modern form of absolute state sovereignty. Ruling capacity of the state had instead been often encroached by corporate

actors of ecclesiastical groupings, economic and hereditary classes, and the universal claims of religious institutions and imperial polities (Williams, 1970). By the seventeenth century, an international community composed of sovereign and central states gradually developed. At this stage, absolute monarchies, evolving at the expense of overlapping and conflicting regional and universal political entities, marked a revolutionary break from the forms and practices of the *ancien regime* (Hinsley, 1966: 45-125).

The Peace Treaty of Westphalia (1648), which gave an end to the long lasting confrontation of the overlapping regional and universal authorities, founded the basis of a new state system consisting of centralised and sovereign states (Philpott, 1997: 28-34). Henceforth, internal state sovereignty has indicated the supreme power in exercising jurisdiction over a given piece of territory, whereas external sovereignty specified state's freedom from external interference in exercising its rule, that is formal equality of states in their relations with each other (Rosas, 1995: 63). Irrespective of the form of government, modern state was constituted as the sole authority in deciding the form of relations both between the state and its people, and state and the international community (Brown, 1996: 108-109).

Principles of hierarchical equality, non-interference, and non-aggression have constituted core principles in the *Westphalian* state-centric model. Between the seventeenth century and the twentieth century, the idea and practice of the state-centric model largely prevailed. However, globalization of economic, environmental, political and military issues in the twentieth century gradually created an international order which began to question sovereign prerogatives of modern states. It came to be admitted that political activities would no longer be decided solely within sovereign boundaries. The

principle of absolute sovereignty has gradually lost its traditional basis founded on the concerns of indivisible and unlimited authority (Camilleri and Falk, 1992; Camilleri, 1990).

Alongside this global tendency, evolving at the expense of state's sovereign capacity, it came to be admitted today that national borders protected by states' sovereign prerogatives would not, for all places and circumstances, be protective of individual rights and liberties. In many cases, it was recognised instead, the principle of sovereignty would be used as a pretext in oppressing human rights and freedoms. Pointing out this fact, Eide (1992: 8) noted:

Between states, it (external sovereignty) serves ideally the function of restraining the use of violence, by clearly demarcating authority and jurisdiction over persons and places; but the assertion of sovereignty has often functioned as a cover for oppression and the denial of freedom for peoples and individuals. This, I submit, has been possible because of a narrow and archaic concept of sovereignty not compatible with the modern international legal order.

In the view of Eide, in order to avoid mass violation of human rights under the pretext of sovereign premises, contemporary international order should reinterpret classical aspects of state sovereignty. Having been aware of this initial transformation, the issue of human rights, which once had been considered under the internal prerogative of the modern states, has gradually acquired an international dimension by the middle of the twentieth century (Philpott, 1997: 34-41).

Nevertheless, an essential turn in the internationalization of human rights questions, including rights of minorities, appeared only by the establishment of the UN in the aftermath of the WWII. The promulgation of universal standards in the field of human rights has become one of the main concerns of the UN acts from the outset. The UN Charter and the UDHR have greatly contributed to the international arbitration of human rights issues. Today, almost all of the world's existing states recognised internal

validity of the principles of the UN humanitarian declarations including those which contained principles relating to the promotion and protection of minority rights.³ In so doing, many states allowed international scrutiny upon national treatment of their own citizens (Marie, 1998: 117-132). This global tendency indicated the fact that horizontally constructed state-centric system of the *Westphalian* tradition is now under decline. There is a move towards a more diverse articulation of sovereignty. Depending on this open possibility, Rosas (1993) asserted that it was not the legacy of the 1648 (the Westphalian Treaty) but the principles of the 1948 (the UN UDHR) which need to be considered as a guide to the internal and external relations of the contemporary states.

Despite the fact that the UN acts externally obliged states to promote human rights, the Cold War dualism paralyzed international humanitarian acts. Under the influence of the then prevailing ideological confrontations, state parties frequently blocked promulgation and implementation of universal standards.⁴ Because of this, international standardisation of human rights issues gained a new pace by the early 1990s. With the end of the Cold War politics, international institutions have undertaken stronger approaches with regard to the national treatment of individual human beings, including those who belong to ethnic, religious or linguistic minorities. It was in this context that, the UN went beyond the vague formulations of the Cold War years and, apart from individual human rights, began to give a special attention to the rights of minorities. The UN *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992), for example, incorporated

³ By 3 January 1998, 137 states ratified the International Covenant on Economic, Social and Cultural Rights (1966); and 140 states ratified the International Covenant on Civil and Political Rights (1966) (Marie, 1998: 122).

contemporary standards in the field of minority treatment. The Declaration compelled the partied states to undertake legislative, administrative and judicial measures appropriate to ethno-cultural, linguistic and religious diversity of minority conditions (UN Declaration, 1993). In following, the *Vienna Declaration* adopted by the UN World Conference on Human Rights (1993) considered humanitarian matters within the legitimate scope of international concern. The Declaration affirmed the fact that “human rights, including minority rights, are the birthright of all human beings, therefore, their protection and promotion is the first responsibility of governments and a legitimate concern of the international community” (UN, 1995a; Rosas, 1995: 62-63).⁵

Apart from the UN, European-regional organisations, including the CoE and the OSCE, have devoted significant labour to the internationalization of human rights issues and sought the ways for creating a human rights regime across the continent. The Council of Europe’s *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1949) and the OSCE’s *Helsinki Final Act* (1975) contributed to the standardization of human rights principles and practices in Europe. Although the OSCE mandate has remained rather political, the CoE has created a regional legal regime with open principles and rules, and with judicial means of implementation and enforcement. Because of this, by the promulgation of these acts, national sovereignty of the European states entered under an effective international scrutiny in the field of human rights issues (Forsythe, 1994).

The end of the Cold War politics and circumstances further decreased sovereign capacity of the European states. In particular, the rise of ethnic conflict by the collapse of

⁴ The Number of vetoes in the UN Council amounted 279 between 1945 and 1989, while the contrary votes appeared only three times from then to 1993 (Fox, 1997: 117).

the Eastern Block provoked international concern in the issue of minority protection (Liebich, 1996). Having seen social unrest generated from the maltreatment of minorities, the CoE and the OSCE, for example, instigated new scope of international norms, principles, and mechanisms limiting states' capacities on the internal regulation of minority conditions. The OSCE's *Copenhagen Document* (1990), the CoE's *European Charter for Regional and Minority Languages* (1992) and the *Framework Convention for the Protection of National Minorities* (1995) introduced a historical breakthrough in the area of international minority protection. In contravention with the classical form of sovereignty, the documents limited sovereign prerogatives in respect to the national treatment of minorities and gradually taken minority issues into legitimate area of international concern. The Framework Convention (FC, 1995: 98-101), for example, stated that:

{t}he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and such falls within the scope of international co-operation.

Obviously, the provision treated rights and freedoms of persons belonging to minorities as an integral part of universal human rights outside the sovereign realm of states. The European regional organizations have, therefore, attributed greater significance to the act of interfering with states' internal affairs relating to minority conditions. It was in this sense that in the region, the regulation of relations between states and their individual citizens, that is states and minorities, was no longer left solely in the sole hands of national governments. Instead, international documents, whether political or legal, began to constitute a framework to be adopted at the national level.

⁵ Articles 19-27 of the Declaration stipulated the issue of minority protection (UN, 1995a).

However, it should be noted here that states are still real actors at the level of both creating and implementing international human rights standards, while non-state or international agents continue to remain in a subordinate position. Yet, the framework of the so-called “soft laws”, that is international treaties, norms, values and monitoring mechanisms, have produced an international network of legal, political and economic instruments which have constrained states in their domestic actions. In particular, the “carrot and stick” implications of an interdependent world came to make it rather costly for the states to disregard implicit power of this network both in their national and international dealings (Rosas, 1995: 61-78).

Aware of the affects of global encroachments in the ruling prerogatives of states, Strange (1994) suggested that the prevailing decline in the sovereign rights of states does not automatically bring an identical decrease in the power of national governments in its internal and external dealings. In her view, as long as they acted in harmony and accordance with the norms of international organisations, states obtain greater international recognition and accession which, in turn, sustain their sovereign position as the key actor of international system. Thus, the issue of human rights, Fox (1997) argued, has become the key basis of legitimate governments in the contemporary world. Because of this, he admitted, though it would be regarded as an infringement of sovereignty at first, international interference in the fields of human rights maintained a strong possibility to contribute to state sovereignty in the long run. It is believed that sovereign capacity of a state increases as it acted in harmony with the international standards of human rights because, the state, in that way, would gain prestige and strength in its international relations, and receive legitimacy in its internal dealings.

On the other hand, the decline of state sovereignty does not mean only the internationalization of those affairs that have been considered within the realm of internal matters. The current transformation of the state system came to imply also the act of reconfiguring state-society relations inside by devolving long established central powers of states to socio-political and economic groupings consisting of both citizens and foreigners (Rosas, 1993: 151-153). In this respect, national implementation of contemporary European-regional and the UN-universal standards of minority rights seems likely to challenge classical parameters of state's internal sovereignty as well. Under international constraints, states would have to share some aspects of its legislative and administrative powers with autonomous minority groups. That is to say, the transformation of the external sovereignty, with the internationalization of human rights issues, today is driving states internally towards reformulating state sovereignty in a flexible and inclusive manner (Canefe, 1996).

In conclusion, the Westphalian model, rested on the equality of sovereign states, had advanced through the centralization of corporate states at the expense of external and internal sources of power. Central state, consequently, had been constituted as the supreme actor in its area of jurisdiction. In the present conjuncture, the gradual internationalization and localization of inherently national affairs have paved way for diverse structures of overlapping sovereignties. Especially in the field of human rights, including those rights belonging to minority peoples, state is no longer regarded as the locus of an uncontested authority. Modern state came to be subjected to a set of externally promulgated socio-political, economic and legal norms with which every state was expected to decide its internal affairs. In so doing, international concern in the

question of minority rights went beyond the state-centric system of the *Westphalian* model. Today it is difficult to deny international standards of minority rights for the sake of internal sovereignty and the principle of external non-interference. The form of state-society relations, that is relations between the majority and minorities, has largely been submitted to the effect of international standards. The principle of sovereignty is being fragmented “upwards” and “downwards”. State sovereignty came to be defined now in conjunction with international rules, norms, standards and instruments. That is why, although states are still more or less sovereign actors, contemporary international system necessitates, if not imposes, a “responsible use of sovereignty” (Prease and Forsythe, 1993: 306).

1.7 Conclusion

Modern era has developed a framework of rules, norms, standards and instruments pertinent to the protection and promotion of minority distinctions. It was the content of this framework that has marked major borders of minority rights regime stipulated according to socio-political and diplomatic circumstances of a given time period and space. New approaches in the meaning and scope of the major parameters have instigated innovative transformations in the said norms, rules, standards, instruments and implementation area of minority rights. Definition of the concept of minority, scope of the rights of minorities, the form of rights concerned and the linkage established between state sovereignty and minority rights, among others, have taken place among prominent parameters of minority rights regimes.

Although there has not yet appeared an international agreement on the definition of the concept, the term minority has been associated with those criteria of ethno-cultural distinctions and citizenship status. Hence, scope of minority rights has chiefly centered on creating a true reconciliation between universal equality of citizenship status with that of the different treatment accorded to minority groups. It was in this sense that the issue of minority rights has marked not rights of those foreign nationals but those of the “different citizens” of a country. In accordance with its universal aspects, citizenship rights have conferred legal existence merely to individuals while principles of different treatment have usually called for creating collective rights, at least, individual rights having collective dimension that ascertained an implicit or explicit recognition to corporate existence of minority groups. On the other hand, whether in individual or collective form, minority rights bear a strong potential to damage sovereign prerogatives of modern national states. State sovereignty has undergone fundamental transformation since the eve of modern era. Today, accommodation of minority distinctions in the legal-political setting of national states has tended to undermine modern form and understanding of state sovereignty. Next chapters will examine the emergence and advance of the said parameters in the duration of the modern era.

CHAPTER II

MODERN STATE AND THE MINORITY QUESTION

2.1 Introduction

Ethnic, linguistic, religious or cultural minorities have become a social reality almost in every stage of human existence. However, it is largely admitted today that the contemporary understanding and legal-political treatment of minority circumstances are rooted in the emergence of the modern state (Thornberry, 1991). Under a monolithic configuration of legal, political and social spheres that modern era fostered pre-modern corporate structures of rule and identity, located in regional bodies, religious and ethno-cultural communities, gradually replaced by those notions of nation-state, nationality and citizenship. The concepts considered peoples, for the first time, as equal members of the polity that largely eliminated legal, political and social grounds of inegalitarian treatment. But it was through the same process that ethno-cultural, legal, administrative and political diversity withered away as modern state practices and ideological discourses contemplated the state, nation, nationality and citizenship.

In fact, the constitutive notions of modern state, that is the nation, nationality and citizenship, inherently indicated distinct areas of socio-political and legal identification. By contemplating them, in contravention with diverse circumstances of human existence, the modern era celebrated monolithic designation of legal, political and social worlds. A dominant ethno-cultural and linguistic identity was situated at the core of national imagination. It was because of this reason that the principle of

national egalitarianism and citizenship equality has usually been implemented in a form of national uniformity.

The question of minority rights, under these circumstances, has been introduced in order to remedy shortcomings of modern formations by creating a true congruence between universal implications of citizenship equality and group-specific aspects of ethno-cultural membership. Bearing this fact in mind, this chapter will, first, examine medieval conditions of diversity which permitted natural accommodation of peoples' distinctions at the expense of the egalitarian principles of universal equality. Secondly, it will examine the gradual transformation of the medieval diversity into uniform designations of rule and identification by reviewing major instruments of this transformation that evolved alongside the congruence of those notions of nation, state, citizenship and nationality.

2.2 Inegalitarian Diversity of the *Ancien Régime*

The contemporary position of ethno-lingual, religious and cultural minorities was rooted in the emergence of nation-states, particularly, in its monolithic configuration of political, legal and cultural realms (Thornberry, 1991: 1). Because of this, while elaborating on the historical evolution and traditional ways of minority treatment, my focus will be on those modern concepts of state, nation, nationality and citizenship. In order to reveal the effects of these modern formations upon ethno-cultural circumstances, it is important to return back to the pre-modern condition of minority issues.

Nation-state with a sovereign central authority, definite frontiers, a society of national citizens having identical rights and obligations, and a centrally administered ethno-cultural identity is indeed a modern European innovation dated particularly to

the aftermath of the French Revolution. During the medieval era and long after, states did have no definite political, legal, geographical, ethnic or linguistic unity as compared to precisely defined ethno-cultural and geographical borders of the succeeding forms. Ethno-cultural, legal and political diversity, instead, characterized major aspects of pre-modern forms of governmental units. In contrast with the sovereign prerogatives of modern states, pre-modern states were the *primus inter pares* in the sense that it was not a single authority in a geographical area but one of the ruling bodies claiming jurisdiction over the population of geographical area (Doyle, 1992; Weber, 1976).

From the political point of view, Europe of the *ancien régime* consisted of so-called *corporative states*, -an *état d'orders*, or a *stöndestaad*- which depended on the functional co-existence of legally and politically recognized corporate bodies. In this context, the ruling mechanism was made up of frequently overlapping and hierarchically stratified authorities of estates, ecclesiastical communities, guilds, provincial or territorial forces, ethno-linguistic groups, and even monarchies, all of which lied between states and their subject peoples. Central administration acted on their subjects not directly, but through the intermediating function of these sub-state bodies, each of whom maintained definite legislative, executive and judicial powers independent of central administration that they were nominally subordinated (Williams, 1970: 25).

Pre-revolutionary picture of the French state presented a good example to the corporate quality prevalent in both medieval state and society. It was suggested that in 1789 France did not yet fully achieved modern characteristics of what we understand today. It consisted of a loosely linked federation of provinces, ecclesiastical and temporal authorities. This legal-political diversity reflected itself in the inegalitarian

stratification of the “French” population. Having no sense of national unity, the French population of the time did not yet reach to the modern stage of a nation of equal citizens. Instead, it was dominated by an association of communities each with their own status and privileges legally and socially recognised (Weber, 1976). Socio-political and legal order of the rest of the Western world exhibited similar patterns. As well known, during the same period, for example, Germany was in a stage of *stöndestaad* having no national, territorial or legal unity. In the last quarter of the eighteenth century, there were over 300 autonomous territories in Germany, all of whom were technically subordinate parts of an higher authority, that of the Holy Roman Empire (Doyle, 1992: 221; Poggi, 1978: 36-59).

Parallel to political diversity, legal order of the *ancien régime* rested upon a distinct form of legal diversity. Inegalitarian aspects of corporate system affected the legal sphere as well. There were no uniform and state-wide legal codes that would equally be applicable to each member of political community. The law was in the form of differentiated legal entitlements entrusted to the corporate mandate of the intermediating bodies to uphold and enforce them (Poggi, 1978: 72). Egalitarian formulation and implementation of legal codes were unknown. Legal inequality, not simply factual inequality, was the basis of social and political order. What determined the nature of relations both between the rulers and the ruled, and among different sections of the ruled was not the principle of equality, but special status granted to each corporate community of peoples. Under these circumstances, a person’s corporate membership, not political membership, decided his or her socio-political and legal position as well. State-membership carried almost no significance in receiving rights and obligations. Thus, the members of a political community were subjected to different sets of rights, obligations, privileges and immunities recognized

by law or custom. Legal entitlements depended exclusively on the corporate category to which one belonged. In elaborating on the legal-political configuration of the pre-revolutionary France, Brubaker (1992: 36) rightly pointed out this legal inegalitarianism in the following statement:

What mattered, as a determinant of one's rights and obligations, was not, in the first instance, that one was French or foreign: it was that one belonged to a *seigneurie*, or that one was an inhabitant of a *pays d'état*, or a bourgeois in a *ville franche*; or that one was a noble or a clergyman; or that one was a Protestant or a Jew; or that one was a member of a guild, university, religious foundation, or *parlement*.

This wording indicated that socio-political and administrative decentralisation was accompanied by a particularistic understanding of the law. Peoples' legal status was decided on the basis of their regional, social, religious or sectarian circumstances. Owing to this legal-political diversity, the locus of membership or belonging for the peoples of the *ancien régime* took shape in the sub-state level. The most immediate ethno-cultural, religious-sectarian, political or geographical characteristics, such as tribe, clan, autonomous town, feudal lord, dynastic state or religious community, provided peoples with meaningful referents of identification (Kohn, 1965: 9). If there appeared any supra-local identification in the duration of the period, it was in the form of religious brotherhood but not ethno-cultural identification (Tilly, 1990: 107).

In fact, ethno-cultural and linguistic diversity was natural under the then prevailing political and ideological conditions which urged almost no incentive to develop a strong linkage between social and political realms. Cultural and political realms did not coincide before the emergence of nation-state system. Political realm was almost completely separated from peoples' ethno-cultural circumstances (Gellner, 1983: 10-20). Having nothing to do with modern models of multiculturalism or pluralism, one reason of this diversity lied in the absence of ideological drives and technical instruments comparable to that of nation-states that included bureaucracy, standing armies and schools. It was under these circumstances that almost none of the

medieval authorities either felt a strong incentive to create ethno-culturally, legally and politically united states nor saw an interest in promoting a politically administered ethno-cultural homogeneity (Doyle, 1992).

Central authorities confined their business to those minimalist functions of maintaining public order, achieving justice and making wars without seeking active loyalties of their subject population. Generally speaking, as long as they paid taxes and fulfilled labor obligations, central authorities, before the emergence of centralized states, if not nation-states, did not interfere with peoples' ethno-cultural circumstances, languages, customs or belief systems. More specifically, they had nothing to do with what peoples believed or which languages they spoke (Doyle, 1992: 238-240).

On the contrary, since socio-cultural, legal and political diversity had provided useful instruments through which state authority would indirectly be mediated to individual subjects in the absence of modern ruling mechanisms, imperial administrations adhered stronger significance to cultural differentiation instead of ethno-cultural, linguistic, legal and political integration. It was because of this basic concern that they even invented and reinforced social compartments whenever and wherever society lacked appropriate cultural cleavages (Gellner, 1983: 10). Under these circumstances, if there was any socio-political homogeneity, it was in the form of horizontally created internal homogeneity within the same ruling strata or among the members of the same social compartment, both of which frequently constituted "inward-closed" communities (Gellner, 1983: 9-13).

Thus, notions of state-membership and ethno-cultural membership were clearly disassociated in the pre-modern politics. There appeared no identification between ethno-cultural and political borders of states. Even in the latin usage, the

word *natio* referred to “communities of people of the same descent, who are integrated geographically in the form of settlements or neighborhoods, and culturally by their common language, customs and traditions, but who are not yet politically integrated in the form of state organization” (Habermas, 1994: 22). It was in this context that exercising jurisdiction upon a single ethno-cultural and linguistic community was an exception, rather than an overriding rule. By contrast, while one political unit exerted authority over various ethno-cultural groups, that is “national”, the same kind of communal groupings scattered over the borders of various political units. The French royal dynasty, for example, involved Germans, Flemings, Bretons, Basques, and other “foreign nationalities” as well as those who belonged to the French ethno-linguistic category (Hayes, 1931: 6-7).

Given ethno-cultural, political and legal diversity that preceded emergence of nation-state system, it seems to be appropriate to conclude that the order of the *ancien régime* did not, or, could not touch, if not directly protect, peoples’ ethno-cultural, religious and linguistic distinctions. Ethno-cultural heterogeneity characterized human reservoir of political units. Similarly, social distinctions with regard to ethno-cultural differences of peoples did not seek political expression. There existed a natural diversity among different sections of territorial populations as they were divided along jurisdictional boundaries and corporate groupings. In the absence of common rights and obligations, neither the idea nor practice of universal citizenship developed. Ethno-cultural distinctions largely remained intact without creating an integral society of citizens. Due to fact that diversity had been accomplished in an inegalitarian legal-political environment, the notion of state-membership did not indicate a sense of common rights and obligations. The locus of identification for almost all of the national population sprang from local, religious, sectarian or ethno-cultural

membership. Before they were Frenchmen, for instance, the inhabitants of the lands belonging to the King of France were first Germans, Flemings, Bretons, Basques, or Normans; or Catholics, Protestants or Jews (Williams, 1970: 18; Gilbert, 1999).

This implies the fact that diverse circumstances of the *ancien régime* were formulated and achieved at the expense of legal equality. Having been situated at the local circumstances of peoples, ethno-cultural distinctions were left untouched but not attributed identical treatment. In most circumstances, discrimination, if not persecution, constituted an integral part of legal systems. Social differences were not accommodated within a system of substantive equality which would seek egalitarian treatment within a context of ethno-cultural diversity. The concept of equality itself came to surface only after nationalism and universal citizenship revolutionary transformed configuration of both state and society as well as the nature of relations between state and its subject peoples.

2.3 Nation-State: A Path to Ethno-Cultural Homogeneity

Corporate quality of the *ancien régime* accommodated social distinctions in an inegalitarian order of socio-political and legal spheres in which political and cultural affairs remained largely independent of each other. However, since the middle of the eighteenth century, categorical distinction that had existed between the classical notion of *natio* and “politically organized people”, that is ethno-cultural and political spheres, gradually disappeared. The meaning of the term “nation” changed from designating a pre-political entity to indicating political association of a group of peoples (Habermas, 1994: 22-23). It was this congruence of political and cultural realms that rendered ethno-cultural identity problematical for both state and its population. Ideal image of the “nation” component of the modern state altered socio-

political and legal position of ethno-cultural and linguistic minorities. While once had been viewed within the terms of natural diversity, modern transformation began to articulate peoples' particularities in terms of minority/majority categories with all of its socio-political and legal ramifications.

It was under the influence of modern constraints and opportunities that were created by the seventeenth and eighteenth centuries' socio-political and industrial revolutions, central authorities embarked intensive policies in the direction of eradicating ideological and functional roles of corporate agents that traditionally existed between state and its subject peoples. Absolutist states, as a result, came to be conceived political norm in the Western world that gathered, in a manner of "bureaucratic incorporation", economic, political, administrative, legal and military prerogatives in the hands of central rulers. It was this integrative process that signified the end of the *ancien régime*'s political and legal diversity (Poggi, 1978: 60-86).

Cultural aspect of the integrative process advanced through ideological and political incentives and opportunities created by the theory and practice of nationalism (Habermas, 1994: 22). As modern transformations exchanged previous forms of political and legal diversity with uniform designations of legal-political formulations, political realm ceased to have been separated from the cultural (social) one. The integrative process of state-building, hence, accompanied with an extensive process of nation-building which unfolded in a manner of ethno-cultural and linguistic homogenisation. Legal-political integration created both ideological-political and technological grounds upon which central authorities constituted congruence between political and ethno-cultural borders and promoted identification of the former with the latter (Gellner, 1983).

Having removed corporate instruments of rule, modern state necessarily instituted a direct linkage between state and subject peoples. Major reason of this development depended upon the concentration of legal-political, economic, cultural, educational and administrative functions in the hands of central authorities who had to take over those basic businesses that had hitherto been fulfilled by intermediary corporate agents. Modern state, therefore, exhibited an increasing conviction to develop intensive social communication and social compliance that would more appropriately be attained in an ethno-culturally and linguistically unified society. Under these circumstances, prevalence of ethno-religious and linguistic cleavages was considered barriers inhibiting establishment of a social cohesion well-suited to the functional existence of a modern state (Birch, 1989: 8-9/40-46; Deutsch, 1969: 18-19).

Beyond doubt, political and economic transformations of the modern age drove state mechanisms to create ethno-culturally and linguistically homogeneous societies. However, the same transformation itself had also activated a process of socio-economic mobilisation that simultaneously created social conditions of ethno-cultural and linguistic homogeneity. It is argued that when industrial revolutions gradually uprooted millions of peoples from their local circumstances of “inward-closed” communities, state-wide mobility and enhancing social communication made different members of population groups not only more familiar with each other but also more similar to each other. The same process slowly withered away local cultures and languages, socio-political ties, identities and loyalties, and assimilated them into a dominant ethno-cultural formation. In most occasions, peoples abandoned their ethno-cultural particularities in favor of a uniform and bounded cultural and political identity promoted in the center of political authority. Although limited by territorial

concerns, peoples' imagination went beyond regional, local and communal sources of identification.⁵⁶

The emergence of the modern state, therefore, prompted the single identification of ethnicity, language, religion and culture at the expense of peripheral sources of sub-national identities. As Balibar (1996: 134) argued, when it was building centrally consolidated states, state-building processes of the non-national-dynastic state apparatuses progressively produced elements of nation-states or nationalisation of society. Ethno-cultural homogenization, hence, became an integral part of modern state formation which is essentially a political process. From this point of view, modern nationalism revisited patterns of primitive tribalism invigorated on an enlarged and more artificial scale (Hayes, 1931: 12).⁵⁷

The so-called policy of "France, one and indivisible" (*nation une et indivisible*) presented a good example to the case of national integration that evolved at the expense of peripheral sources of ethno-cultural identification. In advancing on the way of modernization, national policy of the French state gradually transformed ethno-cultural composition of the French population from a "wealth of tongues" into a linguistic quality strongly dominated by *Ile-de-France*. On the way of becoming members of a unified French nation, more than half of the France's population lost their mother languages (Weber, 1976). The French example indicated that when it attempted to build a national society, characterized by common ethno-cultural identification, modern state, at the same time, destroyed other nations that existed within the same political borders. Borrowing from Connor (1972), it seems

⁵⁶ This view represented the functionalist discourse of the theory of nationalism (Gellner, 1993; Deutsch, 1966; Calhoun, 1997; Anderson, 1983).

⁵⁷ In the words of Hayes (1931: 1), a tribe is "a relatively small and homogeneous group of great cohesive strength. Each tribe has a distinctive pattern of life and culture, a distinctive dialect, a distinctive social and political organisation, a distinctive system of religious beliefs and magical

appropriate to claim that the “nation-building” process proceeded, in practice, in a manner of “nation-destroying”.

To sum up, unlike the *ancien régime*, socio-political and legal diversity lost its ideological and functional grounds by the emergence of modern state which promoted convergence of political and cultural realms. States began to seek not only legal-political centralization but also ethno-cultural homogeneity accomplished around a centrally administered ethno-cultural and linguistic designation. In so doing, modern state transformed social conditions “from the form of a *Gesellschaft*, or functional existence, to a *Gemeinschaft* organisation, or a homogeneous community” (Bloom, 1990: 55). Originally political concept of the state came to be identified with a traditionally non-political and cultural concept of the nation. Henceforth, state and nation, state-membership (citizenship) and ethno-cultural membership (nationality) came to be perceived synonymous. In many cases, ethno-cultural traits began to play constitutive roles in defining political identity of peoples (Habermas, 1994: 22). Bearing this fact in mind, in order to better explain socio-political and legal position of ethno-cultural minorities in the age of nation-states, it is significant to have a closer look at modern connections established between state, nation, nationality and citizenship.

2.3.1 Nation and State

Socio-political, legal and technological transformations of the modern age prompted convergence of political and cultural realms. In this context, the state instrument has often been apprehended as the political expression of an ethno-culturally homogeneous grouping of peoples. It was this homogeneous understanding

practices, a distinctive set of customary laws and ceremonies and art-forms. Each tribe works and wars as a unit and indoctrinates its members with supreme loyalty to it.”

and identical political practice that blurred demarcating lines between essentially two distinct notions of state and nation. The maxim of “one nation, one state” dominated modern thinking. It was believed that every ethno-cultural community would have its own state or every state would rely upon an ethno-culturally homogeneous population. However, it is clear enough that there has existed a lack of coterminality between two distinct concepts of nation and state. Several nationalities have coexisted in the lands of the same state or an ethno-cultural community scattered over the borders of several states. The European continent, for example, has over 70 ethno-cultural communities within 28 states. The number of states has often changed in the history of the continent but the number of ethno-cultural communities remained constant (Oommen, 1997b: 25).

The two notions of state and nation have signified different sources of identity and loyalty. The former has essentially depended upon the terms of political-membership and, hence, referred legal-political locus in peoples’ identity and loyalty. The latter, by contrast, has been associated with particular circumstances of peoples and referred to communal loyalty and identity sprang from ethno-cultural membership (Shnapper, 1998). Despite this fact, from the inception of modern times, as Seton-Watson (1977) rightly suggested, the two concepts have frequently been confused and used interchangeably in common usage. Modern connotations of the League of *Nations*, United *Nations* and *international* relations, which are inter-governmental or interstate formations in essence, have already indicated that modern world has recognised almost no distinction between the two concepts. In the view of Seton-Watson, this common approach misrepresented cultural diversity that existed in the body of national component. The author, therefore, suggested making a clear distinction between legal-political category of the state and ethno-cultural category of

the nation, particularly, in those circumstances where population displayed ethno-cultural diversity in composition.

Thus, since the two concepts overlapped in the modern state tradition, legal-political scope of the state has been considered to represent characteristics and interests of a single ethno-cultural community which was largely totalized in a uniform designation of legal-political, educational and administrative affairs in which almost no room was left to the issue of accommodating and expressing minority particularities. Having taken into account this aspect of the nation-state formation, Emerson (1962) suggested that in order to overcome its totalizing patterns, the two has to be divorced from each other. According to him, state instrument has, in fact, depicted a jurisdictional entity, not an ethno-cultural one, which claimed to assert a single legal-political authority upon those peoples who inhabited its political borders. Because of this, a clear distinction, for the author, is to be drawn between the area of jurisdiction and the body of jurisdiction. It is only under these circumstances that the nation and state concepts would be divorced from each other in a way of facilitating equal accommodation of ethno-cultural differences.

Conflating the two concepts has, thus, tended to complicate relations between states and their national populations. In particular, when the “nation” component involved ethno-cultural and linguistic diversity, “nation-state” connotation has tended to bear socio-political complexities on the part of both state and nation. Then, while discussing contemporary circumstances of minority issues, it is imperative to make it clear how the “nation” component of the modern state has been understood. Broadly speaking, the concept of the nation has been approached within two categorical explanations: one is based on political-territorial and the other on ethno-cultural/kinship ties. The former has represented the western, civic or French model

according to which the nation has been considered a voluntary association of peoples inhabited lands of the same political authority (*jus soli*).

In the view of Renan (1996), the prominent advocate of the civic model, ethno-cultural and linguistic bonds are regarded insufficient to constitute a national society. The view suggested that the nation is not an ethno-cultural community but a voluntarist association of peoples who shared a legacy of common historical memories and are willing to continue to live together in the future. In this model of nationhood, though its members might have had ethno-cultural particularities, group-specific distinctions are generally considered to have withered away in favor of a legal-political formula of national entity. Hence, what determined nationality in this view is not ethno-cultural membership based on particular identities of communal groupings, but political membership held towards a legal-political unit, that of a common state. In Renan's view, state-membership (citizenship) constitutes national identity.

On the other hand, ethno-cultural model, known as eastern or the German model, projected nationhood on the membership of a kinship community. In the context of the model, the concept of nation is associated with a community of descent in which the locus of membership is based not on legal-political membership of a political organization but upon blood ties of ethno-cultural community. Inheritable characteristics of a population group (*jus sanguinis*), in other words, define the criterion of nationality. It is admitted that having no condition of territoriality, ethno-cultural borders of national category override legal-political borders. The major reason of this discrepancy, created between nation and state, is the fact that national awakening preceded emergence of the nation-state, that is national imagination developed independent of territorial and political constraints. Putting the matter

differently, national consciousness, the process of nation-formation, advanced independent of and prior to the stage of state-formation. As a result, ethno-cultural category involved all of the members of the *Volk* irrespective of territory they resided while it tended to exclude all those who remained outside the *Volkish* characteristics (Kohn, 1965).

Under these circumstances, it is expected that since the civic understanding of nationhood, in principle, would refer to an indifferent attitude to ethno-cultural affiliation of peoples, the western model would develop an inclusive approach in treating ethno-cultural distinctions of its national population. Ethno-cultural particularities, in other words, would be secularized in the same way that has been implemented in the case of religion. Peoples would be permitted to pursue ethno-cultural interests in their private realms as long as they respected legal-political framework of the state. Since secularism prohibits establishment of an official religion, state would have no official culture having favorable status over ethno-cultural allegiances of minority groups (Kymlicka, 1995; Kymlicka, 1997).

However, as Kymlicka (1997: 27) rightly observed, ethno-cultural neutrality of the Western civic model has remained a myth in the duration of the modern era. Notwithstanding the legal-political formulation of citizenship policies, civic model too has been engaged in cultivating a single ethno-cultural characteristic. Having advanced at the expense of minority languages and cultures, on most occasions, the state has adopted ethno-cultural characteristics of a dominant ethnic group. In this way, state-membership (citizenship) has tacitly been associated with ethno-cultural membership.

In spite of the apparent distinction that existed between ethno-cultural membership and political membership, the western-civic model too, in practice, has

established a direct linkage between political and cultural worlds. On most occasions, almost no attention has been attributed to the issue of accommodating minority differences at the legal-political structure of state. Presence of a formal discrepancy between nation and state has remained an illusion. Because of this, political membership has not guaranteed persistence of minorities' cultural and linguistic circumstances. By contrast, the legal-political context of the civic model has promoted assimilation of peripheral identities into a dominant one. Ethno-cultural and linguistic elements decided membership criteria of nationality in the French-type as well. For Smith (1996: 113), the only difference was the fact that common myths, memories, or symbols, which, in reality, belonged to a dominant ethnic group, have been introduced in the French model as if they were representing the whole of the national population.

Thus, not only ethnic but also civic model has entailed an ethno-cultural core. Despite the fact that discourse of nationalism has usually situated the two models in two different categories, the civic practices usually culminated in the convergence of political and ethno-cultural membership. Given the significance of kinship ties in the formation of national identity, this convergence was considered unreachable in the German ethnic model. In the civic form, as soon as one received citizenship status, that is legal-political membership to the state, he or she would automatically be granted national, that of the ethno-cultural membership. Although discrimination and/or persecution on the basis of one's ethno-cultural characteristics would, in general, remain out of question, assimilation was introduced as an alternative way of treatment.

The civic model of nationality, therefore, tended not to subject members of ethno-cultural, linguistic or religious minorities to those policies of discrimination or

persecution, but provided that they relinquished their particular characteristics into a national category. The French model, hence, left no room to facilitate free and equal accommodation of minority differences but the principle of equality went hand in hand with practices of uniformity. However, having associated nationality with common descent, ethnic model closed all the doors to policies of assimilation. Instead, ethno-cultural segregation has been used in order to hold outsiders away from national membership. The two models have, therefore, established citizenship practices in conformity with their understanding of nationality. The ideal formulation of the two concepts of nationality and citizenship has largely indicated social position and legal-political treatment of ethno-cultural minorities.

2.3.2 Nationality and Citizenship

Political authorities of the *ancien régime*, as was laid down above, did not seek to create a strong connection between the state-membership and ethno-cultural or nation-membership. During this period, the two concepts largely operated independent of each other. However, by the emergence of consolidated states, which sought to monopolize administrative, judicial, legislative as well as cultural realms in the sole hands of the central administration, the form of links between state and society underwent a comprehensive transformation.

Thus, as modern ideology and mechanisms of the rule operated “in the whole intermediate sphere that had become so strong in medieval times –the sphere of guild, manor, town, monastery, and many other associative ties – individual and sovereign were brought closer together in legal and administrative terms than would otherwise have been possible” (Nisbet, 1994: 8). A direct form of state-membership replaced indirect forms of rule and identification. As a result, legal-political connections

between political authority and individual began to be built in a relation of directness (Nisbet, 1994: 8-9).

It was indeed by the collapse of corporate units that traditional implications of state-membership and ethno-cultural membership acquired new scopes. In particular, individuals were, for the first time, obtained a legal standing independent and out of corporate bodies. Having released from “inward-closed” framework of communal structures, individuals came to be conceived prominently equal members of the ruling polity. Instead of ethno-cultural ties, legal-political realm of the state came to constitute primary bonds among individuals. The community of *citoyens* substituted for *privilégiés* of the corporative regime (Brubaker, 1992: 41). Central authorities were, henceforth, compelled to develop new channels with respect to state-society relations (Nisbet, 1994: 10-13).

In doing this, however, it was already evident that inegalitarian order would no longer determine criterion of state-membership due to fact that the latter had come to be perceived identical with the concept of national membership. This is why, emergence of modern state proceeded as a process standardisation on the legal status of the members of state institution. Hence, without taking into consideration ethno-cultural qualities, universal rights and obligations replaced corporate privileges and private immunities. It was these rights and obligations equally applicable to each member of national society that resulted in the emergence of community of citizens in the modern state system (Brubaker, 1992: 35-49).

Thus, the conception of citizenship as a general membership status was created in place of the liberties, immunities, and privileges of feudal lords and corporate bodies (Brubaker, 1992: 41). The concept appeared as an “equalizing word” which established a reciprocal relationship between state and its individual members on the

universal premises of legal-political membership. Rights and obligations came to be defined in egalitarian terms that ignored, among others, differences of race or ethnicity (Kerber, 1997: 834). The concept of citizenship, in so doing, indicated a legal-political status constructed by common rights and obligations having nothing to do with particular rights and obligations.

In this form, citizenship symbolized a general, formal and abstract status of membership in the political community. Accordingly, the formulation of either law or politics would no longer pay attention to ethno-cultural, religious or sectarian circumstances of the ruled. By contrast, legal-political integration evolved as a generalization and abstraction of the legal-political realm that went hand in hand with abstracting individual from his or her ethno-cultural circumstances (Brubaker, 1992: 40). Putting the matter differently, “just as law and power were generalized, made ‘more unitary and abstract,’ so too the condition of being a subject came to be conceived in more general, unitary and abstract terms”. The word “citizen” (*citoyen*, *Bürger*, *Staadbürger*), therefore, came to be used to depict subject peoples in general irrespective of their corporate attachments (Brubaker, 1992: 41).

Indeed, modern political thought and state practices generally thought that universal ramifications of citizenship status would transcend group-specific particularities of the whole members of polity whatever ethno-cultural, linguistic or religious distinctions they might have. Universality has generally been defined in opposition to particular. It was believed that citizenship would give everyone the same status as equal members of the political entity. It was in this context that universal equality of citizenship status has been conceived in a manner of sameness or uniformity (Young, 1994: 386).

It was expected that the term of citizenship, associated with universal rights and obligations, would have no connection with national attachment. Thus, parallel to the *ancien regime* during which state-membership and culture-membership had existed at two distinct spheres, it was believed that the concept of citizenship, which is the modern indicator of state-membership, would be constituted and implemented at two different levels of political and ethno-cultural worlds. Provided this, the concept might have been thought politically inclusive irrespective of ethno-cultural belonging. However, abstract, universal and general formulation of citizenship status, as expressing a general will over peoples' group-specific differences, has usually operated as an instrument of ethno-cultural and linguistic homogeneity. The two distinct processes of "nation-building" and "citizen-building" have generally gone hand in hand. Because of this, citizenship practices have often inclined to exclude or to put at a disadvantage position some groups, even when they obtained formal citizenship status (Young, 1994: 388-391).

Thus, notwithstanding its theoretical universalism, state practices have usually colored the concept of citizenship with ethno-cultural interests of a dominant ethnic group. Because of this, on the part of minority groupings, egalitarian aspects of the concept have often sustained policies of ethno-cultural assimilation. Due to fact that the notions of nationality and citizenship have frequently been considered identical, legal-political borders of citizenship have often operated in an exclusivist manner towards ethno-cultural others. Whenever or wherever it has been formulated in an inclusive form, this time, the concept has not created equal accommodation of minority distinctions but has mostly operated as an instrument of assimilation (Young, 1994: 401-402).

The idea of exchanging one's ethno-cultural identity for purposes of equal treatment, embedded in the abstract notion of citizenship, was however, not voluntarily admitted. By contrast, many wanted to have both ethno-cultural identity and citizenship equality (Oommen, 1997b: 35). Putting the matter differently, apart from being entitled to all benefits of citizenship, ethno-cultural and linguistic minorities have sought, at the same time, group-specific rights pertinent to the protection and promotion of their religion, language and culture (Young, 1994: 404).

This is to say, socio-political and legal position of minorities in the context of citizenship practices has closely been related to the formulation of national identity and citizenship practices in terms of inclusiveness and exclusiveness. As was already given above, citizenship has provided a legal-political linkage between political realm and individual members of the polity which was colored with a dominant ethno-cultural identity. Therefore, citizenship status, directly or indirectly, has associated individuals to an ethno-cultural and linguistic category. Yet, depending upon distinct origins of the two concepts, it is still possible to assert that nationality is not necessarily a prerequisite of becoming citizen. That is, one can choose to be a member of a polity (citizen) without relinquishing his or her ethno-cultural particularities. But, whether or not this is possible has depended upon the concept of citizenship that a state adopts (Oommen, 1997b: 232).

The politics of citizenship have been shaped around a number of distinctive traditions of nationhood that is deeply rooted in the practices of nation(al)-states on their understandings of what constitutes a nation (Steaward, 1995: 66). Because of this, in order to see true position of ethno-cultural minorities in a modern state, it is necessary to disclose the connection that has been established between citizenship and nationality in modern conditions. At this point, it seems significant to turn back to two

major traditions of nationhood that is the western-civic and eastern-ethnic models. Since citizenship and nationality, at least in principle, have signified two different sources of identification and allegiance, the form of relationship established between the two has carried significant implications on the treatment of minority distinctions.

2.3.2.1 Civic Nation and Citizenship

The western-civic model, in principle, has an ethno-cultural neutrality. Ethno-cultural differences have not prejudiced conditions of national membership. It is argued in this sense that “in accordance with the revolutionary tradition of egalitarianism and universalism, citizenship is based not on ethnic group (as defined by blood or cultural ties), but on the legal criterion wherein the *droit de soil* predominates” (Veil, 1994: 30). Thus, state-membership (citizenship) is considered fully a “legal-status”, that is “membership in a particular political community” (Kymlicka and Norman, 1994: 352). The civic version has treated citizenship synonymous with national membership. However, as given above, civic model has in no way acted blind to ethno-cultural features but maintained a latent form of cultural and linguistic coloring. Because of this, while conflated those notions of citizenship and national membership, the same practice has converged ethnic and civic elements. Citizens have been considered both ethnic and civic members of the state. It was in this context that citizenship equality has been implemented in a form of national uniformity. Because of this, when individuals adopted legal status of state-membership with universal ramifications of citizenship equality, the civic model usually compelled the same group of peoples to adopt its ethno-cultural and linguistic characteristics. As a result, the civic version of citizenship practices has often

operated, on the part of minority groups, as an instrument of ethno-cultural homogenization (Veil, 1994).

The emergence of modern state and nation in France represented a good example of acculturating minority cultures into an integrated national form by using the instrument of equal citizenship. The convergence of nationality and citizenship has become an instrument of assimilation in the French context (Heater, 1999: 103). Defined on legal-political and territorial criteria (*jus soli*), the French notion of nationhood came to be synonymous with “*patrie*” and “*peuple*”. The idea of the French people brought together ethno-cultural groups as well as economic classes under an all-inclusive national form. The “*patrie*” and “nation” were used interchangeably. Citizenship and nationhood were melted into a political designation of integrated and non-divisible whole. Thus, having merged minority differences into French cultural and linguistic category, the terms of citizenship and nationhood in the French model no longer signified separate notions (Heater, 1999: 95-99; Brubaker, 1992: 35-49).

As the French case already indicated, a theoretical identification of citizenship and nationality has occurred whenever or wherever the concept of nation was understood as a political community, a civic community, or as a “community of citizens”. It is in this form that political membership has operated as an instrument and channel of ethno-cultural membership. Accordingly, when one received citizenship status, he or she was automatically involved in the ethno-cultural category of national membership. Therefore, notwithstanding diverse circumstances of national population, it came to be recognised ethno-culturally homogeneous, and its citizens were, at the same time, considered its nationals (Oommen, 1997b: 241).

Not surprisingly, therefore, civic version of nationality and citizenship by no means introduced political and legal grounds upon which minority distinctions would equally be accommodated. Instead, those population categories who remained outside the mainstream identification category have been expected to relinquish their ethno-cultural and linguistic particularities in favour of the dominant one (Veil, 1994). Thus, from the minorities' point of view, full-fledged framework of the citizenship status would be attained at the expense of their group-specific characteristics. Because of this, universal equality embedded in the meaning of citizenship status molded, in practice, in a manner of national uniformity (Oommen, 1997a: 15-19). Alongside identical formulation and practices of civil and political equality, the subject peoples were, at the same time, compelled to match a set of ethno-cultural qualities celebrated at the center. Egalitarian practices of the principle of citizenship have, therefore, advanced "by encouraging, sometimes imposing, one language from the many spoken, one religion among the many followed, one set of myths and symbols among the many produced" (Alfonsi, 1997).

To sum up, the universal scope of the citizenship status removed inegalitarian order of the *ancient regime*. In the context of the latter, peoples were provided with a free space to learn, teach and practice their group-specific distinctions but within an inegalitarian system of legal-political order. Civic understanding of nationality, accompanied with a universal application of citizenship equality, accorded identical rights and obligations to whole members of the polity. However, notwithstanding its abstract formulation, citizenship practices have usually urged subject peoples, this time, to relinquish their group-specific differences in favor of ethno-cultural circumstances of a dominant *ethnie*.

2.3.2.2 Ethnic Nationalism and Citizenship

In the Eastern-German model, as was argued before, the criterion of nationality rested upon an “inward-closed” framework of inborn ethno-cultural characteristics. In this context, the state was considered political expression of pre-modern kinship community based on blood ties. The condition of state-membership (citizenship) was exclusively limited to kindred blood. The German-ethnic model was not a political one nor was it linked with the abstract and universalist idea of citizenship. Accordingly, the German model has developed politics of formal citizenship which relied upon exclusion rather than inclusion. The full-fledged scope of citizenship rights and privileges has been conferred to those groups of peoples who descended from the same blood or ethno-cultural heritage (Steaward, 1995: 66). Putting the matter differently, in the eastern-ethnic model “where the two are fused, membership in the nation is inherent, that is, nationality has nothing to do with individual will and citizenship is inherited. One implies the other” (Oommen, 1997b: 241). Having formulated upon the racist concerns of the Nazi government, the Nuremberg Law of 1935, for example, stipulated:

A citizen of the Reich may be only that subject who is of German or kindred blood who proves by his conduct that he is willing and suited loyally to serve the German people and the Reich. The Reich citizen is the sole bearer of full political rights as provided by the laws; only a Reich citizen...can exercise the right to vote on political matters, or hold public office (Oommen, 1997b: 144).

Thus, when nationality was understood as an extended kinship community, tied together by ethnic or blood relations, full and equal citizenship status have been closely associated with conditions of nationality. Almost no theory or practice of universal citizenship, equally applicable to each section of citizenry irrespective of ethno-cultural characteristics, was, therefore, developed. Rights and freedoms sprang from citizenship status were denied to ethno-cultural others. During the Nazi era, for example, confirming their externality to national category, the Jews, Slavs and

Gypsies, among others, were eliminated from public life, professions and state education. None of them were permitted to purchase rural property or to take place financial institutions, in particular, whole of the “others” were disenfranchised and de-naturalized (Oommen, 1997b: 144).

On the part minority peoples, the eastern-German model has maintained a clear-cut distinction between those notions of state-membership (citizenship) and ethno-cultural membership (nationality). Egalitarian premises of nationality and citizenship have privileged ethno-cultural brothers. On most occasions, therefore, the eastern model has created two distinct categories of citizens: citizens by nationality (national citizens) and citizens by law (formal citizens). Inclusion/exclusion practices of the German model of citizenship, hence, took shape around internality of the national citizens and externality of the formal category of citizens. Because of this, although they might have coexisted for centuries in the same homeland, citizenship practices of the eastern model not infrequently attributed an extreme form of intolerance towards its “co-nationals” (Oommen, 1997a).

This is to say, similar to the practices of the civic model given above, no reconciliation was attained between two dimensions of minority issues: universal citizenship equality and group-specific treatment of ethno-cultural distinctions. The civic version introduced a form of citizenship practice which provided peoples with identical rights and obligations. But, it was the same practice that has denied creating legal-political measures pertinent to the protection and promotion of minority distinctions. Legal equality has been practiced in the form of national uniformity. By contrast, the eastern-ethnic model has displayed almost no concern in the direction of ethno-cultural assimilation. Having decided national criterion on ethnic/blood ties, ethno-cultural others have been segregated from the mainstream category of national

identification. In so doing, however, the latter has conflated the meaning and practices of citizenship and nationality. Full and complete scope of citizenship rights and obligations has, therefore, accorded to those sections of population who were considered within the kindred affinity. Thus, ethnic model has naturally displayed almost no intention to interfere with distinct circumstances of minority groups but largely opened ways of discrimination and persecution. Persistence of minority distinctions has been recognized at the expense rights and freedoms embedded in the framework of universal citizenship.

2.3.3 Nation(al)-state and Ethno-cultural Minorities

Practices of the two versions of nationalism have indicated that ethno-cultural diversity would rarely be reconciled with the expected forms of ethno-cultural uniformity enshrined in the ideological discourses and practices of nationalist doctrines. It is widely accepted today that only a few of the existing states could accomplish homogeneity standards of a “nation-state” with regard to ethno-linguistic and cultural affiliation of their individual citizens. Political boundaries of few states, in other words, coincided with their ethno-cultural boundaries. Ethno-cultural diversity has instead succeeded its continual presence as an integral feature of modern conditions (Conner, 1994; Smith, 1995).⁵⁸ As Alfredsson (1993) pointed out, celebrated homogeneity of the nation-state model has remained an illusion. Depending on this fact, Charles Tilly (1995: 86) rightly suggested that we have to exchange the traditional connotation of “nation-state” with the technical frame of the “national-state”. The latter, in his view, signified consolidated structures of the

⁵⁸ According to recent estimates, 184 states contained approximately 600 living languages and 5000 ethnic groups (Kymlicka, 1995: 1).

modern state but affirmed, at the same time, ethno-cultural diversity prevalent within its national population.

However, despite the persistence of ethno-cultural diversity, integrative centralization of modern states progressively imposed, since the sixteenth century, monolithic policies over the different cultural, religious or ethnic groupings resident within its jurisdiction. Putting the matter differently, “although the fusion between citizenship and nationality was not realized even in the Western Europe, the idea of homogenization caught the imagination of intellectuals and politicians” (Oommen, 1997b: 135). In doing this, although not all of the dominant groups have acted in oppressive or tyrannical forms, few of them, as was suggested so far, have paid attention to the issue of meeting distinct expectations of their societies. In many cases, granting official recognition to ethno-cultural diversity was considered in contravention with national and territorial premises of the ideal state (Geertz, 1963). Because of this, many minority groups have displayed vulnerable characteristics in a community of nation states, and so, frequently resented to acquiring means in order to protect and promote their distinctions. As a result, not only subordinated minority groups resisted to assimilationist policies of modern state but also they were pushed into a position which has disturbed peace and security within as well as between states (Thornberry, 1991; Scarman, 1984).

Thus, notwithstanding the extent of national homogenization, modern states have had to contend with their “outsiders”, those of the citizens who did not belong to mainstream category of national identification. The issue of accommodating minority distinctions has preoccupied humanitarian and security concerns for centuries. Beginning from the Treaty of Westfalia (1648), national and international endeavors have, therefore, sought to devise an adequate instrument of minority protection in

their legal-political settings in order to ensure positive conditions of substantive equality. In association with international efforts, many nation(al)-states have, hence, created their own legal and political regimes in accommodating minority differences whereas many others opted for a systematic policy of assimilation, integration or even discrimination (Bell-Fialkoff, 1993; Macartney, 1968).

However, it is by no means reasonable to state that prevailing regimes of minority protection over the world generated from a unilateral path that culminated in a uniform treatment of ethno-cultural diversity. History of minority protection indicated that minority/majority classification with its corresponding rights and privileges have rarely generated as a product of sudden invention (Macartney, 1968; Preece, 1997). Unique experiences in political, legal, social and even economic histories of world's different countries greatly affected the framework of minority regimes they obtained today.⁵⁹ Foundational basis of both “dividing” and “integrating” factors of national societies have rooted in inclusion/exclusion practices going back to earlier times (Steaward, 1995: 66). For example, it is commonly acknowledged that “language and culture” in France and “blood ties” in Germany historically operated as the instruments of national cohesion while the same factors have been used as major devices of national exclusion on the way of creating their own minorities (Brubaker, 1992).

Consequently, as was already examined above, despite the fact that there has existed a credible distinction between ethno-cultural and political-civic versions of nationalism, cultural element has become an integral part of citizenship practices in

⁵⁹ State declarations, recently promulgated on the Council of Europe's Framework Convention for the Protection of National Minorities, presented a good example to the fact that what determined the meaning of “national minorities”, if not the ways of treatment, rested upon states' historical experiences and practices (CoE, 1999: 74-78). Similarly, “in view of the range of the different situations”, the provisions of the Convention provided the parted states with a secure measure of

both cases. The relevance of tradition, ethnicity and language on the emergence of a national entity has inserted influence on the legal-political framework of citizenship practices as well. In many multi-ethnic and multinational states, the rhetoric of citizenship has often been used historically as a way of advancing interests of a dominant national group (Kymlicka and Norman, 2000: 10-11).

Bearing diverse circumstances of the modern conditions in mind, accommodating ethno-cultural diversity within citizenship equality has sought for creating a clear disassociation between nationality and citizenship. Thus, legal-political act of receiving citizenship was to be thought and practiced distinct from ethno-cultural implications of receiving nationality. In other words, state mechanism ought to be viewed as a collectivity of citizens who enjoy judicial equality in the territory of the state, irrespective of group-specific identities based on, among others, ethnicity, religion or language (Oommen, 1997b: 27). It is in this context that the issue of minority rights has sought a true reconciliation between notions of citizenship equality and that of the different treatment of ethno-cultural minorities. It has been expected that persistence of minority distinctions would be secured within the universal scope of citizenship equality without forcing them to renounce ethno-cultural distinctions (Schnapper, 1998).

As was argued, citizenship practices adopted in the two models of nationalism have failed in creating a true congruence between citizenship equality and distinct treatment. Major reason of this lies in the fact that both models have established closer linkages between two distinct notions of citizenship and nationality. In so far as the notion of citizenship is linked to nationality, there would be almost no possibility to create a reasonable congruence between citizenship equality and minority

discretion "enabling them to take particular circumstances into account" when implementing minority clauses therein (CoE, 1999: 17-37).

treatment. Since egalitarian frame of civil and political rights has generally been associated with the condition of meeting a national criterion, national others, whether obtained citizenship or not, would be subjected to discriminatory treatment.

It is suggested that citizenship does not exclude ethno-cultural distinctions as long as a clear distinction is made between those notions of legal-political identity (citizenship) and private particular identities (ethno-cultural identity). It is believed that when a national formation is constituted as a “community of citizens”, not ethno-cultural grouping, then it can safely be projected upon the grounds of ethno-culturally heterogeneity. Under these circumstances, a public domain, independent, but not superior, of private interests and private belongings, is created in order for national heterogeneity to be a part of the nation(al)-state. The public domain is represented as a neutral “empty-space” in the front of any particular ethnic, religious or linguistic belonging. It is because of this neutrality that individual citizens are permitted to enjoy their particularities in ethno-cultural groups while, at the same time, participating in a political sphere of citizenship universality having nothing to do with private distinctions. It was by the achievement of this disassociation that, it is believed, one would guarantee both cultural autonomy and equal citizenship status which is divorced from ethnic, religious or linguistic affinities. In this context, it is suggested, national category would no longer signify ethno-cultural brotherhood but a political organization made up of a community of citizens. Political and legal act of receiving citizenship, hence, is clearly separated from the cultural act of receiving the nationality of this state (Schnapper, 1998).

It follows from this argument that if minority peoples were to be secured with legal-political grounds upon which they would protect and promote their ethno-cultural distinctions, national settings were to adjust themselves with diverse

circumstances of their population. In particular, citizenship practices, both in theory and implementation, should respect persistence of minority distinctions without violating universal implications of citizenship equality.

2.3.4 Conclusion

Contemporary position of ethno-cultural, linguistic and religious minorities rooted in the emergence of the nation(al)-state system. In the absence of modern ruling mechanisms and ideological incentives, central authorities of the European *ancien regime* did neither wish nor attempted to interfere with diverse circumstances of peoples who were organized in corporate instruments of rule having almost no direct linkages with the state. However, within an inegalitarian order, policies of medieval diversity had nothing to do with any notion of universal equality. It was by the emergence of nation-states that egalitarian concerns began to dominate legal-political realms of the public. In search of building direct linkages with individual subjects, central authorities, on the one hand, dispensed, from the seventeenth century on, with intermediating corporate bodies, on the other hand, created the concept and practice of citizenship with its universal aspects of individual equality.

However, due to fact that theoretical discourse and practices of nationalism preached ethno-cultural homogeneity, the two distinct concepts of citizenship and nationality were usually conflated in the policies of the modern state. Because of this, citizenship equality has often unfolded in a manner of uniformity that urged peoples to exchange their particular characteristics with an abstract formula of citizenship equality. Whatever may be definitions of citizenship, nationality or ethnicity, there existed an implicit expectation that they should coincide. Where they do not, national policies drifted towards assimilation, discrimination, exploitation and even oppression

of ethno-cultural others. Neither ethnic nor civic versions of national articulation would, therefore, create legal-political conditions that would facilitate protection and promotion of ethno-cultural distinctions within citizenship equality.

As opposed to the circumstances of a nation-state in which legal and cultural community was expected to coincide, citizenship in a diverse society would, in fact, operate as a mechanism to provide essential grounds of both unity and diversity. Thus, in so far as the legal-political concept of citizenship was disassociated from ethno-cultural substance of nationality, the former would cease to function as a channel of assimilation on the part of minority peoples. In place, peoples would come to enjoy all the benefit of citizenship status without having had to renounce their ethno-cultural particularities. The legal-political choice of receiving citizenship would no longer deem it necessary to internalize cultural or linguistic characteristics of a dominant nationality. It was in this context that a true reconciliation between citizenship equality and group-specific treatment of ethno-cultural minorities would be reconciled.

Coincided with the emergence of modern state system, national and international have developed a number of norms, values, principles or instruments in order to create the said reconciliation. Next two chapters will elaborate emergence, general scope and practices of policies, principles and instruments developed in the European context, particularly, in the framework of the European regional organizations.

CHAPTER III
INTERNATIONAL REGIMES IN MINORITY RIGHTS
Precedents to the Contemporary Norms and Instruments

3.1 Introduction

Rooted in the emergence of the modern nation-states, the question of minority rights has preoccupied national and international authorities in the duration of the last four centuries. The disappearance of corporate states of the European *ancien regime*, because, has left many non-dominant groups face to face with politics of extinction, assimilation, migration, subordination or oppression. Intensive centralization of the socio-political and economic sources of power has threatened minority peoples with regard to their ethno-cultural, linguistic and religious characteristics. For the sake of political and humanitarian considerations, therefore, the fate of minority groups has been incorporated into the general scope of national and international politics. In order to allow for the legal-political accommodation of minority distinctions, national governments have undertaken internal and external commitments which have gradually built a network of rights, norms, instruments, and the ways of treatment in the field of minority protection. It was within this context that a limited regime of minority rights was created by the second half of the seventeenth century before it evolved into a more comprehensive and expanded regime in the early decades of the last century.

Given this fact, before elaborating on the European-regional and the Turkish minority rights regimes, the focus of this chapter will be on delineating major stages and aspects of minority protection that has largely affected, in particular, the shape of the

former. In this respect, minority rights regimes, which preceded or co-existed with the development of the European and Turkish models, will be examined in three stages. The first stage involved the *Westphalian* system that covered the period preceding the regime established by the *Minority Treaties* of the pre-WWI. During this early stage, a non-systematic form of minority politics, limited in terms of both geographical area and content, prevailed. In relation to the territorial and population transfers, the concern of the regime exclusively concentrated upon the protection of religious minorities inhabited in specific regions or states of the European continent. Despite its limited application, the *Westphalian* regime gradually established a political and legal tradition upon which a new system was founded towards the end of the first quarter of the twentieth century. The second regime accounted for the period of the League of Nations during which a set of bilateral and multi-lateral treaties, commonly known as *Minorities Treaties*, created a framework of norms, rules, principles and instruments in the field of minority protection. Lastly, the present chapter will outline the UN framework of minority protection as it relates to the main characteristics of its humanitarian acts. In this context, this chapter will indicate that the UN regime shifted the focus from the rights of minorities to the universal rights of human beings. This chapter will show also the fact that during the post-Cold War era, the UN attention has turned towards creating a regime of minority protection which was expected to harmonise state rights, individual human rights and group-specific rights of minority peoples.

3.2 Prelude to Minorities Treaties: The Westphalian Regime

As was noted before, the European *ancien regime* manifested a corporate nature in the sense that political, administrative and legal privileges of central authorities had been devolved upwards and downwards among which the central ruler was no more than a *primus inter pares*. While symbolized the emergence of sovereign states, territorially consolidated, politically and administratively centralized, the Treaty of Westphalia (1648) gave an end to the corporate state system.¹ The same process prompted European states to devise an earlier model of minority protection within a network of norms and instruments addressing protection and promotion of minority distinctions (Fink, 2000: 385). During the period concerned, since “Catholic or Protestant, Lutheran or Calvinist rather than Irish or English, German or French were the labels variously used to separate insiders from outsiders” (Preece, 1997: 77), rather than ethno-lingual and cultural distinctions, the focus of the Westphalian regime took shape around the availability of religious freedoms.

The Treaty of Westphalia affirmed the principle of *cuius regio, eius religio* which entitled central rulers to determine religion of the land of their jurisdiction. In so doing, state authorities displayed an open desire to construct mainstream identification of the territorial population on a definite religious belief, while pushing those sections of population who differed from the dominant belief system into a legal-political category of minority status. The Westphalian settlement, hence, opted to urge state authorities to

¹ The actual transformation from ancien regime’s corporate state system into an international system consisting of sovereign states was, of course, a gradual development which began earlier and ended long after the Treaty of Westphalia. The Treaty represented no more than one case where distinct polities sought sovereign authority by securing their internal and external independence. In this sense, not a single treaty but a collection of treaties contributed to the eventual consolidation of the Westphalian conduct of affairs. Most significantly, the development of the Westphalian state system displayed not an even development but varied from country to country and from region to region in Europe (Beaulac, 2000).

grant a significant degree of tolerance to those subjects who differed in faith. Accordingly, although states were to maintain an official religion of their choice, it was also acknowledged that followers of minority religions would freely protect and practice instructions of their religions (Lee, 1992: 117-123; Beaulac, 2000).

The Westphalian regime presented a limited version of minority protection in regard to the beneficiaries of the liberties. In addition to religious delimitation, the concern of the regime was further curtailed as it was associated exclusively with the condition of those religious minorities who were affected from territorial changes. As Macartney (1968: 158) suggested, “where the adherents of one state religion were passing under the rule of a state where a different religion was the established one, only the communities which might be expected to suffer by the change were ordinarily protected”. In doing this, guarantees were secured to religious particularities resulted from those circumstances where territorial changes were accompanied with population transfers. The issue of minority definition, in other words, was delimited with the condition of transferred populations. Members of the same religious or sectarian community who were already subjects of the state receiving territory were exempted from the benefits of the same principles (Hudson, 1921: 210).²

According to Preece (1997: 77), this second limitation rooted in the then prevailing political and moral considerations. Rights, liberties and obligations, contained in the documents of the period, in her view, reflected not an international norm of

² Despite the prevalence of this general principle, where the state ceding the territory had already practiced religious toleration, the same liberties were stipulated for all religions. One example of this kind was presented when the Belgium was assigned to Holland in 1814. The relevant article of the treaty stipulated: “There shall be no change in those articles of the Fundamental Law (of Holland) which assure to all religious cults equal protection and privileges, and guarantee the admissibility of all citizens, whatever be their religious creed, to public offices and dignities (Macartney, 1968: 158-159).

religious tolerance but aimed at controlling anomalies created by territorial redistributions. Since state authorities were granted exclusive rights to determine religious affiliation of their populations, the kin-states sought to create legal-political grounds of survival for those co-religious communities after they were transferred into jurisdiction of a ruler belonging to a different creed.

Though limited in its scope, these earlier attempts laid down significant rights and liberties pertinent to the protection and promotion of minority particularities. The Treaty of Oliva (1660), concluded between Prussia and Sweden, for example, incorporated definite clauses guaranteeing inhabitants of the ceded territory the enjoyment of their existing religious liberties including persistence of legal privileges which they enjoyed before (Macartney, 1968: 158-159). Similarly, the Treaty of Osnabrück, the follow-up treaty of Westphalia, stated:

(Those) who...profess and embrace a Religion different from that of the Lord of the Territory, shall in consequence of the said Peace be patiently suffered and tolerated, without any Hindrance or Impediment to attend their Devotions in their Houses and in Private, with all Liberty of Conscience, and without any Inquisition or Trouble, and even to assist in their Neighbourhood, as often as they have a mind, at the public Exercise of their Religion, or send their children to foreign Schools of their Religion, or have them instructed in the Families by private Masters; provided the said Vassals and Subjects do their Duty in all other things, and hold themselves in due Obedience and Subjection, without giving occasion to any Disturbance or Commotion (Beaulac, 2000: 164-165).

In addition to religious practices and learning, the same treaty promised civil and political equality as well. Its provisions accordingly affirmed that Catholics and Protestants would have equal representation in the assemblies and in other decision-making instruments of the Empire. In this context, it was also recognised that believers of minority religions were not to be “excluded from the community of merchants, artisans or companies, nor deprived of secessions, legacies, hospitals, lazar-houses, or alms-houses, and other privileges and rights” (Beaulac, 2000: 165).

Liberties, immunities, and obligations, characterized the general framework of the Westphalian regime, were contained in other treaties of the age including Nijmegen (1678), Ryswick (1697), Dresden (1745), and Warsaw (1772). Granted on the condition of subjects' loyalty to the state, the content of the treaties provided rights and liberties, most of which were formulated in the sense of individual rights having collective dimension. Those rights to religious practices and religious learning were conferred to the individuals who would exercise them in community with other members of the minority group. Yet, some others, as such equal representation in the decision-making organs of the state and maintaining community privileges enjoyed before territorial changes, were granted to the corporate personality of the minority group. An obvious example of corporate rights took place in the Convention of Constantinople (1881) which recognised:

(It) guaranteed Mahomedans ceded to Greece freedom of religion and public worship; no interference was permitted with the autonomy, hierarchical organisation, or management of Musulman religious bodies, existing or to be formed; and the local courts of the Cheri were to continue to exercise their functions in purely religious matters (Macartney, 1968: 172).

Thus, in addition to providing individual freedom of religious practice, the Convention affirmed corporate rights of the "Musulman religious bodies". It was in that sense that the Westphalian regime contained both individual and collective rights without making strict differentiation between the two. In particular, if the community held corporate authority on its members before, the same authority was given due recognition after it was ceded to the rule of another polity.

Minority provisions of the Westphalian regime were usually inserted into treaties as a condition of peace. However, sovereign authority of a prince receiving territory was in no way limited but instead remained absolute. The treaties concerned did neither contain legal sanctions upon signatory states nor did they establish international

instruments of implementation. The content of the treaties generally did not allow one part of the signatories to interfere with the internal affairs of the other on grounds of violation. The task of implementation, instead, was left to the good will of the state authorities who just promised to put the principles into practice (Gilbert, 1999: 398).

This indicates the Westphalian regime represented special concessions granted by the ruler to his new subjects in the interests of international peace and stability. It was because of this that subjects were in no way understood to inalienably possess such rights by virtue of their citizenship, humanity or natural law. By contrast, bearers of the rights and liberties gained and continued benefiting them as long as the state authorities or the ruler permitted to do so. Principles of non-interference and sovereign equality allowed state interests to weigh the implementation process at the expense of subject communities (Preece, 1997: 77-78).

However, principle of non-interference in the internal affairs of another state, particularly on behalf of religious minorities, frequently disregarded in the case of the Ottoman heritage. Concerned with the extension of their political and economic interests, European Powers, by the eighteenth century, used condition of non-Muslim minorities in the Ottoman Empire as a pretext of intervention. Leaving broader discussion of the question to the coming chapters, it suffices to note it here that each sectarian group of the Ottoman Christians were gradually taken under the protectorate of a European Great Power throughout the nineteenth century (Macartney, 1968: 161-174).

Apart from the Ottoman State, international recognition of newly emerging states of the Ottoman heritage, including Greece, Serbia, Montenegro, Romania and Bulgaria, was also conditioned upon commitments relating to civil and political liberties as well as

religious freedoms of minorities. Going contrary to the principle of sovereign equality, before granting international recognition, they were expected to prove that they met standards of civilization specified in terms of adherence to the rule of law, respect for civil liberties and minority guarantees.³ Thus, unlike earlier practices of the Westphalian regime, minority undertakings ceased to be voluntarily admitted norms of action in the Ottoman world.⁴

On the other hand, by the early nineteenth century, alongside the rise of nationalism, as an ideology and political project, the element of nationality was, in the sense of ethno-lingual differences, began to be inserted into minority questions as a new criterion distinguishing insiders from outsiders (Gilbert, 1999). In response to the rise of national identities, political formulation of minority rights started to change. In the aftermath of the Napoleonic wars, along with major territorial alterations, the Congress of Vienna (1815), for example, not only redrew the map of Europe but also extended the principle of minority protection to national groupings (Fink, 2000: 386).

Nevertheless, incorporating nationality element into the conceptual category of minority provisions did not bring a sudden and complete break in the scope of the Westphalian regime. Instead, religious groups and their rights and liberties remained in the forefront of minority issues throughout the nineteenth century. For instance, when it was granted independence in 1830, the Greek State was required to undertake specific

³ However it should be noted that despite they were admitted as a condition of recognition, it was not at any time withdrawn on the account of non-fulfilment of principles relating to the rights and liberties of minorities (Macartney, 1968: 168). For instance, although Romania defied the terms of the Berlin Treaty by granting citizenship to only 200 of 230.000 Jewish inhabitants, no effective external interference was instigated (Fink, 2000: 387).

⁴ Different from the minority guarantees dictated upon the new states of the central and eastern Europe, the Ottoman state was to undertake minority stipulations not in return of admission to international society as an independent state. Instead, such stipulations were aimed at taking classical Ottoman practices of minority freedoms under a system of international guarantee (Preece, 1997: 80, fn. 10).

commitments towards its religious minorities. The Greek government recognised that “all the subjects of the new State, whatever their religion may be, shall be admissible to all public employments, functions and honours, and be treated on a footing of perfect equality, without regard to difference of creed, in their relations, religious, civil or political” (Macartney, 1968: 164-175).

To conclude, the Westphalian regime, firstly, rested merely on the protection of religious minorities ceded to a state professing a different religion. Whether collective or individual in formulation, rights and liberties were merely confined to the circumstances of religious groupings. Secondly, since the regime advanced through bilateral treaties, it gained neither an international outlook in application nor did it create an international instrument of implementation. In essence, the regime was born within a non-systematic network of state-to-state practices and remained limited to the circumstances of specific religious groups. It was not until the end of the WWI that state-specific practices of the Westphalian regime gained an international dimension.

3.3 Minorities Treaties: The League of Nations Era

The impetus creating political and moral grounds of the Westphalian regime was the regional response given to the tragedy of the Thirty-Years War which had been provoked by religious antagonisms. Because of this, its concern fell merely on the condition of religious minorities resulted from territorial changes. In spite of the fact that the Westphalian regime created a network of norms and principles with regard to the treatment of minority particularities, it lacked an internationally admitted instrument of

implementation. It was, in short, a regime limited in geographical application, scope of rights and beneficiaries, and of the instruments of international enforcement.

By the nineteenth century, the issue of minority protection underwent a gradual transformation. On the one hand, it was no longer exclusively religious but national identities of peoples, expressed in ethno-cultural and linguistic peculiarities, came to preoccupy national and international politics. Apart from religious communities, ethno-cultural and linguistic groups were gradually added to the field of minority issues. On the other hand, there appeared an urgent need to develop a more inclusive, comprehensive and systematic regime of minority protection having political and legal mechanisms of implementation legitimately applicable in both national and international fields (Preece, 1997: 81-82).⁵ Having resulted particularly from insufficient international cooperation in minority issues, the WWI had already indicated shortcomings of the previous regime (Claude, 1969: 45). Therefore, it came to be believed that only an international organization, having a mandate of mediating international conflicts would avoid expansion of minority related problems (Rodley, 1995: 48).

Creation of an expanded form of minority rights regime constituted the prime motive of the peace settlement in the aftermath of the war. Due to fact that the principle of self-determination had intensively been propagated in the duration of the war, many minority groups had convinced that they would attain to independence by the end of the

⁵ When writing to Paderewski, the Polish Premier, on the rationale of the Polish minorities treaty, Clemenceau, the French Premier, reported novelties of the time in his following words: "The situation with which the Powers have now to deal is new, and experience has shown that new provisions are necessary. The territories now being transferred both to Poland and to other states inevitably include a large population speaking languages and belonging to races different from that of the people with whom they will be incorporated" (Gilbert, 1999: 402).

war.⁶ The victorious leaders, however, saw at the end of the war that it was completely unfeasible to fulfill all the national aspirations on the one hand, and to create homogeneous nation-states on the other (Preece, 1997: 81). Depending on a number of economic, strategic and historical considerations, instead, the post-WWI state frontiers were drawn without giving due consideration to the ethnographical circumstances (Macartney, 1968: 192-208).

Beyond doubt, creation of new states or border shifts taking place in the course of the peace settlement incorporated some of the former minorities into those states in which they constituted parts of the majority nationality.⁷ In some other cases, as it happened between Germany and Poland or between Bulgaria and Greece, the principle of physical transfer of minority populations also contributed to decreasing the size of minorities who were akin to destabilise the state system of the post-WWI.⁸ However, the revision of frontiers and the reshuffling of populations did by no means remove the problem of national minorities from the agenda of the world politics (Claude, 1969: 12). The principle of self-determination or the exchange of populations had exhibited definite limits in practice. "It was recognized that, no matter how frontiers would be drawn, there

⁶ Having believed that a sustainable world peace would be secured by the general satisfaction of the principle of nationality, the US president Wilson supported nationalist aspirations of minority peoples in the course of the war. In 1917 for example, he stated: "no peace can last, or ought to last, which does not recognise and allege the principle that Governments derive all their just powers from the consent of the governed, and that no right anywhere exist to hand peoples over from sovereignty to sovereignty as if they were property" (Macartney, 1968: 186). On another occasion, speaking on his "Fourteen Points", President Wilson declared in 1918: "Peoples are not to be handed from one sovereignty to another by an international conference or understanding between rivals and antagonists. National aspirations must be respected; peoples may now be dominated and governed by their own consent. Self-Determination is not a mere phrase, it is an imperative principle of action which statesmen will henceforth ignore at their peril." (Macartney, 1968: 189-190).

⁷ The creation of a Czechoslovakia and redrawing borders of Poland in the course of the peace settlement gave an end to the minority status of many Czech, Slovak and Polish peoples (Macartney, 1968, 196-201).

⁸ When Bulgaria ceded Western Thrace to Greece in the aftermath of the WWI, the two countries signed a treaty, in November 1919, on the exchange of minorities left on the other side of territories. Throughout the

will always be groups in Europe who will have to live in a state the territory of whose inhabitants are ethnically, linguistically or religiously different” (Kunz, 1956: 282).

Thus, the post-WWI peace settlement was unable to create a perfect matching between state-membership and ethno-cultural membership. Although the subjects of the minority questions might have changed in several areas, minority question continued to take place among the prominent, if not the first, issues in the agenda of those leaders who came to Paris in order to conclude the peace process. In addition to those minorities inherited from the pre-war period, territorial changes and the emergence of newly states had produced larger numbers of minority groups.⁹ In this context, “nationalizing” policies of the host countries were creating a subordinate level of citizenship paving way for the development of oppressive minority policies (Fink, 2000: 388). Under these circumstances, putting aside humanitarian aspects of the question, maltreatment of minority peoples was likely to jeopardize national as well as international peace and security (Preece, 1997: 82).¹⁰

Thus, unless a just order guaranteeing fundamental rights, liberties and distinct identities of minority peoples was devised, the post-WWI world system on the part of minorities would mean no more than exchanging one bad master with another one.

implementation of the treaty, some 50.000 Greeks were exchanged for about 100.000 Bulgarians (Psomiades, 1968: 64).

⁹ Though the number of minority people had declined half as regards to the pre-war circumstances, approximately 16.000.000 people, most of whom were from the kin groups of the defeated states, had been reduced to a minority status in the post-war map of the European continent (Buxton and Conwill-Evans, 1922: 80-84). After the settlement of the Peace Conference, the total number of minorities counted about 25-30 million constituting 20-25 per cent of the national populations of some states (Macartney, 1968: 211). For instance, a quarter of the population of Yugoslavia, one third of that of Romania, two fifths of that of Czechoslovakia and almost one half of that of Poland consisted of ethno-cultural or religious minorities (Mover, 1931: 455, cited in Gilbert, 1999: 402).

¹⁰ Having been aware of the disruptive nature of minority questions, the US president Wilson addressed the Conference leaders: “Nothing...is more likely to disturb the peace of the world than the treatment which might, in certain circumstances, be meted out to minorities” (Macartney, 1968: 232).

Because of this, it was believed that there was a moral responsibility on the part of the leaders to compensate the situation of those ethnic, religious and linguistic minorities who could not gain their own independent states (Hudson, 1921: 204-205). Thus, apart from its political-strategic and moral aspects, a comprehensive regime was necessary in order to make the post-war situation more acceptable in the eyes of the newly created minorities. Clemenceau, the French Premier, put stronger emphasis upon this aspect of the new regime when he stated that “these populations (newly created minorities) will be more easily reconciled to their new position if they know that from the very beginning they have assured protection and adequate guarantees against any danger of unjust treatment or oppression” (Macartney, 1968: 239).

Having strategic, political, and moral concerns in mind, the League of Nations was founded as an integral part and one of the main agents of the post-war peace structure. It was stated in the Covenant of the League of Nations that the objective followed with the establishment of this international organisation was to set up an enduring peace and security by promoting cooperation between states (Akermark, 1996: 101). In doing this, the Conference, in the words of the President Wilson, was “trying ...to eliminate those elements of disturbance so far as possible, which may interfere with the peace of the world” (Macartney, 1968: 232). And, the most significant element of disturbance, at the time, was the situation of national minorities.

Despite the fact that there appeared several proposals in the direction of creating a universal minority rights regime,¹¹ the League Covenant, however, did not incorporate a

¹¹ The second draft of the Covenant, submitted by the USA President Woodrow Wilson, included an article wording as: “The League of Nations shall require all new states to bind themselves, as a condition precedent to their recognition as independent or autonomous States, to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact,

general and all- inclusive provision relating to the question of minority protection. In place, the field of cooperation was confined to those specific cases which seemed most prone to create minority problems disruptive for the world peace. It was also indicated by the geographical distribution of the minorities treaties that the effect of the treaties were limited, with few exceptions, to those certain areas ceded from the lands of the empires where unsatisfied minorities inhabited. It was believed that unless the Conference would agree on the terms of a comprehensive protection, these historically established minorities would expose serious threats to both national and international dynamics of world peace (Macartney, 1968: 291-293).

Consequently, apart from the defeated states, the newly created or enlarged states were subjected to the provisions of the League of Nations's regime set forth in the provisions of the *minorities treaties*. It was in this context that those states of Poland, Czechoslovakia, the Kingdom of Serbs, Croats and Slovenes (Yugoslavia), Romania and Greece were required to abide with the principles of *minorities treaties*. Although Germany was interestingly exempted from the effect of the new regime,¹² special minority provisions were incorporated into peace treaties agreed with the defeated states of the WWI including Austria, Bulgaria Hungary and Turkey.¹³ On the other hand,

that is, accorded the racial or national majority of their people" (Miller, 1928: 91, cited in Capotorti, 1991: 16). The stipulation was incorporated in the third draft of the Covenant, submitted by the President Wilson, in a more extended form. The article VI of the third draft read as follows: "The League of Nations shall require all new States to bind themselves, as a condition precedent to their recognition as independent or autonomous States, and the Executive Council shall exact of all States seeking admission to the League of Nations the promise, to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact, that is accorded the racial or national majority of their people" (Miller, 1928: 105. cited in Capotorti, 1991: 16).

¹² Yet, the German government unilaterally declared that "Germany, for her part, is determined to treat the minorities on her territory in accordance with the same principles" (Macartney, 1968: 133).

¹³ Poland was bound with the 1919 Treaty of Versailles, Czechoslovakia by the 1919 Treaty of St. Germain-en-Laye, Romania by the 1919 Treaty of Paris, the Kingdom of Serbs, Croats and Slovenes (later renamed Yugoslavia) by the 1919 Treaty of St. Germain-en-Laye, Greece by the 1919 Treaty Sevres,

Albania, Lithuania, Latvia, Estonia and Iraq were subsequently admitted into the scope of the League regime after they made unilateral declarations to the League of Nations that they would comply with the principles of the regime.

3.3.1 Substantive Framework of the Minorities Treaties

Minorities treaties aimed at making loyal citizens out of unsatisfied minorities. It was believed that once minority sections of the national population were guaranteed conditions of equal and non-discriminatory treatment, without denying their ethno-cultural and religious characteristics, they would no longer become a source of dispute neither within nor between states. The drafters of the treaties, hence, situated the issue of “equality within diversity” at the basis of national policies relating to the position of minorities (Macartney, 1968: 274-280). This objective would be realised only if minorities were provided with two essential rights. The first part related to the citizenship status of minority peoples who were to be subjected to identical rights and obligations as those who belong to the majority. Secondly, universal implications of citizenship rights were to be supplemented with a group-specific dimension addressing preservation of minorities’ ethno-cultural, religious and linguistic distinctions (Akermark, 1996: 111).

Minority provisions of the peace treaties concerned, firstly, with citizenship rights of individuals in general without relating it to group-specific circumstances. It was in the second place that the minorities treaties outlined group specific rights granted to the benefit of those national citizens who belong to ethnic, religious, linguistic or racial minorities. The former section of rights was formulated in the form of negative rights in

Austria by the 1919 Treaty of St. Germain-en-Laye, Hungary by the 1920 Treaty of Trianon, Bulgaria by the 1919 Treaty of Neuilly-sur-Seine, and Turkey by the 1923 Treaty of Lausanne.

the sense that states were not expected to create special conditions for the members of minority groups. Minorities were to be permitted to enjoy the same civil and political rights on the same grounds as the members of the majority. Partied states undertook to guarantee, accordingly, measures of universal equality and non-discrimination. The treaties provided in this context (Capotorti, 1991: 18):

- a) the acquisition of the nationality (citizenship) of the new states;
- b) full and complete protection of life and liberty;
- c) equal treatment before the law and the civil and political equality of members of the minority group with the majority population;
- d) a general right to use mother tongues, including those of the minority groups, either in written or orally, in private intercourse, in commerce, in religious practices, in press or other publications, in public meetings, and in the judicial proceedings;
- e) free practice of religious instructions in public and private;
- f) equality in admitting public positions or in exercising professions.

In the second category, minority provisions were stipulated in the form of positive rights which obliged states to take appropriate action in order to create legal-political and economic grounds facilitating protection and reproduction of minority differences. Unlike the universal nature of the former category, the second naturally included group-specific rights conferred exclusively to the benefit of the members of minority groups. In this respect, treaties guaranteed (Capotorti, 1991: 19):

- a) freedom of association;
- b) right to establish, manage and control, at their own expense, charitable, religious or social institutions, schools and other educational establishments, and to use their own language and to exercise their own religion therein;
- c) (without excluding the necessity of learning official language) right to use minority languages as the medium of instruction in the primary schools in those regions where the minority group constituted a considerable proportion;
- d) to allocate an equitable share of public funds for minority groups in those regions where the minority group formed a considerable proportion.¹⁴

¹⁴ The wording of the minorities treaties relating to the meaning of “considerable proportion” was left unclear in the formula of the treaties. One of the earlier drafts of the minority treaties, presented by the US authorities, pointed out that “each minority comprising at least 1 percent of the total population should constitute an autonomous body with the rights of establishing its national, religious, educational, charitable,

The two categories of rights indicated the fact that the formula of the minorities treaties concentrated chiefly on individual rights. The treaties granted rights, including minority-specific ones, to the individual members of national population. Minority-specific rights, nevertheless, displayed a collective nature in its formulation and exercise because, rights and freedoms specified in this category, including associations, schooling, religious practices, were to be enjoyed by the members of minority groups in community with other members of the group. Because of this, despite the fact that general formula of the treaties did not contain rights completely collective or corporate in nature, its provisions involved rights having collective dimension.

Hence, with the exception of allocating state funds to minority educational establishments, the League regime did not consider minorities as collective entities. Without having adopted a politically ambiguous and discouraging concept of “national minorities”, the provisions addressed individual “nationals belonging to racial (ethnic), religious or linguistic minorities” (Fink, 2000: 389). Thus, although peoples’ ethno-cultural membership was taken into account, minority provisions were completely formulated in the form of citizenship rights granted on a legal-political condition of state-membership. Basic reason behind its individualist orientation was the fear that corporate designation of rights and freedoms would create “states within states” that would, on the one hand, hinder both internal and external sovereignty of partied states, while prompting secessionist aspirations, on the other (Capotorti, 1991: 19).

and social institutions.” We can, therefore, deduce from this draft formula that the wording “considerable proportion,” in the eyes of the Conference leaders, meant 1 percent of the total population (Macartney, 1968: 221-222).

The issue of corporate rights, however, was not completely abandoned. As we pointed out above, almost every minorities treaty, taking place in the context of the League regime, adopted clauses, in the form of corporate rights, addressing specific circumstances of minority groups concerned. As will broadly be examined below, the Polish Treaty, for example, urged the Polish government to facilitate establishment of educational committee for its Jewish minority. The Greek treaty, on the other hand, undertook several commitments in corporate form with respect to the non-Greek communities of Mount Athos and personal laws of its Muslim minorities.¹⁵

To sum up, as supplemented with legal-political grounds of differential treatment, without neglecting universal rights and obligations of citizenship, the scope of the minorities treaties brought into existence a form of substantive equality. Going beyond assimilationist nature of the principle of legal equality, the substantive content promoted equality both in law and in fact. In so doing, the concept of state-membership, expressed in the notion of citizenship, was divorced from that of ethno-cultural membership (nationality). It was secured that minority individuals would continue to benefit from the egalitarian privileges of citizenship status without exchanging their ethno-cultural particularities in return.

3.3.2 Polish Treaty: The Forerunner of the League Regime

The post-WWI peace treaty concluded with Poland was the first example of the *minorities treaties* upon which legal, political, cultural and international framework of the

¹⁵ Article 14 of the Greek treaty stipulated to allow her Muslim minorities to regulate questions of family law and personal status in accordance with their own traditions, to assure the nomination of the religious leaders, to protect mosques and cemeteries, to recognise and give facilities to existing pious foundations (wakfs) and to allow the establishment of new foundations of this kind (Macartney, 1968: 248).

follow-up treaties founded. Hence, it will be useful to have a closer look at the content of the Polish Minorities Treaty concluded on 28 June 1919 (Polish Treaty, 1919). As being a prototype example, its minority section embodied two foundational objectives. First, the Treaty stipulated universal rights equally conferred upon whole citizens of the country without distinction of birth, nationality, language, race or religion. Second, the framework of the treaty concerned directly with group-specific rights granted to those nationals of the country who belonged to racial, religious or linguistic minorities.

In its brief form, as Rosting (1923: 648-649) pointed out, provisions of the Polish treaty incorporated:

- a) common rights granted to all of the nationals or the citizens of the state,
- b) acquisition of the nationality of the country,
- c) group-specific rights granted to nationals belonging to ethnic, religious and linguistic minorities,
- d) national and international instruments of implementation,
- e) special provisions on local and particular conditions.

The first section of the Polish Treaty (Arts. 1-12) was assigned to the issue of protecting and promoting linguistic, religious and racial (ethnic) minorities resident in the Polish territory. Having concerned predominantly with citizenship equality, the first part of the section provided those principles of citizenship equality and non-discrimination. In this context, residents born in the Polish territory were considered *ipso facto* Polish nationals irrespective of ethno-lingual, racial or religious affiliation (Arts. 3-6). In so doing, the Polish government undertook that no section of minority groups would be deprived of the right to the membership of Polish nationality on the ground of having minority distinctions. The full and complete protection of life and liberties were guaranteed on equal grounds without distinction of birth, nationality, language, race or religion (Art. 2). As an integral part of it, principles of equality and non-discrimination

were specified to include civil and political rights, eligibility to public employment, and the exercise of professions. As a result, it was clearly admitted that membership to a minority group would not prejudice benefiting universal citizenship rights conferred to the majority nationals of the country (Art. 8).

However, as we noted above, principles of equal and non-discrimination constituted one dimension of minority protection. The other aspect, which is no less significant, was the differential treatment facilitating protection and promotion of distinct minority characteristics. Having this concern in mind, the Treaty introduced group-specific measures relating to the protection and promotion of linguistic, religious and cultural differences of minority communities resident in the Polish territory. In this context, the free usage of minority languages in private intercourse, in commerce, in religious practices, in press and publications, and in public meetings was effectively guaranteed. In addition, the area of linguistic rights was extended to the judicial proceedings in such a way that minority peoples were provided with the right to use their own languages, either orally or in written form, before the courts (Art. 7).

On the other hand, the scope of linguistic rights was sustained with cultural freedoms as well. Concerning the latter, minority provisions of the Treaty laid down specific principles addressing educational, religious and communal affairs of the groups. Accordingly, it was affirmed that minority peoples would establish, manage, and control, at their own expense, schools, charitable and religious institutions (Art. 8). Although official language was admitted obligatory in all schools without excluding those which belong to minority groups, it was also stipulated that minority tongues would be used as the medium of instruction in the primary schools of those regions where a minority group

constituted a considerable proportion of the local population. In the same regions, governmental or municipal authorities undertook also to allocate an equitable proportion of public funds to the benefit of minorities' educational, religious and charitable institutions (Art. 9).

Obviously, both groups of rights, whether citizenship or group-specific, exhibited no idea of corporate formulation but rested on individual rights, at most, individual rights having collective dimension. In most cases, in fear of creating "states within a state", the idea of granting legal recognition to the corporate body of minority communities was denied. Nevertheless, in addition to these stipulations generally applicable to minority circumstances, *minorities treaties* took into consideration state-specific and group-specific conditions as well. It was in this context that the concept of corporate rights was, to some extent, recognized. The Polish provisions, for example, introduced special stipulations addressing protection and promotion of the religious particularities of Jewish peoples. Accordingly, although it was subjected to governmental control and supervision, a specific educational committee, composed of the members of the Jewish minority, was instituted. The committee was charged with a corporate authority in the management of Jewish schools and distributing communal funds allocated to the minority group concerned (Art. 10).

In the issue of national implementation, it was entrusted to a twofold guarantee of internal and external mechanisms. Internally, the said minority provisions were officially integrated into constitutional system of the country. Thus, it was admitted that no national law, regulation or official action would conflict or interfere with these stipulations (Art. 1). Externally, it was a very significant innovation of the new regime that the question of

minority protection was rendered an integral interest of international law. International supervision on the national implementation were entrusted to the political arbitration of the League of Nations and the legal review of the Permanent Court of International Justice (PCIJ) (Art. 12). In so doing, the issue of elaborating possible disputes was partly removed from political realm of states and transferred into judicial and diplomatic authority of international organizations.

Thus, the Polish treaty largely set up legal and political bases of substantive equality on the part of both minorities and majorities. Without neglecting universal scope of the citizenship status, the Polish government undertook positive obligations in order to guarantee persistence and development of minority identities. In doing this, the rights and liberties of individual Polish citizens were considered within the legitimate domain of international concern. Significant spheres of national government were, therefore, devolved to an emerging regime of international governance. The shape of state-society relations, in other words, came to be decided not solely through a national process but international arbitration was accepted a part of it.

3.3.3 National and International Instruments of Implementation

Unlike state-to-state practices of the previous regime, the League system devised an international instrument of implementation. As was given in the Polish case, national implementation of the minorities treaties was placed under a two-fold guarantee. The Westphalian regime, as underlined above, had entrusted kin states or a group of states, such as great powers, with the task of monitoring on the issue of national implementation. In the latter practice, however, since national interests generally overweighed, the regime

had frequently been assimilated into political considerations of states. Emergence of a new state system, depending on international cooperation, therefore, necessitated an international instrument of execution. Clamenceau, the French Premier, clearly indicated this innovative instrument in his following words:

The new Treaty (the Polish Treaty) differs in form from earlier conventions dealing with similar matters. The change of form is a necessary consequence and an essential part of the new system of international relations which is now being built up by the establishment of the League of Nations. Under the older system the guarantee for the execution of similar provisions was vested in the Great Powers. Experience has shown that this was, in practice, ineffective, and it was also open to the criticism that it might give to the Great Powers, either individually or in combination, a right to interfere in the internal constitution of the states affected which could be used for political purposes (Macartney, 1968: 238-239).

Having been aware of this traditional weakness, national implementation of minority provisions was, on the one hand, instituted as a constitutional principle in the parties states. It was stipulated that no national law, statute, regulation or official action would neither prevail over nor conflict with the minority provisions. On the other hand, implementation was taken under the supervision of the League of Nations. Accordingly, it was affirmed that no provision of the treaties would be modified without the approval of the Council of the League of Nations. Thus, if there appeared any infraction or any danger of infraction, it was no longer kin states or great powers but the League Council was to take appropriate action. In particular, if there appeared any dispute between the Council and a state party, the case was to be submitted to the legal discretion of the PCIJ whose decision was binding over the parties (Stone, 1932; Capotorti, 1991: 20).

The League's supervisory acts relied upon a network of information gathering collected through a system of petitioning. At its earlier period, right of petition was vested in the hands of the members of the Council. This right was later extended to the individual members of minority groups, representatives of minority associations as well as to those states not represented in the League Council. However, the task of elaborating

petitions remained in the domain of the Council's authority that was delegated later to the Committee of Three (Minorities Committee) composed of the President of the Council and two of any other member states (Stone, 1932). In the League system, most of the minority cases were resolved through the mediating acts of the Minorities Committee. However, since the petitioner was not given a legal standing, the system operated in a secret manner between the Committee and the state concerned in which state views and interests weighed (Capotorti, 1991, 22-24).

Thus, it seems quite naive to conclude that monitoring acts of the League provided, legally and politically, an effective instrument of supervision. On the contrary, since state parties continued to dominate the process, the issue of minority rights in the context of the League turned out to be more a matter of political negotiation than legal sanction (Gilbert, 1999: 404). Nevertheless, involvement of the minority individuals and the groups in the monitoring process represented a significant progress in the field. Internationalization of the implementation process was also significant in the sense that it provided, at least in principle, a supra-national procedure through which minority disputes would be handled without taking it in confrontational terms (Gilbert, 1999: 406).

3.3.4 The Dissolution of the League Regime

The drafters of the new regime were not minority groups but state parties had almost single-handedly directed the process.¹⁶ Yet, with its comprehensive scope of rights and beneficiaries, the League system helped to produce a safer socio-political and

¹⁶ In order to provide a secure political, legal and economic environment for the Jews of the post-WWI states, the Jewish organisations of the USA, Western Europe, and the Central and Eastern Europe, such as Joint Foreign Committee and Alliance Israélite Universelle, actively involved in the drafting process of the minorities treaties (Macartney, 1968: 212-218).

legal environment that was unlikely to reappear again till the radical breakthrough of the 1990s. Taking into account this innovative turn, Gilbert (1999), for example, acknowledged that “in many ways, it was a system based on ideas ahead of their time.” Another example of this progressive nature was that the regime obliged not only states to undertake commitments in respect to minority circumstances, but it compelled also minority peoples to bear respect to the sovereign rights of the state they inhabited. Irredentist and secessionist aspirations of minorities were accordingly condemned. The League regime, to this end, imposed obligations not only upon states but also on the beneficiaries of minority treaties. A resolution of the League Assembly, adopted on 21 September 1920 declared:

While the Assembly recognises the primary right of the minorities to be protected by the League from oppression, it also emphasises the duty incumbent upon persons belonging to racial, religious or linguistic minorities to cooperate as loyal fellow-citizens with the nations to which they now belong (Capotorti, 1991: 19).

Apparently, the new regime intended to make loyal citizens out of unsatisfied minorities ceded to new states without recognising an expanded version of the principle of self-determination. Thus, the focus of the regime shed light on the newly “transferred” minorities of the post-WWI states. From this point of view, minority treaties retained a margin of continuity with the objectives of the previous regime.

Another continuity was the fact that the minority provisions were not formulated in the form of universal obligations but were dictated upon those states who were looking for international acceptance. It was in this sense that although the issue of minority treatment ceased to be the concern of few relevant states, it did not generate into a complete international system working outside and above state actors. When commenting on the Polish Treaty, the French Premier Clamenceau pointed out:

This Treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that When a state is created, or even when large accessions of territory are made to an established state, the joint and formal recognition of the Great Powers should be accompanied by the requirement that such states should, in the form of a binding international convention, undertake to comply with certain principles of government (Macartney, 1968: 238).

Thus, “certain principles of government” relating to the internal governance of certain states were to be decided externally “in the form of a binding international convention”. But, despite the execution of the provisions was vested in the supervisory authority of a “supra-national” organisation, the regime had no capacity of international applicability. The effect of the treaties was limited to the case of “certain states” whose minority problems brought into existence the League system (Bagley, cited in Capotorti, 1991: 25). The issue of minority protection was associated with the geographical areas of minority problems. In a discriminatory manner, positive obligations relating to the circumstances of minority citizens were confined to those of the newly created, newly enlarged or some of the defeat states. It was this structural defect that undermined, from its outset, its legitimate grounds in the eyes of those state authorities who had been subjected to its norms and instruments. Because of this, far from being an act of international cooperation, minority commitments were strongly conceived humiliating and an external limitation infringing the principle of the sovereign equality of states.¹⁷

Geographical limitation of the League regime did run counter to the modern doctrine of sovereign equality. It was admitted that legal-political position of citizens and their relations with the state would be determined and supervised externally. However, no

¹⁷ When it was required to undertake similar commitments towards ethno-cultural and religious minorities on the occasion of incorporating new territories, the Italian government, for example, held that “she did not stand on a level with the other Successor States, and was too great a Power to submit to such a derogation to her sovereignty (Macartney, 1968: 252).

parallel obligation was imposed upon Western states including Italy, France, Belgium, Denmark all of whom had acquired new territories (Preece, 1997: 82).

It was accepted that a universal regime of minority protection could not be instituted in the then prevailing circumstances of the world politics. The victorious powers of the war, in particular, were not ready to undertake parallel obligations because they would restrict their colonial policies (Rodley, 1995: 48). Because of this, a universal regime seemed neither politically feasible nor applicable in practice. It was believed that generalization would have hindered effectiveness of the League regime by making all states reluctant to support wishful implementation of its provisions. Under the then prevailing international system, it was suggested, the alternative of this limited formula would be “not a universal system, but rather no system at all” (Claude, 1955: 35-36).

It was because of this essential defect that the regime of the *minorities treaties* was born weak. It was argued, an international system formulated on unequal relations of participating states, divided into two categories of free and “under control”, was destined to failure from its beginning (Sierpowski, 1991: 28). Almost on every occasion, indeed, the subjected states criticized discriminatory aspects of the system and sought generalization of the minority commitments to whole of the states. Having found their minority obligations humiliating for their sovereign rights, the treaty-bound states, in particular, deeply resented their exceptional position in international law and avoided them whenever possible (Akermark, 1996: 116).

As a result, fundamental objectives of the regime sunk into defunct. Neither minority particularities would be provided with safeguards against assimilationist tendencies of majority nationalities nor would internal and external stability be secured.

Acted on their own national interests, international community paid little attention to national implementation of minority obligations as long as their national interests were not concerned. Minority questions, with few exceptions, often developed into a political struggle between kin-states and treaty-bound states. While kin-states sought revision in the post-WWI boundaries, host-states kneed on the preservation of status quo. In contravention with its foundational objective, therefore, the League regime became “an instrument for fomenting international rivalry and discontent” (Preece, 1997: 83).

However, what brought the end of the League regime was not its institutional weaknesses but political transformations that occurred between the interim years. Principally, the national execution of the League provisions, beyond doubt, accounted a pluralist regime respecting ethno-cultural differences of minority citizens. However, in the aftermath of their ratification, political regimes in Europe gradually inclined towards totalitarian and authoritarian formulations of nationalism. Under these circumstances, it was believed, there would remain almost no room even for the preservation of individuals’ basic rights and liberties, let alone international guarantees associated with the protection and promotion of minority distinctions (Lerner, 1993: 82).

Under the influence of growing nationalism, state authorities began to consider minority presence within their countries a threat to their imagined homogeneity. From the first decade of the *minorities treaties*, therefore, the concept of “minority protection” was replaced by the idea and practice of “protection from minorities” (Girasoli, 1995: 25-26). Along side the rise of anti-minority attitudes inside, particularly on the side of the treaty-bound states, nationalist policies fostered an effective unwillingness to abide with international obligations. This culminated in the collapse of the League with its integral

network of standards, norms and instruments. A student of international law summarized this process in his following words:

It is unjust to view the failure of the minority system of the League of Nations independently of the general international condition of its time... the minorities system depended on the general state of international order and relations, and inevitably when that order disintegrated the system collapsed with it... (in) the between war period... dictatorships replaced democracies, hate and intolerance flourished, power overrode reason, and passionate nationalism crushed the growing bloom of international cooperation. That minorities should suffer in such a climate was inevitable; in fact, it was quite natural that they should be first to suffer therefrom (Bagley, cited in Capotorti, 1991: 26).

It was emphasized here that the League regime born from the circumstances of time and relied upon the newly projected principles of the post-WWI world order. Because of this, changes in the internal and external understanding of the state-society and state-international community relations gradually eroded legitimate grounds of the League regime as well. The regime symbolically came to an end when the Polish government unilaterally denounced its minority obligations in 1934. The last blow that hit its effect came with the World War II (WWII). Depending on the emergence of new territorial and population transfers, and new international norms and instruments as well as changes in the circumstances from which the League regime had born, the UN Commission on Human Rights officially judged in 1950 that the regime of the *minorities treaties* was extinct (Preece, 1997: 84; Gilbert, 1999: 407).¹⁸

3.4 The UN Regime: A Universal-Individualist Orientation

The main impetus behind the League Nations' concern on minority issues was political rather than humanitarian. Its prime objective was not to provide humane conditions for distinct position of minorities but to prevent minority related conflicts from

becoming a source of international disputes. Because of this, the overwhelming interest of the League regime centered on those minorities who inhabited specific regions and countries, those of the Central and Eastern Europe. Whatever the extent of minority oppression and maltreatment, it did not invest much concern on such minority problems which seemed unlikely to expose an immediate threat to international peace and security.

However, the League system did not succeed even in this limited political objective. Depending on the political transformations of the western world, by the WWII, minority questions came to be considered a destabilising factor for both internal and external politics. Because, during the war, the Nazi politicians had, on the one hand, exploited German minorities living in other states as an excuse for aggression and occupying these states. On the other hand, several German minorities in their host states had acted as a fifth column force to spread the Nazi propaganda. Most significantly, even some of the non-German minorities, such as Slovaks, Croats and Hungarians, had cooperated with Nazi governments in order to further their nationalist aspirations (Preece, 1997: 84-87). It was evident that the League regime had neither satisfied minority aspirations nor did it avoid another world war. Most dramatically, geographically limited aspects of the *minorities treaties* had proved unable to deter Nazi policies of Holocaust executed merely on the Jewish minority (Claude, 1969: 51-69).

The failure of the League regime and the war-time anomalies discredited the issue of minority rights in the eyes of world leaders. Because of this, the post-WWII settlement was founded on a network of norms, principles, commitments and instruments different in understanding and scope from that of the League of Nations. The issue of minority

¹⁸ In the same secession, apart from the Aaland Island agreement, the UN Commission recognised continual validity of undertakings concerning the Lausanne Treaty on the account that there had been no

protection, in particular, was no longer taken as an independent issue but submerged into a general framework of universal human rights protection.

3.4.1 Emergence of a Universalist-Individualist Regime

The UN minority rights regime developed in response to the collapse of the League regime in the duration of which minority questions were often associated with those pejorative notions of ethno-nationalism, irredentism and aggression. Not surprisingly, therefore, the post-WWII regime aimed at correcting deficient aspects of the preceding system. To this end, while combating with the weaknesses of the previous decades, such as non-humanitarian objectives, geographical limitation, political exploitation and misuse, the UN regime denied the framework of the minorities treaties. Political authorities, instead, favored a new conception of human rights which rested upon abstract individuals regardless of their ethnic, linguistic, religious or cultural affiliation. The UN orientation, therefore, preached universalist-individualist approaches rather than group-specific formula of minority rights (Benoit-Rohmer, 1996: 21). A universalist-individualist view also prevailed because, the issue of minority protection, this time, would in no way be examined solely as a European problem but a general problem comprising all the countries of the world. Thus, in addition to the ethnic antagonisms prevailing in the old-world, the new regime would have to invest interest in the migration problems of the North and the South America as well as the colonial questions of the European powers (Choedon, 1994: 283).

It seemed hardly feasible to find a uniform solution at global level to various minority questions. Both the United States and Latin American governments, dominated

material changes in the circumstances and no new treaty had replaced it (Gilbert, 1999: 407).

by descendants of settlers coming from different European countries, for example, strongly denied recognition of group-specific rights in favor of assimilationist policies based on minimalist principles of equality and non-discrimination. European states, on the other hand, displayed mixed feelings. While the colonial powers were reluctant to undertake minority commitments in the fear of anti-colonial movements, central and eastern European states, under the fresh influence of the Nazi occupation, largely conceived the issue of minority rights as an instrument of internal destabilisation and external interference (Eide, 1992: 213).

As a result, international concern in the issue of minority rights shifted from group-specific rights towards a universal humanitarian agenda. The UN process, therefore, attributed almost no direct concern to the problem of minorities. The UN and human rights advocates believed that principles of equality and non-discrimination would suffice to protect interests of minority groups in preserving their traditions and cultural particularities. Many other thought that gradual acculturation would eventually decrease or even remove the necessity of devising special measures on minority protection (Hannum, 1999, 163). While drafting the UN Charter, the San Francisco Conference (1945) focused exclusively on the issue of universal human rights. Similarly, the Paris Peace Conference (1946) incorporated commitments in the direction of prohibiting discrimination and promoting civil and political equality. But, it undertook a silent position on ethno-cultural, linguistic and religious rights of minority peoples. Accordingly, the post-WWII peace treaties concluded, among others, with Romania, Bulgaria, Hungary and Italy contained general guarantees against discrimination based on ethno-cultural characteristics of peoples. But, unlike *minorities treaties*, having “a strong

desire not to repeat the mistakes of 1919”, none of them involved specifically formulated minority provisions (Preece, 1997: 85-87).

Consequently, the *UN Charter* (UN, 1993a) and the *UN Universal Declaration of Human Rights* (UDHR) (UN, 1991) officially marked the overwhelming norm of the new orientation and gave no special place in their content to the issue of minority rights. Despite the fact that several proposals appeared on the example of the League’s minority rights regime,¹⁹ the UN, in general, attributed an idle stand towards the question of minority protection. Putting aside substantive aspects of the former regime, the UN Charter and the UDHR rather addressed those minimalist principles of equality and non-discrimination. Articles 1 (3) and 55 of the UN Charter, for example, specified that rights incorporated in the Charter were universal in nature and would be enjoyed and exercised equally without distinction of race, sex, language or religion. Similarly, the UDHR put emphasis on the principles of equality and non-discrimination, particularly, in the enjoyment and exercise of human rights specified in the Declaration.²⁰ The universalist-individualist wording of the UN documents appeared also in the provisions of subsequently promulgated UN acts relating to the issue of human rights.²¹

¹⁹ Russia proposed involvement of a special clause in the Universal Declaration of Human Rights on the protection of minorities. In parallel to the scope of the League regime, the Russian proposal read: “Every people and every nationality within a state shall enjoy equal rights. State laws shall not permit any discrimination whatsoever in this regard. National minorities shall be guaranteed the right to use their native language and to possess their own national schools, libraries, museums and other cultural and educational institutions” (Capotort, 1991: 27).

²⁰ Especially articles 2, 7 and 21 of the UDHR incorporated a wording which put a strong emphasis on the principles of universal equality and non-discrimination to be attained irrespective of sex, age, ethnicity, language, religion or sectarian affiliation (UN, 1993a).

²¹ Prominent UN acts in the field of human rights included Convention on the Prevention of the Crime of Genocide (1948), UNESCO Convention against Discrimination in Education (1960), International Convention on the Elimination of All Forms of Racial Discrimination (1965), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), Convention on the Rights of Child (1989) (Harris, 1991; Wallece, 1997).

Nevertheless, despite its individualist-universalist standing, the UN could by no means remain wholly indifferent to the question of minorities. The establishment of a Sub-Commission of the UN Commission on Human Rights (1947), that is the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereafter the Sub-Commission), already signified an earlier UN interest in the issue of minority protection. Having been charged with the task of elaborating and recommending standards relating to the field of non-discrimination and the protection of minorities, the Sub-Commission helped to hold the issue on the UN agenda.²² The UN Resolution 217 (1948), for example, came to a conclusion that “the UN could not remain indifferent to the fate of minorities”. However, the Resolution did not create a comprehensive framework of minority rights and, instead, affirmed the fact that “it was difficult to adopt a uniform solution of the complex and delicate question (of minorities), which had special aspects in each state in which it arose” (UN Report, 1990). In addition, it was also difficult to reach to an agreement because, the Sub-Commission had become an ideological battle-ground between the individualist-universalist views of the Western states and the group-specific concerns of the Eastern Bloc. Group-specific proposals of the latter were defeated several times in the Sub-Commission by the contrary votes of the Western states (Claude, 1969, 145-152).

Nevertheless, as the war-time memories receded and the growing anti-colonial movements created ever increasing minority and refugee problems, the UN, by the middle of the 1950s, became more actively involved in minority issues. Though within an individualist-universalist understanding, the Sub-Commission’s acts, for example,

²² Abjorn Eide, the Special Rapporteur of the Sub-commission, concluded a comprehensive study on the organisational structure and the operation of the Sub-Commission (Eide, 1992: 211-264).

culminated in drafting a minority provision incorporated in the UN *International Covenant on Civil and Political Rights* (CCPR) which was promulgated in 1966 (UN, 1995b). Notwithstanding its minimalist wording and scope, the Article 27 of the CCPR set forth basic norms that were to decide framework of minority treatment in the duration of the Cold War era. During the period, without having introduced any further standardization in the field of minority rights, the Sub-Commission devoted itself to the explanation and implementation of the principles contained in the Article 27.²³

3.4.2 Article 27: The Universal Principle of the Cold-War Era

As we underlined above, the UN has invested an exclusive interest in the issue of universal human rights bestowed upon the benefit of individuals without considering their ethno-cultural circumstances. The UN's humanitarian documents, therefore, refrained from making direct references to the issue of minority rights. During the years 1945-1989, the only exception was the CCPR. In its final formula, the Article 27 of the Covenant provided:

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 practice their own religion, or to use their own language.

Drafted in a negative formula of “persons...shall not be denied”, the article urged states not to interfere with ethnic, religious and linguistic characteristics of minority peoples. Although national governments were not required to undertake positive obligations, except universal rights of equality and non-discrimination, minorities' right to “difference” was clearly affirmed. Oppressive and assimilationist policies were equally

²³ An earlier example of this was conducted by Francesco Capotorti, the Special Rapporteur of the Sub-Commission, who completed his report (*Study on the Rights of Persons Belonging to Ethnic, Religious and*

condemned (Alfredsson and de Zayas, 1993; 2). In so doing, the UN context, for the first time, divorced minority questions from the general scope of the universal human rights and attributed to the former an independent status in the field of its humanitarian concerns. The subsequent reports of the UN Human Rights Committee also confirmed this view, according to which, states were expected not to confuse minority-specific nature of the Article 27 with those universal principles of equality and non-discrimination. It was hence suggested that in order to enable minorities to protect and promote their ethno-religious and linguistic particularities, states must have gone beyond those measures of non-discrimination and equal treatment (Wallace, 1997: 145-148).

However, under the influence of the then prevailing aura, the Article 27 was formulated in an extremely cautious and vague manner. It left many questions open that must have been clarified by national and international interpretations. In particular, the wording was ambiguous with regard to the definition of the beneficiaries, obligations of the parties and the national and international instruments of its implementation. It was not made clear, for example, whether the terms “ethnic, religious or linguistic minorities” involved refugees, migrant workers or other social minorities that existed in the parties’ countries. These weaknesses were significant because national governments would easily obliterate enforcement of the rights in the concrete circumstances (Benoit-Rohmer, 1996: 21). Although official interpretation of the article stipulated that existence of an ethnic, religious or linguistic minority does not depend upon a governmental recognition but requires to be proven by objective criteria (Capotorti, 1991: 97), depending on this literary ambiguity, many states have denied that their countries involved minority groups. Many others have limited the effect of the article to certain

Linguistic Minorities) in 1977.

sections of ethno-cultural and linguistic minorities. The French government, for example, declared on the recognition of the CCPR that “in the light of article 2 of the Constitution of the French Republic,...Article 27 (of the Covenant) is not applicable so far as the Republic is concerned.”²⁴ The same argument was used in France’s second periodic report which stated that “since the basic principles of public law prohibit distinctions between citizens on grounds of origin, race or religion, France is a country in which there are no minorities...” (Alfredsson and de Zayas, 1993: 6).

Thus, the imprecise definition provided state parties with “escape” possibilities through which they obtained a free hand in putting in force the scope of the article. Nonetheless, the absence of definition was not the only weak point in the article. As to be understood from its negative formula, its drafters did not want to bind themselves with international standards of differential treatment with respect to their minorities. Because of this, the article simply urged states to undertake a tolerant policy towards the diverse characteristics of their minority peoples. In its minimalist interpretation, this would be satisfied with those universal measures of equality and non-discrimination. Unlike the group-specific provisions of the League regime, no direct appeal was made to group-specific concerns of minorities. It is because of this that whenever the effect of the article was recognised, governmental authorities denied granting collective recognition to its beneficiaries (Benoit-Rohmer, 1996: 21-22).

However, depending on the same imprecise aspect, it was also inferred from the wording that grounds of a genuine equality between majority and minority nationals would compel national governments to develop positive conditions facilitating protection

²⁴ Article 2 of the French Constitution provided that “France is a Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law, without distinction of origin, race or

and promotion of minority particularities. It was underlined that since its spirit sought establishment of equality both in law and in fact, a broader interpretation of the article would enhance universal principles of equality and non-discrimination with group-specific rights of differential treatment. It was implicitly admitted that state authorities were to refrain from any act which would endanger minorities' physical and ethno-cultural existence. It was instead argued, under the implications of the Article 27, that persons belonging to minorities were to be provided with appropriate legal-political instruments facilitating persistence of their different identities, particularly in the fields of educational, cultural and religious matters (Nowak, 1993).

However, the UN Sub-Commission in its mandate intended to ignore implications of a broader interpretation in favor of a minimalist approach. In the duration of the Cold War period, implementation of the Article 27 remained loyal to the foundational philosophy of the UN as it was laid down in its individualist-universalist approaches as regards to the field of human rights including minority rights. Because, in opposition to group-specific rights, individual human rights was considered by both national and international actors compatible with national policies aimed at assimilation of disloyal minorities. The practice thus promoted ethno-cultural homogenization came to be credited even within the realm of international organisations as a way of overcoming troubles associated with minorities (Preece, 1997: 85-87).

To sum up, the UN regime on the issue of minority rights marked a radical breakthrough from its predecessor. Leaving aside its broader interpretation, substantive framework of the previous regime was almost completely renounced in favour of the individualist-universalist conceptualisation of universal human rights. Hence, while the

religion. It shall respect all beliefs" (Alfredson and de Zayas, 1993).

UN regime expanded the effect of the humanitarian principles at a global level, it largely limited its scope in terms of minority rights. The narrow formula of citizenship equality, consequently, reduced minority members of national societies to a status of mere individuals abstracted from their ethno-cultural circumstances. Therefore, whether it was the objective of the regime or not, the UN framework advanced, in concrete circumstances, in an assimilationist manner. The ideological confrontation of the cold war system, which concerned more with intra-bloc stability, further pushed minority questions behind national policies of integration. Because of this, the resurrection of minority issues coincided with the demise of the cold war state system.

3.4.3 The UN Post-Cold War Regime: A Substantive Turn

Each massive war, including the Thirty-Years Wars, the Napoleonic Wars, the WWI, and the WWII, as was explained, were accompanied by drastic changes in the norms, instruments and practices of minority rights regimes. Although it was not a “hot” war, the termination of the cold war politics presented no exception to this long-lasting tradition. During the last decade, new states came to the scene in Central and Eastern Europe but it hardly created any considerable reduction in the number of minorities. More than half of these states, instead, contained minority groups in proportions varying between 20 to 50 percent. Moreover, despite the fact that they had been frozen within the ideological confrontations of the previous decades, minorities and minority claims came to surface again seeking, at least, substantive equality and ethno-cultural protection within the new national and international order. Under these circumstances, individualist-universalist legacy of the UN acts seemed insufficient to meet minority expectations.

Taking into account growing nature of minority-related conflicts and antagonisms, the UN Secretary-General, for example, proclaimed in 1992:

One requirement for solutions to these problems lies in commitment *to human rights with a special sensitivity to those of minorities*, whether ethnic, religious, social or linguistic. The League of Nations provided a machinery for the international protection of minorities. The General Assembly will soon have before it a declaration on the rights of minorities. That instrument, together with the increasingly effective machinery of the United Nations dealing with human rights, should *enhance the situation of minorities as well as the stability of states* (emphasis was added) (Alfredsson and de Zayas, 1993: 1).

This indicated the fact that following the League example, by the fall of the cold war system, there appeared within the UN an urgent need to revise its essentially universalist-individualist approaches in the field of humanitarian acts in favor of “human rights with a special sensitivity to those of minorities”. With this new concern, the UN General Assembly recognised that there was a need “to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities.” It was in this context that associating “the situation of minorities” with the “stability of states”, the UN General Assembly, for the first time, attributed a direct concern to the issue of minority protection and resolved in 1992 a specific declaration on the rights of ethno-cultural, linguistic and religious minorities. Having adopted in 1992 the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (hereafter the UN Declaration), the General Assembly revisited the comprehensive framework of the League regime (UN, 1993b).

Formulated in a detailed and substantive manner, the Declaration attempted to reconcile the rights of individuals, minorities and that of states. To this end, individualist-universalist wording of the UN human rights instruments was reinterpreted progressively and in a broader sense so as to take into account group-specific circumstances of minority

peoples. It was affirmed that the UN context had hitherto intended “to promote and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion”. As a logical extension of this historical interest in the principles of equality and non-discrimination, it was stated in the Declaration, the UN was now ready to go beyond this original stand and undertake “an important role to play regarding the protection of minorities”. In doing this, on the one hand, the UN General Assembly aimed at granting a substantive protection to ethno-cultural and religious minorities that would “contribute to the political and social stability of states in which they live.” On the other hand, it was expected that a broader framework of minority rights would sustain “development of society as a whole and within a democratic framework based on the rule of law” which, in turn, facilitates “strengthening of friendship and cooperation among peoples and states” (preamble).

Therefore, in conformity with the basic objectives of this radical turn, the individualist colour of the UN humanitarian acts was supplemented with group-specific rights of persons belong to national or ethnic, religious and linguistic minorities. Because of this, the new UN agenda involved strong commitments with regard to the two components of minority protection: civil and political equality of citizenship status and the differential treatment of minority particularities. In other words, the new UN tendency aimed at creating conditions facilitating not only protection but also promotion of minority identities. In that respect, exhibiting substantive aspects of the new regime, the UN Declaration put emphasis on a number of principles, addressing differential treatment of minorities, which included:

- a) right to enjoy their own culture, to profess and practice their own religion, to use their own language in public and private without external interference or any form of discrimination (Art. 2-1).
- b) right to participate effectively in cultural, religious, social, economic and public life (Art. 2-2).
- c) right to participate effectively in decisions concerning minorities (Art. 2-3).
- d) right to establish and maintain their own associations (Art. 2-4).
- e) right to establish free and peaceful contacts, both within and without state, with other members of their community and with persons belonging to other minorities (Art. 2-5).
- f) right to have appropriate conditions to develop their culture, language, religion, traditions and customs (4-2).
- g) right to learn their mother tongue or to have instruction in that language (Art. 4-3).

It was also added that group-specific provisions would be exercised individually or in community with other members of the group concerned. In this way, the UN framework regarded beneficiaries of rights as individuals belonging to a minority group. No collective definition was incorporated in the document. Yet, different from the earlier regimes, potential bearers of rights were also protected against any possible oppression or discrimination that would come either from state bodies or minority group itself. In doing this, the issue of whether an individual is subject to the effect of rights was left to the free discretion of individuals. It was assured that “no disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Déclaration” (Art. 3-2).

Notwithstanding its comprehensive scope, the issue of national implementation is not automatic but, in the last instance, it was to be entrusted to national governments. Taking into account the shortcomings of the article 27, the document renounced its negative language and laid down positive obligations on the part of states to “adopt appropriate legislative and other measures to achieve these ends” (Art. 1-2). Apart from establishing legal-political grounds through which minorities would benefit from the

above given rights, it was laid down that governmental policies and programs were to be “planned and implemented with due regard for the legitimate interests of persons belonging to minorities.” In educational field, for example, state actors were urged to “take measures...in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory.” At the international level, on the other hand, it was stipulated that cooperation and assistance among states would “be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.”

In so doing, persistence of minority particularities in the field of cultural, religious and linguistic affairs was guaranteed at both national and international levels. Most significantly, parallel with the League regime, the document reasoned that accommodation of minority conditions would by no means be contrasted with the principle of citizenship equality. Group-specific measures taken by the national authorities, instead, were formulated and implemented in supplementary way to universal human rights of individuals (Art. 83). It was because of this that the Declaration incorporated strong commitments to the area of universal rights set forth in other human rights documents of the UN including the UDHR. To this end, alongside the differential treatment, “where required,” states were to undertake appropriate measures guaranteeing full and effective equality of persons belonging to minorities (Art. 4-1). Article 8 (1) of the document, for example stated that “the exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognised human rights and fundamental freedoms.”

In doing this, the document imposed upon parties states to take positive obligations allowing and facilitating equal accommodation of ethno-cultural, religious and linguistic differences. However, having learned much from the failures of the League regime, which had largely been exploited by nationalist aspirations of both majorities and minorities, the UN framed a “security clause” in its Declaration. Accordingly, it was stated that not only state actors but also minorities themselves were to act responsible and sincere in the implementation process of the group-specific rights. Thus, the Declaration attempted to balance minority rights against the sovereign rights of states. The scope of minority rights was, therefore, delimited by states’ sovereign equality, territorial integrity and political independence. Article 8 (4) of the document provided that:

Nothing in the present declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of states.

Thus, having been aware of the fact that state actors have been reluctant in recognising and implementing minority rights in fear of internal upheaval and external interference, the document intended to satisfy also their sovereign concerns. This formula would make the new scope of minority treatment not only more acceptable in the eyes of state parties, but also encourage them in the implementation stage. Perhaps depending on this optimism, unlike the League regime, the document did not create national and international instruments of implementation and sanctions that would be imposed on those states who act reluctantly in implementing the framework of the rights.

To sum up, the comprehensive turn of the UN regime in the 1990s extended its humanitarian concern from individual human beings to those persons belonging to minorities. Therefore, the regime ceased to regard individuals as abstract beings but began to treat them within their ethno-cultural circumstances. In doing this, the UN

regime, at least in principle, largely reconciled individualist rights of citizenship status, differential rights of minority circumstances and sovereign rights of the parted states.

3.5 Conclusion

Historical evolution of minority rights regime in an interactive way between states and international system convinced us to claim that each transformation in the world system was accompanied with radical changes in the parameters of the minority rights regimes. In particular, massive wars, whether “hot” or “cold”, have induced transformative impacts on the national and international norms of minority treatment. This is to say, parameters of minority protection would in no way be decided in an exhaustive way but have been and are constituted contextually. Time and space have effectively constrained both subjects and legal-political borders of minority protection.

Exclusively religious focus of the Westphalian regime, both in subjects and rights, was extended, by the late nineteenth century, to a comprehensive regime which incorporated ethno-cultural and linguistic differences into national and international concern of minority rights. The concept of minority was obtained new meanings as the majority component of a national population was described around changing sources of identification. The era of the *minorities treaties* concentrated on the protection and promotion of ethno-cultural, religious and linguistic minorities. In spite of geographical and definitional limits, the scope of the League regime reconciled universal implications of citizenship equality with group-specific dimension of ethno-cultural particularity.

Upon the failure of the League regime, the UN projected a universal system of human rights which left almost no room for the issue of minority rights. The issue of

minority protection was subsumed into general scope of universal human rights. In the duration of the cold war, the UN invested little concern on the issue of minority protection and content with those minimalist standards of equality and non-discrimination. No reconciliation between particular rights of minorities and the universal rights of citizenship status would be achieved up until the break down of the cold war politics. It was by the fall of the eastern bloc that the UN began to revise its originally universalist-individualist orientation in favour of a substantive formulation of human rights sensitive to the rights of minority peoples.

In the same period, the same winds of transformation hit also the European regional organisations, those of the CoE, the OSCE and the EU, all of which gradually renounced their cold war silence and came to engage in standardisation acts in the field of minority rights. In particular, having faced with civil wars and turbulence in the regions of the former Yugoslavia and ethno-religious and linguistic confrontations of eastern European's post-socialist countries, by the early 1990s, regional organizations in Europe have developed a network of rights and instruments in respect to national treatment of minorities (Miall, 1994). It was this contemporary regime of minority rights that came to challenge essential foundations of the Republican minority rights regime. Taking this fact into account, the next chapter will elaborate on the emergence and scope of today's minority rights regime prevalent in the contexts of the CoE, the OSCE and the EU.

CHAPTER IV

MINORITY RIGHTS REGIME IN THE EUROPEAN-REGIONAL ORGANIZATIONS

The Emergence and the Framework of the post-Cold War Regime

4.1 Introduction

The rise of a new international order has usually prompted establishment of a new international regime in the field of minority rights. Parallel with the territorial, socio-political, economic or diplomatic transformations, new norms of minority treatment have replaced preceding state practices and legal-political designations. Two different approaches that appeared in the aftermath of the two world wars already presented good examples to this general trend (Preece, 1997: 76).

Given the traditional linkage that existed between revolutionary international transformations and the issue of minority rights, I intend to analyze the emergence of a new minority rights regime in the context of a new world order established following the fall of the eastern bloc.¹ As international institutions and relations face transformative processes, foundational values, codes, rules and norms of the order too are subjected to parallel changes. This is what happened in the issue of minority rights in Europe following the 1989/90 revolutions.

The collapse of communist regimes, indeed, affected the mode of conduct with respect to state-to-citizens, state-to-state and state-to-international organisations relations. As the “balance of power” politics of the Cold War accompanied with the economic, cultural and political waves of globalisation, central role of nation-states in organising every aspect of human life began to be questioned more frequently.

Regional frameworks, dedicated to the establishment of cooperation, coordination and maintenance of peace and security, came to the forefront in governing national policies. Apart from economic affairs, more and more areas of national policies have been involved in the domain of international concern. As was argued before, one of the most outstanding domains of international expansion has appeared in the issue of creating “humane governance” both in national and international settings (Falk, 1999: 33-34). Universal standards of human rights, including those of minorities, have come to decide international credibility of nation-states (Donnelly, 1998).

Due to its central position in the post-Cold War transformation, the European context naturally became the playground of the new order. Facing its maladies, regional organizations suddenly found themselves in charge of developing adequate standards and mechanisms addressing circumstances of the new order. As the eastern communist regimes collapsed by the late 1980s, it broke down the Cold War formulations and practices in the realm of minority treatment as well. At this stage, putting aside universal orientation of the UN acts, a new understanding of minority treatment set in motion in the European regional organizations including the OSCE, the CoE, and the EU. It was in this period that the said organizations gave an end to the Cold War salience on minority questions and began to promulgate specific conventions, charters and declarations on the protection and promotion of minority distinctions.

In order to be able to better explain its contemporary implications for the Turkish case, this chapter outlines the emergence and the framework of the post-Cold War European regime in the field of minority protection. In doing this, I will first review the underlying reasons which led the regional organizations to develop a new

¹ The concept of “order” refers to the existence of a working balance in the distribution of power among global actors (states, citizens and international organizations) that guarantees stability, peace

regime. Second, starting from their Cold-War approaches, I will examine the development of the new standards of minority treatment in the major regional organizations. Third, the chapter will display the post-Cold War framework of the minority issues in the continent. It is in this context that major parameters of the new regime, those of the minority definition, minority rights, national sovereignty, territorial integrity, principles of equality and non-discrimination, will be examined.

4.2 Emergence of a New Order in Europe

Early responses to the collapse of the Eastern Block announced the victory of liberal values and institutions over authoritarian and totalitarian forms of politics. While speaking just after the fall of the Berlin Wall, which symbolised the Cold War ideological demarcations, Boutros-Ghali (1993; 441-442), the Secretary-General of the UN, argued:

Two months earlier, the Berlin Wall had fallen, carrying away with it a certain vision of the world, and thereby opening up new perspectives. It was in the name of freedom, democracy and human rights that entire peoples were speaking out. Their determination, their abnegation, -sometimes their sacrifices- reflected then, and still reflect, their commitment to do away with alienation and totalitarianism.

In Ghali's view, the pos-Cold war democratic transformation was likely to create a national and international order in which human rights would receive appropriate respect and protection. He believed that "it is through democracy that individual rights and collective rights, the rights of peoples and the rights of persons, are reconciled. It is through democracy that the rights of states and the rights of the community of states are reconciled" (Boutros-Ghali, 1993: 443).

Notwithstanding expected grounds of this optimism, similar statements were made in the period by different sectors of national and international order. Socio-political revolutions of the post-1989 introduced great opportunities for the

and security on the global stage (Falk, 1999: 29).

democratic reorganisation of the continent. Yet, this transformation did not proceed smoothly on the way to establishing a new order of the peaceful co-existence of states, nations, and citizens. On the contrary, the new order entailed strong challenges having potential to jeopardize expected grounds of optimism. The most immediate one was the situation of minorities.

Indeed, the fall of the Cold War accompanied with the re-emergence of minority issues. After having been neglected for decades in the ideological confrontation of the Cold War years, socio-political and legal position of minorities began to receive a renewed interest throughout the European region by the early 1990s. According to Kymlicka and Norman (2000), the prominent reason of this raising interest lied, among others, in the resurrection of ethnic nationalism across Europe on the part of both minorities and majorities. One dimension of this ethnic resurgence appeared in the national awakening of minority peoples. It suddenly became explicit in the aftermath of the 1989/90 revolutions that civic definition of individual identity, based on universal equality of citizenship status, came to fall short of satisfying nationalist aspirations of minority peoples (Liebich 1996). Minority groups, released from long years of repression and manipulation, began to raise increasing claims which ranged from equal participation, official recognition, territorial autonomy, secession to international protection (Klebes, 1995: 92). Secession has particularly become once again a real possibility for those states whose population diversified along ethno-lingual and religious identities (Preece, 1997: 88).

The other dimension lied in the fact that democratic transformation of the post-communist states resulted, in many cases, in the reemergence of “nationalizing states” which attributed greater emphasis to the linguistic, cultural, demographic and economic domination of its core *ethnie* (Brubaker, 1996). Not only civic definition of

citizenship was discredited, but also those concepts of diversity and pluralism were “sacrificed on the altar of nation-building” (Hannum, 1999: 167). By the year 1991, soon after they obtained political independence, Baltic States, for example, chose to embark a strong political struggle in order to restore dominant position of their ethno-linguistic and cultural characteristics. Many “foreign” elements were subjected to systematic persecution and discrimination and denied equal citizenship status that culminated not only in the outburst of minority conflicts but also massive amounts of emigration problems (Poleshchuk, 2001: 1-6).

Baltic States were not alone in this post-Cold War venture of re-nationalization. The former Yugoslavia and Czechoslovakia, among others, presented good examples to nationalist policies rested upon ethno-cultural superiority of a dominant nationality. Leaving aside the possibility of plural and multi-cultural co-existence, both cases celebrated ethnic articulation of legal-political organizations. Peaceful partition of Czechoslovakia between two constituent nationalities represented a nonviolent renunciation of the plural politics whereas the case of the former Yugoslavia, in seeking ethnically homogenous populations, went hand in hand with massive practices of “ethnic cleansing”.²

Dramatic consequences of ethnic cleansing and forced deportation proved once again that minorities still occupied vulnerable positions in the national environments. Taken into account the international dimension of minority questions, apart from exacerbating socio-political life internally, this situation was likely to undermine international peace and security. In spite of the fact that minority-oriented tensions had resulted in the dissolution of several multi-national states, minority

² One-third of the Serbs who resided in Croatia were repatriated from this country by the middle of 1992. In the same period, approximately half a million people from Serbian minority was displaced from Bosnia. The fate of Muslim minority who resided in Serbian territory was not much different as

issues were by no means disappeared.³ Because of this, governments came to believe that broadening the scope of international standards in the issue of minority protection would play a stabilizing role over minority related tensions and violence (Klebes, 1995: 92). In particular, new standards pertinent to the creation of a balance between raising aspirations of minorities and the concerns of majority seemed an urgent need (Malinverni, 1991: 265). It was in this context that national states and international organizations began to revise their traditional views and practices in the issue of minority rights (Lozinski, 2001).

4.3 New Approaches in the European-Regional Organizations

In the early 1990s, many states in central and Eastern Europe concluded bilateral treaties in order to secure protection and promotion of their kin groups resident in another state.⁴ These kinds of endeavours helped to decrease possibility of an open friction between the states concerned. It became, therefore, quite evident that establishment of a sustainable peace and stability in the new world depended not only guaranteeing universal rights of individual citizens but also particular identities of ethno-linguistic, religious and cultural distinctions did need equal accommodation. Individualist-universalist agenda of the Cold War tradition was to be supplemented with group-specific rights. It was in this context that the CoE, the OSCE and the EU gradually adopted a substantive framework of minority treatment.

70.000 Muslims out of 200.000 were forced to leave Sanjak province in the course of dissolution (Bell-Fialkoff, 1993; Preece, 1998).

³ None of the sixteen states emerging from communism can be considered ethnically homogeneous. The size of minorities ranges from about 33 per cent in Macedonia, Montenegro and Moldova to 38 per cent in Estonia and almost 47 per cent in Latvia. Moreover, only the size of Hungarian minority counted 2 million in Romania, 600.000 in Slovakia, 400.000 in Serbia, 200.000 in Ukraine, 40.000 in Croatia, 16.000 in Austria, and 10.000 in Slovenia (Ijgyarto, 1993: 274).

⁴ In order to decrease possibility of an open friction on the treatment of kin-minorities, many states have concluded bilateral treaties since the fall of the eastern communist regimes (Gal, 1999).

4.3.1 Organization on Security and Cooperation in Europe (OSCE)

Having been founded in 1975, the OSCE, formerly the CSCE⁵, has intended to provide an international instrument for the establishment of a pan-European security system. The primary interest of the Eastern countries in taking part in such a conference was to ensure stability of postwar borders whereas the western states wanted to further security and humanitarian issues (Wright, 1996: 191). Thus, the western support was conditioned, among others, on the inclusion of human rights issues in the agenda of the conference (OSCE, 1999: 7).

Human rights agenda of the organisation, including those rights of persons belonging to minority groups, took shape under the constraining influence of two factors. On the first hand, depending on the ideological confrontation of the Cold War system, principles of “sovereign equality” and “non-interference” weighed human rights concerns. Participant states often denied international obligations relating to minority rights. On the other hand, the OSCE agenda on minority rights intended to avoid mistakes of the interim practices that had facilitated expansionist desires of nationalist regimes. Under these circumstances, state authorities convinced that both national and international stability required strong state apparatuses against divisive impacts of minority distinctions. The interim idea of “minority protection” was, therefore, conceded to a general understanding which called, in reverse, for “protection from minorities” (Girasoli, 1995: 25-26).

Notwithstanding these foundational concerns, the OSCE’s humanitarian dimension has vested a specific interest in the issue of minority protection. The

⁵ Since the time of its formation, the OSCE has been transformed from a series of conferences to a permanent and institutionalised arrangement. In conformity with its foundational objectives and working processes, the Organisation has been named as the Conference on Security and Cooperation in Europe (CSCE). However, by the institutionalisation of the Conference mechanism, it was decided in the first Review Conference in Budapest (1994) that as of 1 January 1995 the CSCE would be renamed the Organization on Security and Cooperation in Europe (OSCE) (OSCE, 1999: 15-16).

minority question in the context of the OSCE process should be examined, however, in view of two definite stages. The first stage is the minimalist framework of the Helsinki Final Act which, born in the constraining atmosphere of ideological confrontations, delimited minority questions with a universalist-individualist framework of citizenship equality and non-discrimination. The second stage started when the OSCE attempted to meet the challenges which resulted from the collapse of the eastern communist regimes. In this sense, the Copenhagen Document (1990) marked the end of the Cold War regime of minority rights (Benoit-Rohmer, 1996: 56). It was by the new document that moving away from its minimalist approach, the OSCE began to develop a substantive framework which sought not only protection but also promotion of ethno-cultural particularities.

4.3.1.1 Helsinki Process: Equality and Non-Discrimination

The Cold War regime of minority protection in the context of the OSCE acts evolved along the guiding principles of the Helsinki Final Act.⁶ Provisions of the Act, laid down within three main chapters or “baskets”, in general, concerned:

- I. Questions relating to security in Europe: respect for sovereign equality, refraining from the threat or use of force; inviolability of frontiers; territorial integrity of states; peaceful settlement of disputes; and non-intervention in internal affairs.
- II. Cooperation in the fields of economics, science and technology, and the environment.
- III. Cooperation in humanitarian and other fields.

The OSCE undertook a multi-dimensional approach to the questions of peace, security, economics and human rights protection. The principles extended the legitimate scope of inter-state cooperation to the issue of human rights, including those sets of rights relating to the protection of minorities. The issue of human rights,

⁶ After a series of preliminary works, 35 participant states, from both Western and Eastern blocs, agreed on the terms of the Helsinki Final Act in 1975 (for the full text see, OSCE Act, 1993).

in particular, ceased to belong exclusively to the internal affairs but became a legitimate concern to all participating states (OSCE, 1999: 11-12).

However, it is too early to think that the Final Act opened internal position of minority conditions to a system of international scrutiny. On the contrary, sovereign rights of participating states, documented in those principles of “territorial integrity”, “sovereign equality”, “non-interference” and “political independence” largely constrained the OSCE principles. In other words, state interests weighed peoples’ concerns, including those of minorities that blocked international interference in their internal affairs. Under these circumstances, state parties retained their capacity to deny international criticisms in their practices of minority rights.

Domination of state interests was a weakness of the system. Another weakness lied in the formulation of the minority rights. Obviously, following individualist principles of the UN conventions, particularly Article 27 of the CCPR, the Helsinki Final Act adopted a negative formulation that urged no positive obligation on state parties to create political and legal guarantees of distinct treatment. Having satisfied with the universal equality of citizenship status, the issue of minority protection did not go beyond minimalist scope of equality and non-discrimination. The principle VII of the Final Act laid down this minimalist attitude in the following way:

The participating states on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

The wording is clear enough that apart from the equal treatment of persons belonging to minority groups, no appeal was made to the second aspect of minority rights that called for differential treatment in ethnic, linguistic, religious or cultural matters. Staying within the universal agenda of the individual human rights, despite

minorities were specifically mentioned, the issue of minority protection was delimited by minimalist concepts of equality and non-discrimination.

The document did not involve any definition of the concept of minority. The effect of the principles centered on those “participating states on whose territory national minorities exist”. It was acknowledged that nothing but the discretion of nation-states would decide whether they involved minorities or not. Thus, without paying attention to objective or subjective constituents of minority identity, national government would easily follow their political considerations in depicting minority peoples resident on their territory. The article provided national authorities with the rights to deny the application of the principle in their internal affairs.

Notwithstanding minimalist approach embedded in its minority provision, individualist framework of the Helsinki Final Act drew the limits of minority rights regime in the context of the OSCE process in the duration of the Cold War years. Individual-oriented view overwhelmingly dominated the follow-up meetings of the human dimension mechanisms (Wright, 1996: 193-196).⁷ It was not before the early 1990s that the OSCE moved away from the equality/non-discrimination packages into a comprehensive formula of minority treatment.

4.3.1.2 The Legacy of the Copenhagen Document: Equality Within Diversity

Coinciding with the collapse of the Eastern bloc, the post-1945 individualist-universalist tradition of minority protection ceased to define political and legal borders of minority rights in the framework of the OSCE. The new regime favored substantive formulations which, in addition to universal measures of citizenship equality, took into account particular circumstances of minority groups. In other

⁷ The Follow-up Conferences of the OSCE’s human dimension mechanism took place in Belgrade (1978), Madrid (1980-1983), and Vienna (1986-1989).

words, the idea of universal rights came to be reconciled with group-specific aspects of minority issues. Unlike widely accepted norms of preceding decades, a clear line gradually arose between the notion of equal treatment and that of the unanimous treatment. Thus, as the Cold War world system withered away, first examples of the post-Cold War standards of minority treatment came into being. The concluding document of the Copenhagen meeting (June, 1990), that is the *Copenhagen Document* (hereafter CD), marked the new frame of humanitarian orientation in the OSCE works (Copenhagen Document, 1990).

The Copenhagen meeting was the first OSCE meeting to take place after the demise of the Cold War regimes. Because of this, the participants no longer represented monolithic blocs of ideological confrontation during which “no such words would have been allowed into any CSCE document” as Buerghenthal (1990: 221) rightly observed. In the meeting, the participant states reflected the spirit of the transformation and anticipated new problems and challenges. The drafters of the new regime acted more courageous in drawing its legal and political borders. Many shortcomings of the Cold War regime as it related to the issue of minority protection were to a significant extent superseded (Buerghenthal, 1990).

Indeed, minority rights policy of the OSCE, was subjected to fundamental transformation in the provisions of the CD. For the first time since its emergence, the said instrument ceased to make brief references in the general wording of concluding documents and assigned a full chapter to the issue of minority rights. Going beyond those conventional principles of equality and non-discrimination, the said chapter incorporated provisions comprehensively addressing distinct position of minorities. Concerning the latter, the document interested not only in granting group-specific rights but also formulated legal-political instruments in which the granted rights

would be implemented. To this end, the CD obliged parties to create appropriate conditions in which national accommodation of minority distinctions would be secured in an environment of citizenship equality. For doing this, the document adhered to the ideals of democracy, political pluralism and the rule of law (preamble). In response to totalitarian and authoritarian forms of Eastern European countries, the CD drew an image of democratic Europe in which human rights, including distinct rights of those peoples who belong to ethnic, religious, linguistic and/or cultural minorities, would receive due respect (Art. 30).

Pluralist democracy was expected to guarantee different existence of minorities within the universal terms of citizenship equality. It was in this sense that the language of the OSCE document went beyond human rights/non-discrimination package of the Helsinki process. In order to achieve effective equality, apart from equal citizenship rights, minorities were granted legal, administrative, educational and cultural instruments of differential treatment whenever it was deemed necessary for the protection of minority identity. Accordingly, the new OSCE context confirmed that persons belonging to national minorities “have the right to freely express, preserve, and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture” (Art. 32).

The principles contained in the document raised a new understanding in the OSCE that has determined minority rights agenda of its succeeding meetings. Not long after, the minority provisions of the CD took an official recognition from member countries. In its following months (November 1990), the European governments admitted principles of the CD in Paris as the basis of the “new Europe”. The *Charter of Paris for a New Europe* (OSCE Charter, 1993) considered the issue human rights protection, including those rights of minorities, among prominent

responsibilities of governments, the form of which was to be “representative” and “pluralist” democracy. Having established a close connection between democratic government and effective protection of fundamental human rights, the European leaders expressed their full conviction to build a pluralist democracy as “the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person”.

The Charter attributed also a particular attention to the issue of minority protection. As concerned the consolidation of a sustainable peace, justice, stability and a plural democracy, the question of minority protection was regarded an indispensable element. Because of this, the document put a special emphasis on the fact that “human rights and fundamental freedoms are the basis for the protection and promotion of rights of persons belonging to national minorities”. However, it was no longer the individualist legacy of the Cold War years but the emerging norms of the new Europe that became most influential on drawing the scope of minority rights. Going beyond universal human rights/non-discrimination packages, it was affirmed by the participating leaders 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...ethnic, cultural, linguistic and religious identity of national minorities be protected and *conditions for the promotion of that identity be created* (emphasis was added).

Apart from citizenship equality, the leaders expressed their conviction to creating legal-political conditions allowing free expression, preservation and development of minority identities. It was this effective accommodation of ethno-linguistic, religious and cultural distinctions indicated, at the same time, that the issue of minority protection should have been thought in association with the pluralist settlement of democratic structures. The Charter, in this respect, added that questions

related to national minorities would only be satisfactorily resolved in a democratic political framework. Because of this, the document considered that “rights of persons belonging to national minorities must be fully respected as part of universal human rights...respect for them is an essential safeguard against an over-mighty state”.

The rationale of the relational link established between pluralist democracy and minority protection was subsequently clarified in the *Geneva Report of the CSCE Meeting of Experts on National Minorities* in July 1991 (OSCE Report, 1993). Having been formulated in conformity with the provisions of the CD, the Report put explicit emphasis on the minority-inclusive form of democracy and introduced it as a framework which “guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, including persons belonging to national minorities, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance...”. Parallel to the CD, the Report fostered the development of a pluralist democracy tolerant of political-legal expression and institutionalisation of minority distinctions.

Apart from national accommodation of minority distinctions, the new OSCE context concerned international aspects of minority issues as well. To this end, in order to meet “The Challenges of Change”, the OSCE Helsinki Meeting (1992) decided to establish the *High Commissioner on National Minorities* (HCNM) (OSCE, 1999: 93-97). The mandate of the HCNM was to inform the competent OSCE institutions about tensions involving national minorities at an earliest possible stage. It was expected that depending on this information, the OSCE would provide “early warning or an early act in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage” (OSCE Helsinki, 1993).

Having limited its mandate to a security concern of “early warning”, the HCNM failed in undertaking a larger role in standardizing minority rights practices in the participant states (Heintze, 2000). Despite this failure in creating an instrument of active involvement in minority related issues over the OSCE area of concern, the CD with its succeeding instrument of the Paris Charter indeed created a breakthrough in the OSCE’s tradition with regard to the minority rights issue. Contrary to the minimalist attitude of previous decades, plural accommodation of minority differences has been accepted prevalent norm of democratic governance. It came to be considered in the OSCE area that “in states with national minorities, democracy requires that all persons, including those belonging to national minorities, enjoy full and *effective equality* of rights and fundamental freedoms”. It is this legacy that has been influential up to present day on the minority-related acts of the organisation. The Budapest meeting of the OSCE, for example, noted in 1994 that “the protection of human rights, including the rights of persons belonging to national minorities, is an essential foundation of democratic civil society. Neglect of these rights, in severe cases, contributed to extremism, regional instability and conflict” (OSCE, 1994).

As was pointed out earlier, the OSCE was the first international organisation in giving a due response to meet revolutionary changes of the 1990s that occurred in Eastern Europe. One of the most brilliant aspects of this response was the radical turn that happened in the standard-setting acts of the organisation in the issue of minority rights. However, these standards, from the legal point of view, were merely in the form of political commitments without having force of direct national implementation. Yet, it must be noted that the OSCE’s new regime contributed much to the emergence and spread of new norms in the region in the realm of minority protection. An immediate example was the paralleling legislation that has been

adopted in the context of the CoE which considerably fulfilled legal weaknesses of the OSCE acts.

4.3.2 Council of Europe (CoE)

At the end of the WWII, there emerged a general consensus in Europe that respect for human rights and fundamental freedoms was the only basis on which peace and democratic stability would more strongly be assured (Weil, 1963: 804-805). To this end, the CoE was established in 1949 as an interstate regional body. Soon after its foundation, following humanitarian standards of the UN UDHR, the CoE began to work on a *European Convention on the Protection of Human Rights and Fundamental Freedoms* (ECHR). The Convention was signed on 4 November 1950, and came into force on 3 September 1953 (ECHR, 1993).

However, having been developed under the circumstances of the Cold War era, the CoE traditionally struck with individual human rights and non-discrimination measures and attributed almost no direct and specific attention to the issue of minority rights (Weil, 1963: 824). The drafters considered universal human rights as an appropriate measure in protecting democratic institutions against destabilising sabotages of minorities (Weil, 1963: 805). The Convention, therefore, sided with the then prevailing language of human rights protection. The document contained universalist-individualist rights and freedoms including, among others, prohibition of torture, slavery, the right to personal liberty, the guarantee of a fair trial, the right to respect for private and family life, the freedom of thought, conscience and religion, the freedom of expression, peaceful assembly and association. National governments were not obliged to undertake specific obligations addressing protection and promotion of minority identities (Weil, 1963: 804-827).

This Cold War neglect remained prominent norm of human rights protection in the context of the CoE up until the 1990s. It was by the collapse of the bipolar world system that though the ECHR maintained individualist orientation, following the OSCE's humanitarian acts, the CoE began to invest greater interest in particular circumstances of minorities. Given this two staged process, in order to better see its implications on the Europe's new minority rights regime, I will first outline the roots and evolution of the minority protection in the context of the CoE. This will reveal the universal-individualist focus that dominated human rights concerns of the Council till the breakthrough of the 1990s. The second stage will exhibit minority sensitive legislation of the last decade developed within the CoE organs.

4.3.2.1 The Universalist Focus of the ECHR

In the duration of the Cold-War years, individualist perspective governed standard-setting acts of the CoE with respect to both universal human rights and minority rights. However, it would be inaccurate to conclude by looking at the provisions of the ECHR that the relevance of minority question was completely omitted in its drafting process. The elaboration of the ECHR, instead, faced several proposals of specific guarantees facilitating individuals to enjoy their own culture, language, schools, and religions. Lannung's address presented a good example to the early interest of the Council in the field of minority protection. Having taken into account adverse role of minority disputes in establishing a sustainable peace and stability in the region, the Danish delegate addressed:

When we are dealing with human rights, we should stress the very important point that human rights should also include national minority rights and their protection. Important aspects are protected through the fundamental human rights, such as freedom of speech and expression, freedom of association and assembly, etc. But it is necessary to extend, supplement and elaborate in order that national minorities may secure the right to a free national life and protection against persecution and encroachment on account of their national convictions, aspirations and activities (Hillgruber and Jestaedt, 1994: 13).

In this statement, Lannung underlined the fact that individual human rights/non-discrimination package would secure minorities with universal standards of human rights, but the task of protecting minority distinctions would still seek specific rights going beyond universal definitions. In other words, the principle of equality embedded in the concept of universal citizenship was to be supplemented with group-specific rights emanating from membership of a minority group (Rady, 1996: 54). The proposal, hence, sought a formula which would ensure protection and promotion of minority differences without violating equal citizenship status of minority peoples.

The Lannung's cause received an immediate advocate from some other delegates as well (Hillgruber and Jesteadt, 1994). However, under the fresh influence of the interim years, even making slight references to the condition of minorities was considered unacceptable. Group-specific treatment was regarded contrary to those state interests of national unity and territorial integrity. Because of this, though it was admitted that minority individuals would be allowed to express their views, it was also insisted that rights and freedoms would be curtailed, among others, for the sake of national and territorial integrity (Hillgruber and Jesteadt, 1994: 17).⁸

Under these circumstances, the issue of minority protection was limited in the document with those minimalist measures of equality and non-discrimination. In association with a general provision of non-discrimination, the Convention embodied only a single reference to the question. Article 14 stipulated that "the enjoyment of the rights and freedoms set forth in this Convention" would be implemented in the national settings "without discrimination on any ground such as sex, race, colour,

⁸ Article 10 of the ECHR recognized: "the exercise of these freedoms...may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime...".

language, religion...national or social origin, *association with a national minority...*”.

From this point of view, the ECHR was concerned not with promoting minority peculiarities but with the issue of protecting those persons who belonged to minority groups against discrimination. In so doing, the formulation of the Convention assimilated the issue of ethno-cultural distinctions into a general scope of universal human rights.

Obviously, the major focus of the ECHR fell on guaranteeing equal and non-discriminatory treatment, particularly, in exercising rights and freedoms set forth in the Convention. However, this wording carried a danger of unanimous treatment contrary to the diversity of social reality. Concerned with this aspect, Gillbert (1992: 86; Gilbert, 1999) argued that treating essentially different groups on an identical ground might still be discriminatory in the sense of achieving an effective equality between the members of majority and minority sections of population. In his opinion, despite the fact that individual-oriented language of the ECHR provided significant guarantees on individual equality, it lacked measures of differential treatment that would urge partied states to create legal-political conditions pertinent to the promotion of minority distinctions. Under these circumstances, Gilbert observed that though the acts of non-discrimination would be avoided, one would easily be denied the right to assert his cultural, linguistic or religious identity.

Nevertheless, it was also admitted that a broader interpretation of the non-discrimination measures would facilitate ethno-cultural accommodation. Due to fact that the spirit of the ECHR intended to expand democratic principles, a partied state would enact certain measures in order to safeguard linguistic, religious or cultural peculiarities of its minority citizens. According to this argument, although the ECHR did not urge, a partied state would go beyond simple interpretation of non-

discrimination measure through implementing specific arrangements pertinent to the recognition and promotion of minority identities. It was in this context that the practice of differential treatment was considered not to violate the ECHR's universal orientation but thought to have been seeking effective equality between majority and minority citizens (Gilbert, 1992: 81-93).

Some progresses in the direction had already been achieved in the duration of the Cold War years (Gilbert, 1999: 56-61). Having been inspired with the Lannung reports, the Assembly of the CoE, for example, adopted in 1961 the *Recommendation* 285 which drew attention to the issue of safeguarding peculiar identities of minority peoples in the cultural, linguistic and religious policies of the member states. To this end, the Recommendation examined the possibility of creating an additional protocol on the rights of national minorities not covered in the Convention.⁹ But, the Committee of Experts insisted on the adequate capacity of the non-discrimination measures and came to an agreement in 1973 that it was not legally necessary to legislate a special provision on minority protection (CoE Memorandum, 1995: para. 2). Consequently, humanitarian acts, within the CoE context of minority protection, continued to deny recognition of minorities and specific formulation of minority rights till the radical turn of the 1990s.

4.3.2.2 The Innovative Breakthrough of the Post-Cold War Regime

The individualist attitude of the CoE organs underwent a revolutionary transformation by the early 1990s. It was by the start of the period that the CoE acts began to progress towards comprehensive formulation addressing not only protection

⁹ The Recommendation 285 (1961) worded: "persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their schools and

but also promotion of minority differences. Thus, going beyond universal human rights/non-discrimination packages, the CoE's standard-setting acts began to take into account specific and different conditions of minority peoples. Having faced post-Cold War ethnic problems, it had become evident that individualist-universal view of the CoE standards would no longer meet contemporary claims of minority citizens. Under these circumstances, parallel to the latest acts of the UN and the OSCE, the CoE too started to give a parallel response to the post-Cold War order.

Indeed, the resurrection of minority issues took a prominent place in the CoE acts in guiding the democratic transformation of the continent. In the context of the CoE, the *European Commission for Democracy through Law*¹⁰ was the first in developing a minority-related instrument. The Commission drafted, in March 1991, a *Proposal for a European Convention for the Protection of Minorities* (hereafter the Draft Convention) (Draft Convention, 1991). Having attributed greater value to the “cultural diversity within European states” and “considering that adequate solution to the protection of minorities in Europe is an essential factor for democracy, justice, stability and peace”, the Draft Convention pointed out that there was a necessity for “an effective protection of the rights of minorities and of persons belonging to these minorities” (preamble, para. 6, 9, 10). Departing from individualist tradition, hence, protection and promotion of minority distinctions was directly associated with the framework of a democratic governance. In addition, following the OSCE standards, the issue of minority rights began to be considered “a fundamental component of the

receive teaching in the language of their choice or to profess and practice their own religion” (CoE Memorandum, 1995: para. 1).

¹⁰ The Commission was established by the Committee of the Ministers of the Council of Europe in March 1990, just after the fall of the Berlin Wall, and has played a leading role in guiding constitutional changes in Eastern Europe towards building of democracy, human rights and the rule of law. Concerned with the latest transformation in Eastern Europe, though established by the Council of Europe, the Venice Commission was opened also to the participation of those eastern European states who were not yet members of the Council of Europe.

international protection of human rights” and it was admitted that the question “falls within the scope of international cooperation” (Art. 1).

The Draft Convention intended to guide democratic transformation in the eastern European states. In this sense, the work of the Commission remained a by-product of the CoE activities and entailed no binding nature in implementation. The mere advantage of the document was the fact that the principle of minority protection would theoretically be extended to the non-member states who displayed will to comply with the human rights standards of the CoE (Klebes, 1993: 141). That is why, despite the Draft Convention exhibited innovative transformation within the CoE context, new standards came to the surface only after the Committee of Ministers adopted, on 5 November 1992, the *European Charter for Regional or Minority Languages* (hereafter the European Charter) (CoE Charter 1996).

Developed under the impacts of democratic transformations, the Charter aimed at creating a compromise between state interests and minority rights. To this end, the provisions set forth the principle that state concerns on territorial integrity and national sovereignty should not be conceived in contravention with the persistence of minority languages. By contrast, drafters of the document admitted that heritage of minority languages would be safeguarded within the framework of national sovereignty and territorial integrity that was significant in “building of a Europe based on the principles of democracy and cultural diversity”. To this end, the Charter promoted plural formulation of educational policies. Although the existence of an official language was considered unquestionable, monolithic application of the linguistic policies was discredited. The Charter insisted, instead, on “the value of interculturalism and multilingualism”. As will be explained shortly, governments were

compelled to facilitate establishments of legal grounds through which minority peoples would have capacity to learn and be learned in their mother tongues.

Unlike the assimilationist aspects of the Cold-War decades, the CoE's Charter credited persistence of minority languages. Yet, humanitarian dimension of the CoE still lacked in legislating a legal instrument on the protection of minority distinctions that would no longer be neglected under the constraints and possibilities of the post-Cold War period. A new process was, therefore, initiated in 1993 within the CoE with an objective of updating individualist scope of the ECHR on the question of minority rights. To this end, the Parliamentary Assembly of the Council adopted the *Recommendation 1201* (CoE Recommendation, 1993). It was in this document that "considering that the international protection of the rights of minorities is an essential aspect of the international protection of human rights", the Assembly charged the Committee of Ministers with a task of drawing up an additional protocol on the rights of minorities to the ECHR. It is worth to note here that minority protection was required to take place in the form of an additional protocol because, the ECHR has long maintained a tested experience in the legal supervision of human rights. In the context of the ECHR, an additional protocol would provide persons belonging to minority groups with a legal instrument to remedy acts of violation.¹¹

However, it was bound to remain in the status of a mere parliamentary recommendation without having legally binding force unless was ratified by the Committee of Ministers (Klebes, 1993: 140). But, the Recommendation did not find an immediate response in the Committee. Bearing in mind deeper implications of a legal instrument, ministers refrained from drafting an additional protocol on minority

¹¹ The final opinion of the Parliamentary Assembly highlighted the fact that "through the inclusion in the European Convention on Human Rights of certain rights of persons belonging to minorities as well as organisations entitled to represent them, such persons could benefit from the remedies offered by the

rights. Nevertheless, the CoE member came to an agreement in its Vienna Summit (1993) that a specific instrument on minority circumstances must be devised to meet the challenges of the new period.¹² In place of an additional protocol, however, taking into account its political flexibility, the CoE organs opted in 1994 for a separate instrument of the *Framework Convention for the Protection of National Minorities* (hereafter the Framework Convention) (CoE Framework, 1995).

The Framework Convention indeed became a breakthrough in the CoE context with regard to the issue of minority protection. The principles of the document largely inspired from the post-Cold War standards of the OSCE and the UN. In this sense, the Framework Convention represented one of the latest responses given to the ramifications of the minority-related issues of the post-Cold War European heritage.¹³ The main objective of the Convention was “to ensure...the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states”.

Thus, the Framework Convention was the “Copenhagen Document” of the CoE in the sense that it signified the beginning of a new legal era in the Council acts. Indeed, going beyond individualist and universal orientation of the ECHR, the document advanced a comprehensive approach in the issue of minority rights. Contrary to the minimalist framework of the ECHR, rights and obligations set forth in the Convention made a clear distinction between the notion of “equal treatment” and that of the “unanimous treatment”. The Framework Convention has sought creation of

convention, particularly the right to submit applications to the European Commission and Court of Human Rights” (Benoit-Rohmer, 1996: 112).

¹² The Vienna Summit, to this end, charged the CoE organs “to draft with minimum delay a framework convention specifying the principles which contracting parties commit themselves to respect, in order to ensure the protection of national minorities” (CoE Memorandum, 1995: para. 5).

“a Europe, united in its diversity”. In so doing, its provisions largely undermined the long-lasting perception and practices that state and nation, citizenship and nationality were synonymous (O’Riagain, 1999).

The Convention promoted the idea that contemporary form of democratic governance would have to reconcile the principle of citizenship equality with the group-specific treatment of minority circumstances. It was in this sense that the Convention highlighted the fact that measures of minority protection should no longer be confined to general scope of non-discriminatory measures but integrated into legal-political conditions through which minority identity would be freely expressed, preserved and promoted. To this end, democratic governance was closely associated with the free and equal accommodation of minority differences. An increasing emphasis was placed on the idea that “a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity”.

To sum up, human rights standards of the CoE, including rights of those persons belonging to minority groups, originally took shape under the circumstances of the Cold War politics and fresh memories of the WWII experiences. The area of minority rights was limited to those minimalist measures of citizenship equality and non-discrimination. Individualist-universalist scope of the ECHR governed minority rights regime of the CoE throughout the Cold War era. It was only by the collapse of eastern bloc that the CoE’s humanitarian dimension began to take steps in the direction of legislating a framework of diversity within unity. The Framework Convention has drawn prevailing borders of minority rights in the CoE context.

¹³ Its Preamble stated three sources of inspiration for drafting the Convention: the ECHR, the CSCE Copenhagen Document, and the UN Declaration on the Rights of Persons Belonging to National or

4.3.3. European Union (EU) and the Minority Protection

In comparison to the OSCE, CoE and the UN, the EU has long remained silent on the issue of minority rights. According to Toggenburg (2000), this institutional attitude has several reasons. To begin with, despite the fact that it displayed political aspects from its outset, integration process of the EU has largely rested on economic considerations. Because of this, central organs of the Union did not need to intervene in political or cultural affairs of the member states. Next was the impossibility of achieving a consensus on legislating general standards relating to the issue of minority rights. Third, supranational nature of the community law rendered centrally inaugurated standards of minority rights more dangerous for the member states. Depending on these reasons, in the words of Toggenburg, “an initial commitment on minority issues seems to be, politically spoken, more difficult than in a traditional international context”. This was what happened in reality. Until the early 1990s, not a single treaty of the Community involved any provision devoted to the protection and promotion of minority rights.

In explaining international practices of human rights policies, Frank (1997: 182) noted that Western states have concerned exclusively with the observance of human rights in the third countries rather than taking them seriously at home. In particular, taking into account double standards that existed between West and the Rest in furthering respect for human rights, he added that “intervention on behalf of human rights resembles the Mississippi River: it only flows from North to South”. The EU policy too attributed a similar pattern in the 1990s. Almost no coherent form of minority rights regime has occurred within the realm of the EU acts. Even after it

gave a closer attention to the issue in the 1990s, the EU organs opted to make a clear distinction between internal and external minorities. In doing this, despite the Union has appropriated a rather ambiguous attitude in regard to those minorities existed within its borders, there has been developed a more obvious approach in recognizing minority rights outside the EU. For the former, the EU and the member states continued to undertake individualist and universalist understanding of human rights obligations without ever having committed themselves to the protection and promotion of distinct minority identities.¹⁴ Barrowing from Frank's analogy, it seems rights to state that the issue of minority rights in the context of the EU has resembled more the Danube River: it has flowed from West to the East in the region. The EU's new regime of minority protection should, therefore, be elaborated in light of two separate dimensions of its internal and external minorities.

4.3.3.1. The EU and Internal Minorities

As was given above, due to overwhelming economic orientation, the EU has remained for a long time indifferent to minority questions. The regulation of minority rights within member states has been considered a task vested in the sovereign competence of national governments. It was because of this that the most active organ of the Union in dealing with the issue has become the EU Parliament which retained no competence to enact legislative acts legally binding on the acts of member governments. Because of this, though several reports relating to the regulation of

¹⁴ Under the impact of the Cold War regime, the French government, for example, signed the European Charter for Regional and Minority Languages in 1999. However, insisting on "unity of the people, indivisibility of the Republic and the official status of the French language", the Conseil Constitutionnel nullified the act for considering any act of granting group-specific rights to any group defined by its origin, culture, language or religion in contravention with the principles of the Republic (Oellers-Frahm, 1999).

minority rights and freedoms has been communicated within the Parliament, they all were destined to failure without acquiring legally binding force.¹⁵

In place of legal formulations, the EU has constantly been concerning internally with the issue of minority protection in a form of cultural programs outside the domain of political affairs. Linguistic rights of minority peoples living in the member states, for example, were entrusted to the interest of an NGO which is known as the *European Bureau for Lesser Used Languages* (EBLUL). Having been founded in 1982, the EBLUL devoted its task to the protection and promotion of more than fifty million peoples in the EU, speaking more than thirty different regional languages (Eblul). The mandate of the Bureau have received financial support from the EU budget and was charged with a research program, the so-called MERCATOR, which developed in parallel with the EU and CoE policies addressing protection of minorities, equal citizenship and the promotion of linguistic diversity. The charge, which was taken over, in 1994, by the European Commission, was carried out through studies and seminars conducted on those general minority issues ranging from bilingualism, education, media and legal legislation (Mercator).

Although these cultural acts brought little change to the legal status of minorities within the EU and the member states, they have indicated presence of a growing interest in the EU context given to the value of linguistic and cultural diversity. Parallel to the developments in the Eastern Europe that induced an immediate transformation in the acts of both the CoE and the OSCE, this EU interest too further increased. It was under these circumstances that traditionally indifferent

¹⁵ The Charta of Regional Languages and Cultures, Charter of Rights of Ethnic Minorities (1981); Resolution on Linguistic and Cultural Minorities (1983); and Resolution on the Languages and Cultures of the Regional and Ethnic Minorities (EU Resolution, 1987); Resolution on Linguistic and Cultural Minorities in the European Community (EU Resolution, 1994); Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment Between Persons Irrespective of

attitude of the EU underwent through a slight change towards recognizing culturally diverse composition of national populations in the member states. The *Treaty on European Union* (1992-TEU), the so-called Maastricht Treaty, for example, inserted a cultural dimension to the European economic integration in which the status of minorities was of a significant concern (EU, 2002a).

According to Biscoe (1999: 93), two recent developments have played a fatal role on the emergence of this new trend. First, similar to the OSCE's Copenhagen Document, the TEU was the first community treaty in the aftermath of the Cold War and as such it marked the beginning of a new stage in the political attitude of the Union. Having been drafted under the awareness of ethnic conflicts that followed the dissolution of the Soviet Union and the former Yugoslavia, the drafters were concerned about the adverse affects of ethnic conflicts spreading to Western Europe and jeopardizing both the political stability and economic development. Second, as the Union advanced on the way to substantive political integration, sub-regional groups from various EU member states too began to claim constitutional guarantees for enhancement of cultural diversity in the context of a united Europe. These two developments resulted in the incorporation of an ethnic dimension to the TEU that was specified in its Article 128 which worded:

The Community shall contribute to the flowering of the cultures of the member-states, while respecting their national and regional diversity.

It is suggested that although this article did not urge the central organs of the EU to interfere in the internal affairs of the member states on behalf of minority groups, it represented a major change in the status of sub-state nationalities. It is acknowledged that the article explicitly recognized that member states are diversified along regional and national identities of minority groups. The provision indirectly

Racial or Ethnic Origin (EU Directive, 2000), among others, indicated existence of a normative

provided minorities with the right to claim official recognition and legal-political conditions pertinent to the flowering of their cultural circumstances (Toggenburg, 2000). In line with the spirit of the article and in order to advocate cultural and linguistic enrichment of European minorities, therefore, the EU established several financial programs devoted to the protection and flowering of minority languages, among which the Ariane, Kaleidoscope, and the Raphael Programmes have taken the leading roles (Biscoe, 1999: 95).

However, contrary to what one might expect from the wording of the article 128, the EU approach as concerned rights of internal minorities have remained ambiguous. In their part, the EU Commission and the Council have continued to hesitate in creating a systematic minority-related legislation. It seems to be safer to conclude, therefore, that from the point of internal standards of minority rights, the Union has insisted on preserving an individualist position limited to the principle of non-discrimination. The latest human rights instrument of the Union, the *Charter of Fundamental Rights of the European Union* (EU Charter, 2000) presented a good example in this view. Indeed, despite the Charter expressed its determination, in its preamble, to “respecting the diversity of the cultures and traditions of the peoples of Europe”, the same preamble addressed the fact that the EU has placed “the individual at the hearth of its activities”. Notwithstanding the existence of a growing interest with regard to minority rights, the Charter devised no special place to the issue of minority protection. Following the example of the Cold-War tradition, the minority question was instead delimited by an assimilationist category of non-discrimination and universal rights. Those freedoms of expression, thought, conscience and religion framed universal-individualist orientation of the document (Arts. 10-11). Similarly,

approach in the European Parliament as concerned linguistic and cultural rights of minorities.

the issue of educational rights content with providing the whole of the national citizens with equal educational opportunities without addressing the group-specific circumstances of minority languages and cultures (Art. 14). It was only in the content of the Article 22 that a direct emphasis was made on the necessity of taking into account the “cultural, religious and linguistic diversity” in formulating and implementing EU policies. But, the wording was by no means supplemented with a provision of positive measures that would facilitate protection and promotion of this cultural diversity. On the contrary, the only reference to the concept of minority appeared in association with the principles of “equality before the law” and of non-discrimination of any ground such as, among others, “*membership of a national minority*” (Arts. 20-21).

Given this overwhelmingly individualist attitude, it becomes obvious that the EU attitude of human rights, particularly concerning the rights and freedoms of internal minorities, did not come to depart itself from the wording of human rights instruments adopted during the years of the Cold War. Similar to the previous approaches, the succeeding EU treaty, the *Treaty of Amsterdam*, did not introduce the concept of minority rights into the legal scope of the founding treaties either (EU, 2002b). It demonstrated a progressive step in the direction of formulating a non-discrimination clause in a way to urge the EU to take “appropriate action” in order to combat discrimination based on “racial or ethnic origin”. The EU was obliged to take cultural aspects into consideration in its action particularly in order to raise respect and promote diversity. However, the wording of “appropriate action” was never made clear whether it meant to create specific measures that would be devoted to the promotion of minority identities (Brandtner and Rosas: 1998: 487-488).

When we take into account coherent forms of instruments invoked throughout the years of last decade in other regional organizations in the realm of minority rights, we can safely conclude that the Union opted more for the standards of the previous decades. Though several recommendations appeared and a set of cultural programs was created in the field of minority protection, no binding decision has been concluded so as to regulate national policies of minority treatment in the member states. On the contrary, whenever a minority question came to the EU's humanitarian agenda, it has been considered almost completely in association with the circumstances of those minority peoples who inhabited outside the EU borders.

4.3.3.2. The EU and External Minorities

As was outlined above, the issue of minority protection has received an increasing relevance within the EU context by the 1990s. The minority-related instruments, adopted in the post-Cold War framework of the OSCE, the CoE and the UN, have prompted the EU to reassess its silent position on the issue. However, unlike the standard setting acts of the two other regional organisations, the EU organs have, first, vested more interest in those ethnic problems and minority affairs that took place outside its borders. Second, rather than adopting its own instruments, the EU has chosen to rely on those standards of minority rights that have already been laid down particularly within the OSCE and the CoE organs. Thus, the EU policies of minority protection merely reaffirmed commitments that were already binding on the subjects of international law (Brandtner and Rosas, 1998: 475).

Concerned with the enforcement of already established standards of international human rights, including those of minorities, the question was dealt in association with its enlargement process. The issue of "respect for and protection of

minorities” has constituted one of the main pillars of humanitarian dimension of the pre-accession strategies that have been inserted in the association agreements agreed with candidate countries. The eventual emergence of the new EU regime of minority protection, hence, progressed mainly in relation to the association agreements established with those of the eastern and central European states.

Indeed, similar to the creation of an ethno-cultural dimension in its founding treaty, the resurrection of ethno-linguistic conflicts in Eastern Europe played significant role in making the EU organs responsive to minority questions. As a matter of fact, the growing emphasis on minority rights has been conceived as a part of an instrumentalist policy of promoting stability and sustainable development in those countries which were undergoing a massive economic and political transition (Brandtner and Rosas, 1998: 488). In the context of political cooperation, the EU, on the one hand, has linked the question of granting official recognition to newly independent states to various conditions including prominently “guarantees for ethnic and national groups and minorities”.¹⁶ On the other hand, in order to support political and economic transformations, the EU concluded *Europe Agreements* with post-communist countries. One aspect of this policy was to guarantee stability in this state of anomie resulted from uncertain conditions of transformation that paved way in 1995 for the establishment of the *Pact on Stability* which has become an integral part of the Union’s common foreign policy.

The primary objective of the Pact was to create “a more united Europe distinguished by a will to consolidate democracy, to respect human rights, to extend economic progress, and to reduce threats to peace, and one capable of avoiding the

¹⁶ The Dutch Foreign Minister van Der Broek, acting as the head of the EU troika, declared on October 4, October 1999: “the recognition would be granted in the framework of a general settlement and have the following components: (among others) adequate arrangements to be made for the protection of

excesses of nationalism” (Benoit-Rohmer, 1996: 30). In so doing, the EU has launched political undertakings on the central and eastern European states, particularly, in relation to such a delicate area of minority treatment. It was underlined in the context of the Pact that the position of minorities and the implementation of minority rights, set forth in the framework of the CoE, the OSECE and the UN, would be put in effect and be rendered irreversible (Benoit-Rohmer, 1996: 30-36).

The EU, therefore, directed attention to the significant place that the issue of minority rights has occupied in the stability of the regional politics. The new attitude tacitly recognised also the fact that peaceful enlargement of the Union depended on the resolution of minority conflicts in the candidate countries within a pluralist order of their socio-political settings. In this sense, despite the Pact on Stability has troubled particularly with the task of resolving minority distresses in those “new democracies in transition”, the issue maintained a larger stake in the Union’s enlargement process. The issue of “respect for and protection of minorities” has conditioned membership status of “old democracies” as well, prominently those of Cyprus and Turkey, who have long taken part in the liberal democratic bloc of the Cold War’s bipolar world system. The *sine qua non* conditions of accession, as they were identified in 1993 in the conclusions of the EU Council of Copenhagen, involved a strong emphasis on the question of minority rights. According to the so-called *Copenhagen Criteria*, a candidate country, before accession, has to fulfil a number of standards with respect to both their political stability and economic capacity. Political dimension of the said criteria put emphasis, among others, on “democracy, the rule of law, human rights and respect and protection of minorities” (Verheugen, 2000: 440).

minorities, including human rights guarantees and possibly special status for certain areas” (Weller, 1992: 581).

The Copenhagen conclusions rendered the issue of minority protection one of the basic conditions to be satisfied before having been accepted in the Union. It largely became an established principle in the enlargement policy that unless a candidate country satisfied minimum standards of minority protection within its national borders, there would not be any progress in passing the negotiation stage. Verheugen, the Commissioner for Enlargement, openly stated the fact that “the EU is not ready to start negotiations with a country if there are any doubts about the democratic conditions, the respect of human rights and the protection of minorities” (Verheugen, 2000: 441).

Nevertheless, the Copenhagen Criteria had weak points on the scope of conditions, particularly, that of minority rights. The document broadly listed a number of political and economic criteria, but it did not make it clear what the wording of “respect and protection of minorities” would mean. No detailed articulation of the question was laid down with respect to the national regulation and implementation of minority-related issues. The implication of the wording was instead left to the progressive implementation of the *Accession Partnership* agreements reached between the EU and the candidate countries. The “short-term”, “medium-term” and “long-term” priorities of the accession process outlined expected standards of minority rights in the countries concerned. The *Accession Partnership of Turkey*, for example, indicated the proceeding of the process. With an objective of identifying priority areas towards membership, the document referred “guaranteeing democracy, the rule of law, human rights and respect and protection of minorities”. The document, therefore, included a set of priorities devoted to the enhancement of linguistic and cultural rights of minority peoples that were to be guaranteed before passing to the negotiation stage of the candidacy (CEC, 2000b).

The most effective instrument of accession agreements has been advanced through the supervisory mechanism of annually documented progress reports conducted on the steps taken, in the candidate countries, on the requirements of accession. With an intention of assessing level of progress taken towards meeting membership standards, including those of minority rights, the reports concerned have noted yearly developments in the countries. From this point of view, the reporting procedure has guided identification of the framework that was to be implemented in satisfying EU requirements in the area of minority protection. In conformity with the EU's already given post-Cold War practices, the progress reports, not surprisingly, focused on the enforcement of those minority standards that have been concluded particularly in the context of the CoE standard setting acts.¹⁷ Starting in 1998, the EU Commission's regular reports on Turkey's progress towards accession have made comprehensive evaluations on the condition of minority treatment and legal-political accommodation of sub-national differences in Turkey. The Turkish government has been invited to ratify and put into practice particularly the scope of minority rights contained within the framework of the CoE acts. In particular, in giving standards of minority protection, to be satisfied as a part of the Copenhagen political criteria, the EU Commission has stated, by name, the Recommendation 1201, the European Charter and the Framework Convention.

The enlargement process is indicative of the new standards of minority protection nascent in the context of the EU, even though they are considered as principles imposed upon the candidate countries having insignificant internal implications. Recent acts of the EU bodies further showed the fact that external dimension of the issue was on the way of acquiring broader prospects going beyond

¹⁷ Annual reports, prepared by the European Commission on the candidate countries' progress towards accession, have often made references to the CoE acts relating to minority rights.

enlargement process. A Commission proposal, brought forth in 1997 in relation of the humanitarian aids of the Union, for example, contained a paragraph confirming that the EU human rights programmes should favor special groups, including minorities and indigenous peoples. Accordingly, it was acknowledged that Community assistance could promote minority rights in all third countries, not just the Central and Eastern European states (Brandtner and Rosas, 1998: 488). However, the issue still retains its externality to the community without having any binding effect on the member countries.

4.4. The Post-Cold War Framework of the European Minority Rights Regime

In the post-Cold War period, the European regional organizations, including the OSCE, CoE and the EU, developed a network of values, norms, rules and instruments in the field of minority rights that greatly departed from the practices of the Cold War regime. In contrast to the minimalist approach of the latter, the former has taken significant steps in the direction of creating a true reconciliation between citizenship status and ethno-cultural distinctions of minority peoples. For doing this, the post-Cold War regime, on the one hand, largely transformed the meaning of the concepts including the definition of minority or national sovereignty. On the other hand, the same regime expanded the scope of rights and freedoms addressing distinct circumstances of minority groupings. In order to assess the current framework of the European-regional regime, it is significant to examine the newly emerging network.

4.4.1. The Definition of the Concept of Minority

The question of definition has occupied a troublesome place in the issue of minority protection. As explained before, partly because of the diversity of situations

and ethno-cultural claims displayed by minorities, and partly, depending on national states' overriding will to preserve an ideal coherence in their national populations, international documents have remained silent on the definition of the concept.

As was underlined earlier, the EU has not set its own legislation in the area of minority protection but opted more for reaffirming the already established commitments laid down in other regional organisations. Not surprisingly, the EU context did not introduce a framework on the definition of the concept. Instead, those beneficiaries of the OSCE and the CoE documents relating to the issue of minority rights have largely decided the Union's view. Because of this, in seeking contemporary meaning of the concept, I will focus on the acts of the OSCE and the CoE. The two institutions have, indeed, introduced, directly or indirectly, a set of definitions about which sections of national population were to be considered within the context of the minority rights.

In enforcing national implementation of international rights, national states have traditionally tended to adopt their own definitions of the concept. Up until the massive turn of the early 1990s, no progress was indeed achieved in the direction of identifying subject categories of minority rights. In a similar fashion, the Helsinki process refrained from bringing a minority definition. In conformity with the then prevailing aura, the wording of the Final Act treated the question within the context of universal human rights and categorized minorities as abstract individuals.

This Cold-War tradition withered away only after the collapse of the eastern bloc. The OSCE *Copenhagen Document*, for example, undertook a flexible and broader approach on the question of definition. The document noted that "to belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice". This meant, on the one hand, that

depending on the excuse of political and strategic concerns, no minority would be denied differential treatment provided that they wish to enjoy ethnic, religious, linguistic or cultural freedoms. The OSCE, hence, took the discretion of definition from the sole hands of national governments and entrusted it to minorities themselves. The same wording implied, at the same time, that states would not classify all sub-national differences within the terms of the concept if there arose no demand in this direction. The *Geneva Report* admitted that “not all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities”.

Similar to the Helsinki process, the CoE traditionally fostered an individualist approach to minority questions. Partly because of its legally binding nature and partly of the then prevailing weight of universal human rights, the ECHR lacked in giving recognition to the group identity of minority peoples. Concerning much with the principle of non-discrimination, the Convention viewed minority peoples within an abstract frame of individual citizens (Gilbert, 1992: 82). This individualist orientation of the CoE, if not that of the ECHR, has been subjected to an initial transformation by the early 1990s. The *Draft Convention*, for example, noted:

For the purposes of this Convention, the term “minority” shall mean a group which is *smaller in number* than the rest of the population of a state, whose members, who are *nationals* of that state, have *ethnic, religious or linguistic* features different from those of the rest of the population, and are guided by the *will to safeguard* their culture, traditions, religion or language (Art. 2.1).

The Convention constituted major parameters of the concept around those criteria of numerical inferiority, citizenship, ethnic, religious and linguistic characteristics, and the existence of an explicit will to preserve these differences. It was accordingly added that “any group coming within the terms of this definition shall be treated as an ethnic, religious or linguistic minority” (Art. 2.2).

Perhaps the most innovative feature of the Commission’s definition was the fact that it did not exclude those groups of migrants, refugees and asylum seekers

from the scope of minority rights provided that they obtained citizenship of the host country. No criterion relating to historical establishment was, at least at face, included in the definition. However, parallel with the Copenhagen Document, ethno-cultural distinctions were not automatically classified within the scope of the concept. The Draft precisely stated that “to belong to a national minority shall be a matter of individual choice” (Art. 2.3).

While it enacted the *Recommendation 1201*, the Parliamentary Assembly of the CoE presented another definition. In this field, the Recommendation followed primarily the formula of the Venice Commission and so included almost the same set of criteria in identifying beneficiaries of the protection. Nevertheless, though the Recommendation treated membership of a national minority within the terms of individual choice, it adopted a broader and detailed version of the former. Article 1 stipulated that “for the purposes of this convention the expression “national minority” refers to a group of persons in a state who:

- a. reside on the territory on that state and are citizens thereof,
- b. maintain long standing, firm and lasting ties with that state,
- c. display distinctive ethnic, cultural, religious or linguistic characteristics,
- d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state,
- e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion, or their language.

Interestingly, what has indirectly been indicated in the Draft Convention was clearly documented in this definition. In addition to those criteria of citizenship, ethno-linguistic, religious and cultural distinctions and the existence of a will to preserve these distinctions, the concept of “national minority” was associated with the presence of “long standing, firm and lasting ties with that state”. Thus, the issue of historical establishment was explicitly added to the formula of definition in which migrants, refugees and asylum seekers were denied benefiting the scope of the concept. Beside this, the last definition took into account regional dimension as well.

The status was granted not only to those who constituted numerically minor position in the country but also to those sections of national population who remained in minority in a certain region of that country.

Although the two categories of definitions did not entail a legally applicable capacity, they indicated the emergence of more concrete forms of norms in the European context with regard to the issue of identifying the bearer of the newly formulated rights.¹⁸ Generally speaking, the definitions have constituted grounds upon which national implementation of rights would be practiced. As will subsequently be given, national implementation of the *Framework Convention*, for example, has relied upon the minority concept underlined in the OSCE and the CoE documents.

The Framework Convention did not come to an agreement on the beneficiaries of rights. Having admitted the fact that “at this stage it was impossible to arrive at a definition capable of mustering general support of all CoE member states”, the drafters decided to adopt a pragmatic approach by omitting the question of definition (CoE, 1999: 20). Yet, despite the absence of a definition, the document indirectly pointed out one constitutive elements of a definition. The preamble, for example, stipulated: “a pluralist and genuinely pluralist democratic society should...respect the *ethnic, cultural, linguistic* and *religious* identity of each person belonging to a national minority...” (Klebes, 1995: 93).

Thus, the provisions of the Convention indirectly delimited borders of the concept of minority. However, the “framework” nature of the Convention already indicated that principles contained in the provisions were not directly applicable in the jurisdiction of the member states but would be implemented through national

¹⁸ Having pointed out the significance of the definition included in the Recommendation 1201 (1993), the Parliamentary Assembly of the Council of Europe confirmed once again in 1995 (Recommendation 1255) the underlying role of the said definition in the realm of minority protection (CoE Recommendation, 1995).

legislation. It was this aspect of the Convention that provided national governments with an instrument of acting loyal to their historical and political considerations in identifying minority groupings (CoE, 1999: 20). Yet, the content of the other OSCE and the CoE documents have generally determined subject groups of the Convention as well. Reservations and declarations of the national states, made upon the ratification of the Framework Convention, have proved this general tendency. The Estonian Declaration, for example, adopted, almost in its exact wording, the definition of the Recommendation 1201. The declaration noted that:

The Republic of Estonia understands the term “national minorities”, which is not defined in the Framework Convention for the Protection of National Minorities, as follows: are considered as “national minority those citizens of Estonia who

- reside on the territory of Estonia;
- maintain longstanding, firm and lasting ties with Estonia;
- are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics;
- are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity (CoE, 1999: 74-75).

Thus, although the Convention did not impose any specific definition, following the CoE standards, the Estonian government drew a definition on those criteria of historical existence, ethno-linguistic, religious and cultural distinctions, and the presence of a will to preserve these cultural distinctions. In the same manner, the Austrian government reported, on the ratification of the document, that “the term ‘national minorities’ within the meaning of the Framework Convention...is understood to designate those groups...which live and traditionally have had their home in parts of the territory of the Republic of Austria”. The report also added that the same groups must be “composed of Austrian citizens with non-German mother tongues and with their own ethnic cultures” (CoE, 1999: 74). Thus, in addition to cultural and historical dimensions, the Austrian version adopted also citizenship status that was to be satisfied before having been considered within the scope of the Convention. Depending on the absence of a legal definition, the German government

too limited the effect of the provisions to those German citizens of Danes, Sorbians, Frisians, Sinti and Roma who historically inhabited in the country (CoE, 1999: 75).

The post-Cold War European-regional context with regard to minority definition indicated two consequences. First, despite there emerged no ruling definition, the acts of the OSCE and the CoE, together with corresponding responses of the partied states, have gradually established throughout the 1990s a set of central criteria to be taken into account in identifying minority groups. Citizenship and historical ties, ethnic, religious, linguistic and cultural distinctions took part among prominent constituents of working definitions. In so doing, potential bearers of minority rights have become more transparent leaving little room for political arbitration. From this point of view, national implementation of internationally formulated minority rights has obtained today a stronger hand.

Thus, the concept of minority today obtained a relatively higher precision in circumscribing constitutive features of those peoples who were to be treated within the protective realm of minority rights. Nevertheless, notwithstanding their indirect influence on the minority policies of partied states, the OSCE and the CoE definitions have not yet been transformed into legally binding instruments. It was this weakness that provides national governments with a free hand in carrying out national implementation of the minority provisions. Because of this, in the issue of national implementation, governments have kept a stronger capacity to restrain the scope of the documents in the direction of their political concerns. In spite of the fact that they might have been in need of differential treatment, many minority groups continued to remain outside the scope of minority protection.

4.4.2. Rights of Minorities

Faced with the resurrection of ethnic confrontations and ethno-cultural claims, the post-Cold War European regime of minority rights came out with broader sets of rights and freedoms pertinent to the protection and promotion of minority circumstances. Apart from universal human rights, regional instruments began to seek rights to differential treatment. In addition to equal status of citizenship rights and non-discrimination measures, the issue of minority rights has slowly been added to the international concern of universal human rights protection.

Human rights agenda of the Cold War period was “person-centred, the premises (were) universal, the concerns (were) transcendent” as Thornberry (1999: 1) observed. Depending largely on the prevalence of ideological confrontations, international documents had given almost no place to the formulation of group-specific rights. The then prevailing aura affirmed the idea that if individual human rights would be taken under protection, minorities too would obtain legal-political guarantees through which they would protect and develop their distinctions. Whenever the issue of minority protection arose, hence, international instruments had sufficed with negative rights that compelled national governments to do nothing beyond minimalist formula of non-discrimination measures.

It was only by the 1990s that major international organisations broke this individualist tradition through developing specific declarations or conventions on the protection of peoples who belong to minority groups. As was examined, the UN Convention (1992) constituted universal dimension of the new trend. In the European context, the *Copenhagen Document* and the *Framework Convention*, among others, laid down major principles of the new regime. As was underlined before, the OSCE and the CoE adopted similar documents other than the given two instruments.

However, almost all of the former ones remained mostly at the level of preliminary or supplementary works to these two major documents. Because of this, in outlining the new scope of minority rights in the region, although we make due references to the content of other documents, the main emphasis will be on the provisions of the Copenhagen Document (CD) and those of the Framework Convention (FC).

It was argued that the question of minority rights has traditionally sought to create a compromise between individualist-universalist and group-specific/particular circumstances of minority peoples. It follows from argument that there has existed an inherent duality in the formulation and practice of minority rights because minority individuals have displayed dual identities of being member of larger citizenry and that of the minority group. From the legal-political point of view, minority individuals are, first of all, individual citizens who are entitled to the affect of identical rights and obligations. Because of this, one dimension of minority rights has given priority to guaranteeing civil and political equality. However, since national minorities share ethnic, linguistic, religious or cultural characteristics different from those of the majority, the principle of citizenship equality has been supplemented with group-specific rights and freedoms. Depending on his fact, in elaborating on the content of the new European regime of minority protection, this analysis makes a distinction between universalist-individualist and group-specific/particular principles of the two major documents.

4.4.2.1. Principles on Citizenship Equality

Measures of differential treatment, in general, have been considered after rights to universal equality and non-discrimination were guaranteed. Even in such circumstances where group-specific rights were denied, international instruments,

such as the ECHR and the Helsinki Final Act, provided minority peoples with provisions of civil and political equality. Any discrimination, among others, on the grounds of being associated with a national minority has been condemned. In so doing, members of ethno-cultural, religious and linguistic minorities have been considered, first of all, individual citizens having identical rights and freedoms. The group dimension of minority rights has taken secondary, if not less significant, place in formulating foundational principles of minority protection.

The post-Cold War European regime constituted no exception to this tradition. Notwithstanding presence of a growing interest in the field of group-specific rights, the latest European instruments insisted primarily on safeguarding citizenship equality. The two constitutive documents of the new regime, namely the CD and the FC, displayed this general concern. Before addressing group-specific rights, the Copenhagen Document, for example, incorporated principles that aimed at guaranteeing “full respect for human rights and fundamental freedoms, equal rights and status for all citizens” (CD, 30). The document affirmed that “participating states will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms” (CD, 31).

Having been largely inspired from the scope of OSCE documents relating to minority rights, primarily that of the CD, the FC too prompted identical rights and freedoms in drafting its own formula. The dual concern, inherent in the question of minority rights, was accordingly involved in the provisions of the Convention. The prior concern of the Convention centered on guaranteeing citizenship equality for all members of the national society. The Convention, therefore, attributed a due reference

to those groups of universal rights which included, among others, equality before law and freedom of thought, expression, conscience and religion (FC, 4.1, 7).

In conformity with the general language of human rights protection, principle of citizenship equality was also associated with those measures of non-discrimination. Any discrimination based on having membership with a national minority was prohibited (FC, 4.1). Persons belonging to national minorities were accordingly guaranteed to “have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law” (CD, 31). Most significantly, the new instruments urged national governments to take measures against ethno-cultural discrimination. To this end, the new regime precisely condemned “totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia, and discrimination against anyone as well as persecution on religious and ideological grounds” (CD, 40). It was affirmed that national governments would “provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination” (FC, 6.2; CD, 40.1, 40.5, 40.7).

Principles of universal rights and non-discrimination, as underlined so far, put emphasis on the individualist dimension of the post-Cold War European regime. This individualist-universalist orientation reflected itself also in the exercise of the rights and freedoms that incorporated in the constituent provisions of the new regime. The provisions granted rights to “persons belonging to minorities” but not to the collective entity of minority groups. The new scope granted no recognition to collective or corporate existence of minority groups. The formula of minority provisions indicated, at most, that minorities would exercise group-specific rights in community with other members of their minority groups. From this point of view, although collective

designation was denied, the new regime set forth individual rights having collective dimension (FC, 3.2; CD, 32.6).¹⁹

The new European-regional regime, therefore, affirmed once again the approach that has hitherto received a general appeal in the humanitarian acts of international organisations. It was through the use of this universalist language that the issue of minority protection has initially been integrated into the realm of universal human rights protection. As the principles of new minority rights protection has taken root, the issue came to be considered as an integral part of international protection of human rights. As a result, creating an innovative departure from practices of earlier regimes, national treatment of minority peoples was, to a large extent, divorced from the sovereign area of national governments. As will subsequently be touched upon, international interference in the field of minority rights was henceforth rendered a norm of universal human rights protection (FC, 1; CD, 30).

Thus, the post-Cold War standards of minority rights in the continent largely satisfied individualist-universalist dimension of minority circumstances. Minority peoples were considered, first of all, equal members of the national society and treated accordingly. This universalist focus has by no means neglected the second aspect, that of the measures of differential treatment. Major documents of the period have instead vested greater interest in the task of creating legal-political conditions pertinent to the protection and promotion of minority distinctions.

¹⁹ The Copenhagen Document involved several rights in collective dimension like inauguration of regional administration. Similar rights appeared also in the provisions of the Draft Convention of the Venice Commission. But, following an individualist attitude, when it was transforming these

4.4.2.2. Rights on Group-Specific Treatment

The post-Cold War documents relating to the area of minority rights made it quite clear that universal principles of equality and non-discrimination would in no ways be interpreted as such that they would imply a form of uniformity. On the contrary, while tacitly denounced traditional policies, implemented in a manner of uniformity, it was explicitly recognised that national governments would undertake “where necessary, adequate measures in order to promote economic, social, political and cultural conditions of minorities on equal grounds with those of the majority” (FC, 4.2). To this end, pluralism and social tolerance have acquired a prevalent place in the scope of the new regime (FC, 5.2; DC, 30). National governments were required to provide persons belonging to minorities with legal-political means allowing protection and promotion of “the essential elements of their identity, namely their religion, language, traditions and cultural heritage” (FC, 5.1; CD, 32).

Primary examples of group-specific rights appeared in the field of linguistic rights. National governments began to commit themselves to undertake positive measures in order to protect and promote minority languages. Having created a breakthrough in this field, it was acknowledged in the Copenhagen Document that minorities “have the right freely to express, preserve and develop (among others) linguistic identity” (CD, 32). The same provision affirmed minorities’ rights “to use freely their mother tongue in private as well as in public” (CD, 32.1). The Document did not go, however, into details of the implications of the “public” use of minority languages and those measures which would facilitate promotion of linguistic identity.

It was the *European Charter for Regional or Minority Languages* (EC) which comprehensively outlined contemporary scope of linguistic rights. In the view of the

documents into a legal text, the framework Convention omitted those rights which were inducing creation of collective rights.

Charter, protection and promotion of minority languages represented “an important contribution to the building of a Europe based on the principles of democracy and cultural diversity” (preamble, para. 6). In doing this, the Charter made a distinction between official and mother tongues and admitted that the two was not to be practiced in an exclusive manner. While addressing citizenship obligation to learning official language, the Charter stipulated that “the right to use a regional or minority language in private and public life is an inalienable right” (preamble, para. 3, 5).

On the other hand, putting a direct emphasis on the value of interculturalism and multilingualism in building socio-political and legal structures of the post-Cold War Europe, the Charter stipulated the use of minority languages in the affairs of schooling, judicial proceedings, administrative dealings, media and cultural activities. To this end, national governments undertook to take necessary measures to facilitate educational establishments, private or public, in which minority languages would be taught or minorities would receive education in their mother tongues (EC Art. 8). More precisely, the free use of minority languages in legal proceedings; to provide evidence, written or orally, in one’s mother tongue; and translation of legal documents into minority languages were extensively guaranteed (EC Art. 9). It was also admitted that minority peoples would communicate with administrative authorities in their mother tongues, and in those regions where minority group constituted a considerable proportion, regional or local authorities would incorporate minority languages in their administrative organs (EC Art. 10). In the cultural field, national governments were urged to facilitate radio/TV broadcasting, production and distribution of audiovisual works in minority languages (EC Art. 11). Similarly, the Charter fostered protection and promotion of minority cultures through creating, in minority languages, libraries,

cultural centres, museums, archives, academies, theatres, as well as cinemas and festivals (EC Art. 12).

The Copenhagen Document and the Framework Convention too prompted a parallel formula with respect to the preservation and development of linguistic characteristics. Both documents affirmed the free use of mother tongues, in private and in public realms, orally or in written form (FC, 10.1; CD, 32.1). Minorities would freely receive and transmit information and ideas in their mother tongues without interference by public authorities. This field included the possibility of having equal means in accessing to the media (FC, 9.1; CD, 32.5). In those geographical areas inhabited traditionally and in substantial numbers by citizens belonging to minority groups, it was recognised that minority language would be employed in communicating with public authorities (FC, 10.2; CD, 34). The right to public usage of minority languages covered also legal proceedings taking place in the regional courts (FC, 10.3). Apart from administrative and judicial implications, linguistic rights took into account the right of expressing personnel and geographical names in mother languages. It was accordingly affirmed that in minority-populated areas, local names, street names or other topographical indications would be displayed in the language of the resident population (FC, 11).

Linguistic rights were granted basically to individual members of minority groups. Taking into account collective dimension of minority identity, the documents insisted also on the possibility of creating grounds through which rights and freedoms would be exercised in community with other members of minority groups (FC, 3.2; CD, 32.6). The provisions enshrined hence a set of rights having collective dimension. In order to exercise those freedoms of thought, expression, conscience and religion, minority peoples were provided, for example, with freedom of peaceful assembly and

association (FC, 7). It was clearly specified that minorities would freely manifest their religion or belief and establish institutions, organizations and associations to that effect (FC, 8; CD, 32.2).

Concerning the collective dimension, the linguistic rights, in particular, were associated with the task of creating educational establishments. Here, national governments were required to undertake no commitment in the sense of allocating financial resources to minority educational establishments. Yet, it was guaranteed that minorities would, on their own expense, establish and manage educational institutions in which minority languages would be taught, or instruction would be practiced in that language (FC, 13; CD, 32.2-32.3). Thus, national education, in general, was not expected to give instruction in minority languages or to teach languages concerned. However, particularly in minority-populated areas, without neglecting the learning of official language, national governments committed themselves to take positive measures within their educational systems so as to teach minority language and give instruction in that language (FC, 14; CD, 34).

As was pointed out, minority questions have entailed external dimensions having links with the majority of another country or with a minority living outside the borders of hosting country. Because of this, the new regime of minority protection invested a close concern in developing cross-frontier relations between the members of the same ethno-cultural group living in different countries. To this end, both the Copenhagen Document and the Framework Convention put emphasis on the rights of minorities to establish peaceful relations across frontiers with those external groups with whom they shared an ethno-cultural, linguistic or religious identity, or a common cultural heritage (FC, 17; CD, 32.4). In this regard, parties were further called

to enter into bilateral or multilateral agreements upon the protection of persons belonging to national minorities (FC, 18; CD, 36).

On the other hand, the scope of the new regime interested confirmed that formulation of governmental would be sensitive to minorities' socio-economic, political and cultural concerns. The new age, in this regard, introduced significant obligations on the part of hosting governments. In doing this, although the form of participation was left to sovereign discretion of national authorities, minority provisions stipulated to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those effecting them" (FC, 15; CD, 35).

Since those measures of differential treatment drew legal-political distinctions between majority and minority members of a state's citizenry, such measures were expected to develop in conformity with the principles of equality and non-discrimination with regard to the rights of the other members of national population (CD, 33). Concerning this aspect, the documents made it clear that differential treatment would by no means be implemented at the expense of majority rights. Since the underlying rationality of the practice lied in the existence of an actual difference between various sections of population, group-specific rights were expected to remedy anomalies stemming from the presence of a dominant identity (FC, 4.3).

4.4.3. National Implementation and International Supervision

National implementation of minority rights and creating of an effective international mechanism charged with the task of monitoring have constituted weakest sides of minority rights regimes. States have often retained a reluctant attitude in enforcing international formulations in their national settings, because

minority rights have carried extensive implications on the form of state-society relations. As was previously underlined, the post-WWI regime relieved the question of minority protection from self-interested politics of great powers and put it, for the first time, under the supervisory competence of an international organisation. The League of Nations and the PCIJ were charged with the task of political and judicial review respectively. However, since minority obligations had been drawn in a geographically limited form and imposed generally upon defeated states, the regime inhibited its effective enforcement in the national settings (Capotorti, 1991: 20-24).

Born in a Cold War climate, international organisations' mandate in the field of human rights protection were directed by standard setting, rather than policing or monitoring acts. In particular, the Cold War regime displayed a constant silence on the question of minority protection giving national governments a free hand in dealing with their minority related issues. It was only by the 1990s that international attention has focused once again on methods by which conformity to those standards of minority protection might be encouraged and checked. The contemporary instruments of minority protection in the context of the OSCE, the CoE and the EU created several mechanisms of implementation and monitoring. The innovative point appeared in the development of an eventual co-action between regional organisations particularly in the field of minority protection. In doing this, three regional organisations have inspired from each other's documents relating to minority rights, and hence strengthened each other's position in implementing these rights in national settings.

As was suggested before, the OSCE has played the leading role in the European region with respect to the issue of minority protection. However, the implementation of the OSCE commitments has traditionally depended on the "good will" of participating states. The dominant view has been that the OSCE commitments

are not treaties and, therefore, are not legally binding on the OSCE states (OSCE, 1999: 11). Yet, it is suggested that “signed at the highest political level, they have an authority that is arguably as strong as any legal statute under international law” (OSCE, 1999: 3). In a similar manner, Burgenthal (1990: 231) pointed out moral impact of the OSCE commitments in guiding subsequent developments:

The fact that it is not a legally binding instrument but a political commitment does not really affect its long-term potential significance. After all, neither the Magna Carta, the American Declaration of Independence, the French Declaration of the Rights of Man nor the Universal Declaration were adopted as legally binding instruments. They became the historic milestones they are today because, over time, they captured mankind's imagination as eloquent expressions of universal hopes and aspirations about human rights and freedom. That aspect, not their legal character, explains their overriding political and moral impact and their influence.

Thus, although the OSCE documents have not entailed a directly applicable nature in terms of having legal force, they have carried potential to guide ramification of agreed standards through creating a favourable international public opinion. That is why, it has been argued that implementation of OSCE standards were to be assessed by looking at consequences they produced. Borrowing from Bloed (XX: 4), “a commitment does not have to be legally binding in order to have binding force. The distinction between legal and non-legal binding force resides in the legal consequences attached to the binding force, not in the binding force as such”.

Indeed, neither the Copenhagen Document nor the following OSCE agreements went beyond being political views. The member states have generally expressed their good wishes in order to make the agreements an integral norm of national policies. However, emerging cooperation between regional organizations of the continent made the OSCE principles quite relevant for national politics. Although the OSCE standards, set forth in the content of the Copenhagen Document, introduced no legal obligation, when the same principles adopted in the CoE and the EU context they gained a binding effect.

The influence of the OSCE standards on the scope of the Recommendation 1201 and the European Charter was already prevalent. Yet, the most explicit inspiration was taken in deciding the scope of the Framework Convention. Having been established on the OSCE principles, the Framework Convention, in fact, aimed at giving a legal effect to the content of the Copenhagen Document. The Explanatory Memorandum of the Convention made it clear that the document intended to transform, “to the possible extent”, political commitments adopted by the OSCE into legal obligations for the participating states (CoE Memorandum, 1995: para. 5). To this end, the memorandum stipulated that “the framework Convention is the first legally binding multilateral instrument devoted to the protection of national minorities in general” (CoE Memorandum, 1995: para. 10).

However, since the CoE member states refrained from drafting an additional protocol to the ECHR, the Convention’s legal applicability came not from the judicial scope of the ECHR but from the status of being an international treaty (Klebes, 1995: 93). Hence, the task of monitoring was entrusted not to the already established judicial organs of the ECHR, basically that of the European Court of Human Rights, but to a reporting system based on periodical reports delivered by the parties to the Council of Ministers aided by an advisory committee of experts. That is, in contravention with the legal nature of the Convention, monitoring system continued to be a political arbitration in the hands of national states (CoE, 1999: 37-43).

As was discussed earlier, in addition to the political and judicial supervision of the League of Nations and the PCIJ, the post-WWI regime had directly made minority commitments a part of internal law. In so doing, they had left almost no room for national governments in interpreting the content of treaties in domestic application. In contrast to this settlement, the effect of the Convention was largely curtailed by its

formula which vested a great margin of appreciation to hands of national governments. The “framework” structure of the Convention compelled governments, at most, to endeavor implementation of internal laws in conformity with this vague and imprecise scope of rights and freedoms (Gilbert, 1999: 63). Thus, implementation was left to “national legislation and appropriate governmental policies” (CoE Memorandum, 1995: para. 13). In so doing, instead of direct application, national authorities were granted an important margin of discretion in accommodating distinct characteristics of the minority groups (Benoit-Rohmer, 1996: 39).

Taking into consideration the complex circumstances of minority questions, the new regime introduced no overall mechanism of implementation unanimously applicable in each of the parties state. Instead, the new context of minority protection opted for “programme-type” provisions which were to be fulfilled by national legislation in conformity with their specific conditions.²⁰ The “escape clauses” of the new regime further delimited the possibility of a unanimous application. Having incorporated those words of “where necessary”, “to the possible extent”, or “in conformity with the national legislation”, national governments were given a free hand in dealing with minority related issues.

Despite these limitations in national application, the enlargement process of the EU seems to fulfill the gap, at least, for the case of candidate countries. Acting on the standards of the OSCE and the CoE instruments, the Copenhagen decisions of the EU Council has conditioned new membership on the satisfaction of minority rights. The Framework Convention has particularly been addressed in the association

²⁰ Paragraph 11 of the Explanatory Memorandum (CoE Memorandum, 1995) worded: “In view of the range of different situations and problems to be resolved, a choice was made for a Framework Convention which contains mostly programme-type provisions setting out objectives which the parties undertake to pursue. These provisions, which will not be directly applicable, leaving the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take particular circumstances into account”.

agreements. Thus, specifically in the case of the candidate countries, the EU's enlargement process has been an effective instrument to enforce the implementation of the new European regime of minority protection. Under the pressure of the accession process, many candidate countries have already given effect to many provisions of the Framework Convention in their national legislation (Melanie, 2001).

4.4.4. Territorial Integrity and National Sovereignty

As was underlined before, modern-state has been pinpointed the state as the sole instrument having the exclusive authority over a well-defined territory. It was sovereign in both external and internal dimensions of exercising this authority. Externally, modern-state has been thought of having the sole capacity to regulate and govern its internal affairs without resorting to any higher authority in the world. Internally, it has been projected as the sole actor of jurisdiction who would neither share its authority with nor receive any commandment from another actor within its borders (Gillespie, 1997).

The issue of minority rights, however, has maintained a constant tendency to undermine external and internal implications of state sovereignty. Because, international regulations relating to national treatment of minorities have, on the one hand, traditionally been established and imposed upon states externally by some great powers, kin-states or international organisations. Group-specific nature of minority rights has, on the other hand, invoked creation of a corporate status for minorities and called for devolution of some sort of state functions these groups. Bearing in mind its divisive implications on an ideal configuration of national entity, national authorities have been reluctant in giving official recognition to the different existence of minority groups within their territory. In place, international system has usually appreciated, at

least up until the end of the Cold-War period, the so-called “territorial integrity norm” which promoted monolithic rather than pluralist formulations (Zacker, 2001).

A significant departure from traditional practices occurred when the standards of minority treatment began to be considered within the general scope of universal human rights protection. It was by the early 1990s that a universal framework relating to the scope of minority rights started to arise. The issue of minority treatment has eventually been conceived an integral component of international human rights protection. The Copenhagen Document, for example, affirmed in 1990 that “respect for the rights of persons belonging to national minorities (was to be considered) as part of universally recognised human rights” (CD, 30). In following, the Charter of Paris marked a significant move on the way to internationalizing minority rights while pushing it above and outside the sole discretion of nation-states. While human rights agenda of the organisation was considered as “matters of direct and legitimate concern” of all participating states, the follow-up meetings of the OSCE process recognized the fact that minority rights ceased to be belonging “exclusively to the internal affairs” of any particular state.²¹

In parallel to the OSCE’s new approach, the CoE appropriated a similar approach. The formulation of the Framework Convention, for example, presented one of the most developed forms of the follow-up steps that have been taken in the context of the Council in this direction. The Convention explicitly stipulated that:

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international cooperation (Art. 1).

²¹ When it was delineating “challenges of change” resulted from the revolutionary transformations of the last decade, the OSCE Budapest meeting (OSCE, 1994) noted in 1994: “We emphasize that commitments undertaken in the field of human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned”.

That is to say, national governments would no longer claim exclusive authority in deciding legal and political borders of minority treatment in their internal politics. In the field of minority protection, traditional implications of state sovereignty, therefore, entered in a gradual decay as it opened the issue of minority treatment to the legitimate concern of international interference. Van der Stoel (1999: viii-ix), the OSCE's High Commissioner on National Minorities, stated in 1998:

...no state may any longer plead 'non-interference in internal affairs' when responding to concerns over respect for human rights, including the rights of persons belonging to national minorities...on this basis that we speak increasingly in Europe about 'good governance' (not simply 'democratic governance'), meaning that government must be for the benefit of the whole population and not merely the majority...the duty of 'good governance requires responsiveness to the needs of all –majority and minorities alike– with a view to fulfilling not merely the *minimum* standards in terms of *obligations*, but striving to fulfil the *spirit* of declarations, conventions and commitments in terms of *shared values*. Accordingly, we should think in terms of "the citizenry", rather than "the nation" – of multi-cultural society as distinguished from mono-cultural society...

In Stoel's view, the criterion of "good governance" is associated with the task of divorcing the concept of "nation" from its ethno-cultural substance in accommodating minorities' claims in a "democratic governance". In other words, the condition of creating an equal treatment between majority and minorities, Stoel suggested differentiating the notion of "citizenship", which is multi-cultural in fact, from the notion of "nation" which recalls mono-cultural composition. In projecting this contemporary argument, it is also exhibited that international "declarations, conventions and commitments" relating to the issue of minority treatment came to determine the national framework of minority policies.

Thus, international standards of minority protection have, to a large extent, superseded today objections of national governments that have hitherto been made on those traditional concerns of "non-interference in internal affairs". By contrast, it came to be argued that respect for universal standards of human rights started to delimit borders of national sovereignty (Falk, 1997: 179-180). Yet, in fear of minority secessionism, national governments have resisted extensive forms of minority

policies, as such creation of trans-frontier contacts or territorial autonomy, even in the growing regime prevalent in the 1990s (Gillespie, 1997: 145). Having taken into account this traditional concern, the contemporary regime in minority protection introduced precise obligations on the beneficiaries of minority rights as well. While compelling national authorities to undertake commitments pertinent to the principle of “equality within diversity”, the new European-regional regime, for example, came out with explicit obligations on the part of minority groups. Major documents of the new era affirmed that the question of minority rights would be resolved through democratic means and within the political independence, national sovereignty and territorial integrity of partied states.

Thus, the issue of minority rights has been associated with multi-cultural and pluralist regulation of internal politics. Because of this, the new regime constantly and completely separated secessionist aspirations seeking political independence from the area of cultural rights to be implemented within the territorial integrity of states. To this end, the new European regime incorporated so-called “loyalty clauses” in its constitutive provisions (Klebes, 1995: 96). Accordingly, while granting substantive rights to those persons belonging to ethnic, religious, linguistic or cultural minorities, major documents imposed, at the same time, obligations on the part of minority groups. The Copenhagen Document, for example, noted:

None of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of states (Art. 37).²²

Obviously, the fundamental instrument of the new regime delimited the scope of the new minority rights by “the principle of territorial integrity of states”. In a similar fashion, the Framework Convention stipulated that measures aimed at “the

effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities (be resolved) within the rule of law, respecting the territorial integrity and national sovereignty of states". The Convention further confirmed that:

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of states (Art. 21).

This is to say, national implementation of international standards has initiated a process which has considerably eradicated states' sovereign authority. However, the process by no means proceeded in an exhaustive way. On the contrary, the current transformation has largely reconciled state sovereignty with international standards of minority protection. Because of this, as was argued above, the fulfillment of the universal standards of minority protection would raise international credibility of a state while making it more sovereign acting in the new-world system which obliged minority groups and external actors to respect its political independence, territorial integrity and sovereign equality. In this respect, the provisions of the major documents enhanced basic features of state sovereignty and, in fact, even strengthened it against secessionist aspirations of minority groups. No minority group would today engage in separatist acts provided that they were granted legal-political measures pertinent to the protection and promotion of group-specific characteristics.

4.5. Conclusion

At the end of the two "hot" world wars, the understanding, formulation and practice of minority rights underwent substantial changes both in national and international arena. The state-specific, group-oriented and geographically-limited

²² The same wording took part in the Article 5 of the CoE's European Charter for Regional or Minority

regime of the post-WWI years gave way, in the aftermath of the WWII, to the emergence of a universalist-individualist human rights agenda which delimited the issue of minority protection with those minimalist principles of citizenship equality and non-discrimination. During the period, international organizations paid almost no direct attention to the fact that minority groups would be in need of differential treatment in order to maintain, preserve and promote their particular identities.

The end of “Cold” War presented no exception to this general tendency. The revolutionary changes of the early 1990s resulted in the reemergence of the group-specific scope of the *minorities treaties*, but this time, with a universal effect of application. The declarations, charters, conventions or documents of the UN, the OSCE, the CoE and the EU helped to grow throughout the 1990s a universal framework of minority protection. The new context incorporated an ethno-cultural dimension to the notion of universal human rights protection which came to be considered outside the classical borders of state sovereignty. The new concept of sovereignty, instead, has increasingly been defined in association with its capacity to accommodate minority differences. Consequently, those notions of ethno-cultural pluralism and multi-culturalism, that largely reconciled group-specific aspects of minority distinctions with universal scope of citizenship equality, became the integral norms of today’s minority rights regime. In so doing, the new framework of minority rights largely disassociated the concept of citizenship from its delimiting impacts of ethno-cultural distinctions in the direction of creating an inclusive formula based on the legal status of peoples. To this end, one of the latest CoE acts put strong emphasis on the fact that “nationality (citizenship) means the legal bond between a person and a State and does not indicate the person’s ethnic origin” (CoE, 1998: Art. 2).

CHAPTER V

TURKISH MINORITY RIGHTS REGIME

The Ottoman Roots

5.1 Introduction

When discussing main features of the European minority rights regimes, previous chapters argued that national and international developments in the last three centuries culminated in the gradual consolidation of a network of norms, values, principles and national and international instruments relating to the question of minority treatment. Starting from the *Westphalian* regime of the seventeenth century, recent transformations appeared in the context of the CoE, the OSCE and the EU have presented the latest framework in the continent. Thus, the issue of minority protection in Europe exhibited not a static nature but a very dynamic process. Substantive content of the prevailing regime, in the sense of providing citizenship equality within ethno-cultural diversity, resulted from a long and escalating process of national and international changes. As well, the Turkish minority rights regime, with its conceptualization of the term minority, the formula of rights and obligations and national and international instruments of enforcement is not a sudden innovation. Rooted in the legal-political framework and practices of the millet system, the Turkish regime inherited many aspects from the past and adopted them to the modern forms of minority treatment.

Having been aware of this fact, this chapter will first examine main characteristics of religious diversity embedded in the legal-political formulation and practices of the Ottoman millet system. In this context, legal, political and social implications of the

millet system will be analyzed as it relates to the issue of protecting the “other” population categories. Secondly, the chapter will explain the modern transformation of the millet system under the influence of the nineteenth century modernization projects of the Ottoman governments. Here, this chapter will examine steps taken in the direction of reconciling classical millet system with an egalitarian formula of Ottoman citizenship. Lastly, the emphasis will be on the failures of the Ottoman politics in accommodating ethno-cultural diversity within an egalitarian implementation of the principle of equality. In so doing, the chapter will crystallize socio-political and legal background upon which the Republican minority rights regime was founded.

When examining the main features of the European *ancien regime*, it was pointed out the fact that its state system rested largely upon corporate agents of communal groupings situated between rulers and the ruled. During the period, in the absence of ideological impetus and modern ruling mechanisms, state authorities were neither willing nor capable of achieving a homogeneous population in terms of ethno-cultural and religious affiliation. It was within this value-neutral and functionalist configuration of the political context that the principle of “difference” prevailed over the concern of “sameness” up until the modern times (Rodrigue, 1995).

The European *ancien regime* drew a clear distinction between the notions of state-membership and that of ethno-cultural membership. Due to fact that political and cultural matters were constituted independent of each other, peoples were allowed to enjoy ethno-cultural and religious distinctions in their social environments. However, this does not mean that each cultural category or members of the same category received identical

treatment. The recognition of difference went, instead, hand in hand with inegalitarian treatment which frequently resulted in ethno-cultural discrimination or persecution.¹

The Ottoman administration greatly differed from its medieval equivalents with regard to the issue of accommodating interests of ethno-cultural others within its classical system in which non-Muslim communities were provided with legal-political and administrative measures through which protection and promotion of communal circumstances were to a large extent guaranteed.² Nevertheless, parallel to its contemporaries, the Ottoman administration too adopted and practiced an inegalitarian policy in treating the “other” population groups. The classical system took almost no step in the direction of creating congruence between the principle of individual equality based on state-membership and that of the group-specific treatment.

5.2. The Classical Millet System: Inequality of the Different

The Turkish *ancien régime*, presented no exception to religious and inegalitarian vision which characterized the European *ancien régime*. Despite the fact that many western politicians and travelers traditionally viewed the Empire, its rulers and the rule within the terms of “Turkey”, “Turks”, and -borrowing from Alexandris (1992: 17)- *Tourkokratia* respectively, this ethnic categorization was no more than a misrepresentation of the Ottoman reality (Kushner, 1984: 8). The Empire was not a

¹ Equal accommodation of the Jewish concerns, the dominant minority group of the pre-modern Europe, was often denied and their disabilities would not infrequently be removed by converting to Christianity or by emigrating from the country they inhabited for centuries (Cohen, 1996). During the Middle Ages, for example, many Jewish groups were expelled *en masse* from England (1290), France (1306), Hungary (1349-1360), Austria (1421), Spain (1492) and from Portugal (1497) (Bell-Fialkoff, 1993).

² Depending upon the existence of an institutional instrument pertinent to the protection of ethno-cultural others, when they were being expelled from various European countries, a leading Rabbi of the Ottoman Jewry wrote to his coreligionists resident in Germany: “Ottoman country is a path to prosperity...do not be

Turkish state in the modern sense of the word, but a multi-ethnic, multi-religious and multi-lingual Empire (Inalcik, 1996: 19). Yet, although Sultans had legal capacity to enact secular rules (*kanun*)³, Islam was the ruling religion at the state level (Barkan, 1999; Berkes, 1998: 14; Inalcik, 1994: 70-75).

Compatible with dominant position of Islamic religion, the imperial order (*nizam*) incorporated a policy of ethno-lingual indifference. In the view of both Ottoman statesmen and the general public, an Ottoman subject was a Muslim, Christian or Jewish before being a Turk, Arab, Kurd, Albanian, Greek, Serbian, Bulgarian or Armenian (Davison, 1954: 844). The same religious classification characterized legal boundaries drawn between rulers (*askeri*) and the ruled (*reaya*), on the one hand, and, among different sections of the ruled, on the other. Since professing the Sunni version of Islam was the necessary condition in accessing into the *askeri* class (Akgündüz and Öztürk, 1999: 431), despite exceptions⁴, it exhibited an ideological homogeneity in terms of faith (Inalcik, 1964a: 44). Although many Christian descents had also been admitted into the ruling strata, they were recruited only after having been assimilated into the mainstream Ottoman value system (Menage, 1993).

Religious distinctions also drew horizontal divisions among different sections of the *reaya* which covered a multicultural, multi-ethnic, multilingual and multi-religious

lazy and come to this prosperous country...where everybody would safely live in his garden and enjoy gratitude of peoples and state authorities" (Galanti, 1995: 40).

³ According to Barkan (1999), on behalf of the higher interests of the state, the Ottoman Sultans, though did never interfere with the affairs of family and personal law, had retained a legitimate capacity to enact secular rules in the field of public law, even when the canonical law had prescribed it differently. For Barkan, this was the peculiar aspect of the Islamic law tradition which had provided a legitimate ground of discretion for the rulers in the affairs of government so long as the canonical law clearly prescribed an adverse regulation.

⁴ Since it served to the interests of the Ottoman rulers to leave the subjects in peace as long as they admitted its rule and did pay their taxes regularly, many pre-conquest local privileges were sometimes preserved and adopted to the Ottoman administrative system without discrimination. This was an internal part of the early Ottoman policy of expansion which was called *istimalet* in Ottoman terms (Inalcik, 1998: 196-197).

population particularly by the middle of the fifteenth century (Ortayli, 1995: 53-54). In accommodating distinct groups within its legal-political system, the Ottoman administration adopted earlier practices of the Islamic heritage and its religious doctrines. The imperial population was divided, on the one hand, into two religious categories of the Muslims and non-Muslims. The former, in the eyes of the Muslim rulers, constituted a compact religious brotherhood of “*umma*” or the “*millet-i İslamiye*”. It was doctrinally believed that there would be no sub-division within the *umma* community of the Muslim peoples. However, having been assessed on the origins of religions, non-Muslim sections were classified into two categories of “acceptable” and “non-acceptable” infidels: polytheists who did not have a divine origin and those of the “Peoples of the Book” (*ahl al-kitab*) who, though went to heresy over time, maintained a Godly origin. It was affirmed that only the latter group would be granted protection, *dhimmi* status, which secured a legitimate ground for the persistence of their communal distinctions.⁵ In Islamic tradition, the Jewish and Christian communities were the major groups belonging to the *dhimmi* category (Ercan, 2001, 1-2; Gibb and Bowen, 1962: 207-208).⁶

Islamic tradition associated legal-political framework of the millet system with the instructions of the Qur’an and the practices of the Prophet (Aydın, 1999). In

⁵ Despite the fact that Islamic tradition prescribed assimilation (conversion) or extermination of the polytheist groups, in some circumstances, like Persia and India, the effect of state protection was extended also to those groups who did not belong to legally admitted persuasions (Gibb and Bowen, 1962: 208).

⁶ Despite its Islamic nature in the Ottoman context, the framework of the millet system was not an Islamic innovation. Although the Ottoman administration and its Muslim predecessors improved the system in many aspects, the policy of religious diversity was, in fact, a long established practice of the *ancien* regime. Apart from Roman, the Byzantine and the medieval empires, the pre-Islamic and non-Muslim states of the Middle East had allowed subject communities, though in an subordinate and inferior position, to retain and practice their own traditions under the general jurisdiction of a communal authority (Gibb and Bowen, 1962: 121-213; Ye’or, 1985). In the Sasanid Empire, for example, Christian communities were allowed to follow their own laws and customs on the same footing as the Christian population of the Byzantine Empire. A set of parallel immunities was recognized to the Zoroastrian communities resident in the Byzantine Empire (Besworth, 1982: 37-40). Major difference in the Islamic tradition was the fact that

particular, the Prophet's agreements, concluded with neighboring non-Muslim communities, were generally considered to have delimited legal borders of the millet system (Ercan, 2001: 3-5).⁷ The system was also rooted in the secular arbitration of ruling authorities. Lapidus (1992) suggested that as Islamic states embraced larger sections of non-Muslim groups, their regimes began to be governed not completely by religious norms but laws of political survival also entered into the scene. Nevertheless, although it had been developed and practiced in a contextual necessity, in view of Lapidus, after the millet system was integrated into canonical law, unequal and subordinate position of non-Muslim minorities was frozen. Similarly, Muhibu-din argued that the Prophet established a complete civil and political equality between Muslims and non-Muslims during his lifetime. But, egalitarian system of the Prophet, in his view, degenerated into inegalitarian ways of treatment by the secular acts of the succeeding rulers (Muhibu-din, 2000).

Bearing in mind its religious and political bases, we can safely conclude that, at least, distinct circumstances of those "Peoples of the Book", the Christians and the Jews, had been granted state protection in the Islamic tradition. Ottoman Sultans remained loyal to this Islamic legacy. By the middle of the fifteenth century, the Ottoman state adopted a system of self-rule, that of the millet system, in order to accommodate religious distinctions of its non-Muslim "minorities".⁸ The prominent non-Muslim subjects of the Empire, those of the Orthodox and Armenian Christians, and the Jewish communities,

administrative practices of the earlier periods "were given religious sanction by the Islamic doctrine of the People of the Book" (Hourani: 1947: 20).

⁷ The *Pact of Khabar*, concluded between Muslim conquerors and the Jewish population resident in the city, for example, was generally acknowledged as the foundational practice allowing religious diversity under an Islamic rule. For the terms of the pact, the resident Jews of the city were permitted to live in peace with their own customs and traditions under the protection of the Islamic sovereign but at the expense of several economic obligations and socio-political restrictions (Ye'or, 1985: 44-50).

were granted communal autonomy in spiritual as well as secular fields including religious, educational, juridical as well as fiscal affairs (Eryılmaz, 1990: 17-30).⁹

The legal-political formulation and practices of the classical millet system constrained the Republican framework and practices in the field of minority treatment. The Turkish version of inclusion/exclusion practices took shape under the influence of the basic parameters of the classical millet system. Because of this, this part of the thesis summarizes basic parameters of the Ottoman practice as it relates to the criteria of minority/majority classification and the official treatment of the “minority”.

5.2.1. Inegalitarian Treatment

Communal compartmentalization of the Ottoman *nizam* provided significant guarantees pertinent to the protection and promotion of religious distinctions of the subject peoples. However, what governed the Ottoman *nizam* was not the principle of equality but a certain version of justice (*adalet*) which recognized equality neither between the rulers and the ruled nor among different sections of the ruled. In a Platonian understanding of justice,¹⁰ the Ottoman version of *adalet* prescribed, instead, to secure to

⁸ Although the Ottoman administration systematically adopted the instrument of millet system after the conquest of Istanbul (1453), similar practices had been applied before the given date, particularly, in relation to the government of the Orthodox and Jewish communities (Gibb and Bowen, 1962: 213-214).

⁹ Contrary to the generally held arguments, it was also suggested that despite the Ottoman administration permitted persistence of the non-Muslim particularities, these were not an integral part of the administrative system but remained in the form of *ad hoc* arrangements throughout the its classical period. In this view, the Ottoman policy of religious tolerance, exhibited in the form of the millet system, gained an institutional aspect only towards the middle of the nineteenth century (Braude, 1982).

¹⁰ According to Plato, democracy, the rule of poor majority, provides equal rights to each member of the polity. Fathers and sons, and citizens and foreigners are relegated to an equal level. In so doing, for Plato, unequal cases are treated equally in contravention with the true spirit of justice which necessitates, in fact, unequal treatment of unequal cases (Şenel, 1991: 192). Although it is uncertain to what degree the thought of Plato influenced Ottoman political philosophy, it is acknowledged that the Empire derived the basis of its ideal rule partly from the Plato's absolute ruler, standing apart from the society he rules, responsible only to God or to his own highest self, regulating different orders of that society in the light of principles of justice (Hourani, 1974: 69)

each of the communal groupings a legal status no less and no more than they deserved (Berkes, 1998: 11). Communal autonomy had thus nothing to do with originally modern concepts of universal equality or non-discrimination embedded in the discourse of the Enlightenment philosophy of natural rights. In the absence of the latter, in conformity with the inegalitarian formulations of its age, the instrument of the millet system relied largely upon an idea of ontological inequality that was considered to have existed between believers and unbelievers (*dhimmi*) (Ye'or, 1985). When defining main features of the Islamic law Peters (1999: 9) put this fact as follows:

Within the Islamic territory, all lawful residents are protected by the law...however...not all persons have the same legal capacity or legal personality. Like all pre-modern legal systems, Islamic law does not recognize the notion of the natural equality of all persons before the law. There are several categories of person and their legal capacities are different from each other.

According to the terms of the Islamic maxim of *dhimma*,¹¹ because, despite the fact that they were accorded state protection and a privilege of communal autonomy, each of the *dhimmi* communities obtained a lower socio-political and legal status as compared to those of the Muslim subjects. Thus, persistence of non-Muslim peculiarities within the legal-political order of the *dar al-Islam*¹² was conditioned on a set of inegalitarian and discriminatory treatment. Because of this, similar to the European *ancien régime*, the corporate compartmentalization of the millet system was formulated and practiced under an inegalitarian articulation of the socio-political and legal spheres. Rights and obligations were unequally distributed to Muslim and the *dhimmi* groupings.

¹¹ It is a well-known fact that such provisions were not an innovation and unique for the Islamic doctrine and practice. The Jewish population of the Byzantine Empire used to be subjected similar practices of discriminatory treatment. The Islamic heritage, including the Ottoman lands, hence, was already familiar with the unequal treatment of religious minorities. In that sense, apart from canonical foundations, the Islamic maxim of *dhimma* might have borrowed from traditional-secular aspects rooted in the policies of the preceding regional states (Bosworth, 1982; Ye'or, 1985: 49).

¹² In the classical doctrine of Islam, *dar al-Islam* (the land of Islam) means the whole territory in which the law of Islam (*Sharia*) prevails (Abel, 1993: 127).

Nevertheless, it seems unjust to underestimate significance of religious diversity provided by the practices of the millet system. Braude and Lewis (1982: 9) rightly suggested that “if the law forbids them to rise above it, it also forbids Muslims to drag them down below it”. It was in this sense that the Ottoman non-Muslims obtained a legally secure ground of existence. Whatever the form of discriminatory treatment, Muslim rulers were bound not to subject their *dhimmi* peoples to any form of persecution (Ercan, 2001, 8-9). However, dominant position of the Muslim side tended almost always to make the situation of the non-Muslims vulnerable. In particular, when Muslim rulers began to think that their *dhimmi* subjects were violating terms of the *dhimma* contract, such as by revolting against the Muslim authority, punishment would then be considered legally valid (Braude and Lewis, 1982: 7-8).

Thus, religious diversity of the millet system “should not be equated with religious liberty in the modern understanding of human rights because traditional tolerance does not imply equality of rights” as Bielefeldt (2000: 107) observed. The idea of equal rights and duties was alien to the classical Ottoman system. In accordance with the norms of hierarchically stratified population, the imperial administration, in its classical socio-political and legal system, subjected Muslim and non-Muslim subjects to the effect of inegalitarian legal principles (Aslan, 1995: 107-109). It was because of this that the framework of the millet system was usually examined on the basis of the concept of religious “tolerance” which concealed within itself an institutionalized form of inequality and discrimination.¹³ The concept indeed entailed an unequal form of

¹³ Pointing out hierarchical implications of the word “tolerance” (*hoşgörü*), Mario Levi indicated the fragile aspect of the concept by making an interesting comparison between the Turkish words “*hoşgörü*” and “*horgörü*” (intolerance). According to Levi, as only one letter (ş-r) makes difference in each word, the practices of tolerance would easily turn into hatred and discriminatory acts and treatment. Because of this,

relationship in the sense that the unbelievers were tolerated to exist with their belief systems and religious practices but at the expense of some discriminatory obligations and responsibilities (Ye'or, 1985: 98-101; Yumul, 1998).

Although it granted significant freedoms as compared to its age, an inegalitarian practice of Islamic tolerance drew the limits of the communal autonomy in the Ottoman millet system. Rights, freedoms and obligations were distributed to Ottoman individuals not on the egalitarian basis of their political membership, which is the legal-political connection with the Ottoman state, but on the particularistic basis of their communal membership legally and politically recognized within the framework of the millet system. The religious diversity of the imperial administration represented an inegalitarian formulation of "tolerance" having nothing to do with modern concepts of multiculturalism or socio-political pluralism.¹⁴

5.2.3. Rights and Obligations

The Ottoman administration devolved a number of state functions to the corporate authority of millet administrations. Many aspects of spiritual, judicial and administrative matters, as such communal education, internal taxation, social welfare, health as well as the execution of legal proceedings and some fiscal policies, were entrusted to the legitimate concern of the millet leadership (Eryilmaz, 1992: 34-37). Luke gave a good summary of the scope of the communal autonomy in his following statement:

Levi prefers to elaborate the question of minority rights or other inter-communal relations in terms of rights and freedoms (interview).

¹⁴ Kymlicka (1995: 150-185), for example, has claimed that a liberal form of multiculturalism requires individual freedom within group as well as equality between groups. In his view, although the Ottoman millet system represented the most developed form of religious pluralisms, it lacked egalitarian principles in the sense that it recognized neither individual freedom within nor equality between groups.

The millets were autonomous in spiritual and in certain administrative and judicial matters. Their jurisdiction embraced, in the religious sphere, clerical discipline; in their administrative sphere, the control of their properties, including cemeteries, education and churches; in the judicial sphere, marriage, dowries, divorce and alimony, civil rights and, in some millets, testamentary dispositions (cited in Hourani, 1947: 21).

Thus, although the millet classification was drawn upon religious distinctions of subject peoples, rights, freedoms and privileges went beyond purely religious issues. The scope of millet autonomy included spiritual as well as temporal matters so long as it was not directly related to the use of political power. The legal scope and practices of the millet system guaranteed (Bozkurt, 1996: 14-32; Akman, 1999):

- 1- freedom of religion and conscience which included prominently the freedom of action in the affairs of practicing religious instructions.
- 2- freedom of learning and teaching communal characteristics, whether customary or religious, without the interference of a state-sponsored and centrally administered educational system.
- 3- communal freedom in the management of educational establishments and deciding curriculum to be followed therein.
- 4- freedom of executing, particularly those judicial cases relating to personal status and family law, including affairs of marriage, divorce, and inheritance, in the communal courts based on religious and traditional codes of the millet community.
- 5- communal mandate in registering population statistics relating to the matters of birth, marriage or death.
- 6- freedom of collecting a sum of communal taxes in order to finance administrative needs of the millet.

It was through the use of the said socio-economic, judicial, administrative as well as religious autonomy that millet leaders largely guaranteed preservation of their communities as compact entities without having been assimilated into the dominant Muslim value system (Hourani, 1947: 21). However, rights, freedoms or privileges of the millet system were not based upon an egalitarian formulation. By contrast, in conformity with the foundational principles of the *dhimma* maxim, no egalitarian implementation of civil and political rights arose in the classical Ottoman context. In a time period during which differential treatment was usually associated with discriminatory treatment,

communal freedom to diversity went hand in hand with measures of discriminatory treatment in the fields of socio-political, cultural, religious, juridical as well as economic matters (Peters, 1999: 9). Its inegalitarian scope included (Bozkurt, 1996: 7-32; Inalcik, 1993)¹⁵:

- 1- the use of political power was exclusively reserved to the benefit of the members of the *millet-i hakime* (Muslim millet).
- 2- non-Muslims were exempted from public positions and military service which were under the realm of the authority of the *askeri* class consisting of Muslim subjects (see also Küçük, 2000: 209).
- 3- in return for being exempted from military obligation, non-Muslim subjects were urged to pay extra taxes in the form of poll tax (*cizya*) and a special land tax (*harac*).
- 4- non-Muslim testimony was denied in the Muslim courts.
- 5- open religious ceremonies and displaying religious symbols in the public were not allowed even in those places where they constituted the majority.
- 6- protection of holy buildings were guaranteed, but it was also affirmed that no church or synagogue would be constructed or repaired without getting official permission.
- 7- no non-Muslim was permitted to marry to a Muslim woman though the reverse was legally accepted.
- 8- no non-Muslim building would be constructed higher than those which belong to Muslim subjects
- 9- non-Muslims were to dress in different styles and colors as compared to those of the Muslims.
- 10- non-Muslims were not allowed to ride horses and carry arms.
- 11- non-Muslims were required to settle in different districts.

Thus, although their distinct circumstances were taken under state protection, millet freedoms and privileges legally separated Muslim and *dhimmi* sections of the population. Communal restrictions relating to judicial, administrative, political as well as daily lives depicted subordinate position of the latter. The exercise of freedoms and the fulfillment of obligations were entrusted to the religious hierarchy of the millets. Because both freedoms and obligations had been formulated on corporate terms, the classical

¹⁵ These discriminatory practices, however, were not fixed throughout the reign of the Empire. Many had gradually disappeared in the nineteenth century.

millet system situated non-Muslim minorities under the corporate authority of millet units. Legal status was attributed to the corporate body of the millet groupings. In the absence of communal membership, no Ottoman individual could claim legal existence. In the words of Gibb and Bowen (1962: 211-212),

The Ottoman government did deal with *Dhimmis* of all dominions as members of a community, not as individuals. This was a consequence, partly of the general organization of Ottoman society, which...was essentially 'corporate', but partly too of the nature of the Sacred Law. For though the Sacred Law regulates the relations of *Dhimmis* with both individual Moslems and the Moslem state, yet, for the very reasons that is a sacred law, and that the distinction drawn between *Dhimmis* and Muslims is a religious one, it can not provide for the relations of *Dhimmis* with one other. They are outside its scope...It therefore leaves these 'internal relations of the *Dhimmis* to be regulated by its rivals, the laws of the religions to which they adhere.

This is to say, membership to the Ottoman State did not automatically resulted in an egalitarian political and civil recognition. Although state membership decided one's eligibility for being subjected to freedoms and privileges, the set of freedoms and obligations were indirectly obtained though the declaration of communal membership. Thus, religious affiliation of an Ottoman individual decided his or her socio-political and legal position in the imperial administration. Although they were members of the same political community, under the circumstances, Ottoman individuals were considered primarily members of the millet compartments.

Corporate formulation and exercise culminated in the emergence of a *corporative state* consisted of "inward-closed" and strictly separated communities having no sense of social coherence (Rodrigue, 1995; Hourani, 1947: 22). The principle of *adelet* prescribed that each member and communal leadership stayed within the limits (*had*) of what they were granted. Since it separated communal groupings in rights and privileges, the classical system promoted institutionalization of a form of religious diversity but never a

pluralist system of government. Neither the concept nor the practice of citizenship involving identical rights and obligations appeared in the Ottoman Empire before the nineteenth century (Davison, 1954: 845). On the contrary, the classical Ottoman State exhibited characteristics of a “federation of millets” or a “conglomeration of *umma* communities” (Braude and Lewis, 1982: 1; Ubicini, 1998: 27).

5.2.4. Non-National Composition

It is evident also in the religious classification of population groups, the classical Ottoman administration attributed an ethno-lingual indifference in its administrative system. It was in this sense that despite the term “*millet*” literally meant “*nation*” in Turkish usage, the composition of the millet compartments exhibited essential respects in contravention with modern configuration of a nation based largely upon secular distinctions of an ethno-culturally as well as territorially delimited population category. Within the legal and administrative rationality of the millet system, the concept was used in the sense of a technical term which came to denote semi-autonomous religious groups having legal and political recognition (Ursinus, 1993).

Compatible with its religious basis, millet units were neither uniform in terms of language and ethnicity nor did they have a compact geographic concentration. Administrative authority, communal privileges and immunities were conferred upon millet groupings without taking into account territorial, ethnic and linguistic criteria. On the contrary, since the universal imagination of religion superseded sub-religious particularities, each of the millets incorporated whole of the believers of a religion or sectarian persuasion from various ethnic and linguistic origins and from all regional parts

of the Empire (Vucinich, 1974: 87). Bearing in mind this “non-national” picture, Karpat (1982: 141-169) argued that common ethnicity and language might have strengthened local solidarity among the members of the same ethno-linguistic grouping but, up until the advent of nationalist currents, neither people identified themselves with the said particularities nor did the same characteristics entail political significance.

Apart from the religious configuration of the Jewish millet and of the *millet-i Islamiyye*, the profile of the Greek-Orthodox millet presented a good example to this non-national or even anti-national composition. When it was officially established after the conquest of Istanbul, the Greek-Orthodox millet was organized not on an ethnic and linguistic criteria but a religious criterion with its inherent universalism. The Patriarchate, the head of the Greek-Orthodox community, profoundly adhered to the universalism of the Orthodox doctrine. Despite the fact that its members scattered over the lands of the Empire and divided along ethno-linguistic affinities, legal and administrative authority of the Patriarch symbolized the unity of all Orthodox believers. Various ethno-cultural groupings, including the Greeks, Serbians, Romanians, Bulgarians, Vlacks, Orthodox Albanians, Orthodox Arabs as well as the Gagauz Turks took part within the spiritual and administrative jurisdiction of the Patriarchate (Arnakis, 1974; Clogg, 1982; Inalcik, 1998).

Interestingly enough, it was a general tendency within the classical Ottoman administration to label each of the millet units with the ethnic connotation of its dominant group. However, this administrative depiction never signified political articulation of an ethnic congregation. Depending on the Greek domination in its administrative mechanism, for example, the Orthodox millet was labeled in the Ottoman context within

the terms of the Greek-Orthodox millet (*Millet-i Rum*). Contrary to the modern aspirations of Hellenism, however, the notion of *Millet-i Rum* did not imply the Greek ethnic nationality. The name “Greek” indicated no more than the Orthodox Christians. (Karpat, 1986; Gibb and Bowen, 1962: 234).

Similarly, principles of non-territoriality and ethno-lingual neutrality characterized the Armenian millet as well. Although its ethnic connotation might have complicated its true nature, the community was granted official recognition not because they were from a different ethnic or linguistic origin but because they belonged to a different version of Christianity. The Armenian millet, therefore, did not represent solely administrative conglomeration of Armenian subjects but embraced also other imperial groups of the *monophysite* believers including the Assyrians, Copts, Cadians and Nestorians, which shared a doctrinal affinity with the former in terms of sectarian affiliation. (Bardakjian, 1982; Gibb and Bowen, 1962: 220-230).

The human composition of the millet compartments did not resemble a modern model. Notwithstanding ethnic labels appeared at face value, millet units displayed genuine examples of “imagined communities of religion”. In this context, there was almost no room for free existence of individual or development of an upper Ottoman identity depending on political membership of the Ottoman State and its common territory. In the eyes of both state authorities and the general public, individuals were primarily considered not within the terms of Ottoman subjects but of the fellow members of communal groupings (Vucinich, 1974: 87).

5.2.5. Limited Diversity

The classical millet system framed an institutional place within its administrative system particularly for the Greek-Orthodox, Armenian-Gregorian and the Jewish subjects who obtained legal guarantees pertinent to the protection and promotion of communal differences. The sole focus of the system, however, was on a few religious communities whereas it lacked accommodating many other distinctions of the imperial population. The classical Ottoman *nizam* confined measures of differential treatment, on the one hand, to the benefit of the two big Christian churches (Orthodox and the Gregorian-Armenian) and that of the Jews. Both ethno-cultural and sectarian differentiation of the same communities and smaller groupings of eastern churches remained unprotected or they were subjected to the authority of the former ones.

Concerning the sectarian distinctions, particularly those smaller churches of Assyrians, Copts, Catholics, Cadians, Nestorians, Melkites, Jacobites, Maronites were all exempted from the legal scope and protective scope of the classical millet system. Their legal status was decided in according to the dominant view of the “official churches”. Non-Orthodox Christian subjects, which were heretical in the Orthodox view for being *monophysite* in persuasion,¹⁶ were classified as Armenians (Gibb and Bowen, 1962: 227-232). However, due to fact that almost all of the smaller churches had inhabited geographically isolated areas distant from the capital, it proved practically impossible for the Armenian Patriarchate to take these smaller non-Muslim communities under its

¹⁶ The Orthodox Church, in its doctrine, recognised that Jesus had both a Divine and a Human nature combined in a single person. But, the doctrine of the monophysite churches argued that Jesus had a single, divine nature and denied the orthodox view that Jesus had a dual nature, fully human and fully divine.

communal jurisdiction. In many cases, therefore, eastern churches kept their autonomous status as *de facto millets* and, in practice, ruled themselves (McCarthy, 1997: 130). It was because of this essential neglect that their legal connection with the political authority became ambiguous. Since legal status was obtained through communal membership, *de facto millets* were the members of a religious community but without having legal-political membership of the state. As a result, eastern churches could not obtain secure grounds through which they would protect and promote their religious particularities.

On the other hand, while tolerated religious and, in the Armenian case, sectarian differences of its non-Muslim subjects and fostered their institutionalization within the framework of the millet system, the Ottoman administration strongly denied not only ethnic and linguistic but also sectarian differentiation among Muslim people. Ottoman rulers, including Turks, identified themselves with the *Sunni* version of Islam and submerged particular identities within it. In general, Muslim peoples were officially viewed as constituting a compact and uniform community. In so doing, legal-political ramifications of the official recognition were extended to none of the Muslim elements who were totalized under an all-inclusive category of the *millet-i Islamiyye* or *millet-i Muslime* and was governed accordingly (Kuran, 1997).

Thus, although the Muslim population was by no means a homogeneous community in terms of both ethno-lingual and sectarian affiliation, sub-Islamic -non-*Sunni*, in effect-, particularities were disregarded in favor of religious brotherhood. All of the Muslims, including Turks, Kurds, Bosnians, Albanians, Arabs, Circassians, Cretans, were treated, in private and public, as the equal members of the Muslim millet

Because of this doctrinal difference, monophysite sects, including Armenian-Gregorian and eastern churches of Syria and Egypt, were gravely heretical in the eyes of the Orthodox Church.

(McCarthy, 1983: 7; Karpas, 1985). Because of this, various communal designations, such as “*millet-i saire*” (other millets) or “*cemaat-i muhtelif*” (different communities) never depicted ethno-linguistic or sectarian groups of the Muslim community but almost always indicated non-Muslim millets of the Empire (Eryılmaz, 1990: 154).

It is significant to note here that even the term “millet” indicated the non-Muslim groups, at least up until the reform period of the nineteenth century (Ursinus, 1993). Yet, organization of the Muslim millet operated on the same grounds as those of the non-Muslim millets. It was viewed and regulated as the single community of believers, an *umma* community in the true sense of the word. State authorities attributed greater significance to the preservation of this religious unity. As a result, the *Alevies* in Anatolia, the *Shia* population of the Arab lands, the *Zaidies* in Yemen, the *Nusairies* of Syria, and the *Druzes* in Lebanon were all considered by the Ottoman administration as heretical. Hence, no official recognition and millet-system-like communal autonomy were extended to these heterodox Muslims (Somel, 1997; Somel, 1999/2000; Ortayli, 2000).¹⁷

Although the system created a hierarchical order both within and between communities, once their rights and obligations were laid down, members of the same community were subjected to the effect of identical freedoms, privileges, restrictions or obligations. Unanimity prevailed within the same community that tended to create a form of self-identification among its fellow members. It was in this sense that despite the fact that religious and legal barriers avoided emergence of assimilation or national integration,

¹⁷ It is also acknowledged that some heterodox Islamic sects, like *Druzes* of Lebanon, gained local autonomy in districts where they were strong enough to maintain it. Within this autonomy, these heterodox groupings possessed their own courts for deciding cases in accordance with their own customs and sectarian doctrines (Hourani, 1947: 20).

legal-political unanimity within the same community encouraged development of a gradual intra-group homogenization.¹⁸

Therefore, we can safely conclude that the Ottoman version of the millet system did not bring a comprehensive formula in accommodating religious others in its legal-political system. Borders of the official recognition and communal protection were exclusively delimited with the religious distinctions of three larger non-Muslim groupings. In parallel to the prevailing identity markers of its age, sectarian and ethno-cultural differences, on the part of both Muslims and non-Muslims, obtained, in general, no relevance in the framework of the classical system.

5.3. From Millet to Minority: The Transformation of the Millet System in the Nineteenth Century

The nineteenth century was the “longest century of the Ottoman Empire” as Ortaylı (1995) rightly depicted it. For Ortaylı, despite the fact that the Ottoman modernization rooted in earlier periods, the most radical changes in the socio-political and legal fields of the classical *nizam* appeared in the duration of this century. Transformation of the Ottoman’s classical corporate structures of the millet system into a new system of minority treatment based upon an egalitarian configuration of the Ottoman population was one of the most pressing and problematic wings of this process. When the nationalist currents of the early nineteenth century harbored pillars of the classical millet system, the Ottoman rulers faced contemporary Western concepts of state, nation,

¹⁸ Many Bulgarian-speaking groups in Thrace, for example, came to consider themselves Bulgarian-speaking Greek during the time of national dismemberment. In the same manner, when they adopted Islam, Slavic groups of the Balkans, Bosnians and Pomaks, were largely considered of being Turk (Arnakis, 1974; Karpat, 1985: 49-55).

citizenship as well as a new version of minority treatment. It was in this context that Ottoman reformers vested greater efforts in the direction of creating an egalitarian Ottoman citizenship out of the “federation of millets”.

Bearing this historical fact in mind, before on elaborating egalitarian reforms, it will be useful to examine two major and essentially interrelated developments: internationalization of the question of Ottoman “minorities” in the hands of the so-called European great powers, those of Russia, France and Britain; and ethno-cultural and territorial, that is national, disintegration of the classical millets.

5.3.1. Nationalization of the Christian Millets and the Internationalization of the Minority Questions

Notwithstanding its inegalitarian aspects, the classical millet system functioned well as long as religion remained the dominant source of identity for all Ottoman subjects. As Stavrianos (1974: 195) argued, by the late eighteenth century, “economic, scientific and political revolutions that transformed Western Europe also transformed the Turkish-ruled (Ottoman) Balkans”. In particular, after the French Revolution’s basic tenets, -liberty, equality and “nationality”- filtered down predominantly into non-Muslim communities, the classical Ottoman *nizam* came to prove short of securing national and territorial integrity of the state as well as ethno-cultural claims of subject peoples (Lewis, 1965). Contrary to the premises of classical system, prominently non-Muslim concerns

began to shift from *anational* or *anti-national* millets towards national forms constituted chiefly around ethnic, linguistic and territorial peculiarities (Karpas, 1982: 159-161).¹⁹

It is acknowledged that not only Western ideas, but also diplomatic and armed support of the Western states played significant roles in the ethnic dissolution of the religious communities (Küçük, 2000: 212). Indeed, ethnic disintegration of millets often took an immediate support from the Western great powers (Macdonald, 1913). Western involvement in the Ottoman minority questions was motivated by political and economic concerns (Macdonald, 1913: 36; Davison, 1963: 18). However, inegalitarian practices of the *dhimma* doctrine also offered a convenient pretext which great powers frequently exploited (Ye'or, 1985: 80-84). Thus, as the inegalitarian nature of the millet system made the Ottoman non-Muslims susceptible to external interferences, the great powers gradually extended their "protection" to all members of Ottoman Christians. As a result, the Ottoman *dhimmis*, whose freedoms and obligations had hitherto been decided by the terms of the millet system, slowly moved into a framework of European protégés whose rights and obligation began to be fixed by foreign powers (Braude and Lewis, 1982: 32).

In fact, external protection and universal equality symbolized the termination of the terms of the *dhimma* contract. Particularly the concept of universal equality gradually undermined legitimate grounds of the *dhimmi* inegalitarianism. Major parameters of the classical *nizam*, therefore, disappeared. A significant disharmony in the channels of communication between Muslim rulers and the non-Muslim subjects that had hitherto been provided through mediating role of the corporate leaders, developed. Their membership to the Ottoman State became highly controversial (Gökbilgin, 1967: 94-95).

¹⁹ As a result of nationalist disintegration, for example, foundational ties that had once brought together the Serbs, Bulgarians, Greeks, Vlachs, Romanians, Gagauz Turks, Orthodox Arabs and Albanians with the

It was in this context that principles of civil and political equality came to the forefront of Ottoman politics. Instead of millet privileges, peoples began to seek “inalienable rights” (Davison, 1954: 845-846).²⁰ Under these circumstances, it was barely possible to maintain ideological and structural parameters of the classical system. Aware of this fact, Ottoman rulers began to renounce, for the first time, inegalitarian principles of the *dhimma* system in favor of creating a universal Ottoman citizenship cutting across ethnic, linguistic and religious identities of the subject peoples. The classical parameters of the millet system, based on a distinct principle of *tefrik-i anasır* (separation of elements) henceforth, left its place to a political project of *ittihad-ı anasır* (union of elements).

5.3.2. The Politics of *Ittihad-ı Anasır*: Equality within Diversity

It became explicit in the early nineteenth century that millet categories, isolated from each other without having a common Ottoman identity, operated as physical and ideological basis of national awakening as well a pretext of external interference (Mentzel, 2000). It was in response to these internal and external developments that the Ottoman statesmen launched an egalitarian project of Ottomanism (*Osmanlılık*) in order to replace corporate millet structures by an Ottoman population of equal individuals (Davison, 1963: 405-406; Hanioglu, 1985). It was believed that once the non-Muslim subjects obtained equal treatment, they would no more feel segregated and oppressed by the state and would no longer strive for independence (Inalcik, 1994: 183-184).

Greek-Orthodox millet disappeared (Arnakis, 1974).

²⁰ Under the influence of the nationalist ideas, the non-Muslim minorities had come to criticize traditional restrictions of the millet system. In their 1804 upheaval, for example, the Serbian communities had demanded that the Ottoman administration would allow restoration of churches, public use of bell and religious symbols (Tanör, 1995: 52).

Bearing this concern in mind, the Ottoman administration, by the beginning of the nineteenth century, disregarded theological principle of *dhimma* inequality and began to treat all Ottoman subjects in egalitarian terms of civil and political equality. The earliest sign of the new policy came in the first half of the nineteenth century (1837) when the Sultan Mahmud II conceded:

Our intention is that the Muslims shall be considered as such only in the mosques, and that, according to the same principle, the Christians shall be Christians only in their churches, and the Jews, Jews only in their Synagogues. It is my will that outside those places, where all do similar worshipping to their divinity, they shall all equally enjoy the same political rights, together with my fatherly protection (Karal, 1965: 67-68).

When speaking to the non-Muslim communities in the same year, Mahmud II similarly stated that he considered the Greeks, Jews and Armenians on the same footing as the Muslims. The Sultan insisted that all of the Ottoman subjects were under the protection of law and his “fatherly rule” whatever their religion might be (Tanör, 1995: 52).

As was argued, one’s religion had hitherto been viewed, in official and public circles, constitutive of his/her socio-political and legal status. From this point of view, the words of Sultan symbolized formal termination of the millet system while it opened the doors wide to egalitarianism in civil and political matters. However, the Sultan’s statement promised no more than his “fatherly protection” (Karal, 1964: 596). Concrete steps in the direction of creating substantive transformation in the classical parameters of the Ottoman *ancien régime* were taken during the *Tanzimat* era (1839-1876) in which the *Imperial Rescript of Gülhane* (1839) represented the first step.

5.3.2.1. The Imperial Rescript of Gülhane (1839)

In an interview, Neoklis Sarris²¹ proclaimed that the concept of universal equality is an inherited principle in the Ottoman heritage. According to Sarris, when they were seeking to replace the centuries-old institution of religious tolerance, the Ottoman reformers of the nineteenth century imported the concept of equality from the West.²² As was argued before, although it constituted legal-political ties between state and its individual subjects, religious scope of the millet system had by no means indicated any word of natural rights. Socio-political and legal status of individuals had instead been decided not on an inborn equality but on the membership of a religious community (Karal, 1964: 595). This inegalitarian tradition was, for the first time, abandoned in the Imperial Rescript of Gülhane (Imperial Recript, 1956; Sonyel, 1994: 353-388).

Contrary to the inegalitarian vision of the millet system, which had already lost effect, the main objective of the Rescript was to re-establish legal and political links between state and its subject peoples on the egalitarian basis of citizenship equality (Küçük: 2000: 212). Thus, in consistent with the project of *ittihad-ı anasır*, the imperial act aimed at creating an Ottoman nation of equal individuals independent of ethno-cultural and religious identities. To this end, the document introduced innovative regulations particularly with regard to the legal position of the non-Muslim Ottoman subjects (Aslan, 1995: 108-109). It was in this sense that the act signified a breakthrough

²¹ Neoklis Sarris was born as a Turkish-Greek in Istanbul but was sent to Greece in 1964 when the Turkish-Greek relations strained on the Cyprus question. Currently, he is a Professor in the Department of Sociology at the Panteion University in Athens.

²² It is acknowledged that following radical transformations that appeared in the inegalitarian aspects of the European *ancien régime*, the Ottoman *nizam* too slowly moved, by the early nineteenth century, towards universal rights and principles based on inborn equality of individuals (Shaw, 1992: 54; Soysal, 1997: 12-13). The principle of universal equality, proceeded in the Western world along the equality of all social classes and of all citizens, however, manifested itself in the Ottoman context in civil, political and legal equality of non-Muslims with their Muslim equivalents (Inalcik, 1964b: 621).

in the minority policy of the Empire. Unlike the preceding regime in which one's religion had decided his or her legal, political and social standing, the new document, for the first time, incorporated a secular outlook in regulating civil, political and legal position of the imperial subjects. (Inalcik, 1964b: 616-617; Arsal, 1940: 90-93).²³

Unlike the inegalitarian nature of the former order, the Ottoman administration affirmed in the new manuscript the principle of legal equality without taking into account religious differences. The Rescript incorporated, in fact, a set of administrative regulations including a regular method of assessing and collecting taxes, of levying, recruiting and fixing the term of military service, the abolishing of the tax-farming. Its innovative aspect came from the fact that the Ottoman authority promised to apply the effect of the new regulations equally to the imperial subjects whether Muslim or non-Muslim. Principles of equal treatment before the law and of public trial were accordingly confirmed. Most importantly, security of the life, liberty and property was guaranteed on the grounds of citizenship equality. The document worded:

Full security of person, reputation, honor and property, according to the precepts of the law, are therefore granted by us to all the inhabitants of our well guarded dominions, in order that all our imperial subjects, whether Muslims or other sectarians may without exception enjoy these royal concessions.

By this provision, the Ottoman State recognized that people would have fundamental rights and freedoms to be taken under state protection without any condition. Beyond doubt, similar guarantees used to be granted in the decrees of the Sultans throughout the classical period. But, for the first time, they were formulated in terms of citizenship equality (Kuran, 1994: 34). It was because of this that the Rescript

²³ Despite its secular form and intent, the document blamed the decline of the Empire on deviating from the true path of the Sacred Law that was to be corrected with new regulations to be enacted on the principles of the Islamic instructions. From this point of view, the document would be seen a return back to religious

was admitted the Ottoman version of the nineteenth century European constitutionalism (Inalcik, 1964b: 619; Soysal, 1997: 20-21). Although the document demonstrated a progressive step taken in this direction, its formulation did not rest upon a theory of natural rights and/or social contract (Aslan, 1995: 107-108). Rather, an instrumentalist understanding underlined the rationale of these regulations that were expected to tie the subject peoples to the state, avoid upheavals, increase prosperity, and all of which would strengthen the state (Inalcik, 1964b: 620).

Having been formulated under the concerns of *ittihad-ı anasır*, the principle of equality was expected to correct many shortcomings of the classical millet system. In particular, by the implementation of the Rescript, the millet concept of religious tolerance was gradually replaced by originally egalitarian ideas of rights and liberties. The grounds of inegalitarianism, therefore, began to lose legal foundations (Ye'or, 1985: 98). It paved the way for abandoning the different and, for some cases, discriminatory treatment to such a degree that the non-Muslims began to obtain political and legal equality on the same footing as Muslim subjects. This goal manifested itself in the specific innovation of the reform that the non-Muslims were granted proportional representation in the local councils established during the 1840s (Davison, 1968: 99-101; Shaw, 1992). In so doing, non-Muslim minorities, at least in appearance, were emancipated from the restrictions of the classical *dhimmi* status and started to become equal Ottomans would take part in the political realm (Hizmetli, 1999: 124-125).

Thus, contrary to doctrinal supremacy of the Muslim millet, its provisions sought political and legal equality (Akgündüz and Öztürk, 1999: 434). Because of this, the

roots of the earlier periods. However, its religious colouring was a lip service addressing merely conservative circles of the Ottoman administration (Inalcik, 1964b, 618).

Rescript represented a radical rupture from the legal order of the classical *nizam* which had hitherto been based almost exclusively on the prescriptions of the *Sharia* (Engelhardt, 1999: 44-45). Bearing in mind this secular rupture, Courbage and Fargues (1997: 104) rightly observed that the manuscript marked the emergence of the first un-Islamic (if not anti-Islamic) secular doctrine in the Ottoman context. Indeed, a criminal (1840) and commercial (1850) code, on the basis of secular principles, were subsequently adopted and their execution was entrusted to joint tribunals in which Muslims and non-Muslims would equally be treated (Tanör, 1996: 77-78).

Unlike the expectations of the Ottoman statesmen, the principle of equality pleased neither Muslim nor non-Muslim subjects. After centuries of legal, political, social and psychological domination, the Muslim millet was not yet ready to have equal treatment with non-Muslims. In view of Muslims and the state bureaucracy, universal equality contradicted with Islam and traditional state structure (Inalcik, 1964c; Karal, 1964: 582; Davison, 1954). Due to fact that it established direct links between the state and individual subjects, equality also challenged vested interests of the millet leaders who were reluctant to exchange their educational, legal and administrative authorities with an abstract concept of equal Ottoman citizenship.²⁴ Moreover, those non-Muslims who already drifted towards nationalist currents already felt no enthusiasm in equality, because, what would satisfy them was not egalitarian treatment within but secession from the Empire (Jelavich and Jelavich, 1977: 105).

Nevertheless, in seeking legal-political foundations of an inclusive Ottoman nationality, traditional parameters of the imperial policy in minority treatment were, for

²⁴ Having these concerns in mind, the Greek-Orthodox Patriarchate remained cautious towards the proclamation of the principle of universal equality (Clogg, 1982: 199).

the first time, officially challenged. The unilateral practice of religious tolerance, that had hitherto determined the scope of millet privileges, was renounced in favor of “constitutional” rights and liberties (Tanör, 1996: 78). In so doing, the Rescript greatly contributed to the socio-political and legal emancipation of non-Muslims (Engelhardt, 1999: 59). This first move towards the establishment of universal equality, however, did not culminate in the emergence of an integrated society and a consolidated state. Many features of communal freedoms, privileges and restrictions were left untouched. Non-Muslim testimony was still unacceptable in Islamic courts. Discriminatory taxation of *cizye* and *harac* was still in force. They were not eligible for public employment. This egalitarian turn created, at most, a duality between the notion of an Ottoman nation consisting of equal individuals and the corporate millet structures. The succeeding document of the Reform Edict (1856) further strengthened this duality.

5.3.2.2. The Reform Edict (1856)

Unlike the Imperial Rescript which had largely been formulated and enforced by the Ottoman statesmen, the Reform Edict was formulated under the direct impositions of the European powers. The Edict, hence, provoked a more extensive and substantive transformation in the classical basis of the imperial regime of minority treatment (Kuran, 1999: 104-110).²⁵ The document, therefore, further expanded the scope of guarantees conferred upon non-Muslim imperial subjects. In fact, major objective of the reform was to reconcile universal equality of the Ottoman citizenship without violating minority circumstances. To this end, the Edict indicated that the Ottomanist equality, preached in

²⁵ In order to reaffirm the privileges and immunities of the non-Muslim communities, the Reform Edict was promulgated by the Sultan Abdülmecid on February 18, 1856 (Reform Edict, 1956)

the provisions of both previous and this imperial decrees, by no means implied leveling off communal differences. It was affirmed instead that the reforms intended to correct inabilities of non-Muslim communities prevailed so far but had come to contradict with egalitarian policy of the *ittihad-ı anasır*.

The Edict, hence, confirmed traditional privileges while, at the same time, seeking elimination of persistent structures of inequality. To this end, it was acknowledged that non-Muslim communities would continue to enjoy already established immunities and privileges, this time, in an enhanced aura of liberties. Going beyond traditional limitations of the *dhimmi* status, therefore, it was affirmed that state would no longer interfere with the construction or repair of the places of worship or pious foundations belonging to non-Muslim subjects. Thus, in contravention with the instructions of the *dhimma* contract, new churches, synagogues, community hospitals or schools would be constructed, and, if necessary, those old ones would be repaired freely without seeking official permission. It was also recognized that non-Muslim subjects would practice religious ceremonies and carry religious symbols in public where they constituted majority of the resident population.

On the other hand, members of the non-Muslim millets were conferred the right to enroll in all public schools including military schools. Moreover, non-Muslim communities' capacity to open their own schools in all branches of learning was confirmed. In the same schools, the communities were also permitted to formulate and practice their own curriculum. In doing this, in contravention with the integrative objectives of the policy of *ittihad-ı anasır*, communal designation of the educational system tended to perpetuate traditional divisions (Bozkurt, 1996: 56). In the judicial field,

the Edict did nothing to disassociate legal matters and religious affairs. The treatment of those legal affairs related to family law or personal status, as such marriage, divorce and inheritance, were still in the realm of communal authorities (Akyol, 1996: 102). Nevertheless, in order to ensure egalitarian treatment in those cases relating to the criminal or commercial matters, the Edict promised promulgation of secular codes and the establishment of joint tribunals (Bozkurt, 1996: 57).

Provisions of the document concerned with the internal secularization of the millet communities as well. To this end, spiritual and temporal authority of the clergy was limited exclusively to the realm of religious matters. Secular members of the non-Muslim millets were involved in the administration of communal affairs that had hitherto been entrusted to the hands of the ecclesiastical leaders. In addition, religious leaders were made salaried employees of the state bureaucracy. It was laid down that religious leaders would no longer collect voluntary or assessed taxes from their members in return of religious services. Religious hierarchy, therefore, lost its exclusive authority in both state administration and community affairs (Engelhardt, 1999: 139).

As a natural extension of civil and political equality, non-Muslims were also included in the political realm that had been reserved so far to the members of the *millet-i hakime*, that is the Muslim millet. In this regard, Ottoman subjects, including Muslims and non-Muslims were considered eligible for public employment. It was affirmed, henceforth, that in addition to local councils, non-Muslim members would be accepted to the quasi-legislative organ of the Supreme Council of Judicial Ordinances (*Meclis-i Valâ-yı Ahkâm-ı Adliye*) which was the key organ in implementing the reform process.²⁶

²⁶ Established in 1838, in the year before the proclamation of the Imperial Rescript, the Council was entitled to deliberate laws and reforms to be adopted (Seyitdanlıoğlu, 1994).

Concerning the economic aspect of equality, the Edict promised liquidating the discriminatory taxation practiced so far in the form of *cizye* and *harac*. In fact, it was believed that the said taxes had been levied on the non-Muslim subjects for being exempted from military service. Contrary to the policy of creating an integrated Ottoman nation, once the principle of equality preoccupied Ottoman minds, the discriminatory practice had come to function as a demarcating barrier between Muslim and non-Muslim elements. Because of this, liquidating *cizye* and *harac* was carrying already a practical necessity for the prevailing Ottoman policy of *ittihad-ı anasır* that would remove another pillar of the classical inegalitarianism.

The drafters of the document were well aware of the fact that civil and political equality required also equality in obligation. In this respect, it was recognized that non-Muslim minorities would be subjected to compulsory military service from which they had been exempted in the duration of the classical system. However, centuries-old communal cleavages did not yet allow establishment of a working army out of ethno-religious diversity. In the absence of a sense of national unity, it was acknowledged, diverse composition of military corps would produce a dangerous mob consisting of soldiers suspicious of each other (Engelhardt, 1999: 143). Because of this, although principle of equality in military service was recognized, it was converted in practice to a military exemption due (*bedel-i askeri*). It was not before the last decades of the Empire that military service was generalized in the Ottoman state (Gülsoy, 2000).

It is interesting to note here that the Edict considered socio-psychological aspects of equality as well. The Edict banned the use of degrading social designations depending on peoples' ethnicity, language, race or religion. Especially, the usage of the humiliating

term “*gavur*” (infidel) was forbidden from being used both in the official documents and the general public. However, it was quite difficult to transform this psychological aspect with an immediate official regulation. The word, in practice, has been conventionally used to pinpoint the non-Muslim minorities and continued to operate as an instrument of social discrimination.²⁷

To conclude, similar to its predecessor, the document intended to create an Ottoman population consisting of equal individuals directly connected to the state without having intermediating role of the corporate millet structures. In other words, with the two reform packages, the Ottoman administration sought, on the one hand, to dispense with corporate structures of the classical system in the direction of creating both a centralized state and a community of equal individuals integrated in the notion of Ottomanism surpassing ethno-cultural distinctions. It was expected, on the other hand, that once obtained equal rights and obligations, impaired from the communal cleavages of the millet system, non-Muslim minorities would no longer seek secession from the imperial administration. Thus, the centrifugal tendency of ethnic disintegration would be directed from liberation towards personal emancipation and social integration. However, similar to the previous document, while seeking to eliminate socio-political and legal grounds of inequality, it created a duality between the notion of equal Ottoman subject and corporate privileges of the millet system. In this respect, the Edict left behind not an integrated population but a society compartmentalized along the affairs of religion,

²⁷ Mario Levi and Hrant Dink repeatedly pointed out the prevailing function of this word in discriminating non-Muslims in their everyday life. For both minority intellectuals, the word “*gavur*” has created barriers before the development of a possible integration between Muslims and non-Muslims even in modern Turkey (Interview, 2001).

education and judiciary. This continuity of communal compartmentalization obtained an institutional basis in the millet reforms of the years 1860-1865.

5.3.2.3. Millet Reforms: A Corporate Continuity (1860-65)

The provisions of the Imperial Rescript and the Reform Edict reflected the desire of the Ottoman reformers to create a political community of Ottoman individuals by removing corporate power of millet communities. It had been expected that political and civil equality would introduce a direct connection between state and society that would, in turn, direct peoples' loyalties from communal groupings to the Ottoman State. Having provided this, universal equality of state-membership would be reconciled with the distinct treatment of ethno-cultural membership. However, the provisions of the documents proved also the fact that though the new regulations conferred a legal status to Ottoman individuals, many aspects of the communal-corporate rights were also preserved. The most outstanding form of the latter appeared in the Reform Edict which, while granting rights on the basis of individual existence, promised also reorganization of the millets on the grounds of corporate rights.

According to Davison (1963: 114-115), millet reforms aimed at overcoming the then prevailing incongruity of the Ottoman minority policy with respect to two major fields of internal and external dimensions. Externally, the Ottoman reformers believed that since the western interference depended upon the possibility of state interference in the internal affairs of the non-Muslim communities, legitimate grounds of external interference would be curtailed when internal rule of the communities would wholly be devolved to the corporate authority of their secular and religious leaders. Internally,

however, they were seeking the creation of an integrated Ottoman nation out of the communal corporate agents. Because of this, it was believed that individuals would be emancipated from corporate control of religious leaders whereas secular participation in the administration of millet communities would direct communal loyalties to the state. Therefore, in accordance with the promises of the Reform Edict, the three official millets, those of the Greek-Orthodox, Gregorian-Armenian and the Jewish communities underwent an institutional reorganization in the period between 1860-1865.

The Armenian Constitution (*nizamname*)²⁸ presented a good example to the question of millet reorganization. The constitution, which was ratified by the Ottoman administration in 1860, introduced a general assembly consisting of one ecclesiastical and a temporal council. While the former reaffirmed traditional authority of the clerical leaders, the latter provided a channel of secular participation in the administration of the millet affairs. The general assembly was charged with electing the patriarch and the members of the two constitutive councils. The religious council was entrusted with affairs of religious instructions, religious education and ordination of clergy. The civil council, on the other hand, undertook, among others, management of secular education, hospitals, millet property, finance and judicial affairs. The final control of these councils was vested in the general assembly. Since secular representatives considerably dominated the membership of the assembly, 120 out of 140, it presented a secular turn in the rule of the millet. Although the patriarch was still the medium of communication between the

²⁸ The first draft of the constitution of the Armenian Millet, prepared in 1960 by the leading members of the Armenian community, was entitled as the "Constitution of the Armenian Millet" (*Ermeni Milleti Anayasası*). But, the Port changed it to "the Regulation of the Armenian Millet" (*Nizamname-i Millet-i Ermeniyan*) (Yumul, 1999/2000: 346).

millet and the Ottoman administration, he was accountable to the general assembly for his actions (Yumul, 1999/2000).

Following the Armenian example, the Greek-Orthodox and the Jewish millets adopted similar constitutional regulations in 1862 and 1865 respectively. Although the power of the religious authority remained relatively stronger in the Greek-Orthodox millet, lay participation in the administration of both millets was institutionally secured. Hence, secular representatives of the millets were granted a say particularly in those secular affairs including financing, schooling, and judicial matters. The ecclesiastical authority was limited exclusively to religious affairs (Shaw and Shaw, 1982: 164-169; Bozkurt, 1996: 170-194).

In its exact form, constitutional reorganization of the millet administrations secured codification of the traditional millet immunities that had hitherto been adopted on an *ad hoc* basis of the imperial decrees. Because of this, except the issue of secular participation, the reorganization meant no more than transforming the customary privileges into written principles (Yumul, 1999/2000: 347-349). Thus, although Ottoman reformers had aimed at providing a direct linkage between the state and its individual subjects, millet reforms further reinforced the intermediating role of the communal actors. As a result, non-Muslim minorities continued to have been subjected primarily to the rule of their millet organizations and only indirectly, if any, to that of the Ottoman State.

The essential concern of the Ottoman administration in these reforms was to bring about national cohesion inside and to diminish foreign interference outside. However, none of the objectives would be fulfilled. The reforms did almost nothing to drive minority nationalist aspirations into a legal-political identification of the Ottoman

citizenship. On the contrary, constitutional codification of the traditional cleavages helped to re-emphasize the lack of homogeneity among Ottoman peoples. Millet communities obtained, except territorial control, structures and functions comparable to that of the modern states. Although the power of the clergy declined and some degree of secularization was created, religious segmentation was reproduced (Bozkurt, 1996: 194).

Most significantly, codification of religious distinctions became a landmark in the nationalization of the millet communities. Secular participation in the temporal affairs of the millet administration rapidly expanded the relevance of secular learning that greatly emancipated non-Muslim individuals from religious authority of the millets. However, what replaced their religious aspirations was not a sense and loyalty felt to an abstract project of Ottoman nationhood and the state, but political articulation of their ethno-linguistic identities (Davison, 131-133). In particular, the scope of millet autonomy in the affairs of religion, education, justice and administration was this time articulated in the form of “acquired rights” (Berkes, 1998: 158). As a result, traditional duality that existed between those notions of Ottoman citizenship made up of equal individuals and the communal membership of the millet groupings remained unsolved. If there appeared any dissolution in the classical structures, it was in the nationalization of the Christian communities who gradually moved out of millet consciousness directly into a national consciousness without ever having accepted Ottoman citizenship (Davison, 1963: 407-408). Bearing in mind the centrifugal function of the millet reforms, Davison (1963: 131-133) rightly suggested that “the old clerical obscurantism, which kept the mass of the non-Muslims in ignorance, was a better ally of continued Ottoman dominion, although not of Ottomanism, than the new order in the millets”.

5.3.2.4. The Ottoman Citizenship (*Tabiiyet*) Law (1869)

The Ottoman administration had invested no concern in the issue of promulgating a citizenship law as long as millet system provided indirect channels of linkages between the state and subject peoples. Depending merely upon the intermediating function of corporate agents, the Ottoman statesmen felt no incentive to regulate the status of individual within the Empire. As was stated before, individual had been granted no legal existence in the classical system. The Ottoman state exercised rule over not individual subjects but corporate communal structures. However, by the decline of the millet system, communal channels came to remain insufficient to provide the necessary connection between the state and its subject peoples. In order to overcome this deficiency, *Tanzimat* reforms attempted to redefine legal and political links on the basis of egalitarian rights and obligations. The objective was to create Ottoman individuals out of millet communities by replacing the priority of communal membership with an inclusive formula of state-membership. In doing this, it was expected that individuals would be transformed from subordinated members of the millet communities to right-bearing citizens of the Ottoman State.

However, it became evident in the middle of the nineteenth century that the egalitarian regulations proved insufficient to create a direct linkage between the state and individual subjects. Despite the sincere implementation of the reforms, many of the non-Muslim, for example, had opted for the citizenship of the western powers though they have never been to these countries. Instead of benefiting emerging scope of the Ottoman citizenship, many non-Muslims had received capitulatory privileges of the *protégé* status

in economic, political and legal fields. From the legal point of view, under these circumstances, the Ottoman administration came to govern many peoples who received a “foreign” status or those who were caught between state-membership and that of the communal membership. Contrary to the *raison d’être* of the Tanzimat reforms, new social blocks beyond the reach of the state authority were developed. This situation resulted, among others, in the multiplication of the legally and politically stratified composition in society (Bozkurt, 1998).

In order to eliminate this ambiguity that appeared in the definition of the Ottoman individual, the Ottoman State, for the first time, promulgated a citizenship law (*Tabiiyet-i Osmaniye Kanunnamesi*) in 1869 (Eryilmaz, 1990: 147-148). In conformity with the spirit of the *ittihad-ı anasır* policies, provisions of the Law considered no religious criteria in determining one’s membership to the Ottoman State. The first article of the Law, for example, affirmed that irrespective of religious affiliation, the concept of the “Ottoman citizen” (*Osmanlı*) would indicate descents born from an Ottoman mother and Ottoman father, or only from an Ottoman father. It was also recognized that inhabitants of the Ottoman territories would officially be regarded Ottoman citizens and be treated accordingly unless it was proved otherwise (Art. 9).

The Law laid down also the conditions upon which one’s citizenship would be liquidated. In this concern, unlike previous practices, the Law incorporated the principle that if one adopted a different citizenship without having official permission, his or her Ottoman citizenship would be cancelled by the state (Art. 6). This meant that bestowing or suspension of citizenship vested in the sovereign authority of the Ottoman State rather than the *berats* given by foreign embassies.

This proves the fact that following the rationale of the reform period, the law reflected the spirit of Ottomanism as it symbolized another breakthrough from the inegalitarian content of the Ottoman *ancien régime*. Instead of religio-sectarian, political and legal classification of the latter, the Ottoman Citizenship Law adhered to the secular formulations of the policy of *ittihad-ı anasır*. One's membership to the Ottoman State was decided independent of his or her communal membership. In so doing, the Law created a legal space through which individuals would claim legal existence over and out of the millet communities. In so do, the Ottoman Citizenship Law delimited legal borders of political membership (citizenship) out of ethno-cultural membership that had hitherto drawn one's legal status in the imperial administration.

5.2. The Constitutionalist Era and Minorities

As long as the *dhimmi* status drew boundaries between Muslim and non-Muslim subjects, it produced also a socio-political and legal duality between the terms of state-membership and communal membership. Nevertheless, it was this duality that separated cultural world from political matters while facilitating persistence of ethno-cultural peculiarities. In this context, peoples' status was decided on religious but not on numerical size. The millet system was, in essence, not a "minority policy" in the modern sense of the word. It was a unique instrument of the Islamic tradition adopted in governing peoples of "other" persuasions that had nothing to do with proportional numbers of the various sections of the population. However, as the legal boundaries disappeared under the egalitarian premises of the Ottoman citizenship, relative position of the communal groupings began to be decided more on numerical criteria. The traditional

Muslim/*dhimmi* classification, therefore, began to be articulated in terms of majority/minority relationships (Karpas, 1982: 162).

Indeed, in spite of its theological basis, the Ottoman state had never identified itself, politically and ideologically, with a Muslim majority up until the nineteenth century. In addition to millet leaders, the *devshirme* system, for example, had operated to establish a balance at the political level between Muslim and non-Muslim interests (Gibb and Bowen, 1962: 210-211). Similarly, there was no understanding or practice of official language. The Greek, Latin, Hungarian, and Serbian languages had frequently been used in the Ottoman official correspondence (Inalcik, 1996: 24; Köprülü, 1999: 122-125). However, by the collapse of the corporate millet structures, a gradual identification between cultural and political realms began to arise. A mutual rapprochement between state and Muslim population gradually developed (Karpas, 1988: 44-45).

When we consider the notion of “nation-state” as the identification of the state with an ethno-lingual or cultural community, it seems reasonable to conclude that the nineteenth century reforms gradually transformed the Ottoman Muslim millet into a “Muslim nation”. Although the egalitarian policy of equality hardly succeeded in creating a coherent Ottoman nation out of communal millets, classical form of the millet system no longer existed. Beside the sole criteria of religion, numerical size entered into the picture in the Turkish minority rights regime in which non-Muslims’ legal position came to be decided on majority/minority relationships (Kedourie, 1988: 27).

The eventual congruity between the Ottoman state and the *millet-i Islamiye* acquired constitutional basis by the last quarter of the nineteenth century. While the constitutionalist era continued to uphold the ideal policy of *ittihad-ı anasır*, it came to

credit, legally and politically, the domination of the characteristics of the Muslim millet and the Ottoman version of the Turkish language. In one sense, this political-cultural amalgamation was the natural result of the modernization process. But, it reflected also the deep resentment of the Ottoman statesmen felt towards the failure of the equal Ottoman citizenship.

5.4.1. The First Constitutionalist Era

In the 1860s, gradual secularization of the Ottoman minority issues and the constant foreign intervention in the minority policies of the imperial administration began to receive strong reactions from various sections of the population. The Young Ottomans was the leading group in this regard. Prominent members of the group attributed the decline of the Empire, apart from the absolutist policies of the *Tanzimat* reformers, to the interference of the western powers and the disloyal activities of the non-Muslim communities. In their view, the Ottoman citizenship had resulted in the inequality of the Muslims. Since non-Muslims obtained a constant western support, in contravention with the premises of the *ittihad-ı anasır*, non-Muslim minorities had obtained a privileged status. Although they never abandoned the ideal of citizenship equality, the Young Ottomans sought removal of both the Western intervention and the privileged position of the non-Muslim minorities (Rahme, 1999).

For the Young Ottomans, the grounds of external interference lied in the corporate aspects of the millet system that had been left largely untouched in the preceding reforms of modernization. In the view of the group, corporate communal structures would only be undermined after the fusion of millets (*imtizac-i akvam*) and the

unification of Muslims (*ittihad-ı Islam*) were secured (Berkes, 1998: 221-225). However, the fusion was by no means associated with those policies of ethno-cultural denial or of assimilation. The path to the accomplishment of this political goal was the promulgation of an inclusive constitution and a representative parliament (Berkes, 1998: 206). According to the Young Ottoman leaders, the two instruments would, on the one hand, operate as an integrative mechanism through which non-Muslim subjects of the Empire would be tied to the common interests of the motherland (*vatan*). On the other hand, it was believed that once Christian peoples obtained representation in the parliament on equal footing as their Muslim counterparts, foreign powers would find no legitimate ground of intervention but the reformist ideal of an Ottoman nation of citizens would be fulfilled (Rahme, 1999).

Thus, a coherent “nation” consisting of equal individuals would only be attained in the absence of both western interference and minority nationalism. From this point of view, in consistent with the ideal of *ittihad-ı anasır*, the composition of the “nation”, in their mind, embraced all Ottoman individual subjects regardless of their ethno-cultural, sectarian or religious affiliation. It was in this sense that they inherited many things from the views and practices of preceding reformers. What made them “radical descendants of the *Tanzimat* reformers” was their instruments (Akçura, 1998: 26-27). To be sure, they did not content with *ad hoc* decrees but attempted to change superstructural organization of the state as a whole. To this end, hoping to bring together scattered communities of the imperial population in a common political identity, they prompted promulgation of a constitution and a representative parliament. Not surprisingly then, underlying rationale of the first Ottoman constitution (1876) reflected the policy of *ittihad-ı anasır* which, for

the Young Ottomans, had been preached but could not completely be attained since the reign of the Sultan Mahmud II (Kili and Gözübüyük, 1985: 31-44).

Therefore, in response to the secessionist aspirations of minority nationalities, the main emphasis in the constitution fell on the indivisible unity of the empire with its “nation” and territory. To this end, having been aware of the fact that territorial unity needed first “national” integrity, the document incorporated an egalitarian formula based upon the notion of universal rights and obligations equally applicable to all Ottoman individuals. It was in this context that, following the legacy of the *Tanzimat* reforms, the doctrine of the Ottomanism characterized the most outstanding features of the constitution.

Bearing the unitary objective in mind, the document adopted an inclusive term of “Ottoman” (*Osmanlı*) (Art. 8). Thus, irrespective of religious, sectarian or ethnic adherence, all subjects were regarded Ottoman which was a political designation over particular identities. Accordingly, strong emphasis was put upon the achievement of civil and political equality between Ottomans whose individual rights and liberties were officially guaranteed (Arts. 9-10). It was recognized that apart from exclusively religious affairs, Ottoman individuals would be subjected to the effects of identical rights and obligations (Art. 17). It was in this context that the condition of public employment was divorced from its religious coloring and admitted that all Ottomans were eligible to public offices (Art. 19).

Concerning the egalitarian content, it was the constitutional codification of the preceding imperial decrees and represented another step taken in the direction of creating

ittihad-ı anasır. This view was explicit in the statement of the Sultan Abdulhamid II who, in the first secession of the Parliament, remarked:

Our fathers had been ruling different religious and ethnic communities over these lands. But, one task remained unfulfilled, which was to bring together all these communities under the principles of a common law and a common allegiance. Thanks to all mighty God, we will accomplish this task. From now on, all of my citizens will live under the auspices of the same law, and all will be called as *Osmanlı* which has been the connotation of our dynasty for six hundred years (Kili and Gözübüyük, 1985: 47-48).

While recognizing distinct circumstances of the non-Muslim minorities, the constitution aimed at creating an Ottoman unity on the basis of a common law. Yet, it was also recognized that the principle of civil and political equality would in no ways be implemented in the form of uniform treatment. Many aspects of traditional privileges in the fields of religious, educational and legal affairs were largely left intact. Despite the fact that minority educational institutions were taken under the control of central administration, the constitution, for example, affirmed communities' traditional capacity to open, manage, control schools and other educational establishments and to decide the curriculum to be followed therein (Arts. 15-16). Apart from guaranteeing the freedom to practicing religious instructions (Art. 11), non-Muslim groupings were permitted to carry out communal autonomy in the affairs of private and family (Arts. 17, 23).

On the other hand, while accommodated diverse circumstances of minorities within an egalitarian scope of the Ottoman citizenship, the first Ottoman constitution crystallized majority characteristics of the state as well. The legal position of the non-Muslim peoples came to be articulated in minority/majority terms. The political sphere began to be identified, for the first time, with ethno-cultural and religious characteristics of the dominant Muslim millet. A gradual congruence, hence, occurred between political and cultural spheres that had been located so far independent of each other. In this

respect, although it had hitherto been the dominant religion in practice, Islam was constitutionally rendered the official religion (Art. 11). It was accordingly specified that the Sultan was not only the head of the state but also the protector (*hami*) of the Muslim religion (Art. 4). As a result, the Sultanate was politically associated with the Muslim elements of the population. On the other hand, Turkish language (*lisan-ı Turki*) was, for the first time, specified as the official language (*lisan-ı resmi*). Public employment was accordingly conditioned on the knowledge of the Turkish (Art. 18). Similarly, it was affirmed that parliamentary elaboration was to be held in Turkish (Art. 57), that is, deputies were expected to speak, write and read in the official language (Art. 68).

Although the constitution developed a majority identity in terms of religious and linguistic characteristics, apart from the terms of citizenship equality, minority peoples were provided a substantive right to differential treatment. Principles of civil and political equality were conferred without violating legal-political conditions pertinent to the persistence of minority peculiarities. Hence, legal grounds of “national” unity within diversity appeared at the constitutional level that reflected in the composition of the parliament as well. One-third of the Senate and the Parliament consisted of non-Muslim deputies (Ortayli, 2000: 213-221).²⁹ Unlike the priority of communal membership in the *ancien* regime, representatives were considered, first of all, individual citizens of the Ottoman state. Thus, state-membership obtained priority in the front of ethno-cultural membership. It was affirmed in principle that no communal existence would have a special voice in the general assembly in which Christians, Jews and Muslims were to be depicted in a legal category of Ottoman. Therefore, deputies were to be represented not

²⁹ According to Karal (1982: 387-400), total number of deputies counted 115, out of which 48 were from non-Muslim communities.

on the basis of membership to a millet or ethno-cultural community but according to the proportion that they counted in a constituency (Art. 71).³⁰

It is generally admitted that despite persistent impacts of the millet concerns, most members of the parliament promoted Ottoman patriotism. It became evident not long after, however, that in contravention with the optimistic expectations of the Young Ottomans, neither constitutionally guaranteed citizenship equality nor parliamentary representation created a “national” integration within ethno-cultural diversity, let alone a common political identity. Although non-Muslim minorities were granted equal share in the political realm, nationalist aspirations continued to weigh minorities’ concerns. Ethnic disintegration lasted in an enhanced pace that culminated in the Berlin Congress (1878) which marked secession of Serbia, Montenegro and Romania, and internationalization of another minority question of the Empire, namely the situation of Armenians.³¹

This great loss of territory convinced the Ottoman statesmen that the policy of *ittihad-ı anasır* was nothing but a dream. Because of this, after he suspended the parliament in 1877, Abdulhamid II attributed much attention to the policy of *ittihad-ı İslam* (unity of Muslims). The ideal of an equal Ottoman citizenship was, therefore, substituted with a “religious nationalism” seeking a coherent unity not only among the Ottoman Muslims but also Muslims outside the Empire (Berkes, 1998: 267). However, Sultan’s Islamist orientation by no means indicated the end of the politics of *ittihad-ı anasır*. In response to the Sultan’s Islamism and oppressive rule, a liberal opposition, led

³⁰ The principle of ethno-cultural neutrality based on citizenship equality did not completely run in reality. In the absence of a new electoral law, deputies were elected according to the procedures of the Provincial Law of 1869 (*Vilayet Kanunu*) which admitted proportional representation of the millets in the local councils (Davison, 1968: 106-107).

³¹ According to the terms of the article LXI of the Berlin Treaty, the Ottoman government promised new reforms to be implemented in the eastern provinces considerably inhabited by Armenian minority (Hurewitz, 1956: 189-191).

by the Young Turks, came to the surface as strong advocates of the Ottoman citizenship.³² The group and its political organization, the Committee of Union and Progress (CUP), believed that in order to guarantee political independence, territorial unity and the coexistence of Muslim and non-Muslim citizens in the country, an egalitarian formula of rights and liberties must have been restored in the Empire (Ahmad: 1986: 17-36).

5.4.2. The CUP and the Minority Question

According to Bayur (1991: 115), the CUP's minority policy was shaped by deep feelings of resentment and suspicion. Under the influence of the Western interference and the non-Muslim secessionism, the CUP had come to believe that religious segmentation would no longer be maintained intact. Yet, similar to its predecessors, this would be accomplished, in their opinion, not by the replacement of the Sultan's oppressive policy with another oppressive regime (Bayur, 1991: 5-11). Their prime objective was to restore the policy of *ittihad-ı anasır*. The CUP program (Tunaya, 1998: 70-75) accordingly read:

In order to warn out Muslim and Christian countrymen against the system of government of the present regime, which violates such human rights as justice, equality, and freedom, which withholds all Ottomans from progress and surrenders our country to foreign domination, an Ottoman Society of Union and Progress has been formed, composed of men and women all of whom are Ottomans.

Thus, the Young Turks expected to create a national unity made up of Ottoman citizens irrespective of religious or ethno-cultural origin. Writing to the foreign consulates, the CUP leaders proclaimed that the Committee aimed at uniting all Ottoman peoples, including Muslims, Vlachs, Jews, Armenians, Albanians, Bulgarians, Greeks

³² Despite the ethnic designation of "Turk" in their name, no fraction of the Young Turks ever used this word, which remained a western designation, but continued to style themselves as Ottomans (Berkes, 1998: 305).

and Arabs, under its inclusive organization (Koloğlu, 1998: 30-31). Indeed, the CUP program stipulated that the Committee would work for the common good of the Ottoman peoples whatever their nationality (*milliyet*), ethnicity (*kavmiyet*), gender (*cinsiyet*) and sectarian adherence (Art. 2). In so doing, the program projected an Ottoman citizenship based on those principles of justice (*adalet*), equality (*musavat*), freedom (*hurriyet*) and fraternity (*uhuvvet*) (Tunaya, 1998: 95; Bayur, 1991: 8). They believed that once the oppressive rule collapsed, Ottoman individuals, irrespective of religious and linguistic characteristics, would unite under the rule of freedom and cease to seek political independence. In the minds of the Young Turk leaders, civil and political equality were an instrument to guarantee the future (*beka*) of the country (Tanör, 1996: 130).

Despite the fact they were suspicious about the sincerity of the non-Muslim minorities, the CUP cadres, therefore, determined to attain an Ottomanist unity within ethno-religious diversity of its cosmopolitan population. It was declared in 1906 that:

The Committee desires to create a genuine equality between Kurdish, Turkish, Bulgarian, Arab, Armenian and other citizens of the country and to unite them in its prosperity and the suffering. This country belonged to neither Turkish or Bulgarian or Arabic peoples but to each of the Ottoman individual. All of the Ottoman individuals, who recognized and confirmed principles of this fact, are our fellow citizens irrespective of their ethnicity or religion. Our Committee is not a nationalist fraction. Without regarding ethnic or religious affiliation, those who intended to divide this country, including Turks, are our enemies (Bayur, 1991: 116).

Thus, notions of “unity” and “progress” were the twin pillars of the CUP’s political philosophy. The concept of “union”, in their mind, indicated not assimilation of minority groups into a monolithic project of ethno-cultural form but a task of creating sincere unity (*ittihad-ı samimi*) based on humanitarian and patriotic feelings of citizenship equality (Art. 3) (Tunaya, 1998: 76-80). Because of this, while confirming non-Muslim minorities’ rights to civil, political and legal equality, the CUP programs and

declarations also affirmed traditional millet immunities particularly in the affairs of religion and education (Tunaya, 1998: 70-162).

Thus, the CUP adopted substantive principle of ethno-cultural diversity which embedded in the reformist ideal of *ittihad-ı anasır*. However, the CUP believed that millet segregation was incompatible with the execution of political sovereignty and the ideal of citizenship unity. Non-Muslim minorities' integration into an egalitarian Ottoman unity was to be the precondition of citizenship equality.³³ In their minds, corporate privileges had hitherto operated as an instrument of secessionist currents and external interference, on the one hand, and inhibited emergence of a genuine equality between Muslims non-Muslim minorities, on the other (Ahmad, 1982: 403-405). Hence, after the constitutional regime was restored in 1908, the CUP inclined to obliterate the corporate aspects of millet autonomy in the affairs of legal, political and administrative fields. In their view, traditional communities would, at most, be spiritual entities in which individuals would feel ecclesiastical affiliation to their own faith but temporarily would belong to state's political authority (Berkes, 1998: 330-331).

The CUP authorities, therefore, attempted to dissolve legal, administrative and educational privileges of the non-Muslim minorities. To this end, the *Law of Associations* prohibited political associations based on or bearing the name of ethno-cultural or national groups. Greek, Bulgarian and other minority clubs were immediately closed down (Lewis, 1968: 217). In following, the military exemption due (*bedeli-i askeri*) was cancelled in 1909 and non-Muslims were subjected to the terms of military obligation.

³³ Talat Pasha is reported to have stated: "You are aware that by the terms of the Constitution equality of Mussulman and Ghiaur was affirmed but you one and all know and feel that this is an unrealisable ideal. The Sheriat, out whole past history and the sentiments of hundreds of thousands of Mussulmans and even the sentiments of the Ghiaurs themselves, who stubbornly resist every attempt to ottomanise them, present

Apart from being a natural extension of the principle of citizenship equality, the act was expected to operate as an integrative mechanism among the non-Muslim citizens who would come to identify themselves with the legal-political and social dimensions of the Empire (Gülsoy, 2000: 127-140).

On the other hand, minority educational establishments, in which curriculum and the language of instruction hitherto been decided by millet authorities, were taken under close scrutiny of the state. Apart from constraining the establishment of new schools, the *Law on Private Schools (Mekatib-i Hususiye Talimatnamesi)*, dated 1915, urged minority schools to teach Turkish language and to instruct the Ottoman history and geography in that language (Sezer, 1999: 25-28). In particular, in order to make Ottoman citizens subject to the effect of a secular code, a new family law (*Hukuk-u Aile Kararnamesi*) was enacted in 1917. The Law, for the first time, greatly disassociated the affairs of marriage and divorce from the judicial authority of religious hierarchy (Bayur, 1991: 374-376).³⁴

The government attempted to revise internal rule of the millets as well. The Armenian Constitution (*Nizamname-i Ermeniyan*), to this end, was subjected to an essential regulation in 1916. In its new form, before being eligible to the position, the patriarchs were obliged to prove conditions of the Ottoman citizenship, to obtain the reliability of the state and community, to speak and write in Turkish (Ottoman) and to have knowledge about the basic laws of the state. The power of Patriarchate and the millet councils were considerably curtailed. It was affirmed that the patriarch would bear no power outside religious matters. The council of the lay members, on the other hand,

an impenetrable barrier to the establishment of real equality...There can therefore be no question of equality until we have succeeded in our task of ottomanising the Empire" (Lewis, 1968: 218).

³⁴ Upon the application of the non-Muslim minorities, the scope of the millet system in family and personal law was restored in 1919 when Istanbul entered under Western occupation (Akyol, 1996: 70-71).

was permitted to deal solely with religious and charity-based endowments of the community, and control on the community's educational establishments was vested in the authority of the state (Bayur, 1991: 57-59).

It is significant to note here that these and similar regulations did not intend to dissolve minority identities but to create legal and political grounds of national unity that had remained unfulfilled for the reform period. As was underlined above, the CUP governments remained loyal to the policy of the Ottomanist cosmopolitanism as long as they believed that there was a chance to link non-Muslim minorities to the state. The notions of "Ottoman nation" (*Osmanlı Milleti*), "Ottoman motherland" (*Osmanlı vatani*) and Ottomanism (*Osmanlıcılık*) constituted essential basis of their political philosophy (Tanör, 1996: 130). Although non-Muslims and the non-Turkish speaking Muslims wrongly viewed this inclusive policy as Turkish nationalism, in the Unionist minds, there was only one nation and that was nothing but the Ottoman nation (Küçük: 1987).

The CUP's enmity, as Atay (2001: 46) rightly observed, was exclusively directed towards those minority groups who were displaying divisive and secessionist tendencies. This approach was, in fact, a logical extension of the Unionist policy of *ittihad-ı anasır* pertinent to the political project of national unity based on the principles of civil and political equality. However, despite the CUP's Ottomanist orientation, the second constitutionalist regime too failed in its objective of creating an integrated Ottoman nation. Minority representatives in the parliament displayed almost no sentiment of Ottomanism but voiced more national aspirations of their minority communities (Tanör, 1996: 159-161).³⁵ Indicating the failure of the ideal of *ittihad-ı anasır*, Baso Efendi

³⁵ The Parliament involved 288 deputies consisting of 147 Turkish, 26 Greek, 60 Arab, 27 Albanian, 14 Armenian, 10 Slavic and 4 Jewish representatives.

(Boussios), a Greek deputy, remarked the then prevailing mood of minorities in the parliament that he was as Ottoman as the Ottoman Bank, which was a French bank in ownership (Ahmad, 1982: 409).

Thus, contrary to its fundamental objective of ‘union’, minorities continued to move out of religious-millet consciousness into a national consciousness without ever having accepted equal Ottoman citizenship. After the Young Turk revolution of 1908, Bulgaria declared independence, Bosnia-Herzegovina was annexed to Austria and Crete to Greece. Most of the Balkan Christians ceded to neighboring countries after the Balkan wars (1912-1913). Subsequently, Albania obtained independence (1912) and Arab provinces drifted towards separatist tendencies. It was in this context that the *raison d’être* of Ottomanist diversity almost completely withered away. This threw the CUP leaders “into a mood of anger, bitterness, and frustration” (Lewis, 1968: 214). Henceforth, the CUP policies started to shift from the political project of *ittihad-ı anasır* towards an eclectic program of ethnic Turkism (Tunaya, 1998: 60).

Thus, their ethnic Turkism originated not from a deeply rooted ideological background but from the failure of the politics of *ittihad-ı anasır*. It reflected a sense of resentment against the persistence of minority secessionism. As long as Ottoman statesmen believed that ethno-religious diversity would be united under a common Ottoman citizenship, great efforts were vested to win over minority groups. This attitude is obvious in Akçura’s *Üç Tarz-ı Siyaset* (Three Ways of Politics) in which, having exhibited shortcomings of pan-Islamism and of Ottomanism, the author implicitly suggested to institute the basis of the new politics on the unity of Turkish peoples (Akçura, 1998). When he was answering Ottomanist criticisms, Yusuf Akçura

subsequently made it rather clear that the Turkist turn in the policy of the Young Turks had come to the fore after they convinced that there remained no chance to actualize the ideal of *ittihad-ı anasır*. In the words of Akçura:

When non-Muslims rebelled against the Ottoman State, the Port introduced a system of civil and political equality. It was admitted that the Empire would no longer adhere solely to Islamic doctrines. Having expected to unite different religious groupings, it was believed that peoples would henceforth share a common citizenship and to speak, to some extent, the same language, receive the same education, love the country with the same feelings, make sacrifices for and benefit equally from the common good. Muslims and non-Muslim citizens were treated on the same footing. Public offices, including prime ministry, opened to all of the Ottoman citizens. This was the general objective of the *Tanzimat* reforms but it remained a dream in the minds of the rulers. The ideal would not be reconciled with the reality. (It became evident today that) this policy would no longer be lasted. Greeks and Armenians would in no way come to renounce their ethnic identity in favour of Ottoman citizenship. It seems no longer possible to assimilate Arabs, Chaldeans, Assyrians, Jews, Greeks, Bulgarians, Serbians, Turks and Armenians into a uniform identity of Ottomanism. If it proved otherwise, we would readily give support to upholding this *Tanzimat* policy (of *ittihad-ı anasır*) (Bayur, 1991: 431-433).

On the failure of the Ottomanist project of egalitarian diversity Lewis (1968: 218)

made a similar statement in his following words:

Whatever the measure of sincerity that lay behind the promises of the Ottoman Constitution, the march of events soon made those promises unrealizable. The spread of nationalism...ended forever the 'Ottomanist' dream of the free, equal, and peaceful association of peoples in a...multi-national, multi-denominational empire.

One result of this failure, as was given above, appeared in the gradual growing of ethnic Turkism. The political project of "civic" nationhood, that had promised equal accommodation of the non-Muslim minorities within the legal-political structure of the Empire, began to be discredited. On the other hand, since the persistent minority secessionism threatened survival of the Empire, the failure prompted Young Turk leaders also to take radical measures. Due to fact that they had persistently denied inclusive promises of the Ottomanist policies and continued to engage in secessionist and fifth-

column activities, hundreds of Armenians, for example, were deported from Eastern Anatolia towards the southern provinces of the imperial lands.³⁶

5.4.3. The Treaty of Sevres and the Failure of the Politics of *Ittihad-ı Anasır*

It has been argued that the Ottoman statesmen, in the duration of the reform period, invested great hopes in the principle of citizenship equality in order to save the state from collapse under the centrifugal impacts of minority nationalism and western interference. It was expected that once provided with civil and political equality, non-Muslim minorities would no longer seek independence but become integral elements of an Ottoman nation consisting of equal individuals whatever their religion, ethnicity or language. However, egalitarian reforms could neither avoid disintegration of the imperial population nor did it prevent Western interference in the internal affairs of the state. The ideal of equal Ottoman nationhood, as was underlined above, has largely remained a dream in the minds of ruling classes. The final hit to this Ottomanist ideal came to the fore in the provisions of the Treaty of Sevres (1920) concluded between the Ottoman administration and the Allied Powers in the aftermath of the WWI.

Political clauses of the Treaty (Treaty of Sevres, 1956), indeed, made it clear that minorities and the western powers would no longer content with a framework of minority rights to be implemented in the then prevailing legal-political borders of the Empire. Instead, having limited the issue of minority protection to the borders of a smaller Turkish territory (Section I), almost whole of the minority peoples were either granted independent statehood or annexed to their kin states. In the Eastern Anatolia, for

³⁶ The amount of Armenian deportees changes from source to source. As Turkish sources counted it around 1.176.000, foreign numbers amounted up to 1.600.000 (Courbage and Fargues, 1997: 126-127).

example, an Armenian state was created (Section VI). Part of the Western Anatolia was left to the Greek control that was subsequently to be ceded to that state (Section IV). Most significantly, apart from non-Muslim peoples, in contravention with the traditional Ottoman policy of the Muslim millet, ethno-cultural distinctions of the Muslim population was conferred due recognition. Putting aside secession of the Arab lands, the Treaty established an autonomous Kurdish administration in the eastern and south-eastern regions where to be seceded from the Empire within a year (Section III).

In so doing, the Treaty of Sevres signified the final collapse of the politics of *ittihad-ı anasır*. Civil and political equality culminated not in the creation of an Ottoman national unity within ethno-cultural diversity but in the disappearance of the Ottoman State. The process of ethno-cultural disintegration that had gradually proceeded along the demarcating lines of minority circumstances was almost complete. It was this failure that prompted much resentment among the Turkish-Muslim peoples of the core lands and the rulers of the Empire, prominently the Turks, who had invested great hopes in the principle of citizenship equality to save the state from collapse. Non-Muslim minorities and the persistence of communal immunities hence came to be considered one of the major causes behind the national and territorial dissolution of the Empire (Sonyel, 1993).

The issue of minority rights and the western interference relating to the question of minorities, therefore, came to be associated with centrifugal drives of ethno-religious groups not with those notions of respect, freedom, liberty or equality to be implemented within the borders of a shared polity. In particular, taking into account the role of the western powers in the dismemberment of the Empire and their intervention in the internal affairs of the state on behalf of the Christian minorities, the latter came to be regarded

natural allies of the external enemies and pioneers of ethnic dismemberment (Gibb and Bowen, 1962: 232). On most occasions, in the eyes of the Turkish-Muslim peoples, non-Muslim minorities represented the “foreign”, “unreliable” and “disloyal” elements of the population who were to be treated accordingly. It was this legacy that has inserted greater impacts on the form and practices of the Turkish minority rights regime (Akçam, 1995: 35-112).

5.5. Conclusion

Parallel to the practices of the European *ancien regime*, the Turkish traditional regime of the classical Ottoman period disassociated political realm from ethno-cultural world. Ethno-cultural affairs were largely entrusted to the control of the corporate organizations of religion within an inegalitarian framework of rights and obligations. While non-Muslim minorities were provided with instruments of ethno-cultural protection, inegalitarian nature of the canonical law rendered the issue of universal equality out of question. Policies of different treatment in the classical Ottoman administration went hand in hand with practices of inegalitarian treatment which situated non-Muslim minorities in a second-class position as compared to the Muslim subjects.

It was not before the early decades of the nineteenth century that an idea of citizenship equality developed in Ottoman lands. Under the driving impacts of the minority nationalism and of the external interference, Ottoman reformers of the nineteenth century attempted to reconcile two notions of equality and different treatment in a substantive formula of rights and obligations. To this end, while no specific concern was attributed to the distinct circumstances of the Muslim subjects, non-Muslim members

of the Ottoman population began to be treated on the same footing as those of the Muslims. Major reform documents of the period aimed at guaranteeing citizenship equality of the non-Muslims. However, corporate aspects of the classical system would hardly be melted away but largely preserved intact. Because of this, egalitarian turn of the reform period resulted in the emergence of a duality between the notion of Ottoman citizenship consisting of equal individuals and the corporate membership of millet system. Almost no mutual identification between the Ottoman state and its non-Muslim subjects would be attained. The latter, instead, continued to consider themselves primarily members of the corporate communities.

The reformist ideal of the “Ottoman unity within diversity”, the politics of *ittihad-i anasır*, could not obtain a common appeal. In place, egalitarian reforms accompanied by the gradual disintegration of both Ottoman population and territory. The reform process followed prospective anticipation of Resit Pasha, the father of the Imperial Rescript, who remarked that away from being an instrument of saving the country from collapse, the Reform Edict was “a dangerous instrument which would bring complete destruction of the country” (*vasita-i tahrib-i memleket*) (Engelhardt, 1999: 138).

In contravention with the essential incentives of the egalitarian reforms, the Ottoman administration could not prevent the further loss of Ottoman territories and peoples. Emancipation of the *dhimmi* peoples from inegalitarian and discriminatory doctrines and practices of the classical system did not satisfy their secessionist aspirations. In fact, what Ottoman authorities would not see, if even they wanted to, was the fact that non-Muslim minorities were not seeking equality within but political liberation without the Empire. Once harbored by the winds of nationalism, ethno-cultural

disintegration recognized no internal solution. Emancipation and political liberation, therefore, went hand in hand in the Ottoman context. The ideal of creating an equal Ottoman citizenship out of the corporate millet structures remained unfulfilled. The issue of minorities and the question of minority rights, consequently, lost its naiveté in the Turkish eyes and came to be considered not as a matter of respect, liberty, freedom or equality but more as an instrument of ethnic dismemberment and a pretext of external interference.



CHAPTER VI
TURKISH MINORITY RIGHTS REGIME
The Republican Establishment

6.1. Introduction

The previous chapter delineated gradual transformation of the inegalitarian norms and practices of the Turkish *ancien régime* into an egalitarian project of Ottoman citizenship. While obliterating discriminatory aspects of the former, the reform policy of *ittihad-ı anasır* aimed at creating a political unity of Ottoman individuals on the principles of civil and political equality. To this end, a substantive form of equality, at least at the level of legal regulations, was to a large extent achieved. However, under the influence of minority nationalism and external interference, citizenship equality could not create an Ottomanist unity. Almost all of the non-Muslim minorities opted not for Ottoman citizenship but citizenship of their national states. When the final collapse came in the aftermath of the WWI, the Ottoman statesmen and the general public understood that the ideal of *ittihad-ı anasır* was a dream.

Minority issues, in the duration of reform years, had usually been associated with ethno-cultural circumstances of the non-Muslim minorities. Although the legal and political aspects of the millet system gradually withered away, religious compartmentalization continued to determine minority/majority categories. Egalitarian regulations consistently addressed non-Muslim minority distinctions. It had nothing to do with the sub-religious particularities of the Muslim population. Notwithstanding ethnic nationalism nascent in some sections of the CUP, Muslim differences continued to have

been treated within an understanding of *umma* uniformity up until the final collapse of the Empire.¹ The Ottoman statesmen considered Islam as a national bond between its Muslim subjects and always placed all Muslims within a uniform social category.²

Demographic transformation of the period also sustained religious configuration of the Ottoman politics. Thus, while non-Muslim millets turned towards political secession and/or ethno-lingual disintegration, the core lands of the Empire (the Ottoman Thrace and Anatolia) entered into a process of religious homogenization. More specifically, after the Berlin Congress of 1878, Muslims of various ethnic and linguistic origins, inhabited lands lost to the European or newly created Balkan countries, began to flow into the lands of today's Turkey (Kirişçi, 1996).³ Secession of Albania and Arab lands, therefore, inserted almost no considerable impact on the Muslim character of the Ottoman population. A cultural combination of the Turks, Pomaks, Albanians, Cretan Muslims, Circassians, Crimeans, Bosnians, Kurds and Arabs came to constitute a new form of "Muslim millet" in the core lands of the Empire. Thus, despite the fact that the Empire lost larger groups of non-Turkish and non-Muslim territories during the disintegration, traditionally ethno-religious diversity of the imperial population was in no way exchanged with an ethnic homogeneity. The sole link uniting such a heterogeneous society was the common adherence to the Islamic religion.

¹ Although the CUP administration began to create ethno-lingual categories for the different sections of Ottoman Muslim population, which included Kurds, Circassians, Albanians, Bosnians, Arabs etc., the outcome was kept in secret. In accordance with the traditional official policy, Muslim population was given in a single category in the final declaration of the census (Dündar, 2000: 25-26).

² While the 1831 Ottoman census classified the Imperial population along the religio-communal categories of the classical millet organisations, 1881/82 census included ethno-lingual categories specifically for the Orthodox communities. Henceforth, the Greeks and Bulgarians, who once took place within the same social and administrative classification, were registered in different social groupings (Karpat, 1985: 109-110/122-123).

³ The total number of Muslim migrants from the Crimea, the Caucasus and the Balkan countries to Anatolia amounted in the first decade of the nineteenth century approximately 5 million (Karpat, 1985: 55).

Partly following this demographic reality, and partly under the influence of the Ottoman legacy, the nationalist leaders adopted traditional forms of inclusion/exclusion practices. The Muslim adherence was situated in the center of the majority identity or “imagined nation” of the new regime. The non-Muslim sections of the population, hence, continued to constitute categorically the other position. This chapter will first examine the legal-political roots of this final transformation which culminated in the minority provisions of the Lausanne Treaty. Here is where the secessionist-irredentist and fifth column activities of the non-Muslim minorities that took a significant place in the national struggle, will also be reviewed. It was on this factor that traditionally “other” position of the non-Muslim minorities was further consolidated. Secondly, this chapter will analyze the Muslim-inclusive characteristics of the national war which proceeded in a manner of Muslim movement. In one sense, the national war was fought on a Muslim front against nationalist aspirations of non-Muslim minorities. After examining the final configuration of the majority/minority categories of the Republican population, the chapter will set forth the legal framework of the new minority rights regime incorporated in the political clauses of the Lausanne Treaty.

6.2. From the Politics of *İttihad-ı Anasır* to the Practices of *İttihad-ı Anasır-ı*

***İslamiyye*: Crystallization of Minority/Majority categories**

It was argued before that the failure of the politics of *ittihad-ı anasır* aroused feelings of resentment among the Muslim people and the rulers of the Empire who had invested great hopes in the principles of equality to save the state from collapse. Beyond doubt, towards the end of the Empire, this failure prompted ethnic Turkism among

several intellectuals and ruling cadres (Akçura, 1998). But imperial administration, in general, remained loyal to the ideal of the Ottomanist unity, in particular, to the uniform image of the Muslim millet.⁴ The result of the failure was seen in the attitudes of nationalist leaders when they had to fight a war of liberation against western and Greek occupation in 1919-22. Having learned much from the Ottoman experiences, the new leaders seemed to have lost their belief that a stable reconciliation would be achieved between different treatment of minorities and egalitarian implications of national unity expressed in the universal principle of citizenship equality. Unlike the late Ottomanist policies of *ittihad-ı anasır*, the nationalist leaders, therefore, ceased to promote a political definition of Turkish national identity. Nevertheless, under the influence of the Ottoman legacy of inclusion/exclusion practices, the policy of *ittihad-ı anasır* was by no means substituted with an exclusivist policy of ethnic Turkism but with a strong policy orientation of *ittihad-ı anasır-ı İslamiyye* (union of the Muslim elements).

Thus, while searching a new national form, the source of cohesion was sought within the imagined unity of the Muslim elements. Despite the fact that non-Muslim minorities still constituted 15 percent of the Anatolian population⁵, they were categorically excluded from this earlier stage of nation-building process. As against the disloyal acts of the non-Muslim minorities, legal-political developments of the war years delimited ethno-cultural borders of the Turkish majority identity with cultural characteristics of the Turkish-Muslim population.

⁴ While addressing egalitarian principles of the Ottoman citizenship, the CUP programme, for example, continued to stress the compact unity of the Muslim population (Tunaya, 1998: 70-75).

6.2.1 Secessionist and Irredentist Activities

After the Ottoman state was defeated in the WWI, western interference in the internal affairs of the state turned into a real occupation. On the part of the non-Muslim minorities, the Allied occupation was widely conceived to have presented a great opportunity in order to have a final break from the Ottoman rule. Prominently the Christian minorities, therefore, not only welcomed the occupation but also actively participated in its due course. Under these circumstances, the issue of minority protection was almost out of question. Secessionist demands prevailed over the claims of minority rights (Alexandris, 1992: 52-76). Henceforth, particularly the Greek and Armenian minorities, in collaboration with the Allied forces, embarked strong claims against the territorial unity of the Ottoman state.⁶

Parallel to the nationalist dismemberment of the reform period, disloyal acts of the non-Muslim minorities made it clear from the outset of the Western occupation that they were no longer in search of equal treatment within. By contrast, having involved in intrigues in a manner of secessionist and irredentist activities, by the beginning of the WWI, the Armenian community, including its prominent members, for example, renounced even citizenship status for an armed struggle in the eastern regions.⁷ Although these activities had been silenced after the Armenian deportation, the question resurrected

⁵ At the end of the WWI (1919), the Ottoman population counted 12 million, out of which %85 belonged to Muslim majority, %9 to the Greek minority, %5 to the Armenian minority, and less than %1 to the Jewish minority (Selek, 1987: 64).

⁶ The attitude of the Jewish minority retained contradictory views. On the one hand, it was argued that during the late nineteenth century, there emerged some Zionist attempts for the establishment of a Jewish state in Anatolia (see Atamer, 1968). It was suggested, on the other hand, that, at the end of the WWI, the Jewish minority refrained from involving in disloyal activities aiming at partition of Anatolia but remained loyal to the nationalist cause (Galanti, 1995: 57-68; Bali, 2000: 34-36).

⁷ Prominent Armenian deputies of the last Ottoman Parliament, Krakin Pastirmajian (Erzurum), Hamparsum Boyajian (Kozan) and Vahan Papasian (Van), released their responsibilities in the parliament and participated in the guerilla war being carried out in the eastern provinces (Tunaya, 1998: 603).

by the defeat. Many deportees began to return back to the region in order to play the “fifth column” role of the occupation.⁸

The fall of the Empire also revitalized the Greek ambitions of the *megali idea* which sought incorporation of Istanbul and the Asia Minor (Anatolia) into the lands of the Greek Kingdom. To this end, both Greek leaders and the overwhelming part of the Anatolian Greek minority conceived the conjuncture properly ripe to actualise a greater Greece embraced all the Hellenes of the Ottoman lands (Smith, 1998: 1-20). Because of this, the Greek minority warmly welcomed the Greek occupation in Istanbul and Anatolia.⁹ In the eyes of the Greek minority this was the “accomplishment of a dream” and never hesitated in cooperating with the Greek occupation (Smith, 1998: 90-92).

The imperial Greeks, on the other hand, were expected to provide demographic legitimacy and a fifth column force for the Greek expansion in Anatolia. In order to create a Greek dominated region, for example, Muslim population of the Western Anatolia was subjected to a forced migration into inner parts of Anatolia (Beytulloğlu, 1969). The imperial Greek minority, including Pontian Greeks, was, on the other hand, activated within several irredentist organisations. The *Mavri Mira*, the Union of Pontian Greeks (*Pontus Rum Derneği*) and the Cordus¹⁰ were the prominent Greek societies in

⁸ Armenian volunteers constituted approximately 80 percent of the French forces when it occupied those South-Eastern provinces of Antep, Urfa and Adana (Selek, 1987: 197-198).

⁹ The Greek landing in Smyrna (Izmir), portrayed in Smith's (1998: 88-89) following words, particularly illustrated irredentist ambitions of the Greek minority: “Thousands of chattering Greeks converged on the seafront. Blue and white Greek flags waved on the quayside and fluttered on the houses along the front. For the Greeks of Smyrna it was an infinitely moving occasion, the accomplishment of a dream. Not one of them doubted that the occupation was to be permanent. With the flags and streamers waving in the early morning sun, the atmosphere was that of a public holiday”.

¹⁰ The full name of the association was the *Central Commission of the Greek Migrants (Yunan Muhacirler Komisyonu)* which was a joint action of the Greek State and the Orthodox Patriarchate. The Commission guided secessionist aspirations of the Ottoman Greeks to annex the Greek populated lands with the Greek Kingdom. To this end, the Cordus was charged with several responsibilities including recruitment of local Greeks to the Greek army, establishment of paramilitary brigades and inducing population transfer towards Greek populated lands (Ökte, 1971).

which almost all of the Greek minority establishments, including schools and the Orthodox church, were directed to work for the Greek cause (Atatürk, 1994: 1-2).

As was argued before, the issue of minority rights has been associated with the citizenship status of minority peoples due to fact that the issue ascertained creating a genuine equality between minority and majority members of a state. In this respect, the position of non-Muslim minorities in the period would no longer be regarded in the context of minority rights. In addition to secessionist acts, when the Greek Patriarchate declared (May 1919) that the Greek minority relinquished its civic responsibilities as Ottoman citizens and prescribed its members to abstain from municipal and general elections, the imperial Greeks had legally become foreign (Alexandris, 1992: 57).

Therefore, particularly the Christian minorities came to represent a “category of foreign groupings” acting in collaboration with external enemies. Because of this, their treacherous acts further exacerbated relations between two historical blocks of the imperial population. They came to be viewed not only as the internal extension of external enemies but enemy of the country itself. Public anger that mounted against occupation was directed against minorities as well. As a matter of fact, the target of nationalist forces involved not only the western occupation but also fifth-column and secessionist activities of the Christian minorities (Oran, 1997: 125-126; Öke, 1986: 114).

To sum up, treacherous acts of the non-Muslim minorities once again convinced the nationalist leaders that there remained no chance to promote principles of the policy of *ittihad-ı anasır*. Legal and political diversity of the Ottoman citizenship had already proved insufficient to save the country from collapse. Because of this, in order to save, at least, the core lands of the country, nationalist leaders turned towards the Muslim peoples

of Anatolia. Socio-political basis of the national struggle, therefore, came to be instituted upon traditional unity of the Anatolian Muslims. The first example of this new orientation appeared in the human composition and ideological drives of the nationalist societies.

6.2.2. Defense for the Rights Societies: A Muslim Front

The major objective of the national war was to secure national and territorial integrity of the country against the Western occupation and minority secessionism (Kansu, 1997: 231). In fact, the latter, for Atatürk, had grown under the protection and promotion of the former (Kansu, 1997: 81-82/587-589). The nationalist leaders further considered that the implicit motive of the Western occupation was to actualize territorial aspirations of the Armenian and Greek minorities. It was this widely shared belief that strongly alarmed the national forces (Selek, 1987: 65). Having been aware of their centrifugal tendencies given above, the founding leaders particularly worried about the presence of minority groups in Anatolia (Selek, 1987: 67).

The nationalist societies (*müdafaa-i hukuk cemiyetleri*), therefore, grown up in those specific areas of the Thrace, Izmir, Trabizond and Eastern Anatolia where were under territorial claims of either Greek or Armenian minorities.¹¹ This proved the fact that minority secessionism weighed concerns of the nationalist leaders who subsequently promulgated a direct correspondence which prescribed establishment of national detachments especially in those regions where minority population constituted a considerable proportion. For the leaders, in the absence of a standing army, national detachments would hinder inimical acts of non-Muslim elements (ARMHC, 1997: 22).

¹¹ Out of 5 nationalist societies, founded just in the aftermath of the Mudros Armistice (Oct. 1918), 3 targeted the Armenian and the other 2 the Greek minority irredentism (Oran, 1997: 125-128).

Thus, the question of minorities occupied a central place in the Turkish liberation war. It was this essential factor that helped to characterise the national movement a front of Muslim peoples. Human composition and ideological drives of the societies were destined to represent Muslim inhabitants of Anatolia and their interests that was manifested more clearly when the regional societies were subsequently united under the name of the Defence for Rights Society of Anatolia and Thrace (*Anadolu ve Rumeli Müdafaa-i Hukuk Cemiyeti-ARMHC*). Having obtained an institutional organization, the society formulated also a statute of action which laid down its ideological orientation and membership criteria. Minority/majority categorization and the principles of minority treatment, framed in the statute, largely determined basic norms and practices of the war-time period (ARMHC, 1997; Kansu, 1997: 221-230).

The statute of the ARMHC projected a national vision on the indivisible unity of the Anatolian Muslim population. The statute affirmed having mutual respect to each other's racial and environmental circumstances, *anasır-ı islamiye* of Anatolia formed a brotherly unity with its territory which under no condition, be violated either by western powers or Christian minorities (Art. 1). For being a nationalist front of the Muslim population, its membership was limited to the Muslim adherents of the Anatolian population (Art. 7.c). It was accordingly delivered in a secret correspondence that the new recruits to the national detachments (*milli müfrezeler*) were to be accepted after they sworn on the Qur'an.¹² In so doing, the statute delimited ethno-cultural and territorial borders of the country with the Muslim characteristics and Muslim populated lands of

¹² After the declaration of the statute, a secret correspondence was delivered to those officers who were in charge of implementing the content of the statute (DRSAR, 1997: 22).

Anatolia. Unlike the cosmopolitan vision of *ittihad-i anasir*, non-Muslim residents were categorically excluded from the constitutive foundations of the national body.

Nevertheless, the statute examined also the question of minority rights in association with the condition of non-Muslim minorities. It was in this context that scope and limits of minority protection, occupied nationalist minds under the antagonistic circumstances of the war years, were underlined. In doing this, the nationalist leaders, in general, followed norms and practices of the Ottoman administration. It was, on the one hand, affirmed that the nationalist cause would respect citizenship rights of the non-Muslim minorities with regard to the protection of life, property and honour. They would also be allowed to practice their religious and national traditions. On the other hand, following the dominant view of the period, the scope of minority rights was conditioned by the loyal attitudes of the non-Muslim peoples. Having condemned nationalist aspirations of the latter, the statute worded that they would not be allowed to infringe the Ottoman authority, the rights of the Muslim majority and its national existence (Art. 2).

Thus, despite the fact that the nationalist leaders had strongly been motivated with the dangers of minority nationalism, it seemed unjust to conclude that the liberation war was an anti-minority movement in its full sense. Instead, the nationalist leaders constantly stated that traditional rights and immunities of the non-Muslim minorities would be respected provided that they did not involve in actions inimical to the territorial and national unity of the country. On most occasions, the nationalist leaders made a clear distinction between the issue of protecting loyal sections of the minority groups and the policy of combating with those sections of non-Muslim groups who actively engaged in irredentist or secessionist activities. Otherwise, they were well aware of the fact that

international legitimacy of the war would be irrevocable. In the following words, Atatürk (1970: 18) clearly expressed this delicate minority policy:

It was an accepted principle for us that the prosperity and happiness of the Armenian and Greek inhabitants of the country would be guaranteed as long as they remained faithful to the Government and our national cause... Having seen it among the utmost interests of the country, we informed all the centres about the significance of the protection of Armenians even in those days when the Anatolia had lost all of its communication with the out-world... Proving the inborn civilised quality of our nation, loyal sections of the minorities took protection even when they obtained direct concern of no foreign power.

Thus, while they preserved their firm objection to any form of minority claims, which would infringe national and territorial integrity and political independence of the country, the nationalist leaders, including M. Kemal, admitted to grant specific treatment addressing protection of minority particularities (Öke, 1986). To this end, for example, Atatürk often delivered warnings to the heads of nationalist societies, civil and military governors that national reactions growing against western occupation must have been taken under control before turning into an open attack against the Christian residents. Any adverse development, in the view of M. Kemal, would jeopardize legitimate grounds upon which the liberation war was founded (Kili, 1995: 39-40).

To sum up, with its human composition and political objectives, the nationalist societies represented, in general, a nationalist front of the Muslim residents of Anatolia. Although loyal sections were assured protection, the political program of the societies severely condemned nationalist and fifth-column acts of the non-Muslim minorities. In doing this, non-Muslim minorities were situated at the “other” position of the Turkish national movement that reproduced traditional practices of social classification in the country. A similar rationality prevailed in the local congresses of the nationalist leaders, those of Erzurum and Sivas, the Nationalist Pact and in the First National Assembly constituted.

6.2.3 Erzurum and Sivas: Muslim Congresses

Regional centres of the national resistance were gradually united in aim and action in the two congresses that convened in Erzurum (23 July-7 August 1919) and Sivas (4-11 September 1919). Nationalist leaders participated in the two congresses as being military and political leaders of the liberation war. Because of this, the congresses marked both military and political aspects of the war. Final documents of the congresses introduced a programme of action and political objectives that were to guide the war and those legal-political developments that would occur after. Putting the matter differently, the embryonic form of the post-war territorial, political and national structures took an eventual shape in the final documents of the two congresses.

The congresses, in practice, went beyond a war committee and operated as a constitutive national assembly charged with the crystallization of a new regime. To this end, nationalist leaders concerned not only military-related questions but also outlined significant ideas about political and social visions of the nationalist front. Cultural and territorial aspirations of the nationalist front were crystallized. In relation to this, minority questions took among the hot topics of the congresses. In particular, having been formulated upon the troublesome position that minorities occupied in the nationalist eyes, membership and the wording of the final documents reflected the then prevailing inclusion/exclusion practices.

Having taken into consideration the role that non-Muslim minorities played in the expansion of the western occupation and that of their secessionist and irredentist tendencies, the focus of the congresses centered on the Muslim peoples of the core lands.

Unlike the ethno-lingual and religious diversity of the Ottoman parliaments, both of the congresses brought together a number of delegates from different sections of the Ottoman Muslim millet. No representation was given to the members of non-Muslim communities.¹³

The membership of two national congresses displayed a picture of a Muslim assembly. This religious brotherhood was not alien to the delegates. Since they traditionally had taken place within the uniform category of the Muslim millet, political culture facilitated emergence of a co-action between Muslim inhabitants of Anatolia. However, in addition to this historical and psychological background, circumstances of the time were also influential in the development of a common Muslim front. Thus, apart from traditional unity, western occupation and minority secessionism directed a common threat to the survival of the Muslim population as a whole that prompted emergence of an active cooperation between Turkish and non-Turkish Muslims of Anatolia (Mutluçağ, 1972: 11).

Not surprisingly, the final documents of the congresses reflected the vision and socio-political projects of the Ottoman Muslim population (Mutluçağ, 1972; Erzurum Congress, 1968; Sivas Congress, 1969). Majority and minority classification of the population took shape under the common concerns of this Muslim front. On the one hand, therefore, similar to the ideological, legal and administrative categorisation of the

¹³ Although the number of Armenian population had greatly decreased after the deportation of 1916, the amount of non-Muslim population had constituted still a considerable proportion of the regional population. For example, approximately one-third of the population of Erzurum had still belonged to non-Muslim residents. As against the 83.070 Muslim peoples, the province included 34.542 Armenian and 1097 Greek minorities while its Muslim inhabitants numbered 83.070 (Gökbilgin, 1965: 83). All of the 57 delegates who participated in Erzurum, from five different eastern provinces of Bitlis, Erzurum, Sivas, Trabzon and Van, were Muslim in religious affiliation (Kansu, 1997: 78-80). Similarly, 38 delegates participated in the Sivas Congress from eleven Anatolian provinces, including Afyon, Ankara, Aydın,

Ottoman Muslim millet, the “national society” of the nationalist front indicated the Muslim residents (of Anatolia) whatever their racial (ethnic), lingual or cultural distinctions. The documents stipulated that Muslim elements (*anasır-ı İslamiye*) of the Anatolian lands, bound each other with the feelings of mutual sacrifice, respect for each other’s racial, communal and environmental circumstances, constituted a brotherly and indivisible unity. Cultural and territorial borders of the “imagined nation” were accordingly delimited by the religious characteristics of the resident population.

Obviously, religious language of the documents went counter to an ethno-lingual designation of nationality. Unlike the secular form of nationalist currents, state-society identification was built around religious adherence. Islam was preserved to be the sole linkage between the state and citizens. In doing this, nationalist leaders remained loyal to the traditional stratification of the Ottoman society that clearly signified prevalence of the ideas of *ittihad-ı anasır-ı İslamiye* in the minds of the nationalist circles. The “national” component of the national struggle, in their eyes, indicated the unity of different sections of the Anatolian Muslim population.

The non-Muslim residents were, therefore, rendered ready-made “outsiders” of this imagined national form. As for the legal-political position of the former, nationalist leaders adopted again general framework of the millet system. Accordingly, it was affirmed in the final documents that the nationalist front was ready to grant to the non-Muslim minorities those privileges and rights that had officially been recognised so far by the Ottoman administration. The security of life, property and honor was guaranteed to the non-Muslim minorities who were also facilitated to practice, protect and promote

Eskişehir, Antep, Hakkari, İstanbul, Kastamanu, Kayseri, Niğde, Samsun, were all from Muslim elements (Kili, 1995: 60-62).

their religious and national traditions. Yet, as a general rule of the war-time period, it was clearly laid down that nationalist aspirations of the non-Muslim minorities would under no condition be admitted. The framework of minority protection was restrained in the congresses by the principles of political independence and territorial and national integrity.¹⁴ The Turkish minority rights regime followed this essential pattern when its principles were declared to the world with the *National Pact* (*Misak-ı Milli*).

6.2.4. The National Pact: A Muslim Oath

Under the pressure of the Anatolian movement, new elections were held in the late 1919 and a new Ottoman parliament was convened on January 12, 1920. However, unlike the previous Ottoman parliaments, the composition of the new parliament reflected general picture of the nationalist front. The communal leaders of Greek and Armenian minorities had already released their members from the civic responsibilities of the Ottoman citizenship.¹⁵ The elections, therefore, returned an overwhelming nationalist majority that had been nominated from among the members of the ARMHC branches in which non-Muslim membership had already been prohibited. Hence, it was unnatural to see that the nationalist vision would dominate the last Ottoman Parliament as well. In fact, even the agenda of the deputies, elected from Anatolian provinces, were pre-settled in Ankara by M. Kemal before they participated in the Parliament (Mumcu, 1986: 49).

¹⁴ Article 3 of the final document of Erzurum Congress reads: “no privileges that would infringe our independence and social order shall be recognised to Christian minorities”. The same provision was incorporated in the third article of the Sivas Congress.

¹⁵ In a correspondence addressed to Cemal Pasha, the Minister of War, M. Kemal noted, on 20 January 1919, that the abstention of the non-Muslim minorities from elections would work at their own expense. When the independence of the nation and the country was accomplished, for M. Kemal, they had to live in the Ottoman state as Ottoman citizens within the same rights (Atatürk, 1970: 13-15).

Not surprisingly therefore, the National Pact, promulgated by the last Ottoman Parliament, on 28 February 1920, truly represented the then prevailing ideals of the nationalist leaders (National Pact, 1996; Mumcu, 1986: 49-50). In its essence, the Pact highlighted “the maximum of sacrifice that can be undertaken in order to achieve a just and lasting peace”. It was strongly insisted that the future of the state and the nation would, otherwise, be lost in the hands of western powers and the nationalist aspirations of non-Muslim minorities. Accordingly, the provisions of the Pact introduced a programme of action to be followed in order to reach to the ideal objectives relating to the internal and external relations of the country.

In the first place, therefore, the Pact drew national and territorial borders of the state. For doing this, the document implicitly conceded the secession of the Arab provinces from the country. The territorial and national frontiers were delimited with the core lands of the Empire (Tanör, 1995: 71). But, the ideal of the Muslim coherence prevalent in the minds of the nationalist leaders was by no means renounced. The religious formulation of the national population continued to be appreciated within the area of a more limited geography. The Pact, in this sense, concerned exclusively with the fate of the Ottoman Muslim majority. As Lewis (1968: 352) observed, on no part of the declaration, any specific reference was made to the ethno-lingual identity, including Turkish identity, separate from the all-embracing brotherhood of Muslim connotation.

In conformity with the premises of the Anatolian movement, new boundaries of the state and nation were rested upon the religious adherence of the resident population. “Having been united in religion, race and aim, and inculcated with sentiments of mutual respect for each other and of sacrifice, and wholly respectful of each other’s racial and

social rights and surrounding conditions”, the document affirmed that the Muslim residents of Anatolia formed an indivisible whole. It was in this sense that the Pact represented the wishes and ideals of the *anasır-ı İslamiye* who were to be liberated from either the irredentist acts of minorities and/or the forces of the western occupation.

Thus, in the rationale of the document, the concept of minority indicated a certain section of the Ottoman population other than those of the different elements of the *anasır-ı İslamiye*. Parallel to the nationalist premises, the minority question in the Pact was considered in terms of religious “others”, those of the the non-Muslim sections. Bearing this traditional classification in mind, the fifth article of the document framed an innovative formulation of minority rights. The article undertook that:

The rights of minorities as defined in the treaties concluded between the Entente powers and their enemies and certain of their associates shall be confirmed and assured by us –in reliance on the belief that the same Muslim minorities in neighbouring countries will also be given the benefit of the same rights (National Pact, 1996: 125).

The article was innovative in two points. On the one hand, as noted before, though constantly denied territorial claims of minorities and condemned their collaborative tendencies, the Turkish national struggle had hitherto confirmed traditional rights and privileges granted by the Ottoman administration. In the National Pact, it was recognised, for the first time, that the Ottoman government would adopt the then prevailing international standards with regard to the internal treatment of minority peoples. In place of millet privileges, the government promised to promote principles of the *minorities treaties* which settled standards of minority treatment in Europe in the aftermath of the WWI. The Turkish regime, hence, was, for the first time, integrated with the framework of the European regime. In this sense, the National Pact created a radical breakthrough in Turkish history in respect to the issue of minority protection.

On the other hand, the same article brought into existence a condition of reciprocity in the national implementation of the international standards of minority protection. As was explained before, millet system was an instrument of the Ottoman governmental policy having no external dimension in implementation. Unlike the Westphalian regime of minority rights, for example, the communal autonomy of the millet system had been adopted and implemented without external coercion. The Pact, for the first time, associated the status of the non-Muslim minorities with the condition of the Muslim minorities resident in the neighbouring countries. In doing this, in conformity with the then prevailing religious form of the national population, the Ottoman state rendered itself the kin-state of the Muslim minorities resident neighboring countries, particularly those of the Balkan states. Muslim citizens of the neighbouring countries, irrespective of ethno-lingual and racial characteristics, were implicitly considered to be natural extensions of the Turkish national society.

6.2.5. The Grand National Assembly: A Muslim Assembly

Since it transformed the nationalist principles into a legislative action, the promulgation of the National Pact was met with anger by the western occupation. This resulted in the suspension of the last Ottoman Parliament. It was upon this Allied action that the nationalist leaders convened the first Grand National Assembly (GNA) in Ankara on 23 April 1920. It became once again evident with the opening of the GNA that whenever the connotation of the “national” appeared in the course of the national struggle, it signified the Muslim citizens of the country. Rights and obligations were accordingly conferred upon Muslim peoples who actively participated in the national

struggle and whose representatives were permitted to take place in the political and military organisations of the period. The GNA was not an exception. Contrary to the demographic diversity of the then Anatolian population, the composition of the GNA displayed characteristics of a Muslim assembly. No non-Muslim member was permitted to participate in the GNA (Tunaya, 1997; BTTD, 1989).¹⁶

The Muslim composition of the GNA resulted from two reasons. On the one hand, in response to non-Muslims' nationalist aspirations, the leading members of the national struggle encouraged, if not prescribed, limitation of its electoral process solely to the Muslim citizens. In the eve of the elections, in the name of the Committee of Representation (*Heyet-i Temsiliye*), M. Kemal corresponded an official order to the provincial governors that non-Muslim minorities be prevented from participating in the elections (Selek, 1987: 338). On the other hand, nominees were selected from among the members of the ARMHC in which, as we noted before, membership had been limited to Muslim residents of the country.

Thus, the GNA represented not a national grouping in the modern sense of the word, but the religio-cultural composition of the Anatolian population irrespective of their sub-religious particularities. The composition of the GNA, hence, represented the dominant policy of the national struggle expressed in the notion of the *ittihad-ı anasır-ı İslamiye*. In the GNA, Atatürk (1960: 73-74) accordingly pointed out:

Those who convened here and did compose our Grand National Assembly are not only Turks, not only Kurds, not only Circassians, and not only Lazs. Instead, it is a sincere Muslim unity which embraces all these different elements. Therefore, objectives represented by this assembly do not belong to any specific Muslim element. What is represented here is the will of an entity which covers all Muslims of our society (Ataturk, 1960: 73-74).

¹⁶ It is argued that although the number of deputies registered in the GNA is generally given 339, the actual amount of the deputies far exceeded this official number with the irregular participants coming from various parts of Anatolia (Tunaya, 1997: 21). Indeed, in another document, the number of the first-term deputies was counted 377 (BTTD, 1989: 46-67).

This implied the fact that although ethno-lingual diversity of the participants was recognised, Muslim diversity was not seen in contravention with a national unity abstracted from sub-religious particularities of the founding elements. In place of ethno-cultural particularities, universal brotherhood of religion was stressed. The cause of the Assembly was devoted to the interests of this religious nation. In so doing, apart from religious bond, Muslim diversity was totalised within an instrument of political association, if not of a political identity. For this reason, despite the fact that ethno-cultural differentiation was recognised, this designation was believed to have lost its significance when all Muslim elements were defined as the integral parts of a Muslim entity. In proving this religious stand, Atatürk worded in another parliamentary speech delivered in 1922 that:

The People of Turkey (*Türkiye halkı*) is a social entity united in race, in religion, in culture, and in ideals and interest, and that bound each other with the feelings of mutual sacrifice. In this entity, respect for each other's racial, communal and environmental conditions constitutes one of the fundamental references of our internal policy (Parla, 1991: 190).

Hence, it is clearly evident that the composition and the cause of the GNA demonstrated a religious substance. Nevertheless, it is unjust to claim that the question of minority rights was completely disregarded in the works of the GNA. Rather, following the principles of the National Pact, the framework of minority rights was delimited with the European standards of minority protection outlined in the *minorities treaties* of the post-WWI peace settlement. Atatürk noted in the same Assembly that the Christian minorities resident in Turkey would be granted rights identical with the standards of the European *minorities treaties* so long as the Muslim minorities of the neighbouring states were guaranteed the protection of the same rights (Parla, 1991: 190).

Thus, the GNA remained loyal to the then prevailing aura of the inclusion/exclusion practices of the Turkish nation-building process. In doing this, Muslim elements were considered full and equal members of the Turkish society whereas non-Muslim communities were excluded from both social and political proceeding of the legislative instrument. This proved the fact that it was the Muslim millet and not an ethnic nation who was expected to fight the liberation war and participate in the building of a new state and nation. Although ethno-cultural distinctions of the Muslim population were implicitly recognized, the issue of official protection was voiced only in relation to the non-Muslim minorities. Particularly after the promulgation of the National Pact, the nationalist leaders affirmed to grant European standards of minority protection to those of the non-Muslim citizens so long as they proved loyal to the territorial and national integrity of the country and the political independence of the state.

6.2.6. Ethno-cultural Diversity of the Nationalist Discourse

The language of the national struggle, as was discussed so far, signified a significant breakthrough from the Ottomanist ideal of *ittihad-ı anasır*. In place of developing a political approach superior to ethno-lingual, religious and sectarian distinctions, the nationalist documents, in general, sought ethno-cultural basis of the national form in the concept of the *ittihad-ı anasır-ı İslamiye*. “National” component of the national struggle signified the religious unity of the Turkish-Muslim peoples resident in Anatolia. In this respect, traditionally uniform image of the Muslim millet was revisited whereas the “other” position of the non-Muslim minorities was reproduced.

However, the concept of *anasır* (elements) itself symbolised an implicit recognition given to the ethno-cultural diversity that existed among Muslim peoples. In consistent with the literary meaning of the concept, the said documents incorporated several connotations, such as “racial and social rights” (*hukuk-u ırkiye ve içtimaiye*) and “social circumstances” (*şerait-i muhitiye*). It was this language that greatly blurred the traditional parameters of the minority/majority categorization prevalent in the minds of the nationalist leaders. Beyond doubt, these and similar designations tended, at least at face value, to prompt ethno-lingual stratification within the members of the Turkish-Muslim population. So far so that the uniform image of the *anasır-ı İslamiye* appeared to have lost its traditional and ideological grounds.

Having been aware of the fact that Muslim peoples maintained ethno-lingual distinctions, the nationalist leaders often attributed attention to this diversity. However, they also believed that in order to preserve the strength of the national struggle, ethno-cultural particularities of the Muslim peoples must have been pushed behind the scenes. To this end, despite the fact that ethno-cultural diversity of the Muslim population was implicitly recognised, its political accommodation was consciously left unresolved and uncertain for the sake of national unity needed in the period. As indicated this general policy, M. Kemal (1970: 5) subsequently stated:

This border (outlined both in the final documents of the congresses and the National Pact) was not drawn exclusively with military concerns. It drew essentially a national border. However, no one can claim that this border involved only a single Muslim element. It embraced, instead, Turks and other Muslim elements. Hence, this border is the national border of a mixed group of brother elements completely united in aim. *Social, racial* and *environmental* circumstances, that each of these Muslim elements possessed, was, mutually and with honest feelings, confirmed. Naturally, because of the prevailing state of affairs, no explanation or detail would be given to this aspect but left to the deal of brothers to be handled after the national survival was completely secured.

Thus, although the nationalist leaders conceded recognition to ethno-cultural diversity of its Muslim citizens, the then prevailing war-time circumstances had avoided putting political requirements of this promise in practice. Yet, this phrasing proved also the fact that sub-religious distinctions of the Muslim population were not considered in contravention with the terms of a national unity based on religious brotherhood. Because of this, despite the fact that they recognized its diverse nature, nationalist leaders insisted on the brotherly unity of all Muslim elements and promoted a kind of religious nationalism against the non-Muslim sections of the Ottoman population. In other words, when they were referring to sub-religious features of the Muslim peoples, the founding leaders cautiously refrained from creating new minorities within the Muslim peoples of the country. In this respect, it was argued that plural formulation of the nationalist documents by no means indicated emergence of a rupture in the minority/majority policy of the nationalist discourse. In this view, the major incentive, which led to the development of plural designations in the documents, was a strategic maneuver imposed by national and international circumstances of the time (Özbudun, 1997).

It seems appropriate to conclude that the nationalist leaders never renounced the legacy of the millet system with regard to the majority/minority classification. Although circumstances sometimes forced them to express respect to the ethno-cultural characteristics of the Muslim elements, they never went beyond making ambiguous references.¹⁷ In the eyes of the nationalist leaders, the notion of minority had only one meaning and it was limited with the circumstances of the non-Muslim residents of the country.

6.3. Republican Minority Rights Regime: The Peace Treaty of Lausanne (1923)

As was pointed out earlier, the end of the WWI transformed international norms with regard to the question of minority protection in terms of both content and geography. Formulated in the provisions of the *minorities treaties*, the post-WWI settlement, first, extended the issue of minority protection from the traditional category of religious groups to ethno-lingual and racial (ethnic) minorities. Second, the same process changed the question from state-to-state practices into a limited form of international regime. Concluded on 23 July 1923, the Peace Treaty of Lausanne represented the Turkish version of the *minorities treaties* (Turlington, 1924, 699-701).

The Treaty of Lausanne was the “birth certificate of the independent, national Turkish state” as Karal (1965: 74) observed. International borders and the national structures of the modern Turkey, including the issue of minority protection, took a final shape in this international document. Although the Turkish regime was an integral part of the *minorities treaties*, its scope in no way represented a complete break from the Ottoman legacy. Minority provisions of the Treaty could not impair itself from the imprints of the past. Inclusion/exclusion practices that had hitherto determined minority issues in Turkey inserted great influence upon the final shape of the Turkish regime. Bearing this fact in mind, this part will first elaborate on the meaning of the concept of minority. Secondly, the scope of the rights will be drawn and the form of the rights will be analysed. Finally, there will be an analysis of the relationship between the concept of national sovereignty and international supervision.

¹⁷ It has been asserted that M. Kemal promised in 1923 to grant regional autonomy to Kurdish populated areas of the country. However, the promise has remained uncertain and no step was taken in this direction

6.3.1. Definition of the Republican Minority

When the National Pact marked objectives of the liberation war, major features of the Turkish minority rights regime to be adopted in the aftermath of the war had already been settled. As was noted before, the fifth article of the Pact affirmed that Turkish government would replace its traditional regime that of the *minorities treaties*. The same approach delimited the Turkish government during the negotiations of the Lausanne Conference. Although the western powers insisted on the persistence of traditional privileges with regard to the treatment of non-Muslim minorities, Ismet Pasha, the head of the Turkish delegation, denied that Turkey would recognise any measure outside the *minorities treaties* (Meray, 1969: 212). The Turkish delegate stated that traditional form of the non-Muslim privileges had already been replaced in the National Pact by contemporary European regime of minority protection (Meray, 1969: 327).

Not surprisingly, therefore, it was believed that Turkey would recognise minority/majority categorisation and the framework of the minority rights as they were documented in the Polish Treaty. For Curzon, the President of the Conference, Turkey had already made an overt commitment before the armistice to grant full protection to its *ethnic* and religious minorities (Meray, 1969: 181). However, contrary to the Turkish tradition, the *minorities treaties* had generally extended the concern of international minority protection from the sole category of religious communities to ethno-lingual and racial (ethnic) groupings. In addition to religious, ethnic and linguistic particularities had come to be subjected to protection (Bilsel, 1998: 264-265).

in the duration of the Republican era (M. Kemal, 1993: 105).

In the same manner, it was thought that the Turkish document would recognize an inclusive definition of the concept of minority that would cover racial (ethnic), religious and linguistic groups whether Muslim or non-Muslim. In other words, in addition to the Greek, Armenian, Jewish communities who had been included in the traditional Turkish conceptualisation, the new scope would urge minoritization of sub-religious particularities of the *anasır-ı İslamiye* and the smaller Christian churches that had hitherto been excluded from legal recognition (Meray, 1969: 301). Due to this fact, apart from the Greek, Armenian and the Jewish, the western states were also concerned with the condition of Assyrian, Chaldeans, and Nestorian minorities (Bilsel, 1998: 272). The draft treaty, indeed, covered all racial, religious, and linguistic minorities resident in Turkey whatever religious or sectarian affiliation (Meray, 1969: 164-166).

However, minority/majority categorization of the treaties was extremely alien, both in theory and in practice, to the Turkish political culture. As noted before, no section of the Ottoman Muslim population had ever been granted official recognition or different treatment. All Muslim peoples had, instead, been officially regarded as a uniform entity both in Ottoman times and in the years of the National Liberation. Ethno-lingual formulation of the first draft, therefore, greatly alarmed the Turkish delegation. In the eyes of the Turkish leaders, ethno-lingual designation was completely inapplicable for the Turkish case. In the Turkish view, even when the nationalist leadership promoted international standards in the National Pact, religious classification in minority formulation had consciously been preserved intact.¹⁸

¹⁸ The Turkish government insisted on the view that historical practices in Turkey proved the fact that the question of minorities has referred to the circumstances of the non-Muslim peoples. Just because of this legacy, the concept of minority had been associated both in the in the related articles of the National Pact

In fact, when legal-political borders of the concept of minority were drawn at Lausanne, the task contributed also to the crystallization of the Turkish majority. Once the non-Muslim citizens were reconciled with traditional status of minority, the category of the Turkish majority was identified with its traditionally religious "others". In the view of Turkish authorities, unlike the traditional otherness of the non-Muslim elements, common history, traditions and morals had created a natural unity within the Turkish-Muslim population (Meray, 1969: 306). Further, Muslim elements of the country, in the same view, had shared civil and political equality without distinction of birth, ethnicity, or language and equally participated in the administration and the rule of the country. Depending upon this cultural and political legacy, the Turkish authorities insisted that ethnic and linguistic classification was truly a western practice and they believed that no Muslim country would treat any one section of the Muslim majority within the terms of minority rights. Minority commitments, associated with the circumstances of Muslim distinctions, would imply in the Turkish eyes, no more than interfering in the affairs of the national majority which no state would by no means be expected to undertake international obligations with regard to its own rights (Meray, 1969: 175-176).

The second concern of the Turkish authorities in refusing to give official recognition to ethno-cultural diversity of its Muslim elements depended on the experiences of the late Ottoman and the recent era of national struggle. It was believed that disloyal acts and nationalist aspirations of the non-Muslim minorities had played significant roles in the dismemberment and final collapse of the Ottoman Empire. In the eyes of the Turkish leaders, after minorities achieved final disintegration in the provisions

and those of the Turkish proposal submitted to the Sub-Commission with the non-Muslim sections of the population (Meray, 1969: 160).

of the Treaty of Sevres, the Turkish national struggle largely had evolved in a manner of national survival against minority secessionism (Akçam, 1995: 55-68). In the eyes of both state authorities and the general public, it was this recent past that had instituted minority issues as an instrument of dismemberment. Multiplication of minority questions, therefore, came to be identified with the expansion of centrifugal threats. In particular, preservation of the territorial and national unity, and the political independence of the country came to be closely associated with the task of minimizing minority questions to its possible limits. Following limited diversity of the Ottoman legacy, Rıza Nur (1999: 103) clearly expressed this nationalist view when he stated:

Western people recognise three kinds of minorities in Turkey: Racial minorities, linguistic minorities, religious minorities. This is a great evil and a great danger for us... Besides the Greeks and Armenians, the connotation of "race" implied those of the Circassians, Abkhazs, Bosnians, Kurds etc.... of "language" intended to divide the non-Turkish speaking sections of the Turkish-Muslim population into minority groupings. The criteria of "religion", on the other hand, granted minority status to the two million Alevites (*Kizilbash*) of the country. In other words, the Western conceptualisation of the term of minority entailed a dangerous potential to divide us up to a complete extinction.

Thus, conceptualization of the term minority was strongly associated with the survival of the country. In order to avoid adverse developments, the Turkish leadership was determined to limit the definition of the concept exclusively to the religious communities of the non-Muslim citizens. To this end, "racial" (ethnic) and "linguistic" categories incorporated in the formula of the minority provisions were strongly denied. The Turkish government insisted, instead, on the limitation of the concept of "minority" to non-Muslim citizens of the country (Meray, 1969: 167-169). In so doing, unlike the secular formula of the *minorities treaties*, the Turkish side favored a non-secular categorization on the traditional compartments of the millet system. It was accordingly specified in each provision of the minority section that rights and privileges defined in the clauses addressed exclusively the "non-Muslim Turkish citizens".

Nevertheless, in contravention with the Turkish views, the Treaty implicitly recognised that Turkey embraced racial and linguistic minorities as well. But, this implicit recognition did not go to such an extent that ethnic and linguistic minorities other than those of the non-Muslim citizens would benefit from the general content of the minority section. Without taking into account substantive aspects of citizenship equality, the provisions provided the ethno-cultural distinctions of the Muslim elements with minimalist measures of equality and non-discrimination. In limiting minority status to non-Muslim citizens, the Conference thought that general scope of the principles of equality and non-discrimination would also protect ethno-lingual distinctions of the sub-Islamic elements of the Turkish society.¹⁹

It seems to be right to conclude, therefore, that the Turkish conceptualisation of the concept of minority drifted from the mainstream standards of its contemporaries that had extended the effect of minority protection from religious communities to those of ethnic and linguistic groupings. Following parameters of the millet system's limited diversity, the Republican state preserved its traditional and strategic concerns with regard to the definition of concept. Concerning the beneficiaries of minority rights, therefore, the Turkish minority rights regime established a strong continuity between the socio-political and legal stratification of the Ottoman millet system and minority/majority classification of the Republican Turkey. Contrary to the general scope of the regime then prevailed in Europe, minority provisions of the Lausanne Treaty constituted a minority rights regime in Turkey exclusively upon the religious distinctions of its citizens.

¹⁹ M. Montagna, head of the Sub-Commission on Minorities, expressed this concern of the Commission in a report submitted to Curzon, the Head of the First Commission (Meray, 1969: 309-314).

6.3.2. The Lausanne Framework of Minority Rights

The Lausanne Conference was the last phase of the so-called Eastern Question in which minority issues had taken a central place. One of the prominent topics at the Conference, therefore, was the legal status of minorities in Turkey.²⁰ It was in this context that notwithstanding secular scope of the then prevailing minorities treaties, the western powers intended first to restore traditional framework of minority treatment in Turkey. Thus, although they claimed that Turkish government would not treat its non-Muslims in accordance with the principles of the Islamic jurisdiction, the western delegation, at the same time, strongly promoted persistence of traditional scope of minority rights regime in Turkey (Akyol, 1998). Curzon, for example, proclaimed on different occasions that traditional rights and privileges should have been taken into consideration in deciding minority provisions of the Turkish treaty (Akyol, 1996: 147).

However, the era of the national struggle coincided with the emergence of a consolidated national state in Turkey at the expense of the corporative aspects of the Ottoman administration. This is to say, corporate dimensions of the administrative, legal, and political privileges of the millet system would no longer be maintained under the political organisation of the new state (Bilsel, 1998: 271). Since it had blurred areas of national and communal membership in the Turkish history, corporate autonomy had come to contradict with the modern aspirations of the national state. The Turkish objective at Lausanne, accordingly, centred on the elimination of the corporate forms of minority protection inherited from the Ottoman legacy (Akyol, 1998).

²⁰ Lord Curzon proclaimed at the Conference that the main objective of the Western occupation in Turkey was to provide political liberation or, at least, a secure emancipation for the non-Muslim minorities of the Empire (Meray, 1969: 180).

On the other hand, under the fresh influence of the recent past, the founding leaders had already expressed their will to give up traditional system in favor of European standards. The National Pact, as noted above, had bordered the nationalist regime of minority protection with international principles of the then prevailing European *minorities treaties*. Depending upon this fact, the Turkish government denied persistence of the millet privileges particularly on the grounds of the principle of external non-interference. In view of Ismet Pasha, traditional system of minority protection had constantly been exploited by the external powers in furthering their political and economic interests in the Ottoman lands that had culminated in the final collapse of the state. The external sovereignty of the country, for him, had required limiting the scope of minority rights with the post-WWI European regime (Meray, 1969: 187-200).

Bearing these concerns in mind, the Turkish government insisted on the transformation of the Ottoman millet system into the general scope of the post-WWI regime. Thus, in place of the centrifugal institutions of millet privileges, modern rights and liberties must have been accommodated and its execution has been invested in the sovereign discretion of the state (Meray, 1969: 187-200). To this end, the Turkish government exhibited a complete determination and largely succeeded in obliterating corporate aspects of the minority provisions. Because, unlike previous conferences such as Vienna or Berlin, the Turkish delegation had come to the Conference “not as a conquered ‘Sick Man’ but as an invigorated reawakened nation determined at all costs to maintain what it believes to be the sovereign rights of the Turkish people” (Brown, 1923: 290). As a result, unlike the issue of minority definition, the scope of rights and liberties was almost completely divorced from the imprints of the traditional Turkish practices.

Having been agreed on the grounds of the then prevailing European minority rights regime, articles 37 to 45 of the Treaty of Lausanne instituted modern framework of the Turkish minority rights regime (Lausanne Treaty, 1956). The provisions made it quite clear that Turkish authorities denied millet-system-like formulations in favor of the contemporary standards of minority rights outlined in the *minorities treaties*. As was explained before, the scope of the treaties had, in general, created the legal-political grounds of substantive equality among individual citizens irrespective of ethno-cultural, religious or sectarian origin. In doing this, apart from universal rights and obligations, the said treaties had addressed group-specific rights pertinent to protection and promotion of the minority particularities. While the former category of rights covered measures of universal equality and non-discrimination, the latter aimed at creating instruments of differential treatment within the universal premises of citizenship equality.

Parallel to this general framework, the Turkish version aimed at constituting legal equality with its substantive aspects of protecting and promoting distinct identities of minority groups. On the one hand, therefore, minority provisions of the Treaty provided citizenship equality on the principles of civil and political equality and non-discrimination. It was accordingly recognised that “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”. It was similarly stipulated that “all inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief...”. Additionally, the Turkish government undertook that no restriction would be imposed upon the movement, settlement or migration of minority peoples (art. 38).

On the other hand, while the Treaty stipulated that “Turkish nationals belonging to non-Muslim minorities will enjoy the same civil and political rights as Muslims”, the principle of political and legal equality was attributed an identical value. The Turkish government accordingly affirmed that “all the inhabitants of Turkey, without distinction of religion, shall be equal before the law.” Upon the same principle, it was accepted that “differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil and political rights.” The matters included, for example, “admission to public employments, functions and honours, or the exercise of professions and industries.” The measures of citizenship equality reflected itself in the question of linguistic rights as well. Notwithstanding the existence of the official language, the use of mother tongues was equally guaranteed for “any Turkish national” in private intercourse, commerce, religion, press and publications, public meetings as well as in the courts (Art. 39).²¹

These provisions made it clear that the principle of equality by no means indicated any practice of uniformity. On the contrary, those measures of citizenship equality and non-discrimination were substantively supplemented with the instruments of differential treatment. Without renouncing principles of universal equality, minority groupings were facilitated to practice, protect and promote their particular characteristics. Bearing this substantive objective in mind, the provisions vested great interest in the task of creating legal-political grounds of differential treatment that would allow reproduction of minority cultures. To this end, minority citizens were provided with group-specific

²¹ Although the Turkish governments never practiced this aspect of the provisions, the wording of ‘any Turkish national’ has subsequently been interpreted to indicated that the provision brought linguistic rights to whole of the non-Turkish speaking segments of the Turkish population including Muslim minorities (Oran, 2001: 226-227).

rights and immunities in the affairs of culture, education, religious practices and charitable foundations.

Concerning the group-specific rights, the Turkish government recognised that “non-Muslim citizens shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education” (Art. 40). Further, provided that the teaching of the Turkish language remained obligatory, minority languages would be used as the medium of instruction in the primary schools in those towns and districts where they constituted a considerable proportion of the regional population. The provisions affirmed that (in the same areas) “minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds for educational, religious or charitable purposes” (art. 41).

In order to guarantee the non-Muslim minorities’ traditional heritage, the Turkish government undertook also “to grant full protection to the churches, synagogues, cemeteries, and other religious establishments”. In particular, the government conceded to treat pious foundations, religious and charitable institutions of the non-Muslim minorities on the same footing as those of the majority. Unlike the classical practices of the millet system, it was accordingly affirmed that the “the Turkish government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are granted to other private institutions of that nature” (Art. 42).

As was discussed in chapter III, particularly the Greek version of the *minorities treaties* had conceded legal autonomy to their Muslim minorities with regard to the cases of family and private law. The same practice had also constituted an integral part of the

imperial minority rights regime. However, devoted to the creation of a consolidated state having a single-unified legal system, the Turkish authorities, at Lausanne, had already come to impair its regime from the corporate effects of the legal autonomy. In spite of a strong Turkish resistance, the Lausanne provisions recognised traditional immunities of the non-Muslim minorities in the areas of family law and personal status, both of which still were considered in the realm of religion. The matters of religion, the settlement of the affairs of marriage, divorce, and inheritance was, therefore, left to the corporate authority of the minority groupings (Art. 42). Since the then prevailing Turkish law was a non-secular one, the government was obliged to admit corporate scope of this provision (Bozkurt, 1996: 182).

The Lausanne framework of the Turkish minority rights regime intended to reconcile the notion of citizenship equality with the group-specific particularities of minorities. For doing this, the regime promoted emergence of ethno-cultural diversity, legally and politically respected, that guaranteed, at the same time, civil and political equality embedded in the universal aspect of the citizenship status. Thus, minority differences would no longer be associated, in principle, with the terms of inequality and discrimination. It was in this sense that the new regime largely overcame shortcomings of the traditional duality that had long existed in the Ottoman context between the political status of state-membership and the ethno-cultural status of group membership. Therefore, the traditional Turkish minority rights regime that hitherto had relied upon traditional practices and instructions of the Islamic religion encountered with a sharp rupture. Although its minority/majority categories remained intact, administrative, judicial and

political ramifications of the millet system privileges henceforth ceased to determine dynamics of the Turkish minority rights regime.

6.3.3. The Form of Rights: Collective or Individual

The Turkish *ancien* regime, as was examined before, rested upon corporate recognition of communal distinctions. Rights and privileges, incorporated in the millet system, were formulated and implemented in a collective-corporate understanding. Thus, socio-political, administrative and judicial privileges of the millet communities were bestowed upon the corporate personality of religious groupings. Subjects of the millet privileges, therefore, were not individual members of communities but the corporate body of the community itself. Individual Ottoman subjects held almost no legal standing unless they proved membership to a religious community. The communal autonomy of the non-Muslim minorities, in this form, had displayed characteristics of a decentralised system creating “states within a state”.

Thus, the classical Ottoman system represented a pre-modern and corporative state model which was contradicted with the sovereign aspects and centralised functions of a modern state. Because of this, non-Muslim minorities would no longer continue to carry out communal autonomy in the form of corporate rights in the Republican Turkey. Minority provisions of the Turkish Treaty, therefore, were expected to obliterate traditional forms of religious, political, administrative, and judicial privileges. To this end, Lausanne provisions relegated non-Muslim minorities to a status of cultural groupings whose members would receive differential treatment in respect to the affairs of religion and language. But, their legal status would no longer stem from communal

membership nor communal hierarchy would insert absolute authority over their individual members.

The founding leaders were well aware of the fact that collective dimensions of the traditional regime had concealed in itself seeds of minority troubles in the Empire. In the view of the founding leaders, collective form of rights and privileges had, on the one hand, avoided emergence of an integrated Ottoman nation out of the members of the “imagined nations” of religion. The process of the national awakening had evolved towards ethno-lingual and territorial emancipation but not for a common Ottoman nationhood. Putting the matter differently, corporate privileges had, in the long run, operated at the expense of national and territorial integrity. On the other hand, corporate personality of non-Muslim communities had paved the way for the external intervention of the western powers in the internal affairs of the Ottoman state. Benefiting from the collective autonomy of non-Muslim communities, the European powers had often infringed political independence, national unity, and territorial integrity of the state.

It is not unusual to notice, under these circumstances, that one of the prominent objectives of the Turkish authorities in figuring out its new minority rights regime aimed at releasing the Turkish regime from its corporate dimensions. To this end, given greater concern to the issues of internal and external sovereignty, and territorial and national integrity of the Republican state, the Turkish authorities, at the Conference, constantly denied collective formulation of minority rights, that of creating “states within a state” (Meray, 1969: 251). Because of this, corporate compartmentalization was almost completely eliminated from the scope of the new regime. Contrary to the communal identification of the millet system, individual members of the non-Muslim minorities

were considered primarily individual citizens of the Republican state, not of the religious communities. The communal membership, if ever existed, remained secondary in the formulation of the new regime. Hence, unlike the dual practices of the late Ottoman reforms, citizenship status of minority peoples dominated their communal membership. It was because of this modern transformation that rights and freedoms specified in the document directly addressed religious, linguistic and cultural particularities of the “Turkish nationals belonging to non-Muslim minorities”.

Nevertheless, implementation of religious, cultural and educational rights did not disregard, if not openly promoted, its collective dimension. After all, those affairs of schooling, charitable and religious establishments and the allocation of governmental funds implicitly indicated existence of a collective aspect. The exercise of the said principles called for, at least in practice, creating individual rights having a collective dimension. Parallel to its contemporaries, the new Turkish regime, hence, adopted several principles which set forth individual rights to be exercised “in community with others”.

In fact, despite the final document of the provisions compelled Turkish authorities to undertake no strong commitments in collective form, it was reached after several contrary proposals were defeated. In particular, four groups of collective rights, those of the legal privileges, the status of the Patriarchate, non-Muslims’ military obligation, and the question of the Armenian homeland, troubled the founding leaders in the duration of the Conference. Although some were immediately defeated or subsequently cancelled, in order to deploy modern transformation of the Turkish minority rights regime, the given areas of collective rights, which largely contrasted with the national ideals of the Republican regime, must briefly be elaborated here.

6.3.3.1. The Question of Legal Privileges

The Lausanne regime largely integrated traditional norms of minority treatment in Turkey into the European standards of the *minorities treaties*. However, the latter had also incorporated several provisions addressing local and particular conditions. The Greek and the Serb-Croat-Sloven treaties, for example, had entailed country-specific provisions with regard to the cases of their Muslim minorities. In the same manner, the Western delegation at Lausanne insisted that the Turkish government should have undertaken specific obligations guaranteeing traditional privileges of its non-Muslim minorities in the affairs of family and personal law. It was believed that religious nature of the family and personal law urged the Turkish government to develop a multi-legal system in which the legal autonomy of non-Muslim minorities would be maintained (Akyol, 1996: 150; Bozkurt, 1996: 181).

Legal autonomy of the non-Muslim minorities was therefore recognised in the affairs of family law and personal status including those matters of marriage, divorce and inheritance. Article 42 of the final document provided:

The Turkish government undertakes, as regards non-Muslim minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities...these measures will be elaborated by special commissions composed of representatives of the Turkish government and of representatives of each of the minorities concerned in equal number.

The execution of the provision was delegated to the corporate personality of the communal institutions. In so doing, similar to millet system, though unwillingly, Turkey recognised a compartmentalised form of the judicial system in protecting non-Muslim distinctions. It was accordingly affirmed that the Turkish government would facilitate

establishment of joint commissions in charge of the settlement of the procedures according to which minorities would handle the cases of family and personal law.

However, the founding leaders were well aware of the fact that the issue of judicial autonomy contradicted with the national projections of the Republican regime which was seeking unity in the realms of cultural, administrative, political as well as legal affairs. However, the provision would not have been removed because of the non-secular features of the then prevailing judicial system (Bozkurt, 1996: 182). It was believed that “when the law depended upon religious regulations, governments are obliged to grant special laws for each of religious grouping. In order to attain political, social and national unity... the spheres of law and religion should be separated making it equally applicable to each section of the national population”. In this view, judicial privileges of the non-Muslim communities, inherited from the religious regime of the Empire, would be eliminated only after the Turkish law was truly secularized (Bozkurt, 1996: 193).

Therefore, soon after the ratification of the Treaty, the government determined itself to dispense with the collective aspects of minorities’ legal affairs. For doing this, while the government permitted minorities to establish joint commissions in order to produce specific judicial measures for the implementation of the article, it embarked a reform process to secularize its civil code. Non-Muslim communities, the Greeks, Armenians and Jews, established special commissions in order to exercise judicial autonomy. However, before they concluded final regulations, having taking into consideration that the government was working on the adoption of a secular civil code that would be equally applicable to all of the citizens irrespective of religion or creed, the Armenian and Jewish commissions renounced judicial privileges. Insisting for a longer

time on the preservation of the legal privileges, the Greek commission too subsequently agreed with the Armenian and Jewish commissions.²² The commissions declared in their petitions submitted to the Ministry of Justice that “upon the reception of secular principles, the community would no longer seek differential treatment in judicial matters but be considered within the universal terms of the national law” (Bozkurt, 1996: 182).

It is significant to note here that this was the abdication of one of the significant provisions of the Lausanne Treaty which had brought collective guarantees to the preservation of the affairs of family law and personal status. Because of this, communities’ act was sometimes viewed with suspicion as if it had been taken under the pressure of the government.²³ Alexandris, for example, argued that the Greek minority was actually unwilling to renounce legal rights for they were considered most important part of the minority provisions. In the eyes of the Greek minority, for him, the legal autonomy did not create a privileged position but an instrument of collective resistance against assimilationist policies. Alexandris accordingly suggested that since the universal views of the new code contradicted with the group-specific principles of the article 42, Turkish authorities urged the heads of the religious leaders to renounce guarantees accorded to them with the said provision (Alexandris, 1992: 135-139). With similar views, the Greek government protested the abdication of the legal guarantees and sought its restoration in the PICJ (Bozkurt, 1996: 182).

²² The Jewish community was the first in declaring their voluntary renouncement (15 September 1925). Armenian community followed the Jews on 17 October 1925, and finally the Greek minority declared the same decision on 27 November 1925. The Jewish petition to the government presented an example for other minority groups. The petition proclaimed that upon the adoption of a secular law equally applicable to the members of Turkish citizenry, the Jewish community conceded judicial privileges of the article 42 in favor of being treated in the same footing as other Turkish citizens (Galanti, 1995: 68-73).

²³ German consulate to Istanbul reported that “through the means of their own organisation, the Jewish minority renounced their rights established in Lausanne for the good of the minority concerned. However,

Thus, when the Turkish government adapted the Swiss Civil Code on 17 February 1926, the long-lasting legacy of the compartmentalised juridical system ended in the Turkish law. Although implemented in violation of the Lausanne commitments, the Republican State obliterated the legal privileges of corporate nature. In the legal sphere, principle of equality excluded practices of differential treatment. The removal of the article 42 indicated that the principle of citizenship equality for the Turkish government required implementation of a uniform treatment, outside and above ethno-cultural particularities.

6.3.3.2. The Question of the Military Service

Another collective formulation appeared at Lausanne on the issue of non-Muslim minorities' military obligation. As noted before, non-Muslim sections of the Ottoman population had been exempted from military service. Following this classical practice, the Lausanne negotiations vested a special interest in the collective exclusion of non-Muslim Turkish citizens from military obligation (Meray, 1969: 151-292). The issue occupied such a significant place in the eyes of the western powers that they even conceded to sacrifice minorities' political rights in exchange of military exemption. Veniselos, the Greek President, for example, argued on different occasions that the Greek government was ready to recognise the curtailment of the political rights of minorities in Turkey in return of guarantees exempting those peoples from military service (Meray, 1969: 299). Though the Greek proposal attracted little attention, western states generally displayed strong determination to making the issue of collective exclusion as an integral

the decision was not reached completely by the free will of the Jewish minority but taken under strong pressures of the Turkish government" (cited in Bozkurt, 1996: 182, fn. 19).

part of the Turkish regime. To this end, the draft proposal of the Allied states, for example, incorporated an identical provision which provided that “Turkish government undertakes measures which shall exclude the non-Muslim Turkish citizens from military obligation in return of an extra tax (*bedel*)” (Meray, 1969: 165).

The Turkish government, in response, insisted on the equal application of military obligation among the Turkish citizens upon three major grounds. First, the principle of the citizenship equality, for the Turkish authorities, required equality in citizenship obligations. On the Turkish side, the question of military service was, therefore, one of the most significant dimensions of citizenship equality incorporated in the minority provisions of the Lausanne. Second, for the Republican authorities, the principle of equality in exercising military service would function as an integrative mechanism when it was manipulated as an institution where national values, objectives as well as the spirit of national brotherhood would be cultivated in the hearts of minority citizens. It was accordingly argued that, notwithstanding deeply rooted communal divisions, equal circumstances of military service would produce a national unity while directing disloyal aspirations of minorities in favor of a loyal Turkish citizenship.

Third, military service was expected to adjust economic imbalances that had existed in the country between non-Muslim minorities and the Muslim majority. As long as it was reserved to the benefit of the latter, it was argued, military recruitment had hitherto served to the enrichment and expansion of the non-Muslim population at the expense of those of the Muslim majority. Ismet Pasha explained that a privilege of this

kind would increase economic and numerical strength of minorities in Turkey against the interests and size of the Muslim majority (Meray, 1969: 306-307).²⁴

Consequently, the Turkish thesis weighed at Lausanne while the contrary proposals were completely defeated in the final form of the minority provisions. The question of military obligation was henceforth removed from the framework of the Turkish minority rights regime while it was constituted both a right and an obligation of the all of Turkish citizens irrespective of religious, sectarian or ethno-cultural characteristics. In so doing, hundreds years old practice of the millet system ended in accordance with the unitary concerns of the national state.

6.3.3.3. The Status of Patriarchate

In connection with the collective rights to be granted to the non-Muslim minorities, the Status of Patriarchate in Turkey received significant concern in the proceedings of the Conference. Needless to repeat, being the heads of communal millet institutions, patriarchates, as an administrative organ of the Ottoman administration, had hitherto executed collective jurisdiction over the members of their communities. However, in violation of their communal authority, both the Greek-Orthodox and the Armenian patriarchates had actively involved in the nationalist awakening of their members that culminated in the final collapse of the Empire. Because of this, secular acts of the minority leaders, primarily the patriarchates, had lost legitimacy in the eyes of both leading Republican cadres and the general Muslim population. In the aftermath of the liberation war, there had remained almost no positive incentive in the minds of the

²⁴ For the concerns of the founding cadres of the Republic in insisting on the equality of military obligation between Muslim and non-Muslim sections of the Turkish population see the speech delivered by Ismet

leading cadres that would encourage persistence of collective privileges of the patriarchates. The Turkish authorities had come to promote removal of the Greek Patriarchate from Turkish lands (Sofuoğlu, 1996; Işıksal, 1969).

On the other hand, as was indicated in the case of legal privileges, the Republican leaders were seeking to secularize the new regime. To this end, although retained non-secular aspects of the millet system in respect to the definition of minority categories, the government had displayed enormous determination to the secularisation of the general framework of its minority rights regime. For this, in place of the theological regulations of the millet system, the post-WWI European regime had been accommodated. As noted before, the scope of the latter had confined the jurisdiction of the religious institutions exclusively to spiritual matters. Notwithstanding their traditional and religious functions, the Republican leaders had convinced that they would no longer tolerate existence of corporate agents between the state and citizens. According to Rıza Nur,

...by separating the Caliphate and the State and by establishing a democratic regime, the government had suppressed the privileges which had been granted in the Ottoman Empire to the non-Muslim communities. The relations between the charitable, educational and philanthropic institutions of the minorities and the State must henceforth be carried on directly; the clergy and its hierarchical chiefs must not in the future concern themselves with any but purely spiritual matters. The Patriarchate, which had hitherto been a political institution, ought to be removed outside Turkey; for its past activities will prevent it from adapting itself to the new situation which, by eliminating the political privileges of the Patriarchate and of the organisations dependent on it, will remove all grounds for its continued existence. These conditions show that the necessity of abolishing the temporal privileges of the clergy and transferring the Patriarchate outside the country is just as inevitable for Turkey as it is salutary for the community concerned (Meray, 1969: 327-328).

This indicated the fact that in the aftermath of the national struggle, the Turkish government had intended to transfer corporate-collective privileges into the realm of the state. It was hoped that having freed from secular encroachments of the clerical

Pasha at the Conference on 9 January 1922 (Meray, 1969: 306-307).

structures, the state then would bypass these intermediary institutions in dealing with its citizens.

However, this was not an easy task to do in the case of the patriarchate. Because, the western powers insisted not only that the Patriarchate would continue to be seated in Istanbul but also would continue to exert collective jurisdiction over its fellow adherents. In particular, the Greek state proclaimed, on many occasions, that collective authority of the minority religious institutions depended upon their religious distinctions that existed between the Muslim majority and the non-Muslim minorities. Relying upon this fact, it was argued that it was hardly possible to claim removal of the powers of non-Muslim institutions if the cultural and religious distinctions of non-Muslim minorities were to be properly taken under protection. In this sense, Veniselos suggested that traditional functions of the Patriarchate, which were regarded by the Turkish state as temporal powers irrelevant to the jurisdiction of a religious institution, was in fact, completely spiritual in instruction of the Orthodox church. For Veniselos, matters of family law and personal status had become so integral to the lives of Orthodox peoples that would be regulated by no secular reform. Since they were spiritual in essence, for him, the Turkish government was to recognise corporate powers of the patriarchate over its members in the affairs of family and personal law (Meray, 1969: 328).

Secularization of the minority rights had retained a close affinity with the general secularisation of state affairs in Turkey. The image of minority rights kept in the minds of the Republican leaders became one of the driving impetuses of secularisation. Perhaps because of this fact that as they were bringing forth their objection to the preservation of corporate millet forms in the new regime, Turkish authorities associated it with the

secular reforms that were taking place in the policies of the new Turkish state. It was through the same secular commitments that a final compromise in the issue of the Patriarchate would be achieved. It was conceded at Lausanne that the Patriarchate would continue to remain in Turkey but without having collective jurisdiction of secular nature over its community members. In so doing, traditional framework of political, judicial and administrative capabilities of the Patriarchate was almost completely abandoned. Thus, the Republican State achieved to level off another remnant of the Ottoman millet system in shaping its new minority rights regime (Meray, 1969: 324).

6.3.3.4. The Question of the Armenian Homeland

When discussing collective dimensions of minority rights in the chapter I, it was underlined that the most concrete form of it appears in the delimitation of a geographical area to the autonomous organisation of a minority group. The right is collective in the sense that the said minority is considered as the majority population of the given region where the task of ruling is largely vested in the hands of that minority group as a whole. In this kind of formulation, authority of the central government over the rule of the regional population is significantly curtailed and comes to depend upon some pre-settled areas of jurisdiction. In other words, collective right to regional autonomy is most likely to create “states within a state” against which the founding cadres of the Republic had stood quite distasteful and suspicious. After all, the provisions of the Sevres Treaty that had divided Anatolia along ethno-lingual and religious borders were still fresh in the Turkish minds. Hence, Turkish leaders exhibited strong determination to the eradication of territorial designations from the new framework of the Turkish minority rights regime.

However, contrary to the Turkish concerns, the Lausanne proceedings considered also an option of regional autonomy in the formulation of Turkish minority rights regime especially with respect to the accommodation of Armenian and Assyrian interests. Particularly, the British and the USA governments insisted on the creation of a “gathering land” in the Eastern or South-Eastern parts of Turkey where the local and deported Armenians would have a “national home” under the rule of the Turkish state. According to the USA memorandum presented to the Conference, for example, the creation of an autonomous Armenian region was a humanitarian task which would provide the Armenian peoples with a living space (Meray, 1969: 242-244).

However, having learned much from the late Ottoman experiences, Turkish government naturally denied even talking about these specific regulations. For the Turkish side, collective rights accorded in the form of territorial autonomy would, in time, operate as a mechanism of secession. Hence, for the Turkish view, the question of minority protection should not have been confused with territorial-national aspirations of minorities. As concerned with this policy, Ismet Pasha stated in the Conference that the Turkish state would embrace all Armenians resident in Turkey with honest feelings of brotherhood. For Ismet Pasha, any form of territorial autonomy, to be granted to any one section of minority groups, would, however, end up in the final partition of the Turkish territory along national aspirations of minority communities (Meray, 1969: 298).

The question at Lausanne, after all, was not the creation of national states but the adjustment of sub-national politics related to the protection and promotion of minority distinctions. Although the proposals did not claim an eventual partition, the form of geographical autonomy had concealed within itself seeds of complete secession that had

clearly been proved, on many occasions, throughout late Ottoman period. In order to avoid resurrection of the problems of the past, the new Turkish regime denied any form of geographical designation including those claims of “Armenian homeland”. No parallel provision was accordingly incorporated in the final document of the Lausanne Treaty.

6.3.4. National Sovereignty and International Guarantees

As was explained before, external interference of the western states in the internal affairs of the Ottoman state on behalf of the interests of the non-Muslim minorities had culminated in the demise and final disintegration of the Empire. Having been aware of this fact, the founding leaders stood suspicious about external intervention in the national implementation of the new minority rights regime. To this end, the Turkish government denied possibility of direct supervision that would be carried out by an international commission seated in the country. Yet, parallel to the procedures that contained in the provisions of the other *minorities treaties*, the Turkish version too incorporated a form of international monitoring (Meray, 1969: 212).

In accordance with the post-WWI regime, national enforcement of the Lausanne rights was taken under a twofold guarantee of both internal and external mechanisms. Internally, the Turkish government undertook that minority provisions of the Treaty constituted an integral part of the fundamental law in the country which would be subjected to change by national arbitration under no condition. The provision of the Treaty, accordingly, provided that “no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them” (Art. 37). The treaty, hence, closed all the doors to the subsequent

amendment of the established standards. Parallel to the regime of the minorities treaties, the modification of the provisions was entrusted to the discretion of the League of Nations. Thus, despite the fact that the government constantly rejected any formulation that would interfere with the regulation of internal affairs of the nation, this article externally regulated legal status of non-Muslim minorities in Turkey.

Indeed, it was clearly specified in the article 44 that national enforcement of the provisions fell under the guarantee of the League of Nations. Thereby, the Turkish government undertook to recognise that these provisions constituted obligations of international concern. It was accordingly provided that none of the provisions would be modified or changed without the assent of the majority of the League's Council. The task of monitoring was vested in the hands of the members of the League Council who "shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations". This is to say, any change or modification in the original document would, under no condition, be a work of national legislation.

On the other hand, it was one of the outstanding aspects of the new regime that the settlement of disputes ceased to be a political issue. Instead, the regime installed a mechanism of judicial review through which disputes that would arise out of the national implementation of the provisions would legally be handled. It was accordingly provided that in case of internal or external disputes on the Turkish provisions, the case was to be referred to the PCIJ whose decision was final and binding for both parties. This was a very significant innovation when we remember traditionally political and armed intervention of the great powers in the internal treatment of non-Muslim minorities.

Thus, it seems reasonable to conclude that monitoring procedures of the regime, established in the articles 37 and 46 of the Treaty, contrasted to a greater extent with both internal and external aspects of national sovereignty that had preached by the Turkish authorities in the duration of the Lausanne Conference. In its exact form, the procedures assimilated the Turkish regime of minority rights into governance of an international regime. In so doing, Turkish authorities were given no free hand in the national enforcement of the concluded principles. Yet, unlike traditionally bilateral interferences of the European great powers, the new minority rights regime entrusted the procedure of supervision in the political competence of an international institution and the legal arbitration of a supranational court. Therefore, it is conclusive to claim that another aspect of the traditional system of minority protection was completely broken in Turkey. Having divorced from political considerations of the partied states, the area of minority issues, at least at face value, gained a humanitarian feature.

6.4. Conclusion

The Lausanne Treaty and its implementation procedures largely integrated the classical Turkish regime into European standards laid down in the provisions of the *minorities treaties*. A secular framework of rights and freedoms was accommodated within the general scope of the new Turkish regime. However, due to fact that inclusion/exclusion practices of the Turkish political culture has constrained the Republican minority/majority classification, the same regime differed from its contemporaries with respect to the definition of the concept of minority. As a result,

traditional divisions that existed between Muslim and non-Muslim sections continued to characterize the minority/majority categorisation in Turkey.

In doing this, uniform image of the Muslim population was reproduced. In spite of the fact that sub-religious distinctions of the Muslim population were implicitly recognized, the early Republican politics of *ittihad-ı anasır-ı İslamiye* totalised the Muslim residents of the country within a religiously coloured configuration of national unity. Under the imprints of the limited diversity of the classical millet system, the issue of minority rights was associated exclusively with non-Muslim sections of the population, those of the Greeks, Armenians and the Jews, who had been granted millet status in the Turkish *ancien* regime. Although the Lausanne document had brought no detailed clarification for the general wording of the “non-Muslim minorities”, neither Catholics nor different persuasions of the Assyrian communities were officially entitled to the protective umbrella of the Lausanne regime. Parallel to the practices of the classical millet system, the latter group has been exempted from official recognition in the Republican state.

Nevertheless, the scope of the Lausanne’s minority provisions introduced innovative changes into the traditional scope of the Turkish minority rights regime. In particular, the formula of the Lausanne rights, which reconciled citizenship equality with the notion of ethno-cultural diversity, resolved, for the first time, the question of incongruity between state-membership and group-membership. Having granted civil and political equality, minority individuals were considered primarily as the individual citizens of the state but without abstracting them from their traditional and ethno-cultural circumstances. Although the *tanzimat* reforms had aimed to accomplish this congruity,

facing with the overwhelming power of the minority nationalism, the reformist endeavour was doomed to a complete failure.

Indeed, the Turkish minority rights regime, within its new framework, provided legal norms and instruments of the principle of “equality within diversity” and/or of the “diversity within citizenship unity”. But, because the emergence of the modern regime had proceeded hand in hand with the nationalist and secessionist aspirations of the non-Muslim minorities, the latter group of Turkish citizens lost reliability in the eyes of the Turkish statesmen and the general public. Although they were guaranteed legal-political grounds of citizenship equality and ethno-cultural differentiation, they came to be regarded within the terms of the suspected residents of the country who were to be held under a constant and cautious supervision.²⁵ Hence, notwithstanding existence of legal guarantees, the Turkish minority rights regime has, as the next chapter will exhibit, encountered with problems in practice.

²⁵ A non-official report on minorities, which was prepared by the general secretary of the RPP probably during the late 1930s presented a good example to the fact that minorities were considered unreliable and suspected citizens. They were regarded always ready to jeopardise national interests of the country (Bulut, 1998: 166-191).

CHAPTER VII
REPUBLICAN PRACTICES AND THE CONTEMPORARY
TRANSFORMATION OF THE TURKISH MINORITY RIGHTS REGIME

7.1. Introduction

Minority provisions of the Lausanne Treaty provided non-Muslim minorities with a substantive right to ethno-cultural and religious diversity as well as citizenship equality. However, the imprints of the millet system and Ottomanist experience continued to limit minority policies in Turkey in two ways. First, one's creed has continued to determine the criteria of "inclusion" and "exclusion" in the Turkish regime so long as we referred to minority/majority classification. The imagined unity of the Muslim millet was preserved against the "other" position of the non-Muslims. Second, the fifth-column and/or secessionist acts of the latter resulted in the loss of confidence against both the issue of minority rights and that of the minorities themselves. In the eyes of both Turkish authorities and the general public, minority questions and minorities came to be viewed as a pretext of international interference or a tool of territorial secession. They usually were conceived as "suspicious", "dangerous" and "foreign" elements within the Turkish-Muslim nation. Hence, though provided with a secure framework at Lausanne, non-Muslim minorities in Turkey frequently found themselves in a vulnerable position.

Parallel to the classical dimensions of the millet system, the notion of minority difference has generally been associated with unequal and discriminatory treatment. However, the instrument of inegalitarianism was no longer the legal-political-social dimension of the millet system. In the Republican regime, legal-political

conceptualization and practices of citizenship has operated as an instrument of inclusion and exclusion. Once the Turkish context established a close linkage between citizenship and nationality, it has, on the one hand, operated as an instrument of Muslim-inclusive policy in which the principle of citizenship equality has been equated with national uniformity. On the other hand, the same instrument has proceeded in an exclusivist manner to the ethno-cultural others who were often subjected to inegalitarian policies. Bearing this fact in mind, this chapter will elaborate on the socio-political, legal and foundations and practices of this linkage. In doing this, firstly, while pointing out Muslim-inclusive formula of the Turkish national category, emergence of a monolithic category of national formation will be discussed. Having delineated uniform establishment of the Turkish-Muslim category, secondly, the position of the non-Muslim minorities in the practices of the Republican minority rights regime will be examined. Lastly, under the light of the recent developments, we will review contemporary framework of the Turkish minority rights regime.

7.2. The Question of Muslim Diversity

Turkish minority rights regime, as was examined so far, illustrated main parameters of the Republican policies of inclusion/exclusion practices in which two exclusivist categories of “us” and “them” have been expressed in terms of religious distinctions. As was noted before, unlike the Ottomanist policy of *ittihad-ı anasır* that had projected an abstract Ottoman nationhood superior to sub-national particularities, the Republican authorities had ceased to develop a political definition of nationality. Political and cultural grounds of an egalitarian unity between Muslim and non-Muslim citizens

had almost completely been lost during the national struggle. It was also noted above that the Ottoman ideal of *ittihad-ı anasır* was by no means substituted with a policy of ethnic Turkism but with a strong policy orientation of *ittihad-ı anasır-ı İslamiye*, union of the Muslim elements. In so doing, a religious substance was inherited from the Ottoman past and adopted to the national formulation of the Republican State. It was on this religious color that while a Muslim-inclusive national form was constituted, sub-religious characteristics of the Muslim peoples were denied.

7.2.1. Religious Delimitation of the Republican Nationhood and the Emergence of “National”/“Formal” Categories of Citizenship

Discussing “the sources of Turkish civilisation”, Lewis (1968: 15) suggested that “one may speak of Christian Arabs, but a Christian Turk is an absurdity and a contradiction in terms... a non-Muslim in Turkey may be called a Turkish citizen, but never a Turk.” Thus, in view of Lewis, the Turkish tradition has made a clear-cut distinction between the notion of state-membership (citizenship) and that of the ethno-cultural membership (nationality). In consistent with the legacy of the Ottoman past and of the legal-political formulations and practices of the national liberation, the Republican authorities delimited ethno-cultural borders of the Turkish nationhood, among others, with religious characteristics of citizens. Legal-political conceptualization of both “Turkish nation” and “Turkish citizenship” has proved this Republican tendency. It must be noted here that since the concept of citizenship was often entangled with the concept of nation, the distinction, in fact, carried further implications for the equal accommodation of non-Muslim distinctions. Despite the fact that the citizenship and

nationality signified two different sources of identification, full and complete status of citizenship has generally been connected with ethno-cultural position of peoples. In order to attain political stability and national coherence, the ideal of the Turkish authorities has generally become to create a true congruence between the two sources of identity.

Turkish nationalism has sought the basis of this congruity in the religious/cultural unity of the Muslim population. Ziya Gökalp, the prominent advocate of the Turkish nationalism, for example, promoted a Muslim-inclusive formulation of Turkish citizenship and nationality. He believed that the main reason of the complete failure of a common Ottoman citizenship was the religious distinctions of subject populations (Berkes, 1981: 78). In his view, a working citizenship policy would be established on the existence of a coherent nation which was a cultural community speaking one language and professing one religion (Berkes, 1981: 136-137).

Having closely connected the two notions of citizenship and nationality, Gökalp's argument implied the fact that a workable citizenship policy would successfully be established, in the Turkish context, only in cultural unity of the Turkish-Muslim peoples. He accordingly believed that belonging to the same religious and cultural background, non-Turkish speaking Muslims, irrespective of ethno-linguistic characteristics, would take place in the Turkish national category on the grounds of citizenship equality after they professed Turkish language (Berkes, 1981: 78).

Similarly, Atatürk intended to develop a comprehensive formula of Turkish nationalism which would be inclusive for all the inhabitants of the country irrespective of religious or ethno-cultural affiliation. In doing this, Atatürk denied religious substance of Turkish national formation in favor of common language, culture and history (Afetinan,

1998: 18-25). However, his secular approach still concealed an implicit religious implication in the sense that traditional practices had hardly produced a cultural unity between Muslim and non-Muslim citizens of the country. As was explained so far, almost no cultural, historical or linguistic affinity had yet developed between Muslim and non-Muslim sections of the Turkish population. Practices of the Ottoman *nizam* had instead prompted the emergence of cultural and linguistic affinity among the members of the same religious category. Because of this, Atatürk's national formula of the 'cultural community of citizens' implicitly connoted a national category consisting of the Muslim community of citizens. Having been aware of this historical legacy, Atatürk, in another definition, limited membership to Turkish nationality to those citizens who had participated in the founding process of the Republic from which non-Muslim citizens, as was given before, had completely been excluded (Afetinan, 1998: 18).

Although delimited with the condition of Turkish language, early Republican practices projected indeed a Turkish national category out of the Ottoman Muslim elements who had hitherto shared a common legal and cultural heritage. However, this did not imply assimilation of non-Turkish speaking Muslims into an ethnic-Turkish category but indicated "melding of all the various Ottoman-Islamic communities, including the Turks, into a new form of political organization" (Karpas, 1985: 57). Thus, parallel to the monolithic configuration embedded in the Ottoman Muslim millet, this political project by no means permitted legal-political accommodation of the Muslim particularities. Although the Ottoman Muslim category came to be expressed, this time, in an ethnic connotation of Turkish identity, it was not expected to operate as an upper identity under which sub-religious distinctions would acquire a legal-political status. By

contrast, the name of the “Turkish nation” signified a political instrument in which neither Turkish ethnic identity nor any ethnic element of the Muslim population would gain predominance. Having amalgamated in the political formula of the Turkish national category, religio-cultural unity of Muslim population was expected to supersede, if not eliminate, Muslim peoples’ ethno-lingual distinctions. Atatürk himself, for example, implicitly affirmed ethno-lingual differences of Circassian, Kurdish, Boshnak and Laz elements in Turkey. But, depending on the existence of a long shared history in legal and cultural sphere, he strongly denied that Turkish-Muslim distinctions would claim a national identity separate from that of the Turkish nationality (Afetinan, 1998: 23).

Thus, the national project of the Republican state could not impair itself from the imprints of the Ottoman legacy. Not language alone but also religious affiliation delimited Turkish national category from the outset of the new regime. Religious distinctions of the Turkish population, thereby, continued to constitute a socio-political instrument in identifying national “insiders” and “outsiders”. In following mainstream policy of the founding leaders, non-Muslim minorities were excluded from the ethno-cultural borders of the Republican nationhood. In the case of non-Muslims, even adopting the Turkish language was conceived insufficient for being eligible to the membership of the Turkish nationality.¹

It was the same religious substance that constrained legal-political borders of the Turkish citizenship and national classification. Parliamentary elaboration of the Article 88 of the 1924 Constitution, which formally defined Turkish citizenship, manifested that

¹ Bearing in mind religious basis of the Turkish identity, a “Turkish” non-Muslim blamed in the 1940s that “as it was the case in the pre-Republican years, no non-Muslim was considered to be Turk even during the Republican period but were constantly viewed within the traditional categories of Jewish, Armenian or Greek” (Saul, 1999: 125).

the formal status of citizenship was not sufficient to guarantee equal membership to Turkish national population. In fact, the article stipulated that “the name Turk, as regards to citizenship, shall be understood to include all citizens of the Turkish Republic without distinction of, or reference to, race or religion” (Kili and Gözübüyük, 1985: 111-135). But, the Republican authorities denied formulating an identical citizenship status for both Turkish-Muslim and non-Muslim sections of population. The dominant view of the Turkish Grand National Assembly (TGNA), at the time, was to restrict inclusive aspects of the Turkish citizenship with an exclusivist definition of Turkish nationality. In contravention with the formal scope of the article 88, civic features of the Turkish national identity, with its essentially inclusive formula of the name “Turk”, was limited to the privilege of the cultural community of the Turkish-Muslim population. In doing this, state-membership and ethno-cultural membership were situated in two different realms by creating a strict distinction between membership to “Turkish nationality” (*milliyet*) and the “Turkish citizenship” (*tabiiyet*). Non-Muslim minorities were included in the formal definition of the Turkish citizenship but excluded even from the legal-political content of the Turkish national category (Toker, 1979: 361-364).

Depending on this nationality/citizenship duality, the concept of citizenship was not completely neutralized in the Turkish context against the ethno-cultural particularities. The Republican regime instead constituted two categories of citizens in Turkey: ‘national citizens’ (citizens by nationality) and the ‘formal citizens’ (citizens by law). Under these circumstances, notwithstanding civic aspects of the legal definition, the distinction in nationality carried two significant implications for the Turkish citizenship practices with regard to the issue of minority treatment.

On the one hand, with the Muslim-inclusive formula of nationality, which superseded ethno-lingual and sectarian differences of Muslim citizens, the Ottoman Muslim millet was culturally, legally, politically and practically reproduced within the national borders of the new state. The legal-political content of citizenship has largely been identified with ethno-cultural members of the Turkish nationality. Beyond doubt, Muslim-inclusive definition has provided measures of legal equality and non-discrimination for the Turkish-Muslim citizens irrespective of sub-national characteristics. But, due to fact that the uniform configuration of the national citizenship has denied public expression of the Muslim population's ethno-cultural distinctions, the socio-political and legal ramifications of citizenship equality have manifested itself, in the case of "national citizens", in an understanding and practice of unanimous treatment. The formula of "national citizenship", therefore, has operated in the form of totalizing or disregarding, if not completely denying, ethno-linguistic, cultural and sectarian particularities that existed among different sections of the *anasır-ı İslamiye*.

On the other hand, in accordance with the Lausanne commitments, the Republican governments have bestowed official recognition and the measures of differential treatment to the members of the "formal citizens". However, because of the dual formulation of citizenship, policies of differential treatment would not be reconciled, in the Turkish context, with the universal terms of citizenship equality. By contrast, contrary to the substantive aspects of the Lausanne commitments, egalitarian principles of the Turkish citizenship has often been reserved, in practice, to the "national citizens" of the country.

7.2.2. Muslim Minorities: Equality within Uniformity

The Turkish constitution associated Turkish nationality formally with the condition of Turkish citizenship. Depending upon the distinction of national and formal categories of citizenry, however, the name “Turk”, in practice, has been used to refer to the cultural unity of the Turkish-Muslim population. Hence, few, if any, non-Muslims have been accepted into the conceptual category of the Turkish national identity whereas few, if any, Turkish-Muslim citizens have been allowed to legally accommodate, freely express or develop their particular characteristics. The unifying/dividing function of the Muslim identity has operated almost within the same rationality that religion had been fulfilling within the socio-political and legal compartment of the Ottoman Muslim millet.

Relying on this legal-political and traditional setting, Republican governments, from the outset, insisted on the idea of “one and indivisible” unity of the Turkish nation. To this end, contrary to ethno-lingual diversity that existed among different groups of the Turkish-Muslim population (Andrews, 1989), foundational ideology of the Republican state, in respect to its legal, political and administrative organisation, has rested upon this essential political and cultural concern. In this context, substantive aspects of the principle of equality, which prescribed treating different cases differently, have been neglected in the Turkish regime of minority protection with regard to the Turkish-Muslim differences. The scope of the Lausanne regime has been limited to the traditional circumstances of the non-Muslim citizens while granting each member of the Turkish-Muslim population formal (legal) equality of being treated alike within the indivisible unity of the Turkish national entity.

Muslim-inclusive formulation of Turkish nationality and citizenship has guaranteed formal equality and non-discrimination for Muslim citizens irrespective of sub-national characteristics they possessed. But, since it denied public expression of Muslim population's ethno-cultural distinctions in favor of a Muslim-inclusive nationality, socio-political and legal ramification of "equal treatment" have been implemented with an understanding and practice of "unanimous treatment".

Turkish constitutions recognized equality of all citizens before the law irrespective of language, religion, ethnicity, colour, sectarian affiliation and political opinion. On the basis of legal equality, however, it was also affirmed that differential treatment would be accorded to no section of the (Turkish-Muslim) population (Art. 10). Both of the 1961 and 1982 constitutions put strong emphases on the "indivisible unity of the state with its nation and territory" (Art. 3) which would be subjected to amendment under no condition (Art. 4). To this end, legal-political organs of the Republican state were constitutionally charged with the task of preserving national and territorial integrity (Art. 5). That is why, the exercise of constitutional rights and freedoms including freedom of religion, thought, expression, communication, press and association were conditioned by the respect paid to this foundational unity. It was clearly laid down that rights and freedoms would be curtailed if they were used in contravention with the principles of the national unity and territorial integrity (Art. 13-14).²

² The two article of the constitutions (13/14) were subjected to amendment, in the year 2000, thus for narrowing the grounds for fundamental rights and freedoms. The inherent spirit of the articles was yet preserved intact. Article 13 now reads: "Fundamental rights and freedoms may be restricted only on the basis of specific reasons listed in the relevant articles of the Constitution without prejudice to the values defined therein and only by law. These restrictions shall not conflict with the letter and spirit of the Constitution and the requirements of the democratic social order and the secular republic and the principle of proportionality". Article 14 now reads: "None of the rights and freedoms embodied in the Constitution shall be exercised within the aim of violating the indivisible integrity of the state with its territory and nation, or for activities undertaken with the aim of destroying the democratic and secular Republic based on

Owing to this essential interest, Turkish constitutional setting drew further boundaries so as to inhibit political expression of socio-cultural diversity. The Turkish *Law on Political Parties* presents a good example (İHD, 2000: 254-258). In fact, the constitution granted full recognition to the principle that “political parties are indispensable elements of the democratic political system”. However, it was also brought forward that political parties are subject to the same constitutional limitations enforced in the exercise of civil and political rights. In particular, the constitution made it clear that their statutes and programs would in no way involve any objective contrary to the unitary features of the country (Art. 68-69). With the constitutional regulation, the Law has prohibited political expression of ethno-linguistic, cultural and sectarian distinctions (Art. 78). Nor would they consider ethno-linguistic, religious, or sectarian criteria for membership or would claim that Turkey involves any national minority based on differences of national or religious cultures or on differences of sect, race or language (Art. 12). Political objectives seeking protection and promotion of sub-national languages and cultures or regional interests have, therefore, been conceived as an act of “violating the national integrity by creating minorities on the territory of the Republic of Turkey” (Art. 81). The provisions of the Law precisely concluded that any political party convicted of violating these principles would completely be closed down. As is well known, several political parties, including the pro-Kurdish Peoples’ Democracy Party (*HADEP*) and/or pro-Alavi Peace Party (*Barış Partisi*) were either banned or investigated

human rights. No provision of this Constitution shall be interpreted in a manner that grants the State or individuals the rights of destroying the fundamental rights and freedoms embodied in the Constitution, and of staging an activity with the aim of restricting rights and freedoms more extensively than is stated in the Constitution. Sanctions for persons undertaking activities in conflict with these provisions shall be defined by law” (Law No. 4709).

several times for pursuing separatist or divisive objectives on the basis of ethno-lingual, regional or sectarian differences of the national citizens.

Similarly, the exercise of the freedom of association was restricted by the principle of “indivisible unity of the state with its nation and territory” as it has been understood in the Turkish political culture. The *Law on Associations* (Law No. 2908; İHD, 2000: 175-183)) has banned the establishment of associations based upon peoples’ group-specific distinctions with regard to ethno-linguistic and sectarian affiliation (Art. 5-1). Associations were clearly banned from following particular interests relating to peoples’ regional or ethno-cultural characteristics (Art. 5-5). In particular, the Law specifies that no association would claim the existence of ethno-cultural, linguistic, religious or sectarian minorities on the territory of the Republican Turkey. Nor would they engage in any activity to create minorities by means of protecting, developing or promoting any language or culture other than the Turkish language or carrying out any activities to that effect (Art. 5-6). On the basis of this legal setting, among others, a sectarian group, that is the Cultural Association of the Union of Alavi and Bektashi Formations (*Alevi-Bektaşî Kültür Birliği*), for example, was dissolved on 13 February 2002 on the grounds that according to articles 14 and 24 of the constitution, and article 5 of the *Law on Associations*, it was not possible to found an association by the name of *Alevi* and *Bektashi*, which refer to Muslim sectarian communities.

Additionally, educational and cultural policies have also been subjected to the same unitary characteristics of the state and the nation. The right to learning or receiving instruction in mother tongues, in this context, has been delimited with the traditional circumstances of non-Muslim minorities. The Turkish language has been admitted as the

sole medium of instruction in the schools. In accordance with Article 42 of the constitution, the *Law on Foreign Language Education* (Law No. 2923; İHD, 2000: 142-143) stipulated that no language other than Turkish would be taught to Turkish citizens as their mother language (Art. 2-a). Similarly, although the private and public use of non-Turkish minority languages was officially settled in 1991, the Turkish constitution has not yet come to recognize that minority languages would be used in radio/TV broadcasting. The law has stipulated that “radio television broadcasts will be in Turkish with the exception for languages that will contribute to the development of universal culture and science” (Art.4-t, Law No. 3984).

Another reflection of the unitary view has marked administrative organization of the country that has been projected on the basis of considerations which had nothing to do with ethno-cultural or linguistic characteristics of regional peoples. Political expression of regional distinctions, such as territorial autonomy or secessionist aspirations, was strictly prohibited. Article 312 of the *Turkish Penal Code* made it clear that any such action would be legally considered within the terms of "inciting people to hatred and enmity on the basis of class, race or regional differences" (Law No. 765). Accordingly, the prevailing constitution stipulated that the rationality of administrative sub-divisions rested upon a set of functional concerns including “geographical limitations, economic conditions, and necessities of public services” (Art. 126).

In brief, the uniform image of the Muslim millet has been carefully preserved in the socio-political, administrative and legal structures of the Republican state. Having limiting practices of differential treatment to the case of non-Muslim minorities (formal citizens), principle of legal equality, with regard to different sections of the Turkish-

Muslim population (national citizens) has been carried out in a form of uniformity. Putting the matter differently, Turkish governments never considered granting official recognition and legal accommodation to ethno-cultural, linguistic and sectarian distinctions that existed among the Turkish-Muslim majority. Whenever there emerged any ethno-cultural claims among its Muslim elements, these kind of particularistic demands have officially been interpreted not in ethno-cultural terms of minority rights. The prominent example was the Kurdish question. Thus, although the Kurdish identity underwent an ethno-lingual disintegration and has been seeking official recognition and legal accommodation, particularly since the 1970s, the Turkish governments never examined it in ethnic terms to be considered in the context of minority protection. The PKK's separatist upsurge, which has dominated the Turkish politics for the last two decades, for instance, has officially been identified with economic backwardness, reactionary religious movements, or with tribal aspects of socio-economic relations prevalent in the region (Yeğen, 1996; Mesut, 1993).

7.3. Non-Muslim Minorities: Inegalitarian Treatment Revisited

One dimension of the Turkish minority rights regime centred on the socio-political and legal totalisation of the Turkish-Muslim citizens. The constitutional principle of equal treatment has been implemented within the terms of national uniformity that has constantly inhibited political and legal accommodation of group-specific distinctions that remained outside the scope of the Lausanne Treaty. The other dimension of the regime proved almost the reverse. Since the official ratification of the Lausanne Treaty, the Republican governments have bestowed official recognition to non-

Muslim distinctions and treated them accordingly. Non-Muslim citizens have received differential treatment with distinctive facilities of positive measures, among others, in the affairs of education, religious practices and cultural development.

However, the Lausanne regime secured not only group-specific instruments of distinct treatment but also legal-political foundations of citizenship equality. The two essential dimensions of the issue of minority protection, thus, were reconciled in the substantive formula of the Lausanne settlement. Contrary to the Lausanne commitments, however, the Turkish authorities have been unable to create a harmonious conciliation between those policies of citizenship equality and group-specific treatment. It was in this sense that ethno-cultural neutrality of Turkish citizenship remained a myth with respect to the official treatment of the formal citizens. The rhetoric of Turkish citizenship has advanced on a duality of “national” and “formal” citizenship as equal and full citizenship status has, in most cases, been reserved to the national citizens made up of the Turkish-Muslim population. Demographic, linguistic, cultural, religious and economic dimensions of Turkish nationalism have, therefore, progressed in a discriminatory manner against and at the expense of the formal citizens’ ethno-cultural and demographic presence.

7.3.1. Nationalist Attitudes of the Single-Party Period

As was noted before, although they were granted civil and political equality apart from the rights to different treatment, non-Muslim minorities have occupied a suspect place in the eyes of both state authorities and the general public. Their loyalty to the state and nation has often been considered unconvincing. In order to achieve a coherent form of national entity, that meant emergence of a true congruence between nationality and

citizenship categories, it was generally believed that the formal sections of the citizenry must have first been eliminated either through assimilation, integration or expulsion. However, in consistent with socio-political legacy of the Turkish-Muslim majority, the Turkish nation-building process has usually operated in an assimilationist (inclusive) manner only with regard to various Muslim elements whereas the same process has appropriated an exclusivist approach against non-Muslim minorities. It was these inclusion/exclusion practices, based on the peoples' national characteristics that sustained non-Muslim-exclusive policies in the Turkish context.

The official establishment of the Lausanne commitments was accompanied with an intensive process of demographic nationalization which meant in the Turkish context nothing but homogenisation in terms of religious affiliation. The Turkish-Greek exchange of populations became one of the earliest steps taken in this direction.³ Unwilling to live with a larger minority presence⁴, through the implementation of the exchange both states sought achievement of a this religious homogenisation. When the project was completed towards the end of the 1920s, more than 1.2 million Anatolian "Greeks" had been exchanged with Muslims of Greece who numbered about 400,000 (Aktar, 2000: 17).⁵ In conformity with the major premises of the Turkish minority rights regime, citizenship

³ The Turkish-Greek population exchange was agreed at Lausanne between the Turkish and the Greek authorities on 30 January 1923. According to the terms of the Convention, with the exception of the Greeks of Istanbul and the Muslims of the Western Thrace, Turkish citizens of the Greek origin were subjected to exchange with the Muslim minority of Greece (Psomiades, 1968: 120-126; Meray, 1969: 89-95).

⁴ Under the fresh memories of minority secessionism, Turkish authorities, at Lausanne, declared on several occasions that the Turkish government was no longer willing to maintain a minority presence on the Turkish territory. In the view of Ismet Pasha, a population exchange, particularly between Turkey and Greece, was necessary in order to dispense with the social grounds of confrontation and external interference (Meray, 1969: 186-200).

⁵ In fear of a possible Turkish revenge, approximately 1.350.000 out of 1.5 million Ottoman Greeks resident in Anatolian had followed the Greek retreat in 1922 and taken refuge in Greece. In this sense, On the part of the Greek side, the exchange was a fait accompli (Tekeli, 1998: 61). In the duration of the exchange, that took place between 1923-27, 149.851 Anatolian Greeks were exchanged with 355.635 Muslim citizens of the Greek state (Geray, 1970: 10).

status was reciprocally bestowed upon religious brethren, not ethno-linguistic kin, living on the other side of the national frontiers. Consequently, apart from Greek-speaking ones, the Turkish government exchanged many Turkish-speaking Orthodox citizens with many Greek-speaking or non-Turkish speaking Muslims including Pomaks, Albanians, Bosnians and Gypsies (Psomiades, 1968: 60-68)⁶. The population exchange, hence, resulted in “two deportations into exile, of Christian Turks to Greece and of Muslim Greeks to Turkey” (Lewis, 1968: 355).

The population exchange eliminated larger minority groups from the lands of both states. Since it credited those ideas of religious homogenisation, the practice considerably contradicted with the then prevailing scope of the *minorities treaties*. Having been based upon the refutation of those values of toleration, ethno-cultural diversity and plural coexistence, the exchange transformed approximately two million peoples from a status of minority into refugees (Ari, 2000; Koufa and Svolopoulos, 1991). Yet, the formula and implementation of the Convention remained quite loyal to the general framework of Turkish minority rights regime. In line of the Turkish minority definition, population categories submitted to exchange were assessed under the imprints of the Ottoman legacy. One’s faith was taken as the signifier of his or her majority/minority status in both of the countries. Ethno-lingual or cultural distinctions were completely disregarded. Religious affiliation became the sole criteria of national belonging in the duration of the exchange.⁷

⁶ Most of the deportees did not even know the language of the country to which they were sent. When the two parties met in Greece, the Greek deportees who were sent from Turkey and spoke only Turkish could not communicate with the Greek-Muslims who spoke only Greek (Yalçın, 1998; Aladağ, 1995).

⁷ Article 1 of the Convention reads: ...“there shall take place a compulsory exchange of Turkish nationals of the Greek-Orthodox religion established in Turkish territory, and of Greek nationals of the Muslim religion established in Greek territory”...

During the years of demographic nationalization, the government initiated a new process of exchange, this time, in the personnel of minority or foreign-owned companies, as they were compelled to exchange their foreign and non-Muslim staff with Muslim-Turkish citizens.⁸ It is estimated that by 1926 approximately 5,000 employees from the Greek minority had been replaced with Muslim Turks (Alexandris, 1992: 110). Indicating the “other” position of the non-Muslim minorities, the government blocked avenues of public employment as well. The *Law on Public Employment*, dated 1926, conditioned public employment with “being Turkish”, not with “being a Turkish citizen”. Hence, because non-Muslim minorities had been considered Turkish only in terms of citizenship, the law, in practice, excluded non-Muslim citizens from the state sector, making it an exclusive privilege for Turkish-Muslim citizens (Aktar, 2000: 118-121). Although the law was subsequently amended in 1962, having been isolated for a long time from public works, non-Muslim citizens have experienced little change in their occupational status in the state sector.⁹

The law violated the civil and political equality guaranteed by the Lausanne commitments and the subsequently elaborated constitutional setting, and so, the working prospects of non-Muslim minorities in the public sector were to a large extent curtailed. The next face of nationalizing policies was in the issue of the linguistic rights. As was explained, the free use of minority languages, both in public and private, had been

⁸ Indicating the unequal position of non-Muslim minorities, Fevzi Bey, the Minister of Public Works, declared in 1923: “According to arrangements concluded with foreign companies, the latter must engage Turkish employees only. This does not mean that they can employ all subjects of the Grand National Assembly of Turkey indiscriminately. They must employ Muslim Turks only. If the foreign companies do not shortly dismiss their Greek, Armenian and Jewish servants, I shall be compelled to cancel the privileges under which they are authorized to function in Turkey” (in Alexandris, 1992: 111).

⁹ A recent study demonstrated that though there remains today no official ban on employing minorities in the public sector, under the far-reaching influence of past policies few minorities have tried to obtain such positions. Many seemed to have lost hope that they could be employed in state offices (Koçoğlu, 2001).

provided at Lausanne. However, from the early years of the republic, the liquidation of minority languages became one of the most delicate aspects of national cohesion (Üstel, 1997: 240-242). Despite the fact that the first national census, dated 1927, assured that the overwhelming majority shared the “same race, blood and the substance”, existence of minorities who differed in “language, culture and history” still troubled political authorities (Dündar, 2000: 50-51). The Turkish language, therefore, began to be emphasized as an essential criterion not only for Turkish nationality but also for Turkish citizenship. It was argued that if one desired to have an equal and full access to Turkish citizenship, he or she must have first mastered the Turkish language.¹⁰

Therefore, instruction of minority languages was greatly limited even in minority educational establishments.¹¹ Subsequently, several municipalities agreed to discourage minority citizens from speaking a non-Turkish language in public places.¹² Parallel to official and intellectual approaches, overt expression of minority languages aroused resentment in the general public who came to consider it as the proof of arrogance and disloyalty.¹³ It was believed that linguistic Turkification was a moral obligation on the part of the non-Muslim minorities (Benbasa and Rodrigue, 1995: 103). A widespread

¹⁰ Indicating close linkages between Turkish nationality and full and complete citizenship, Celal Nuri Ileri, a prominent politician and journalist, delimited Turkish citizenship with the Turkish language. Ileri claimed that if minorities were to be admitted into equal framework of Turkish citizenship, linguistic rights of the Lausanne must have first been liquidated. For Ileri, as long as they maintained linguistic distinctions, non-Muslim minorities would hardly be equally treated within the terms of Turkish citizenship (in Bali, 2000: 107).

¹¹ The Unionist Law (1915), which had made it compulsory to teach Turkish language and to give the instruction of history and geography courses in Turkish, was restored in 1923. In following, Turkish was admitted as the sole medium of instruction in all elementary schools of the non-Muslim minorities (see Sezer, 1999: 17-35). As against the five-hour instruction of the Jewish and French languages, the Jewish communal schools came to teach in 1927 twenty-hour Turkish weekly (Galanti, 2000: 39).

¹² Several Turkish citizens of Jewish origin were fined in Bursa and Balıkesir for speaking Ladino (a Romance-Hebrew Sephardic Jewish language) in public places (Bali, 2000: 108).

¹³ A witness of the period remarked: “attitudes of the non-Muslims were quite arrogant. They did neither know nor try to learn Turkish but spoke mother tongues in high tones. I always took it as a demonstration of communal strength and disloyalty to the state. They were enjoying time in their closed communities

campaign of ‘*Citizen! Speak Turkish*’ – one periodically repeated throughout the 1950s – was, consequently, initiated in 1928 in the Turkish press, political circles and the general public against the persistence of minority languages.¹⁴ The campaign intended to manipulate the government and public opinion. Although no legislative act was concluded in this direction, it succeeded in creating public hatred against minority languages. Many of the minorities were harassed, insulted, attacked or beaten in the streets for reading a non-Turkish document or speaking a minority language (Galanti, 2000; Bali, 2000: 131-149).

Thus, notwithstanding national and international obligations undertaken in relation to the protection and promotion of minority languages, linguistic distinctions came to be perceived, by the early decades of the Republican regime, incompatible with the terms of national projects and equal citizenship. Having been aware of the fact that they had obtained international guarantees to protect and reproduce communal languages, non-Muslim citizens became the primary subjects of linguistic Turkification. Istanbul, Izmir and Edirne, where non-Muslim minorities constituted a considerable proportion of the resident population, were the major centres of the linguistic campaign. In conformity with the general scope of the Turkish minority rights regime, almost no special attention

without bounding themselves with the interests of the country. They were earning much and consuming pretentiously...(and) all these were irritating us” (İlmen, 1998)

¹⁴ Under the pressure of the campaign, prominently the Jewish minority established a number of communal institutions in order to disseminate Turkish language among its members. The Commission for the Dissemination of Turkish Language (*Türk Dilini Yaygınlaştırma Cemiyeti*) and the Association of National Culture (*Milli Hars Birliği*) presented two examples (see Bali, 2000: 133). On the other hand, in the same years, two Jewish intellectuals, A. Galanti (2000) and M Cohen (M. Tekinalp), introduced several projects of linguistic Turkification. For the former, expansion of the role of Turkish language in the minority educational establishments would be a useful method. In the view of Cohen, if the Jewish community desired to become full and equal members of the Turkish nation, they had to fulfill “ten commandments” which included: 1. Turkify names, 2. Speak Turkish, 3. Pray (at least partly) in Turkish, 4. Turkify your schools, 5. Send your children to state schools, 6. Become involved in state affairs, 7. Mingle with Turks, 8. Uproot the spirit of communal separation, 9. Do your share for the national economy, 10. Know your rights (in Landau, 1984: 23).

was given to the non-Turkish speaking Muslims who were already under the effect of a uniform educational system (Aktar, 2000: 131).

On the other hand, parallel to the rising trend of nationalist currents in Europe, the emphasis of Turkish nationalism shifted in the 1930s from Turkish-Muslim culture to Turkish-ethnic cores. It was in this context that Atatürk promoted the foundation of the Turkish Historical Society (*Türk Tarih Kurumu*) and the Turkish language Society (*Türk Dil Kurumu*) whereby the “Turkish history thesis” and the “sun-language theory” was introduced (Oran, 1997: 200-207; Özdoğan, 1996). This ideological transformation by no means instigated an essential change in the practices of the Turkish minority rights regime being based upon exclusivist categories of the Muslim/non-Muslim duality.¹⁵ Nationalist policies continued to seek their targets in the presence of non-Muslim minorities. An immediate affect of this was seen, in the year of 1934, in the promulgation of a new settlement law (*İskan Kanunu*) which greatly restrained living conditions, especially for those non-Muslim minorities who inhabited strategic regions of the country. Citing the political, cultural and security considerations of the state, the Law closed certain parts of the country to non-Muslim minority settlement.¹⁶

From the legal point of view, the Law contradicted with the third paragraph of the Article 38 of the Lausanne Treaty which stipulated that “non-Muslim minorities will

¹⁵ The Gagauz Turks, who spoke Turkish but followed the Orthodox-Christian faith, were not allowed to migrate to Turkey in the mid 1930s. Because of religious distinction, they were not considered to fall under Turkish national identity. In the same period, however, large groups of Balkan Muslims from various ethnic and linguistic backgrounds were accepted into Turkey (Kirişçi, 2000: 1-22).

¹⁶ Article 2 of the Law divided Turkish territory into three zones: 1. Areas assigned to the settlement of those who belonged to Turkish culture, 2. Areas assigned to the settlement of those who were to be assimilated into Turkish culture, 3. Areas closed to human settlement because of military, health, security, economic and political considerations (Law No. 2510). The first two zones signified settlement areas of the Turkish-Muslim citizens whose cultural and linguistic amalgamation was traditionally desired. This reflected existence of a persistent interest in the uniform categorization of the Turkish-Muslim population. As their settlement areas were limited, non-Muslim minorities' assimilation into an all-inclusive Turkish national identity was considered unconvincing (TBMM, 1934).

enjoy full freedom of movement and of emigration subject to the measures applied, on the whole or o part of the territory, to all Turkish nationals...". The law discriminated the non-Muslim citizens in regulating their movement and emigration conditions within the country. Although the dominant idea behind the Law was to assimilate non-Turkish speaking Muslims into Turkish national category, the practice was promoted at the expense of non-Muslim minorities. In particular, those non-Muslim citizens who inhabited strategic regions, such as the Turkish Thrace and Straits, were destined to evacuate the place (Bali, 2000: 246). In so doing, the legal act revived traditional practices with its legal-political aspects of inegalitarian treatment. As a result, political authorities and the general public once again reaffirmed traditionally 'other' and "unreliable" position of the non-Muslim minorities.

The growing nationalism and those feelings of anti-Semitism, indeed, sustained the emergence of the settlement law (Toprak, 1996; Levi, 1998: 102). Because of this, after the promulgation of the Law, particularly the Jewish citizens found themselves under an increasing pressure of uprooting. The act was accompanied in the Turkish Thrace with economic boycotts and physical assaults carried out against minority citizens. Many Jewish houses and work places were either burned or plundered (AT, 1934c: 53).¹⁷ The Jewish residents of Turkish Thrace, consequently, were forced to evacuate the region, with more than 10,000 of them forced to seek refuge in Istanbul in the summer of 1934 (Karabatak, 1996; Levi, 1998: 10).¹⁸

¹⁷ It was admitted that the affair was organized by the nationalist sections who had no direct relationship with the government. Yet, it was also recognized that local branches of the RPP would have involved in the emergence of the nationalist attacks (Toprak, 1996). The government officially condemned the affair and promised that criminal officials and peoples were going to be subjected to administrative and judicial investigation, and plundered properties were going to be returned to their owners (AT, 1934c: 52-54).

¹⁸ According to official numbers, in the aftermath of the affair, 3.000 out of 13.000 Jews fled to Istanbul (AT, 1934c: 53).

Both political authorities and the press related the affair to affects of anti-Semitism which was then growing in the world (AT, 1934a: 78-79; AT, 1934c: 52). Another commentator thought that the affair resulted from economic exploitation of the Jews on the Turkish peoples who had made great sacrifices for the good of the country and most deserved to benefit its advantages (AT, 1934b: 78). But, it was also believed that the security concerns of the settlement law played a larger role in the emergence of the affair. The persistence of linguistic and cultural distinctions, in particular, in the strategic regions was seen inconsistent with security concerns of the country According the Yunus Nadi, the “real” ground of anti-Semitism in the region, was the fact that since the Jews had insisted on not speaking Turkish, Turkish residents of the region, where was a non-military zone, had considered them dangerous for the security of the country (AT, 1934a: 78-79). Similarly, Şükrü Kaya, the Minister of Internal Affairs, reported to the government that due to fact that they continued to remain in a “foreign” language and culture, there was a widespread suspicion on the Jewish residents of the region (Thrace and Çanakkale), where was a non-military zone, that they would jeopardize the security of the country (AT, 1934c: 52).

By the beginning of World War II, discriminatory policies against non-Muslim minorities increased. In the early months of the war, for instance, in fear of minorities’ fifth column activities, non-Muslim males, aged 25-45, were suddenly taken into military service where they were held under a sort of surveillance for about one-and-half years (Bali, 1998). However, the Turkish minority rights regime presented a stronger inegalitarianism in the implementation of the Capital Tax (Law No. 4305-*Varlık*

Vergisi).¹⁹ When enacted in November 1942, the law had, in fact, been promulgated in order to levy extraordinary wealth earned through exploiting the then prevailing wartime conditions.²⁰ But, it has been argued that apart from the officially declared one, the law had concealed an implicit objective of levelling off the non-Muslim presence from the country's commercial life (Akar, 1999: 166-167). Saraçoğlu, the Prime Minister, for example, is reported to have stated in the parliamentary group of the then ruling Republican Peoples Party (RPP) that:

This law, at the same time, entails a revolutionary nature in the sense that it will introduce an opportunity to achieve our economic independence. (Because) in doing this, while eliminating the non-Turkish elements from Turkish economy, we will be able to hand over, on the one hand, the Turkish economy to Turks. On the other hand, with this law, we will be able to transfer importable estates in Istanbul to Turkish hands...In short, this law will put an end to the economic superiority of non-Turkish elements in the country (Barutçu, 2001: 594).

In the same speech, the Prime Minister declared that the non-Muslim elements would be assessed %75 higher than those of the Muslim-Turkish citizens. Therefore, though Saraçoğlu insisted on several occasions that the government recognized no distinction between various citizens of the country (Yalman, 1997: 1253-1254), the taxpayers were categorized on the basis of the traditional duality rooted in the general framework of Turkey's minority rights regime. One's creed determined the amount of the tax to be assessed. The tax lists classified payers into two major groups of M (Muslim)

¹⁹ Provisions of the Tax stipulated that proportions were to be assessed by the Tax Assessment Boards composing of governmental, commercial and local authorities of each town, city or district (Art. 7). The amount had to be paid in cash within fortnight. Another 15 days were allowed but with the penalty of increasing the original amount by 1 percent weekly. In the cases that the tax was still unpaid, the entire property of the taxpayer was to be confiscated and himself was to be subjected to forced labor (Art. 12).

²⁰ Saraçoğlu blamed the cause of the economic problems to the passions and speculative acts of the commercial circles and thought that in order to dismiss economic illnesses, a special tax must have been levied upon the wealth of those who earned much from economic circumstances of the war years (AT, 1942a: 40). It was to be an extraordinary tax, because, for F. Ağralı (Minister of Finance), traditional instruments were insufficient to tax earnings obtained war-time circumstances (AT, 1942b: 22-40).

and G (*Gayrimüslim*, non-Muslim). Subsequently the two other categories of E (*Ecnebi*) for foreigners²¹ and D (*Dönme*) for the Jewish converts²² were added (Ökte, 1987: 19).

The non-Muslim categories were assessed a proportion of five or ten times higher than those of the amounts levied on Turkish-Muslim citizens (Ökte, 1987: 34-35). Thus, the burden of the tax fell on the shoulders of non-Muslim minorities.²³ Most significantly, those who declared their inability to pay the assessed amount were banished to labour camps established in the remote corners of Anatolia where they were expected to pay off the tax by working for the state.²⁴ Interestingly, though the liability to forced labour was, in principle, applied to Turkish-Muslim defaulters as well, in conformity with the inclusion/exclusion practices of the Turkish minority rights regime, the administrative organs and government refused to dispatch Muslim Turks to labour camps (Ökte, 1987: 71-72). Notwithstanding the fact that many Muslim citizens too had failed to pay the assessed amount in Izmir, none of them took place among the deportees who were sent to the labour camps established in Sivrihisar (Güçlü, 1993).

Towards the end of the WWII, the government cancelled the implementation of both the Capital Tax and the labour camps. All those who had hitherto been kept in camps were released and the amounts still unpaid were rendered null. Many of the non-Muslim minorities, however, had already gone to economic ruin which created immense

²¹ Upon diplomatic protests, the category of foreigners was dropped from the context of discriminatory taxation and was assessed on the same footing as Muslim citizens (Ökte, 1987: 37).

²² The category of the *Dönme* referred to those Jewish converts to Islam who belonged to the Sabataist persuasion. For a detailed study conducted on the community (Zorlu, 1998).

²³ A number of detailed study conducted on the implementation of the Capital Tax (Ökte, 1987; Akar, 2000; Aktar, 2000: 135-215).

²⁴ Many deportees had been assessed taxes over TL 100.000, that is, they would have to undertake hard labor for over 250 years in order to clear his dept (Ökte, 1987: 25). Despite the fact that the law had exempted them from forced labour, many old-aged and sick peoples took place among the deportees (Kandemir, 1962).

collapse in the psychological and social situation of the non-Muslim citizens.²⁵ In order to pay the assessed amounts, many taxpayers had to sell their properties and real estates, approximately 98 percent of which was bought out by the Turkish-Muslim citizens (Aktar, 2000: 204). From the political point of view, therefore, the Capital Tax represented another stage in the inegalitarian practices of the Turkish minority rights regime. Muslim/non-Muslim segregation of the Ottoman legacy was reproduced with its internal aspects of legal-political inequalities. As a result, non-Muslims' confidence to comprehensive framework of the Lausanne commitments was once again shaken. They largely lost their belief that non-Muslim distinctions would find an equal accommodation in the citizenship practices of the Republican state (Ökte, 1987: 94).

7.3.2. Internalisation of External Crisis: Minorities in the Multi-Party Period

In the aftermath of the war, Turkey took its place in the Western world which was promoting democratic governments and individual human rights. Hence, the Turkish political system began to transform its autocratic structures towards liberal-democratic model of politics. The single-party rule of the RPP was replaced by Democrat Party (DP) government in 1950. Liberal-democratic transformation of the political system raised hopes among members of minority groups as well. It came to be said among minority citizens that religious, linguistic and cultural distinctions would no longer be subjected to discriminatory governmental policies but would henceforth be treated equally in law and in fact. Indeed, during the early years of the DP government, inegalitarian practices lost effect. Although public employment of the non-Muslim minorities were still out of

²⁵ A good example of this eventual collapse was illustrated by Zaven Biberyan (1999) in his famous novel named *Babam Aşkale'ye Gitmedi* (My father did not Go To Aşkale).

question, non-Muslim minorities, for example, came to be appointed to significant university posts and began to receive equal treatment in the military service (Bali, 1998a). On the other hand, the Orthodox Patriarchate was permitted in 1951 to accept foreign students to the Seminar of Khalki. On the basis of a reciprocal agreement, the government subsequently allowed Greek teachers to take part in the educational establishments of the Greek minority (Oran, 2001: 592).

It was expected, therefore, that substantive principles of the Turkish minority rights regime, as established at Lausanne, would take higher respect in the new period. However, it became obvious by the mid-1950s that the democratic context would hardly wipe away the imprints of the foundational duality embedded in the Turkish minority rights regime. Ethno-cultural difference continued to be associated with socio-political and economic practices of inegalitarian and discriminatory treatment. Political authorities and the general public continued to rank non-Muslim citizens within exclusivist categories of “unreliable”, “undesirable”, and “foreign” residents of the country.

Unlike the previous decades, the position of non-Muslim minorities in the new period began to be shaped not by nationalist aspirations of internal politics but by diplomatic crises of external relations. Having been constituted in a category of internal extensions of external enemies, non-Muslim minorities frequently lost their socio-political and economic security inside whenever the Turkish governments faced diplomatic crisis outside. The first example of this attitude surfaced by the mid-1950s from strained Greek-Turkish relations over the issue of Cyprus.²⁶ As Turkey and Greece

²⁶ Parallel to the de-colonization movements of the period, the Greek Cypriots launched an anti-colonial struggle against the British rule by the early 1950s. However, the movement was seeking not only liberation but also union with its kin-country Greece that was undesirable for the Turkish residents of the Island. Because of this, the target of the Greek resistance involved not only the British rulers but also

disagreed on the final status of the island, the loyalty of non-Muslim minorities once again began to be questioned inside. Anti-minority feelings were once again cultivated in the minds of the Turkish peoples (TT, 1986).

It was in this context that instead of being Turkish citizens with full and equal rights, members of the Greek minority began to be treated as “foreign” and “dangerous” residents of the country who were to be expelled *en masse* (Benlisoy, 2000). Most significantly, the Greek minority was frequently pinpointed as the target of a possible Turkish retaliation that came true on the night of 6-7 September 1955 (Alexandris, 1992: 256). Having been inflamed by the Cyprus crisis, angry crowds in Istanbul and Izmir destroyed cultural, religious and economic presence of minorities. According to Nesin (1990: 30), the mass attacks of the night reminded the St. Barthelamov’s Day of the French Protestants. Toker (1991: 144) illustrated the excesses of the night in his following remarks:

I would never forget the situation that *Beyoğlu* street displayed at that night. The street was full of clothes and other things thrown out of shops. Refrigerators, radios, washing machines were on the floor... it had any sense of nobility... Istanbul lived, perhaps, the worst night of its history. People were in panic. Everywhere was like a fire-place. Nobody knew what to do. The authority of both government and the state had been lost in the anger of crowds.

The masses would only be taken under control after the government declared martial law. The total amount of damages assessed in Istanbul alone was estimated at \$60 million (Alexandris, 1992: 259).²⁷ Official sources reported that in the course of the incident 3 people were killed and 30 injured (Dosdoğru, 1993: 100). Helsinki Watch

Turkish Cypriots. Despite the fact that it denied hitherto to associate itself with the question, Turkish governments involved in the Cyprus crisis by the middle of the 1950s. In order to find a final solution to the question, Turkey, Greece and Britain started negotiations. But, upon the failure, Greek-Turkish relations strictly strained by the fall of the 1955 (Gürel, 1993: 53-65).

²⁷ The damages included 1004 houses, 4348 shops, 27 pharmacies and laboratories, 21 factories, 110 restaurants, cafes and hotels, 73 churches, 26 schools, 5 athletic clubs, and two cemeteries (Alexandris, 1992: 259). In Izmir, the attacks destroyed 14 houses, 6 shops, 1 pavilion, the Greek Consulate, and a Greek church. It was reported that 57 persons were wounded in the same city (Kılıçdere, 2000).

subsequently reported that human losses totalled, in fact, 15 (HRW, 1992: 50). The Greek sources, on the other hand, estimated that 25 persons were killed and another 600 wounded (Averoff-Tossizza, 1986: 49). A number of people were arrested and taken under custody in the aftermath of the night.²⁸ The government promised compensation for material casualties. To this end, the Parliament enacted a special law, but the law limited the amount with TL 60 million in total (TT, 1986: 19). It was insufficient because, within a month, 4433 citizens had already applied for TL 69.578.744 (Kocabaşoğlu, 2000: 47).

These incidents damaged the international prestige of the Republican State. The meaning of international guarantees relating to the circumstances of the non-Muslim minorities disappeared in the mass anger (Oran, 2001: 601). In particular, the Lausanne framework had lost effect within a few hours. Because of this, apart from material and human losses, 6/7 September contributed to spread those feelings of emotional destruction, regret, resentment and fear in the hearths of minorities. In contrast to widely shared expectations that minorities would benefit from the democratic transformation of the country, traditional vulnerability continued to mark social position of minorities in Turkey. The affair, hence, encouraged many persons from Greek, Armenian and Jewish minorities to opt for emigrating from Turkey (Akman, 1992: 27). Indeed, although no definite number has been given, it is estimated that an increasing number of minority persons with Turkish nationality sold their property and moved abroad in the aftermath of the affair (Çelik, 2000; Alexandris, 1992: 42-44). The most enduring affect of the 6/7

²⁸ 6000 persons in Istanbul, and 165 in Izmir were taken under custody in the aftermath of the affair (Demirer, 1995: 114). The arrests were accused of destruction of property, looting, spread of communist propaganda, theft, sabotage, murder, attacking against religious and sacred establishments and revolting

September, therefore, appeared on the declining size of non-Muslim population. It was because of this, the affair was considered to signify the final stage in the gradual collapse of the imperial cosmopolitanism in Turkey (TT, 1986; 11).

The last blow to the presence of the Greek minority came to the forefront when the Turkish government cancelled the Ankara Convention (1930) which had granted legal status to the existence of more than 17.000 Greek citizens resident in Istanbul, those of the so-called *etablis* Greeks (Gönlübol and Sar, 1974: 68-69).²⁹ Although they legally held Greek citizenship and subjected to population exchange, depending upon commercial and familial connections they had been permitted to stay in Istanbul. In so doing, many of them had engaged in intermarriages, joint investments, social and religious activities with Turkish citizens of Greek descent. By the 1960s, parents and children, grandparents and grandchildren had come to retain different citizenships (Demir and Akar, 1999: 90). Notwithstanding the absence of Turkish citizenship in legal terms, many *etablis* had taken place in the political life of the country as well.³⁰

The terms of the Ankara Convention were generally observed until the middle of the 1960s. The London-Zurich accords, that established a partnership government in Cyprus in 1960, further consolidated the status of the Greek citizens in Turkey. However, when the Greek-Cypriots turned, in 1962, to *enosis* policies in violation of the Zurich-London accords, diplomatic relations of the motherlands too exacerbated (Bahcheli, 1990: 51-94). Its immediate consequence affected the shaky position of Greek minority, particularly that of the *etablis* Greeks. Gradually an anti-minority atmosphere grew up in

against the authority of the government. No suspect, however, were found guilty and all were initially released (Dosdoğru, 1993: 17-93).

²⁹ The Greek citizens of Istanbul numbered 26.431 in 1927, 17.672 in 1935, 13.598 in 1945 and 11.879 in 1955 (Alexandris, 1992: 281).

the government and the general public. Starting from the year 1962, the Greek minority came to be represented again as the fifth column force of the Greek irredentism, a source of friction, enmity and social virus in the country. Both the public opinion and the government were convinced that the national security and the long-term interests of the country demanded expulsion of the Greek elements (Demir and Akar, 1999: 64-67).³¹

First, bank accounts belonging to the Greek minority were frozen. Next, Greek citizens were prohibited to obtain real estate in Turkey (HRW, 1992: 9, fn. 12).³² In following, the government cancelled the Ankara Convention on 16 March 1964 and began to deport *etablis* Greeks from Turkey on the ground that they were dangerous to the internal and external security of the country. In a few months, approximately 9.000 Greek citizens were obliged to leave Turkey for Greece on the ground that they endangered national security of the country (Bahcheli, 1990: 174). When the government refused renewing residence permits of the Greek citizens, the number exceeded 11.000 by the September 1964 (HRW, 1992: 9).

Nevertheless, measures of expulsion by no means limited to the Greek citizens. As was explained, due to the fact that many deportees had hitherto established familial and economic connections with the Turkish citizens of Greek origin, deportation of one Greek citizen resulted, in practice, in actual uprooting of the whole family. This is why, the affect of the governmental decision far exceeded its original objective. Apart from the

³⁰ Before being expelled in 1965, Neoklis Sarris, for example, was one of the leading figures in the RPP's youth branches in Istanbul (Interview).

³¹ M. Soysal, the spokesman of the government, announced in July 1964: "in response to the unfriendly policy of the Greek government, the Turkish government decided to terminate privileged treatment that has hitherto been accorded to the Greek nationals in Turkey (HRW, 1992: 9)...unless the Greek government changed its prevailing attitude relating to the Cyprus question, all the Greek nationals in Istanbul might be expelled *en masse*" (Alexandris, 1992: 282).

Greek citizens, throughout the implementation of the expulsions, 30.000 Turkish nationals of Greek descent permanently left Turkey (HRW, 1992: 9). Thus, despite the fact that most of them were under the scope of the Lausanne regime, the abrogation of the Ankara Convention resulted in the expulsion of more than 40.000 Greeks.

The impetus of the official action was a diplomatic objective undertaken in order to force the Greek government to come to terms over the Cyprus question. The government itself did not believe that the Greek minority would be held responsible for the atrocities and enosis policies of the Greek-Cypriots and the Greek state. Later, Ecevit, the then ruling Minister of Labor, admitted this point in his following words:

The impetus of the governmental action was the catastrophic atrocities of the Greek-Cypriots that were intensified against the Turkish brethren during the late 1963 and the early 1964. Turkey, then, was unable to interfere in the Island to save the Turkish-Cypriots. Military capacity of the country was not sufficient to accomplish this policy. Under these circumstances, Turkey manifested its reaction in a very erroneous way. Despite the fact that they played no role in what was going on in Cyprus, the Greeks of Istanbul were compelled to leave Turkey (in Demir and Akar, 1999: 201-202).

Thus, Greek residents of Istanbul were sacrificed to the Greek-Turkish diplomatic tensions. After the population exchange of the early Republican years, the expulsion became the second great wave in the emigration of the Greek minorities. Although no direct relation was officially expressed between two different issues of minority rights and external relations, the persistence of diplomatic tensions between Greece and Turkey reflected its effect on the educational facilities of the non-Muslim minorities as well. During the intense crisis in Cyprus and in the Greek-Turkish relations, new restrictions were induced on the implementation of the Lausanne's minority rights regime. The most obvious example of this governmental attitude, with far-reaching implications on the part

³² According to official reports, 2902 estates, with an estimated value of \$261 million, were confiscated in the course of the exodus (Demir and Akar, 1999: 89-90). The Greek sources estimated total value of the deportees' property about \$500 million (Alexandris, 1992: 285).

of Turkish minority rights regime, was the closure of the Theological Seminar Khalki (*Heybeliada Ruhban Okulu*) in 1971.

. In the context of the traditional immunities, the Seminar had been established in 1844. Its mission was to educate clerical staff to the service of the Orthodox Patriarchate. After the Turkish government affirmed at Lausanne that non-Muslim minorities “shall have equal rights to establish, manage and control at their own expense,...any schools and other establishment for instruction and education” (Art. 40), the original form of the Seminar was held intact in the new framework of the Turkish minority rights regime. Educational capacity of the school further expanded in the early 1951 when the Ministry of National Education permitted that the Seminar would incorporate the High-School of Theology and, apart from the Greek minority, foreign students would be accepted to the Seminar (Özyılmaz, 2000; Oran, 451).

The closure, however, was not a direct abdication of the right. The governmental act depended upon the existence of a legal inconsistency between constitutional principles and the identical provisions of the *Law on the Private Educational Institutions* (*Özel Okullar Yasası*). Thus, although the constitution had prohibited establishment of higher educational institutions by individuals or corporate agents outside the state, the Law had also retained permissive provisions in this direction. On the application of the Council of the State (*Danıştay*), the Constitutional Court amended in 1971 two articles of the Law. In accordance with the terms of the article 120 of the Constitution³³, the Court came to a conclusion that no private or corporate actor, except the state, would have any right to establish higher educational institutions (Özyılmaz, 2000: 96-98).

It was upon this court decision that although its high-school (*Heybeliada Özel Rum Erkek Lisesi*) was preserved intact, the department of Seminar was closed down. However, following the gradual decrease in the number of enrolled students, the high school too was closed down by the Patriarchate in 1984 (Özyılmaz, 2000: 96-102; Oran, 2001: 451). The seminary had been the centre of Orthodoxy for centuries in ecclesiastical learning. In consequence, the decision affected the educational capacity of the Greek-Orthodox Patriarchate. It is for this reason that since the early 1990s, the restoration of the institution to its original position has occupied a prominent place in the issue of minority rights in Turkey (Oran, 2001: 451).

Furthermore, during the 1970s and '80s, attacks on Turkish institutions and diplomats by the ASALA (Armenian Secret Army for the Liberation of Armenia)³⁴ worsened particularly the social position of Turkey's Armenian minority (Sıvaslıyan, 1992). Under the influence of the ASALA terrorism and the increasing Greek-Turkish tension on the Cyprus question, corporate power of the foundations came to be regarded dangerous to Turkey's national interests. It was legally documented by the Council of State two months before Turkey intervened in Cyprus that "since corporate bodies were likely to be stronger than private individuals, no corporate body, constituted by *non-Turkish* citizens, would obtain real estate. Otherwise, it would be impossible to prevent the emergence of inconvenient and dangerous circumstances for the security of the state" (CD, 999). It was in this context that governmental authorities began to liquidate real properties belonging to the corporate personality of the minorities' pious foundations.

³³ Article 120 reads: "Universities shall be established only by the state and in accordance to the regulation of a special law... under the supervision and inspection of the state authorities, shall be administered by autonomous bodies elected by the members of these institutions".

In fact, apart from guaranteeing non-Muslims' religious and charitable foundations, Turkish government had committed, at Lausanne, to treat the same foundations on the same footing as the Muslim ones. Article 42 of the Lausanne Treaty affirmed that "all facilities and authorization will be granted to the pious foundations of the said minorities...which are granted to other private institutions of that nature" (Art. 42). The legal ground of the official action, under these circumstances, was based on the property lists that had been required in 1936 from both Muslim and non-Muslim foundations.³⁵ The government recognized the list of the 1936 declaration as the true property of a given foundation. Thus, although pious foundations of the non-Muslim minorities had continued to get new properties, through either donation or purchasing, all of these properties, obtained between the years 1936 to 1974, were considered illegal. The properties, therefore, were returned to heirs of those who had denoted them to the foundation. If no potential owner could be found or the property had been obtained by purchasing, then it was confiscated (Oran, 2001: 229).³⁶

The confiscation, in the eyes of the minorities, represented another phase in the discriminatory treatment. Liquidation has meant the financial collapse of the foundations that hitherto relied on the revenues earned merely from the rents of the properties. This is why, as the pious foundations lost its properties, their capacity to fulfill communal services in the affairs of religion, education and charity was also curtailed. Bearing this

³⁴ ASALA staged 86 attacks against the Turkish nationals between the years 1975-1985, which killed 47 Turkish citizens, 32 of whom were officials, and injured 19 officials (Franz, 1994: 327).

³⁵ In order to hold economic sources of pious foundations, particularly those of the Muslim ones, under state control, the Law on Pious Foundations (*Vakıflar Kanunu*), dated 1936, urged the foundations to make a declaration on the list of properties that they possessed at the time

³⁶ It was asserted that with a secret declaration, the government of the military rule assured in 1981 that no further action was to be taken against the property of the non-Muslim minorities' pious foundations (Aktüel, 1999). However, the Law remained in force and the confiscation lasted especially upon the properties belonging to Armenian foundations (Oran, 2001: 229).

fact in mind, it was rightly argued that the post-1974 acts on the communal properties indicated, in practice, not only the violation of property rights but also of educational rights. Having lost their financial sources, apart from several community hospitals, many minority schools were gradually closed down (Radikal, 1999).

To sum up, legal-political and administrative practices of the Republican minority rights regime helped to replicate the Muslim/*dhimmi* compartmentalization with its latent aspects of inegalitarianism. Although the Lausanne framework formulated a substantive framework of citizenship equality, almost no compromise would be achieved between the principles of civil and political equality and the group-specific dimension of minority treatment. In practice, the notion of full citizenship has exclusively been reserved to the Turkish-Muslim sections of the population. Thus, inegalitarian treatment of the Republican regime exhibited that though they were formally considered equal citizens irrespective of ethnic, religious and linguistic distinctions, the practice proved the reverse. In the case of the non-Muslim minorities, the right to ethno-cultural and linguistic differentiation went hand in hand with extensive practices of discrimination. Minorities, therefore, came to believe that only Muslim nationals were full citizens of the Republic and that they were not considered “citizen” even within the limited meaning of the concept (Bali, in Kaplan, 2000).

7.4. Towards a Regime of Substantive Equality: The post-Cold War Era

Two major transformations that occurred in Turkey by the middle of the 1980s, began to challenge traditional practices of the Republican minority rights regime relating to the official treatment of both Muslim and non-Muslim distinctions. Internally, the

imagined unity of the *anasır-ı İslamiye* that had been carefully upheld, at least, from the years of the national struggle, entered in a process of disintegration along the demarcating lines of ethno-lingual and sectarian particularities. Peoples' interest in receiving legal-political recognition and accommodation for their sub-national identities that existed among "national citizens" of the country gradually became widespread.

It was quite evident by the 1990s that traditionally monolithic formulation of the *Turkish millet* would no longer meet identity claims brought forth by the different sections of the Muslim citizens. In particular, the ethnic-Kurdish, Alevi-sectarian and fundamental-Islamist groups came to take a critical stand against the uniform definition of the national citizenship. Islamist groups, for example, projected an Islamic version of "social contract" modeled upon the example of the plural practices of the golden age of religion and called for liberating religious life from judicial and administrative interference of the state (Bulaç, 1992). The Turkish citizens of Kurdish origin, on the other hand, came to attribute greater interest to the issue of official recognition, legal-political accommodation and of the free expression of ethno-linguistic characteristics particularly in the fields of education, radio/TV broadcasting and cultural activities (Ekinci, 1997). As well, non-Muslim minorities began to produce retrospective criticisms against the inegalitarian practices of the Republican citizenship, and have sought the implementation of substantive reforms that would relieve their "second-class" position in the country (Levi, 1998; Saul, 1999; Bali, 2000; Koçoğlu, 2001). Discriminatory treatment, particularly, in the affairs of non-Muslim minorities' religious education and property rights of the pious foundations came to the forefront in the Turkish minority rights regime (Oran, 1994; Oran, 2001: 449-452; Baydar, 1999; Berberakis: 1998).

Externally, as was explained before, the end of the Cold War unleashed minority problems all over Europe in the 1990s that had been frozen within the ideological confrontations of the previous decades. The issue of equal accommodation of minority distinctions within a plural configuration of legal-political settings began to preoccupy national and international circles for both security and humanitarian considerations. It was in this context that as given above, apart from the UN, the CoE and the OSCE, the EU has attributed greater significance to the protection and promotion of cultural, linguistic and religious characteristics of minority peoples. As a result, humanitarian packages of the European regional organisations gradually shifted from the minimalist principles of equality and non-discrimination towards substantive accommodation of minority distinctions. Apart from citizenship equality, minority peoples have, therefore, been provided with positive measures of differential treatment allowing protection and promotion of their ethno-cultural particularities. It was in this context that the Copenhagen Summit of the EU Council affirmed in 1993 that a candidate country must have achieved, before accession, among others, stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

7.4.1. The Impacts of the post-Cold War European Standards

The emergence of a comprehensive regime in the post-Cold War acts of the European-regional organizations has constrained traditional norms and practices of the Turkish minority rights regime. In particular, with the intensification of EU-Turkey relations, the Turkish governments became more prone to increasing international pressures in issues of democratization and minority protection. The same pressures

strengthened the effect of minority claims within the country. Starting from 1998, for example, the EU Commission's annual reports have included comprehensive assessment of the prevailing condition of minority treatment and the legal-political status of sub-national differences in Turkey. Generally speaking, drawing attention to the traditional shortcomings of minority protection in Turkey, the reports have insisted on the extension of official recognition from three non-Muslim communities (Armenians, Greeks, and Jews) to the Kurdish, Alevi and Assyrian groups. As well, it was recommended that Turkish governments would facilitate cultural and political expression of minority differences. To this end, it was insisted that both Muslim and non-Muslim sections of minority groups were to be provided with legal-political instruments through which they would promote and protect their distinct identities. In doing this, the reports suggested that Turkey was to undertake appropriate steps in the direction of integrating its constitutional regime with the contemporary standards of minority protection specified particularly in the latest documents of the CoE and the OSCE (CEC, 1998; CEC, 1999; CEC, 2000a; CEC, 2001; CEC, 2002).

Give the limited aspects of the Turkish minority rights regime, the 1998 Regular Report of the Commission, for example, put emphasis on the traditional shortcomings of the Lausanne Treaty. It was accordingly laid down that in Turkey there is a *de jure* and *de facto* difference with regard to the official treatment accorded to minorities" those who are recognized under the Lausanne Treaty and those who are outside its scope. In accordance with the Lausanne Treaty, it was admitted, three minorities are officially recognized by the Turkish State: Armenians, Jews and Greeks, each of whom freely manages its own churches, schools and hospitals. As for those who remained outside the

scope of the Lausanne Treaty, it was also pointed out that the Assyrian Orthodox religion is not recognized as a religious minority and is subject to pressures in the exercise of its religious education. In addition, the Commission drew attention to the fact that Turkey's Alevi Muslims are not permitted to have legal-political measures pertinent to the exercise and development of sectarian distinctions. In particular, it was broadly argued that the Turkish authorities do not recognize the Kurds as a national or ethnic minority, considering them to be simply Turks of Kurdish origin. The Commission suggested that the latter should be provided with the recognition of certain forms of cultural identity and greater tolerance of the ways of expressing that identity. In this context, the Commission urged the Turkish government to allow the use of the Kurdish language in political communication or in education and radio/TV broadcasting (CEC, 1998).

Thus, in contravention with the traditional scope and practices of the Turkish minority rights regime, the EU documents promoted expansion of official recognition to those Muslim and non-Muslim elements of the population who had hitherto remained outside. Leaving aside the *de facto* minority status of the Assyrian communities, the Alevi and Kurdish concern of the reports particularly challenged the uniform configuration of the "national citizens". For doing this, both the CoE and the EU organs suggested that Turkey would have to sign the CoE's minority documents including the *Framework Convention on Protection of National Minorities*, the *European Charter for Regional and Minority Languages* as well as the *Assembly Recommendation 1201* on an additional protocol on the rights of national minorities to the ECHR (CEC, 1999).³⁷

³⁷ Turkey did not yet sign none of the minority-related documents concluded particularly in the context of the CoE that have been brought to the fore in the EU organs too as regards to the political criteria of the enlargement process. Another document on minority rights, which Turkey did not sign, is the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The post-Cold War agenda of the European-regional framework on minority rights challenged foundational parameters and traditional practices of the Turkish minority rights regime. Although the Turkish regime failed in creating a true reconciliation between two dimensions of minority rights, those of citizenship equality and ethno-cultural particularity, the said agenda compelled Turkish governments to adopt a substantive form of citizenship equality, which would allow legal-political accommodation of ethno-cultural distinctions going beyond the limited scope of the Lausanne Treaty. To this end, apart from civil and political equality embedded in the citizenship status, it was insisted that both Muslim and non-Muslim minorities of the Turkish population would be guaranteed differential treatment. In particular, the EU documents urged the Turkish governments to provide minority peoples with equal opportunities in the fields of education, press and radio/TV broadcasting. It was because of this EU concern that provisions of the Turkey's *Accession Partnership Agreement* conditioned the Turkish membership on the removal of "any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting" in the short-term, and "in the field of education" in the medium-term (CEC, 2000b).

Notwithstanding driving impacts of the 1990s' internal and external developments that have created socio-political and diplomatic pressures on Turkish governments to review traditional practices with regard to minority issues, the latter has long tended to associate the question of minority rights and its external dimension in those traditional categories of external interference, disloyal acts and secessionist aspirations. At first

(1992). The only exceptions to this steady policy are OSCE's Copenhagen Document (1990), the Charter of Paris (1990) and the similar documents of the OSCE follow-up meetings. Other exceptional cases are the UN International Covenant on Civil and Political Rights (1966), and the UN International Covenant on

instance, the EU standards of minority rights, therefore, were largely received in official circles with great suspicion as if they would open the “Pandora’s Box” in the country paving way for national and territorial disintegration of the Republican state (Mete, 1998: 18). More specifically, the act of granting public recognition to group-specific distinctions of both Muslim and non-Muslim groupings was generally considered an attempt destined to the restoration of the highly destructive provisions of the Sevres Treaty that had been defeated at Lausanne (Demirel, 1998a).

Nevertheless, this did not mean that the traditional framework of the Turkish minority rights regime that has hitherto excluded non-Muslim minorities from the benefits of substantive equality and hindered the free expression of ethno-linguistic and sectarian differences of the Turkish-Muslim population would still be maintained intact. By the second half of the 1990s, as they faced increasing impacts of the post-Cold War standards in the field of minority treatment, Turkish governments instead began to seek an appropriate solution, which would reconcile those state interests of national and territorial integrity with legal-political settlement of ethno-linguistic and religious diversity that existed among national population. Partly, under the constraining impact of the EU integration, and partly, in response to the growing identity claims inside, Turkish authorities came to promote recognition of social particularities on the grounds of “individual freedoms” (Elekdağ, 1999).

The *Turkish National Programme*, submitted to the European Commission in the years 2001, represented a good example to this policy of change that appeared at the state level. The Programme outlined the agenda of the Turkish government relating to the

Economic, Social and Cultural Rights (1966). Both Documents were signed by the Turkish government in the August 2000, but have not yet been ratified in the TBMM.

requirements of the *Accession Partnership* in which the contemporary standards of minority rights, as they were laid down in the European regional organizations including the CoE, the OSCE and the EU, had taken a significant place. Because of this, the document embodied several references to the policy prospects relating to minority circumstances in Turkey. However, having refrained from making strong and clear commitments, the government sufficed with a minimalist formula of non-discrimination based upon the guarantee of individual freedoms that signaled almost no shift from the traditional framework of the Lausanne regime. Instead of granting an official recognition to distinct characteristics of those Muslim and non-Muslim communities who remained outside the scope of the Lausanne, the question of cultural and linguistic rights was treated within the terms of individual freedoms granted to all of the Turkish citizens irrespective of language, race, colour, sex, political pinion, philosophical belief or religion (TNP, 2001).

Nevertheless, under the pressures of the EU integration and increasing internal claims to cultural identity, the issue of minority rights, by the time, has already taken a central place in the Turkish politics. It was in this context that the notion of constitutional citizenship was introduced and began to be widely discussed within the Turkish public, intellectual circles and the state (İçduygu, Çolak and Soyarik, 2000). As was suggested above, Turkish practices had established a close linkage between two notions of citizenship equality and nationality. Full and complete scope of Turkish citizenship has been reserved to the privilege of “national citizens” which has involved all of the Turkish-Muslim citizens irrespective of ethno-linguistic distinctions. Although non-Muslim minorities have been considered within the formal scope of Turkish citizenship,

because of the nationality-citizenship connection they had, at times, been subjected to inegalitarian treatment of legal-political and economic policies. It was this identification of full citizenship and Turkish-Muslim nationality that had inhibited also legal-political expression and accommodation of Muslim distinctions.

It was against this state of affairs that the notion of “constitutional citizenship” would be promoted in order to disassociate citizenship status from particularistic identities of peoples, including those of the Turkish-Muslim ones. The notion suggested to fabricate legal-political ramifications of the constitutional bond a value-neutral source of identification for the Turkish population without prejudicing any one section of the Turkish-Muslim or non-Muslim citizens. In this view, the constitution was expected to operate as an integrative mechanism through which nationals of the country would be integrated into a common polity without divorcing themselves from their ethno-linguistic, sectarian and religious particularities (İçduygu, Çolak and Soyarık, 2000: 192). It was believed that situated at the rights and obligations of an all-inclusive constitution, full and equal citizenship would no longer be associated with national characteristics of an ethno-cultural community but to the legal framework of a constitution. The issue of citizenship as state-membership would, therefore, be constituted at a different realm from that of the ethno-cultural membership. Thereby, the state would cease to be the representative institution of a single ethno-linguistic and religious community of citizens but would open room for the free expression of particular differences. In the name of constitutional equality, thus, the state would become equally responsible to all its citizens in protecting and promoting their cultural and linguistic features.

The principle of constitutional citizenship, therefore, helps us not only to transcend the traditional duality rooted in the Turkish minority rights regime but also to satisfy those strong claims of social diversity brought forth by both the different sections of the Turkish population and the EU integration. Having been aware of this fact, the former President Demirel remarked, on several occasions, that social differences in Turkey would be accommodated without violating uniform image of Turkish population. While promoting development of a democratic response to the prevailing problems of ethnic diversity in Turkey, the then ruling Prime Minister Demirel (1992: 33) stated:

Differences in culture, thought, belief, language and origin are natural among our citizens. Such diversity is not a weakness in a democratic and unitary state. In a unitary structure, various ethnic, cultural and linguistic characteristics can be freely expressed, preserved and easily developed. This does not weaken the unity of the nation, but strengthens it. Everyone is equal and has the same status. The right to search for, preserve and develop one's mother tongue, culture, history, folklore and religious beliefs falls within the framework of human rights and freedoms. The law will ensure these rights.

"The law", in Demirel's view of difference, is associated with the concept of constitutional citizenship. He subsequently recommended that "while granting universal citizenship equally to every individual member of the state, the constitutional citizenship would, at the same time, recognise ethnic and sectarian differences" (Demirel, 1998b).

In one sense, this approach signalled the substitution of the dualistic conceptualisation of Turkish minority rights regime with a legal diversity of Turkish nationals united only in respect to formal connection held towards the same rights and obligations. Thus, constitutional affiliation to the Republic of Turkey would, on the one hand, not necessarily make one 'Turk', even in the formal sense of the word, but he or she would continue to assert his or her particular identity. On the other hand, non-Muslim minorities would receive identical treatment for being citizens of the Republic while, at the same time, continue benefiting group-specific treatment of the minority rights. In this

way, the discourse of universal citizenship would neither be used as a neutralising instrument for the particular identities of the Turkish-Muslim population, nor be implemented at the expense of the non-Muslim minorities. In the case of Muslim differences, for example, as Demirel (1998b) argued, “a Turkish citizen of Kurdish origin would freely express his or her ethno-cultural identity provided that he or she maintained loyalty to the constitution and the essential principles of the Republic”.

While Demirel drew attention to the internal constraints on the transformation of the traditional form of the Republican citizenship, the High Coordinating Committee on Human Rights (Radikal, 2000b) and the Ministry of Foreign Affairs (Radikal, 2000a) instigated similar debates for the sake of Turkey’s EU integration. Having devoted themselves to meeting the EU objectives, both of these public institutions declared that implementation of a monolithic formula of national identity upon the whole of the Turkish citizens has abstracted them from ethno-cultural circumstances and, hence, blocked the free expression of particular differences in religion, sect, language and ethnicity. Thus, if Turkey was to improve its human rights standards in the contemporary world, the Ministry and the High Coordinating Committee reported that social diversity and national unity must have been reconciled under the principle of a “comprehensive constitutional citizenship”. The idea is that “legal equality of citizenship is to be supplemented in Turkey with an inclusive form of equality”. In doing this, it was suggested that having supported with substantive aspects, the principle of citizenship equality should entail in itself a “right to difference” without which those citizens who differ from the mainstream identification category in ethnic, linguistic, religious and cultural terms would be less equal in enjoying contemporary standards of human rights.

In so doing, it was argued that since the indivisibility of the country with its nation and territory would continue to remain a constitutional principle, no threat would originate from the official recognition of minority differences. It was within this legal-political context that Turkish citizens of Kurdish origin, for example, would freely use their mother tongues in TV/radio broadcasting and/or education.

Although there is little compromise among different departments of the state³⁸, these reports are indicative of the current trend in Turkey which tends towards constituting a socio-political and legal system of substantive equality. Several steps have already been taken in this direction. The ban on speaking Kurdish language in public and using it in press and publications was cancelled in 1991. In following, Demirel, the Prime Minister of the time, declared in a public speech delivered in one of the Kurdish populated cities that the state recognised the existence of the “Kurdish reality”. In a similar manner, a pro-Kurdish political party took part in the Turkish democracy since the early 1990s. Tens of municipalities have been governed, for the last decade, by those majors elected from among the members of this pro-Kurdish party. On the other hand, the Supreme Court of Appeals passed a judgement on 31 March 2000 which confirmed the freedom of individual citizens to give their children any names of their choosing, including the Kurdish ones (CEC, 1999; CEC 2000).

On the other hand, unlike the legal-political practices of the previous decades, the Republican state has undertaken several steps in the direction of guaranteeing substantive equality for the non-Muslim citizens of the country. To this end, the Turkish government

³⁸ The National Security Council, one of the most influential constitutional institutions in Turkish politics, for example, has stood against any drift from the traditional parameters of the Turkish minority rights regime that had found its final expression in the provisions of the Peace Treaty of Lausanne (Radikal, 2000c; Radikal, 2000d).

has disregarded, for the first time, dual practices of the Turkish minority rights regime and attempted to treat non-Muslim minorities on the same grounds as the Turkish-Muslim citizens. In December 1999, an official circular, for example, recognised that non-Muslim minorities would no longer be required to seek permission from the state in order to restore churches and other buildings belonging to minority foundations. In the following year, the Turkish Presidency issued a message in the eve of the year 2000 to non-Muslim minority groups on the occasion of *Christmas* and *Hanukah* (Radikal, 2000e). The message carried a symbolic significance as it confirmed equal position of the non-Muslim minorities at the top of the state authority. Similarly, the Ministry of Education, for the first time, attempted to eliminate prejudices about Roma citizens. To this end, the Ministry issued a circular in 2001 in order to cancel pejorative words used about Roma people in the definitions of the dictionaries published by the same ministry (CEC, 2000).

Recent political orientation of the state indicated a substantive transformation in the classical duality of the Turkish minority rights regime. While non-Muslim minorities came to be treated with genuine equality of citizenship, sub-national identities of the Muslim population began to find an implicit recognition in the public realm of the state. It is too early to talk about the consolidation of a comprehensive constitutional citizenship expressed in a system of substantive equality tolerant to the ethno-linguistic, religious and sectarian differences of both Muslim and non-Muslim members of the Turkish citizenry. But, the EU reforms of the August 2001 considerably proved the fact that the post-Cold War transformation in the Turkish minority rights regime is likely to create an essential rupture from the framework of its traditional regime.

7.4.2. The Framework of the EU Reform Packages

Comprehensive transformation of the last decade largely removed traditional aspects of the Turkish minority rights regime. Although ethno-cultural freedoms were not framed within the scope of minority rights, the spirit of contemporary standards came to be recognised in Turkey within the context of individual freedoms. Yet, changes of the last decade have also left several issues unsolved. Those problems relating to the free use mother languages in education and radio/TV broadcasting, property rights of non-Muslims' pious foundations, and their ecclesiastical learning remained in the agenda of the Turkish minority rights regime. In order to overcome the given problems, the TBMM, during the last two years, legislated seven reform packages which addressed a wide range of human rights issues. The first reform package (February 2002) amended Article 312 of the Turkish Penal Code in the direction of expanding freedom of expression relating to ethno-cultural diversity.³⁹ The same package also clarified the meaning of ethno-cultural propaganda embodied in the article 8 of the *Anti-Terror Law*.⁴⁰ The second reform package (April 2002) concerned basically with the *Law on Associations* that was subjected to several amendments in the direction of removing bans on international connections of the associations (Law No.4748, Art. 5-f). But, article 5 of the Law, which prohibited the formation of an association for the purpose of engaging in any activity on the grounds of or in the name of any region, race, social class, religion or sect was

³⁹ The description of the offense under article 312 ("incitement to hatred on the basis of differences of social class, race, religion, sect or region") was amended. The scope of incitement was narrowed with an additional wording of "in a way that may be dangerous for public order" (Law No. 4744, Art. 2).

⁴⁰ Amendments to the article 8 of the Turkish Criminal Code clarified the meaning of acts committed against the "unitary characteristics of the state" and introduced the notion of "propaganda in connection with the terrorist organization in a way that encourages the use of terrorist methods". The maximum closure

preserved intact. Establishment of associations based on the distinctions of “race, religion, sect, culture and language” was banned for being in search of “creating new minorities” on the lands of the Republic of Turkey (Law No. 4748, Art. 5-b).

It was only by the third reform package (August 2002) that the Turkish government introduced substantive amendments to such effect that greatly challenged traditional parameters and practices of the Turkish minority rights regime. Indicating its deep implications, Bardakçı (2002) noted on the enactment of the package that:

The venture of westernization in Turkey started with the first Tanzimat of the Imperial Rescript (1839) and continued with the second Tanzimat of the Reform Edict (1856). Since then, no parallel document has been promulgated in Turkey. The recent reforms, in this sense, represented the promulgation of the third *Tanzimat*.

In this historical view, Bardakçı associated the essential reforms of the Turkish history with the impacts of the westernization process that had constrained Turkish politics since the early decades of the nineteenth century. The third reform package, for him, represented no exception. Indeed, the major concern of the two reform documents, adopted in the early decades of the Turkish modernization, had centered chiefly on the ethno-cultural circumstances of the non-Muslim minorities. The “third *Tanzimat*”, however, expanded the scope of this traditional concern to all Turkish nationals irrespective of ethnicity or religion.

Prominent amendments of the third reform package, in an attempt to satisfy the requirements of the Turkish National Programme, provided ethno-cultural freedoms to be equally applicable to both Muslim and non-Muslim sections of minority groupings.⁴¹ To

period for radio or television channels for propaganda against unity of state was reduced (Law No. 4744, Art. 4).

⁴¹ Since the reforms intended to expand the traditional scope of the Turkish minority rights regime, the nationalist part of the coalition government brought strong criticisms to the new reforms. The package, for the leaders of the Nationalist Action Party, was, on the one hand, satisfying requirements of the separatist sections and, on the other hand, retaining potential to create national minorities on the territory of the Republic. Because of this concern, the leaders found the reforms dangerous for the good of the country and

this end, the package, in the first instance, was concerned with linguistic freedoms in respect to learning one's mother language and using it in radio/TV broadcasting. Article 26 of the Constitution, which specified that "No language prohibited by law shall be used in the expression and dissemination of thought" had already removed in the year 2001. In order to make it applicable in practice, the reform package facilitated radio/TV broadcasting in the different languages and dialects used traditionally by Turkish citizens in their daily lives. In doing this, the package added to the Article 4 of the *High Audio-Visual Board (RTÜK) Law* that "broadcasting shall be permitted in the different languages of dialects used traditionally by Turkish citizens in their daily lives so long as it does not contradict the fundamental principles of the Turkish Republic and the indivisible integrity of the State" (Law No. 4771, Art. 8).

Related to the former, in order to facilitate mother tongue education, the package also amended the *Law on Foreign Language Education and Teaching*. The amendment provided for the possibility of learning different languages and dialects traditionally used by Turkish citizens in their daily lives. To this end, it was affirmed that the establishment of private courses, pertinent to teaching different tongues and dialects that have traditionally been used in the daily lives of Turkish citizens, was allowed provided that this does not contradict with the indivisible unity of the State (Law No. 4771, Art. 11). However, this did not mean that languages or dialects other than Turkish would be used in public education. Article 42 of the Constitution, which specified that "no language other than Turkish shall be taught as a mother tongue to Turkish citizens," remained unchanged (OG, 2002a).

depicted the leaders of the other political parties as siding with the aspirations of the separatist PKK (Radikal, 2002b).

As was noted above, the 1936 declaration had fixed properties of the pious foundations in the year 1936 and those properties that had been obtained after the given date have been either confiscated or returned to their original owners. Because of this, particularly pious foundations belonging to non-Muslim minorities have lost many properties and the remaining was at risk.⁴² In an effort to remedy problems related to these property rights of the non-Muslims' pious foundations, the third reform package introduced an amendment to the *Law on Foundations*. Community foundations were, therefore, allowed to acquire and dispose of property. In this context, within a period of six months, these communities were entitled to register the property they actually use as long as they can prove ownership (Law No. 4771, Art. 4-a). Considering the fact that the six-months time period was insufficient to complete the bureaucratic procedures, the sixth reform package (July 2003) extended the time period to 18 months (Law No. 4928, Art. 2; OG, 2002b; OG, 2003).

The implementation of this provision, however, was subjected to a number of conditions. On the one hand, permission must be obtained from the Council of Ministers for the purpose of acquisition and disposal of new property. But, since the registry procedure was a complicated one with full of bureaucratic interference, the regulation tended to encounter with problems of political attitudes. On the other hand, the discretionary power of the *Directorate General of Foundations* over religious foundations, including the possibility of dismissing their trustees, remains unchanged (Radikal, 2002a; Şık, 2002). Because of this, although the reform seemed, at face value,

⁴² Throughout the implementation of the confiscations, foundations of the Greek minority lost 152, of the Armenian minority 48, and of the Assyrian groups 6 of its properties. Today, the pious foundations of the non-Muslim minorities have 165 properties (77 Greek, 52 Armenian, 10, Assyrian, 19 Jewish, 1 Bulgarian, 3 Chaldian and 2 Georgian) (Şık, 2002).

to remedy shortcomings of the 1936 declaration, it was hardly possible to put its principles into practice. After all, the amendment did provide nothing for the return of the already confiscated properties. This is why, the reform was considered to mean no more than giving legal legitimacy to confiscations that had been implemented so far (Reyna, 2002; Özuzun, 2002).

Notwithstanding its shortcomings, the reforms aim to improve legal-political circumstances of minority distinctions in Turkey. Yet, non-Muslim minorities continue to have problems due to the absence of a legal recognition for pious foundations and restrictions on the training of clergy. Since it has not been considered within the scope of the Lausanne regime, the Assyrian community, for example, is not permitted to have its own educational establishments and, consequently, has no legal capacity to teach its liturgical language to its youth. Similarly, although they have traditionally been considered within the terms of the minority status and treated accordingly, the Greek-Orthodox and Armenian communities have not yet permitted to have theological schools pertaining to educating men of religion. For example, the governmental authorities have not yet permitted the re-opening of the Orthodox Seminary of Khalki which has been closed since 1971.

Thus, recent reforms succeeded, to a large extent, substantial transformation in the traditional parameters of the Turkish minority rights regime. A system of equality within ethno-cultural diversity gradually substituted dual practices of the Turkish regime which has treated Muslim-Turkish population within the uniformity of an abstract citizenship equality whereas non-Muslim minorities have largely been excluded from the universal scope of citizenship status under an exclusivist conceptualisation of national distinctions.

It was only in the post-Cold War era that traditional attitudes of associating “ethno-cultural difference” with practices of discriminatory and inegalitarian treatment came to be removed from the framework of the Turkish minority rights regime. True, several deficiencies remained unsolved. But, the transformation of the Turkish minority rights regime is in an intense process which seems likely that they will be removed at time.

7.5. Conclusion

In contradiction with the substantive aspects of the Lausanne regime, universal principles of equality and non-discrimination, embedded in the modern concept of citizenship status, was hardly implemented in the Turkish context with regard to the treatment of non-Muslim minorities. Apart from historical divisions, prejudices and nationalist policies of the Republican governments, the main reason of this inegalitarian practice lied in the world-wide demise of the post-WWI minority rights regime. When the League of Nations collapsed within the nationalist currents of the interim years, supervisory instruments of its protective umbrella also withered away. Therefore, within few decades, the Turkish minority rights regime released itself from the juridical and diplomatic scrutiny of the League system. Because of this, in place of international standards, traditional practices and national projects have prevailed in the Turkish minority rights regime.

Under these circumstances, the practices of the Republican minority rights regime culminated in the reproduction of the Muslim/*dhimmi* compartmentalisation with its inegalitarian aspects of socio-political, economic and legal inequality. As a result, almost no compromise would be achieved between the principle of civil and political equality

and the group-specific treatment of minority rights. The full-fledged scope of citizenship equality has, in practice, been confined to Turkish-Muslim citizens and implemented in a form of uniformity. Turkish-Muslim population has been totalized under a religious-some definition of Turkish national category in which ethno-cultural and linguistic distinctions were denied. In so doing, without considering secular transformations of the Republican regime, religion has remained an integral feature of the Turkish national identity with regard to the minority/majority categorization of population. Non-Muslim citizens continued to constitute the “other” elements who, in conformity with the Lausanne commitments, have been granted measures different treatment which, however, has been implemented in an exclusivist manner. The issue of different treatment, in the Turkish context, has usually been associated with practices of inegalitarian treatment which resulted, in general, in the gradual homogenisation of the Turkish population in terms of religious affiliation as many of the non-Muslim minorities left Turkey for another state.⁴³

⁴³ Although the first Republican census had counted % 2.8 non-Muslim, the proportion declined to % 2 in 1935, % 1.6 in 1945, % 1.1 in 1955, % 1 in 1960, and to % 0.8 in 1965 (Dündar, 2000: 138). As come to 1990s, the number further declined to % 0.2. According to estimations made in 1992, apart from earlier migrations, during the last three decades over 20.000 Armenians, 23.000 Jews and more than 55.000 Greeks had emigrated from Turkey (Franz, 1994: 331). Today, the community sources count no more than 50.000 Armenian, 27.000 Jewish and 3.000 Greek minority left behind (Dündar, 2000: 138). It is estimated that under normal conditions, the size of the non-Muslim minorities in Turkey must count today around 1.2 million (Courbage and Fargues, 1998: 115). During the last decades, Assyrian community of the South Eastern Anatolia also joined the venture of the “official” minorities. Beginning from the early 1960s, considerable numbers of Assyrian peoples migrated to Western countries. Throughout the 1960s and 1970s, an estimated amount of 20.000 Assyrians, 40 percent of the community population, moved to Europe (Björklund, 1981: 54). Although economic difficulties have also played role in the Assyrian emigration, it is argued that Assyrian peoples largely shared the fate of other non-Muslim minorities. They were affected from the exclusivist practices of the Turkish minority rights regime (Bilge, 2001: 117-124). Indeed, it is suggested that surrounding Muslim-Turkish population has often treated the Assyrian communities as if they were Greek during the Cyprus crisis and Armenian when the ASALA attacks were intensified (Yelda, 2000: 231). Having been unable to find a secure place within the Muslim-Turkish majority, the Assyrian peoples too have, therefore, opted for living in another country.

It was only under the prevailing constraints of the post-Cold War Era that Turkish minority rights regime began to develop a substantive framework inclusive for both Muslim and non-Muslim minority distinctions. As the relevance of minority issues grew stronger in the European regional organizations and among different sections of the Turkish national population, a gradual transformation in the traditional practices and parameters of the Turkish minority rights regime gradually appeared during the last decade. In particular, Turkey's EU integration has played a larger role in this essential transformation. In one sense, Turkey's integration with the EU has proceeded in a manner of integrating with the contemporary standards of the European minority rights regime. It was in this context that not only Muslim minorities came to be granted official recognition and the legal-political instruments of differential treatment, but also shortcomings of the Lausanne regime, relating to the situation of the non-Muslim minorities, began to be removed. Turkish minority rights regime, today, came closer to creating a peaceful compromise between two foundational dimensions of minority rights, citizenship equality and group-specific treatment of ethno-cultural distinctions.

CONCLUSION

In order to disclose historical, legal, political and social foundations and contemporary circumstances of minority issues in both contexts, this thesis examined the general framework of minority rights adopted in the European-regional organizations and in Turkey. Situated in a general regime of norms, principles, instruments and practices, the specific focus of the study fell upon the question of how the two regimes accommodated two distinct notions of citizenship equality and ethno-cultural particularity. In doing this, the thesis considered, on the one hand, legal-political acts of the European-regional organizations in which minority-related norms, principles, instruments and practices gradually reconciled universal scope of citizenship equality with group-specific dimension of ethno-cultural diversity. The Turkish regime, on the other hand, was examined from the perspective of major policy formulations and constitutional developments in which the prominent parameters of minority treatment have displayed a problematic tradition in creating a plausible balance between the two notions of citizenship equality and ethno-cultural particularity.

In the European-regional context, the concluding remarks of this work can be summarized in five points. In order to better analyze modern conditions of social diversity, the dissertation, first, argued that the contemporary position of ethno-cultural, linguistic and religious minorities were rooted in the emergence of the nation(al)-state system. In the absence of modern ruling mechanisms and ideological incentives, political and ethno-cultural matters were situated at two distinct levels of human existence. The notion of state-membership (citizenship) was separately constituted from the particularistic impacts of ethno-cultural membership. It was argued that since corporate organizations, gathered around feudal sources of identification located in fiefdom, region, town, guilds, religious or sectarian

brotherhood, operated as useful instruments of rule in the hands of the rulers, cultural diversity was not only permitted but also encouraged. A political community involved several ethno-cultural groupings while an ethno-cultural community scattered over various political boundaries. In this context, the pre-modern diversity might have established a plural but never a pluralist system of government. There was no idea of universal equality either between the rulers and the ruled or among the different sections of the ruled. Ethno-cultural diversity was instead closely associated with an inegalitarian version of legal diversity which subjected legal-political status of corporate groupings to inegalitarian terms of the law. In the light of this fact, this dissertation suggested that the European *ancien regime* could not reconcile legal-political scope of the state-membership with group-specific particularities of ethno-cultural membership.

Second, the dissertation argued that the emergence of a nation(al)-state system radically transformed state-society relations as it relates to the official treatment of ethno-cultural diversity and of the terms of state-membership. At this stage, central authorities eliminated corporate communal structures and established direct linkages between state and individual subjects. The notion of citizenship, with its principle of individual equality, was created in order to connect the ruler and the ruled on an egalitarian basis of relationship. However, since theoretical discourse and practices of nationalism promoted the congruence of political and ethno-cultural realms, the modern transformation often conflated the legal-political notion of citizenship with an ethno-cultural category of nationality. There existed an implicit expectation in the nation(al)-state practices that citizenship and nationality (ethnicity) should coincide.

Ideal premises of the nation(al)-state system have, however, rarely been accomplished. Ethno-cultural, linguistic and religious diversity has, instead, continued to characterize modern conditions. Peoples have sought to enjoy not only universal benefits of citizenship

equality but also insisted on the protection and promotion of their ethno-cultural, linguistic or religious particularities. It was upon this moral basis that the idea of minority rights developed. At this point, it was believed that in order to promote the humanitarian value of both citizenship equality and ethno-cultural diversity, state practices should create a true reconciliation between citizenship equality and group-specific particularities of ethno-cultural minorities.

Relying upon this theoretical and political background, the third point raised in this work is that since the emergence of modern state system, national and international endeavors in the European continent have developed a number of norms, principles, practices and instruments in order to create a working balance between citizenship equality and ethno-cultural particularity. At this stage, it was argued that the Westphalian state system and the post-WWI regime of the *minorities treaties* presented earlier examples in providing equal grounds upon which the persistence of minority distinctions would be guaranteed. From the former to the latter, the issue of minority protection evolved, on the one hand, from the mere protection of religious distinctions into a comprehensive regime which took ethno-linguistic, sectarian as well cultural groupings under the effect of minority rights. The same process developed, on the other hand, from a system of bilateral treaties into an international regime vested in the discretion of an international organization and a supranational tribunal. Although geographically limited in effect, minority peoples were treated both as being legal-political members of the polity with universal rights of civil and political equality and ethno-cultural members of minority groups with group-specific rights of differential treatment.

The fourth argument of the thesis is that in the aftermath of the WWII, both the UN and the European-regional organizations projected a universal system of human rights in which group dimension of minority conditions almost disappeared. Within the ideological confrontations of the period, the Cold War regime concerned prominently with the protection

of individual human rights and neglected, in general, the distinct position of ethno-cultural particularities. During the Cold War, the issue of minority rights, therefore, content with those minimalist standards of equality and non-discrimination without having substituted it with group-specific rights and freedoms. Although the Cold War regime took significant steps in the direction of universalizing geographically limited scope of humanitarian concerns, its norms, practices and instruments fell short of creating a plausible reconciliation between minority particularities and the universal scope of citizenship equality.

The fifth point of the European-regional context is that it was only by the fall of the Cold War order that the UN and the European-regional organizations began to revise their universalist-individualist acts in the direction of developing a substantive formula sensitive to group-specific circumstances of minority peoples. At this stage, in addition to civil and political equality, embedded in the citizenship status of individuals, the post-Cold War regime has undertaken positive measures of differential treatment. To this end, multicultural configuration of legal, political and cultural policies began to receive an increasing appeal in the humanitarian acts of the regional organizations. It was in this context that rights to mother tongue education; using it in broadcasting, press, publications, audio-visual products, cultural activities, and in political communication and courts; originating in cultural and political associations; establishing cross-frontier relations with kin communities or other minority/majority groups, among others, have taken part among the norms of differential treatment.

Concerning the Turkish context, this dissertation argued five main points. First, rooted in the inclusion/exclusion practices of the Ottoman millet system and the failures of the late Ottoman project of egalitarian citizenship, the Turkish concept of minority did not include ethno-linguistic or sectarian dimension nor did it create a true reconciliation between citizenship equality and legal-political accommodation of minority differences. The

“majority/minority” or “us/them” classification of the classical Ottoman administration was basically between Muslim and non-Muslim sections of the population. While the Muslim peoples were totalized under a compact category of the Muslim millet, non-Muslims (Orthodox, Armenians and Jews) were organized within semi-autonomous communities of religion. Interestingly enough, parallel to the European *ancien regime*, although they were permitted to protect and promote their language and religion, non-Muslim communities were denied civil and political equality and located in a lower legal position as compared to the Muslims. In so doing, the classical Ottoman *nizam* relied on the principle of *tefrik-i anasır* in which peoples’ legal status depended not upon the terms of state-membership but that of the ethno-cultural (religious) membership. Irrespective of the fact that they were members of the same political community, Muslims and non-Muslims, even different sections of non-Muslim communities, were subjected to the effect of different laws.

At this stage, this dissertation also argued that under the influence of modern ideas and minority nationalism, the nineteenth century Ottoman reformers invested an exclusive concern on the policies of *ittihad-ı anasır* (union of all elements). The latter attempted to dispense with corporate communities of religion and inegalitarian implications of the millet system with a political objective of creating a system of citizenship equality within ethno-cultural diversity. However, since the secessionist aspirations of minority communities weighed their concerns of civil and political equality, the Ottomanist project of *ittihad-ı anasır* failed as it culminated in the collapse of the imperial administration. Consequently, the Turkish statesmen and the general public lost faith that citizenship equality and minority particularities would be reconciled in the Turkish context.

After the general picture of the Ottoman legacy was drawn, the thesis secondly argued that political, legal and social grounds of minority/majority classification and the modern framework of minority rights in Turkey developed under the constraining influence of the

Ottoman practices which found its final appeal in the duration of the national struggle. It was in this period that inclusion/exclusion practices of the Turkish regime initially built minority/majority classification and the principles of minority treatment. We underlined at this point that while they were in search of a new national form, the founding leaders abandoned the late Ottoman policy of *ittihad-ı anasır* and adopted a more limited and religiously colored policy of *ittihad-ı anasır-ı İslamiye*. Ethno-cultural characteristics of the Turkish-Muslim population delimited borders of the Republican nationhood. Thus, parallel to the Ottoman Muslim millet, irrespective of ethno-cultural or linguistic particularities, Muslim peoples were included in the “imagined community” of the Republican nationhood which accordingly excluded non-Muslims from the national category of the new state.

Thirdly, the dissertation laid down the legal bases of the Republican minority rights regime. At this point, it was argued that political provisions of the Lausanne Treaty largely integrated the Turkish context into the general scope of the *minorities treaties* prevailed in the post-WWI western world. The Turkish regime henceforth adopted a framework of substantive treatment, at least, for the ethno-cultural circumstances of the non-Muslim minorities. The legal framework of the Treaty reconciled the two notions of citizenship equality and ethno-cultural particularity, and hence, resolved, for the first time in the Turkish history, the question of incongruity between state-membership and group-membership. The terms of civil and political equality were equally guaranteed for the Turkish citizenry. Members of the non-Muslim communities were primarily concerned as the individual citizens of the country but without having abstracted them from their traditional and ethno-cultural circumstances.

The thesis fourthly pointed out that even after the national reception of the Lausanne commitments, traditional norms and practices continued to draw the legal-political borders of the Turkish minority rights regime. In following religious configuration of the minority/majority classification, the inclusion/exclusion practices of the Turkish minority

rights regime built up, from its outset, two categories of citizenship status: citizens by nationality (Turkish-Muslim citizens) and citizens by law (non-Muslim citizens). In so doing, the Turkish context conflated two distinct concepts of citizenship (state-membership) and nationality (ethno-cultural membership) that greatly reduced its legal neutrality.

In this context, the non-Muslim minorities have been accorded positive measures of differential treatment pertinent to the protection and promotion of their ethno-cultural, religious and linguistic circumstances. However, depending upon their national “otherness”, universal implications of citizenship equality have often been denied to the non-Muslim minority elements of the country. Measures of differential treatment have, instead, been associated, in practice, with inequalitarian and discriminatory forms of treatment. On the other hand, in conformity with religiously inclusive project of *ittihad-ı anasır-ı İslamiye*, the Turkish-Muslim population has been entitled to full and complete scope of citizenship equality. On the part of the Turkish-Muslim citizens, the principle of equality, however, has been equated with practices of uniform treatment. Ethno-cultural, linguistic and sectarian uniformity has become the gate in accessing into full-fledged scope of the citizenship status.

Under the shadow of this Muslim-inclusive and non-Muslim exclusive form of national classification, the Republican practices of the Turkish minority rights regime culminated in the reproduction of the Muslim/*dhimmi* compartmentalization with its inequalitarian aspects of socio-political, economic and legal inequality. As a result, notwithstanding the fact that the Turkish regime incorporated European-regional standards of the post-WWI settlement, almost no compromise could be achieved between the principles of citizenship equality and of the group-specific treatment of minority rights.

The next, but not the least significant factor which facilitated the persistence of traditional formulations and practices in the Turkish minority rights regime, depends on the demise of the League of Nations system. After the League of Nations’ supervision

disappeared, the close linkages between Turkish citizenship and nationality frequently prompted Turkish governments to neglect the internal dimension of the League regime's twofold guarantees. In complementary to this, the fall of the League system removed the effect of its external dimension as well. Thus, while the international appeal of the *minorities treaties* lost effect over the world by the 1930s, the Turkish regime released itself from both political and judicial measures of international supervision. It was in this context that in place of international norms, standards or instruments, traditional views and practices dominated policy formulations of the Turkish governments. Under these circumstances, not only universal aspects of citizenship equality was violated but also traditionally granted rights of differential treatment were often suspended in the affairs of education, religion or communities' charity foundations.

The formulation and practices of minority rights underwent a comprehensive transformation by the outset of the Cold War years. But, this change had little impact on the legal and political implications, and practices of Turkish minority rights regime. During the Cold War period, the Turkish context faced almost no external pressure that would oblige governments to undertake effective obligations in respect to the issue of minority protection. On the contrary, since the Cold War regime discredited group-specific rights of differential treatment, its individualist-universalist framework rather sustained traditional practices of the Turkish minority rights regime. In the absence of external pressures, Turkish authorities ignored the point that the issue of minority rights proceeded on a dynamic ground upon which new norms and instruments were created in conformity with global transformations. Turkish authorities intensively realized this fact in the aftermath of the Cold War during which the issue of minority rights obtained a renewed interest in the humanitarian acts of the European-regional organizations.

Under the constraining influence of internal and external developments, this dissertation fifthly argued that traditional parameters of the Turkish minority rights regime entered in a process of substantive transformation by the late 1980s. Internally, it was already evident by the 1990s that traditionally monolithic formulation of the *Turkish millet* would no longer meet identity claims that gradually arose among the ethnic-Kurdish, Alevi-sectarian and fundamental-Islamist sections of the population. Thus, the imagined unity of the Turkish national category began to lose meaning in the eyes of Turkish-Muslim citizens as the latter drifted towards their ethno-lingual, religious and sectarian particularities. Externally, the end of the Cold War unleashed minority problems all over Europe. As a result, the focus of humanitarian issues in the region gradually shifted from the Cold War's minimalist formulations of citizenship equality and non-discrimination towards a substantive accommodation of minority distinctions. It was in this context that in addition to the universal scope of citizenship status, regional organizations, including the CoE, the EU and the OSCE, have developed a set of norms, rules, principles, practices and instruments sensitive to ethno-cultural, religious and linguistic distinctions of minority peoples.

As the prevalence of minority issues grew stronger in the European regional institutions and among the different sections of the Turkish national population, the last decade witnessed a gradual transformation in the traditional practices and constitutive parameters of the Turkish minority rights regime. The Turkish context henceforth began to develop a substantive framework inclusive for both Muslim and non-Muslim minority distinctions. In particular, Turkey-EU integration has played larger role in the emergence of this essential breakthrough. The EU agenda has insisted that in addition to those universal measures of civil and political equality, Turkish governments should facilitate cultural expression and legal-political accommodation of ethno-cultural, linguistic, religious or sectarian differences whether Muslim or non-Muslim.

It was in this context that Turkish governments have adopted a number of reform packages in the direction of creating a true reconciliation between citizenship equality and ethno-cultural particularities. To this end, basic laws on political parties, associations, language education, pious foundations, radio/TV broadcasting as well as the criminal code have been subjected to substantive changes. As a result, not only the uniform image of the Turkish-Muslim citizens was officially renounced, but also traditionally “second-class” position of the non-Muslim citizens largely withered away. This has paved way for the emergence of a comprehensive system of minority treatment going beyond traditional practices and limited scope of the Lausanne regime. Both Muslims and non-Muslims began to benefit ethno-cultural, linguistic and sectarian particularities under a comprehensive formulation of citizenship rights and freedoms.

It remains to be seen in the light of the recent transformations, whether it will be possible for Turkish governments to accomplish a true reconciliation between the universal scope of citizenship equality and group-specific aspects of minority treatment. For a complete reconciliation, Turkish governments will have to develop a complete disassociation between originally legal-political scope of the Turkish citizenship and cultural-religious characteristics of the Turkish-Muslim population (*Turkish millet*). Putting the matter differently, the Turkish authorities will have to dispense with the traditional connection that has hitherto existed between two distinct sources of identification: citizenship and nationality. It is in this context that the Turkish citizenship practices will cease to depend upon the existence of two exclusive categories of national and non-national citizens.

If, in the future, Turkish authorities decide to continue the reconciliatory process of establishing an inclusive model of citizenship defined by the legal-political membership of peoples, it seems likely to substitute the dualistic practices of the Turkish citizenship with a legal diversity of Turkish nationals united only in respect to formal connection held towards

the same rights and obligations. Only then, traditional connection that existed between citizenship and nationality would disappear and the discourse of the Turkish citizenship would no longer be used as a homogenizing instrument over peoples' particular identities nor would its practices entangle with inegalitarian forms of treatment on the part of the "different citizens".

Given the fact that this dissertation was written at a time of transformation both in the European-regional context and in Turkey, it carries the trademarks of ambiguity and a sense of incompleteness in assessing the political, legal, social and cultural ramifications of the emerging scope of the Turkish minority rights regime. A particular shortcoming of this study is that it would not effectively analyze the recent legal-political reforms which appear to change the traditional definition and practices of minority, nationality and citizenship in the Turkish context.

It is significant to note that this thesis indicated emergence of a radical breakthrough in the traditional parameters of the Turkish minority rights regime. Parallel to the post-Cold War norms and principles, the Turkish regime began to open the doors wide to the group-specific claims of both Muslim and non-Muslim minorities. While traditional parameters of the Turkish minority rights regime have been subjected to innovative transformation, the same process has gone hand in hand with the emergence of new understandings in conceptualizing Turkish nation and citizenship. Substantive accommodation of minority distinctions has constrained Turkish practices to divorce the universal scope of the Turkish citizenship from ethno-cultural impacts of Turkish nationality. As a result, the traditional framework of the Turkish state, in the areas of national codes and citizenship practices, began to involve in a radical process of innovation. However, and here is where the general political ambiguity in the relationship between the European-regional context and Turkey resides. It remains uncertain whether a complete disassociation of Turkish nationality from Turkish citizenship

would end up with a legal-political framework which the European-regional organizations adopt.

In spite of the ambiguity on the part of both Turkey and the European-regional context, the Turkish minority rights regime evolved under the constraining influence of the European-regional norms and practices. It is in this context that this dissertation contributes to the existing literature in two ways. First, most of the studies in Turkey on the issue of minority rights have been limited by analyses of specific minority groups or minority-related cases. This dissertation, by situating the issue of minority rights in a historical, legal and political framework of norms, principles, practices and instruments, aimed to fulfill the gap in literature between the group-specific cases and the foundational dimensions of the issue. Second, this dissertation situated both the European-regional and Turkish regimes in a broader perspective of citizenship equality and ethno-cultural diversity. In so doing, it aimed to reveal the traditional foundations, contemporary formulations and practices of minority rights standards in both Europe and Turkey.

Having examined the general framework of the Turkish minority rights regime, this thesis left several questions unsolved in the Turkish context. In order to better analyze the current norms, principles and practices of the Turkish minority rights regime, this thesis provoked a number of complementary studies. In view of our shortcomings, it seems significant for the future studies to consider, first, legal-political scope of the new framework in the Turkish minority rights regime that has gradually developed during the last few years. In relation to this, in order to examine practical effects of the new scope, the thesis, secondly, put emphasis on the fact that case-specific and group-specific analyses must be undertaken on the policy implementation of the recent reforms. The next, but not the least significant, is that today it seems noteworthy to review newly emerging understandings on the Turkish

citizenship and Turkish nationality, particularly, as it relates to the contemporary articulation of inherent connections between the two concepts.

On the other hand, having indicated gradual evolution of the minority issues in the context of the European regional organizations, the thesis displayed the influence of the European agenda on the recent transformations of the Turkish minority rights regime. It is in this sense that though considered contemporary standards of the European-regional organizations, this thesis remained limited in scope as a country-specific analysis. However, the same agenda has constrained, in the same period, not only policy formulations of the Turkish governments but also those of the other European countries. Because of this, in order to situate today the Turkish regime in a larger European context, it seems useful to examine the influence of the European regional norms on the legal-political formulations and practices of other European countries, particularly, those which are in a process integration with the EU.

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