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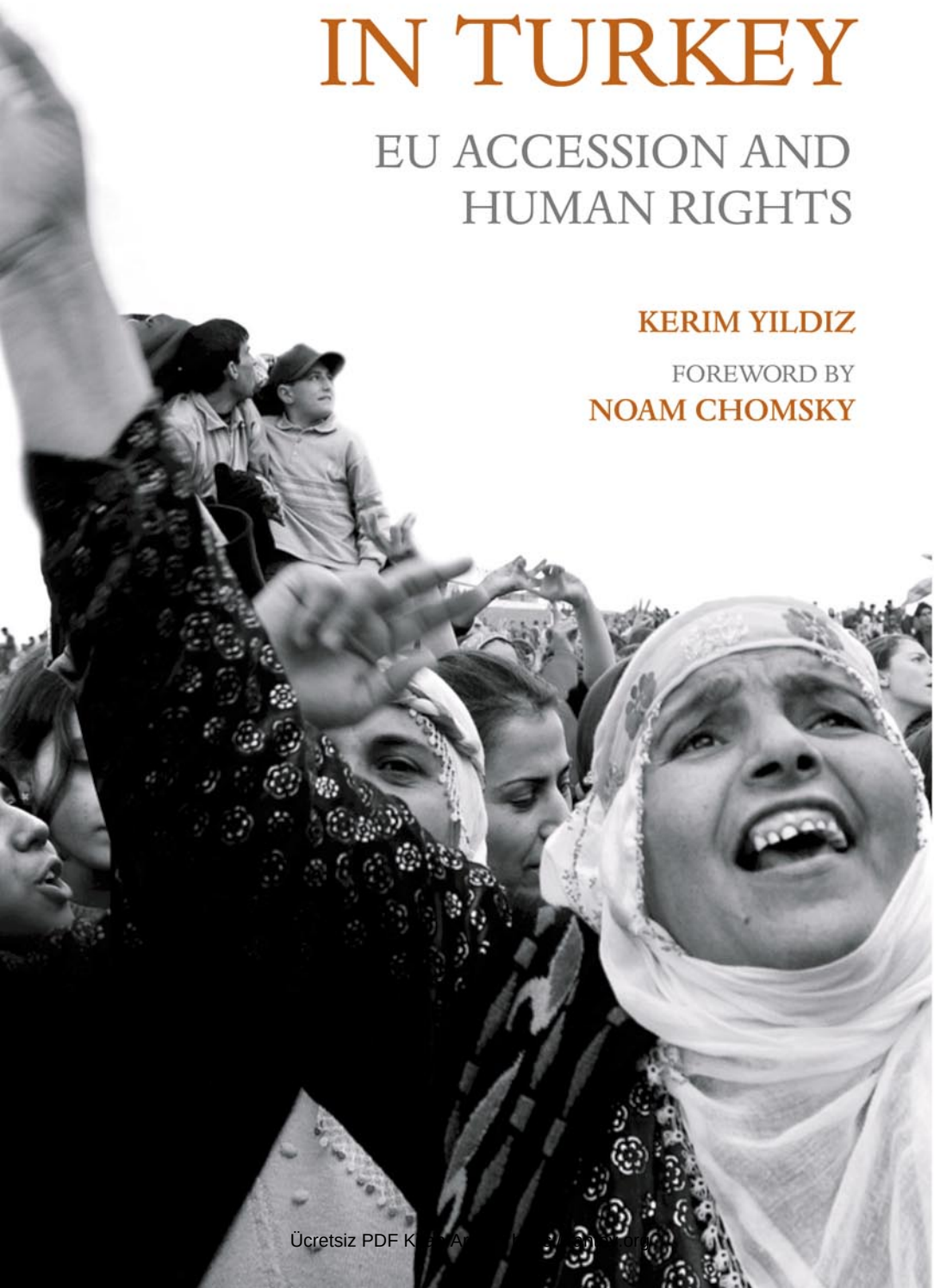
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THE KURDS IN TURKEY

EU ACCESSION AND
HUMAN RIGHTS

KERIM YILDIZ

FOREWORD BY
NOAM CHOMSKY



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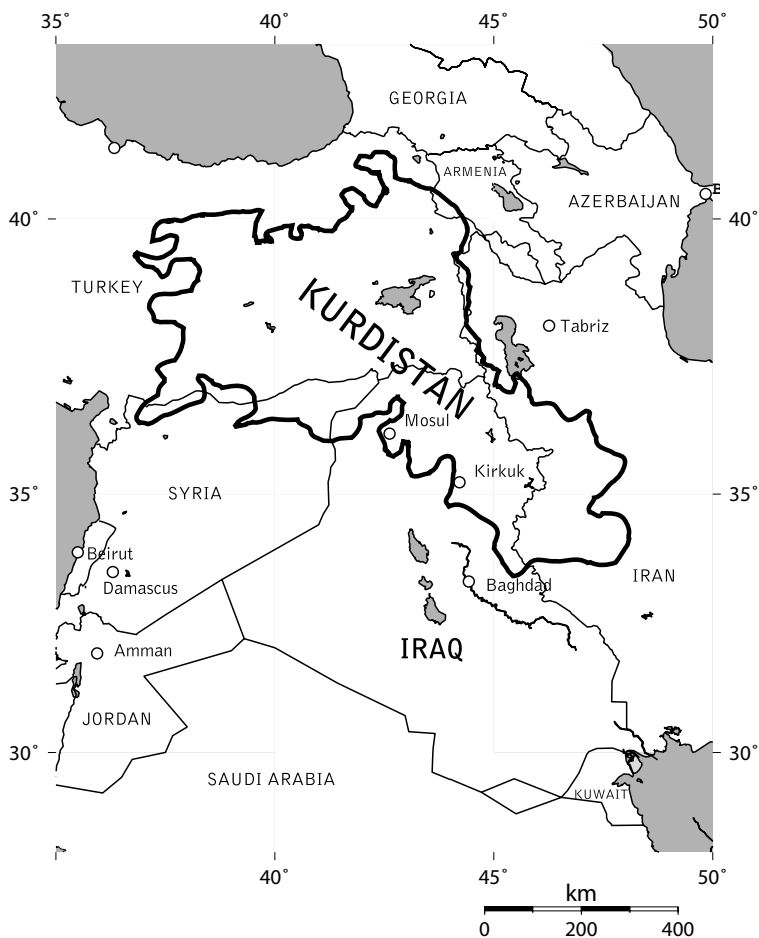
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Map of the area inhabited by Kurds

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Foreword

Noam Chomsky

This Foreword is edited from a keynote speech delivered by Professor Noam Chomsky on behalf of the Kurdish Human Rights Project, on the occasion of its tenth anniversary, on 9 December 2002. Already when this talk was being delivered, the drums of war were being heard everywhere as the Bush administration and its allies prepared to launch war against Iraq. Kurds throughout the regions feared they would lose what autonomy they had achieved in Iraqi Kurdistan since the establishment of the 'safe haven'. The speech provides the reader with the context not just to the Kurdish question in Turkey, but also to the Iraq invasion which began three months later.

With the political leadership in Washington, and their London affiliate, declaring in every possible way their determination to go to war in Iraq – and crucially, without delay – the future for the people of the region is highly uncertain, and ominous as well. No one can predict the consequences of war: not the CIA, not Donald Rumsfeld, no one, and prospects include outcomes that are far from pleasant. These include, for Iraq, the dire warnings of humanitarian and medical organizations; and for the world beyond, the grim predictions of US and other intelligence agencies that an attack might stimulate terror for deterrence or revenge.

These are among the many reasons why the threat or use of violence always carries a heavy burden of proof; very powerful arguments are needed for it, and no argument at all is needed against it. That holds for international affairs just as it does for personal relations or any other human interaction. I will not try to review the arguments offered for the resort to violence in this case, apart from joining in the extreme skepticism, to put it politely, that reigns outside of narrow though influential sectors in Washington and London.

Very narrow sectors. The academic dean of the Kennedy School of Government at Harvard, international relations specialist Stephen Walt, speaks for many analysts in the mainstream when he observes that 'there is no evidence to suggest that Iraq is becoming significantly more dangerous' or that deterrence is not a feasible option, and that

'the timing [of the war plans] is being driven primarily by domestic politics.' He adds further that we should disregard the 'small but well-placed group of neo-conservative officials and commentators' who are passionately dedicated to war, and we should instead be 'pursuing a more evenhanded policy in the Middle East in general.' Here he presumably has in mind particularly US-Israel-Palestine relations. In this domain, US government policy continues to stand in opposition to regional and world opinion, and to a large majority of domestic opinion, as studies regularly demonstrate.¹

Even the most hardline military and strategic analysts, like Anthony Cordesman, are warning the administration not to heed 'neo-conservative and Israeli fantasies about going on to region-wide conflicts or triggering broader overthrows of regimes,' and other plans of the 'sillier armchair strategists and more vocally irresponsible hardliners.' Cordesman is presumably referring to high civilian officials in the Pentagon who were writing position papers for the far-right Binyamin Netanyahu in the 1990s, and are circulating ideas about extending the Hashemite kingdom of Jordan to parts of Iraq and Saudi Arabia, establishing Jordan as Palestine with the obvious consequences for Palestinians, and going on with ambitious plans as far as China.²

One of the best current sources is the Israeli press, particularly informative now because of the close relations between Washington hawks and extremist sectors in Israel. One prominent Israeli strategic analyst, Ehud Sprintzak, returned recently from a meeting with high-ranking civilians at the Pentagon and described them to the Israeli press as 'a revolutionary group, with a totally different approach to the Arab world and the threats coming from it. One can summarize their approach in one sentence: they think that the Arab world is a world of retards who only understand the language of force'³ – an understatement, as one can see by their reaction when German or Canadian leaders violate the rules by paying some attention to the will of their own populations.

It is hard to rank the likely victims in terms of imminent threats, and pointless to try, but there can be little doubt that the Kurdish populations are among them, and once again face dangerous times. Those concerns hold for Kurds everywhere, including the 4 million Kurds of northern Iraq, who for the moment have achieved unusual progress in the northern enclaves under the uneasy alliance of Masoud Barzani and Jalal Talabani. Anders Lustgarten may prove to be right in his warning that in the long run 'none stand to lose

more than the occupants of Iraqi Kurdistan,' and that 'any successor to Saddam will see the Kurdish threat to Baghdad in the same light' (citing Kurdish historian David McDowell).⁴

If the worst can be averted – and there is always a lot that we can do about that – then there are some real signs of hope: some external, others within. And in both domains, again, we can do a lot to nourish these hopes.

It is obvious beyond any need for comment that the rich and powerful countries, primarily the US and Britain, will have an enormous influence on future developments, as they have had in the past, decisively in the Middle East for a century. And in free societies, where fear of repression is slight, that means that popular forces and independent organizations can have a decisive influence. For that reason alone it is a real privilege to be able to participate in the tenth anniversary celebration of the Kurdish Human Rights Project, which has compiled a stellar record in promoting and significantly advancing the cause of human rights in this tortured part of the world.

In the coming years, its tasks will be even greater, and concerns reach well beyond the Kurds, severe as their problems are. We need not rehearse the reasons why Britain and later the US have been determined to control the Gulf region. It suffices to recall the observation of the State Department in 1945 that the resources of Saudi Arabia, and the Gulf more generally, are a 'stupendous source of strategic power, and one of the greatest material prizes in world history.' It was taken for granted that the US must control these resources. France was unceremoniously expelled by legal chicanery, and Britain reduced over the years to a 'junior partner,' as the Foreign Office recognized early on. Control over these resources yields 'wealth beyond the dreams of avarice,' as one standard history of the energy system puts it; the wealth recycles to the US and British economies particularly, along many avenues, not just oil company profits. 'Strategic power' translates into a lever of world domination. All of this was understood clearly by those who planned the post-war world, with much care and thought. According to current intelligence projections, Gulf energy resources are expected to become even more significant in the years ahead;⁵ and, correspondingly, so do the stupendous source of strategic power and the great material prize.

Note that the issue has not been access by the US itself, but control, a crucial distinction, often overlooked. When President Eisenhower warned in 1958 that 'to lose [Jordan to Nasserite indigenous nationalist

pressures] would be even worse than the loss of China, because of the strategic position and resources of the Middle East,'⁶ he did not have in mind US access to those resources, which did not become even a marginal issue for many years, but rather control. And that remains true for the indefinite future.

The resources are, of course, a wasting asset. If the wealth beyond the dreams of avarice flows to the West and the pockets of corrupt and brutal leaders, not to internal development, then many tens of millions of people face a fate too awful to contemplate as the resources decline with nothing to replace them. Twenty-five years ago a well-known international economist warned that if the wealth of the oil states is not invested for industrial development, the Arab world may not survive long into the twenty-first century. It 'is the region with the fewest resources in water and cultivable land' and was even then incapable of feeding its rapidly growing population. The Arab world and Africa generally, are 'heading for tragedy,' he wrote, and even Saudi Arabia 'will cease to exist,' unless resources are directed constructively to internal needs.⁷ No rational investment policy has been pursued, and the abominable social organization of the region has seen little progress in the years since, while economic conditions are in many ways far worse. That is all apart from the possible consequences of the wars planned by the 'revolutionary group of sillier neocon armchair strategists.'

Analysts who are taken more seriously – not merely because of the power they wield – hold that the rich industrial countries have a 'right of access' (as they call it), which outweighs the rights of those who happen to inhabit the coveted lands. These are concepts with deep roots in Western intellectual and legal culture. On such grounds, they urge that Middle East oil 'could be internationalized, not on behalf of a few oil companies, but for the benefit of the rest of mankind'; I am quoting the respected specialists Walter Laqueur and Robert Tucker, who speak within a noble tradition. This concern for the benefit of the rest of mankind has not yet been extended to the natural conclusion that the industrial and agricultural resources of the West should be internationalized for the common good, but that's traditional too. Those who might be misled into such strange paths can be returned to good form by another well-established doctrine: the distinction explained by the distinguished political philosopher Irving Kristol between 'significant' and 'insignificant nations.' The latter, 'like insignificant people, can quickly experience delusions of significance,' he explained, and these delusions must be driven

from their deformed minds by force. 'In truth, the days of "gunboat diplomacy" are never over,' he continued. 'Gunboats are as necessary for international order as police cars are for domestic order.' Anyone with a good English education should be able to come up with worthy antecedents, including the most distinguished and honored figures. And it should come as little surprise that traditional doctrines are continually resurrected, adapted to new contingencies.⁸

Regrettably, the insignificant nations lack the insight to appreciate these subtleties, and continue to lapse into delusions of significance. They never seem to comprehend why the wasting wealth of their region must flow in abundance to others, not to them, laying the basis for a viable existence for their descendants. Hence the constant need for force under one or another guise, which it is the historical task of intellectuals to provide.

Serious planners, however, have understood the basic issues well enough. George Bush is not the first president to ask 'Why do they hate us,' and his predecessors knew well that the answer is not 'because we are so good.' A more serious answer was given by the National Security Council in 1958, a crucial year in Middle East affairs, when President Eisenhower was voicing his concern over 'the campaign of hatred against us' in the Arab world, 'not by the governments but by the people,' who are 'on Nasser's side,' supporting independent secular nationalism. The reasons for the 'campaign of hatred' were outlined by the National Security Council:

In the eyes of the majority of Arabs the United States appears to be opposed to the realization of the goals of Arab nationalism. They believe that the United States is seeking to protect its interest in Near East oil by supporting the status quo and opposing political or economic progress.

Furthermore, the perception is accurate: 'our economic and cultural interests in the area have led not unnaturally to close U.S. relations with elements in the Arab world whose primary interest lies in the maintenance of relations with the West and the status quo in their countries' – that is, with harsh and oppressive regimes that block democracy and development.⁹

In brief, the situation is much as it is elsewhere, notably Latin America, where the record is long and rich, and very revealing for those who hope to understand something about the world. In the last few years a wave of democratization in Latin America has inspired

much enthusiasm among Western commentators – but not Latin Americans, as polls indicate, registering steady decline in faith in democracy, or to be more accurate, in the form of democracy that has been instituted. The standard scholarly source outlines the basic reasons. The author, Thomas Carothers, explains that the US indeed supported democracy, but of a special kind: only when it retains ‘the basic order of quite undemocratic societies’ and avoids ‘populist-based change’ that might risk ‘upsetting established economic and political orders and heading off in a leftist direction.’ Washington can ‘adopt prodemocracy policies as a means of relieving pressure for more radical change, but inevitably sought only limited, top-down forms of democratic change that did not risk upsetting the traditional structures of power with which the United States has long been allied.’ Carothers writes with an insider’s perspective, having served in State Department ‘democracy enhancement’ programs. He reluctantly approves of the anti-democratic policies he outlines, since he can see no alternative. Allowing insignificant people a role in shaping their affairs is evidently not an option. It is, in fact, too extreme a conception even to be rejected.¹⁰

These problems are very much alive in the Islamic world as well. Asia correspondent Ahmed Rashid reports that in Pakistan, ‘there is growing anger that US support is allowing Musharraf’s military regime to delay the promise of democracy.’ Musharraf is ‘my kind of man,’ US Ambassador Wendy Chamberlin declared, ‘very direct, genuine, and extremely personally honest’ – rather like Suharto, whose record compares well with Saddam Hussein’s, and accordingly remained ‘our kind of guy’ as the Clinton administration described him; he was greatly praised as well by Paul Wolfowitz, now a leading Pentagon hawk, when he was Ambassador to Indonesia in the Reagan years, at a time when Saddam was also ‘our kind of guy.’ A well-known Egyptian academic told the BBC that Arab and Islamic people were opposed to the US because it has ‘supported every possible anti-democratic government in the Arab-Islamic world. When we hear American officials speaking of freedom, democracy and such values, they make terms like these sound obscene.’ An Egyptian writer adds that ‘Living in a country with an atrocious human rights record that also happens to be strategically vital to US interests is an illuminating lesson in moral hypocrisy and political double standards.’ Terrorism, he said, is ‘a reaction to the injustice in the region’s domestic politics, inflicted in large part by the US.’ The director of the terrorism program at the New York Council on Foreign Relations agreed that ‘Backing

repressive regimes like Egypt and Saudi Arabia is certainly a leading cause of anti-Americanism in the Arab world,' but warned that 'in both cases the likely alternatives are even nastier'.¹¹

There is a long and illuminating history of the problems in supporting democratic forms while ensuring that they lead to preferred outcomes. And it doesn't win many friends.

The fundamental issues that troubled Eisenhower and his staff are very much alive, even among elites closely integrated into the Western-run version of 'globalization.' By now the sources of the 'campaign of hatred' are compounded with specific concerns having to do, particularly, with the fate of Palestinians, and of Iraqi civilians under the murderous sanctions regime. It arouses little concern among Western humanists if the 'economic sanctions [imposed by the US-UK, though conveniently attributed by propaganda systems to the UN] may well have been a necessary [sic] cause of the deaths of more people in Iraq than have been slain by all so-called weapons of mass destruction throughout history,'¹² in the hundreds of thousands according to conservative estimates. But not everyone seems to rise to the level of Western sensibilities on these matters.

And of course it is not true that 'they hate us,' apart from fringe elements that would have little significance were it not for the resonance of their words even in sectors that despise and fear them. Rather, they hate US government policies. Some find that distinction difficult to grasp, reflexively identifying state policy with the country, its people, and its culture. The cultural deformity is familiar in the official rhetoric of totalitarian states and military dictatorships. People with some commitment to freedom and democracy dismiss such attitudes with contempt: it would only arouse ridicule in Rome or Milan if a critic of Berlusconi's policies were condemned as 'anti-Italian,' though I suppose it would have passed in Mussolini's day – as in Anglo-American intellectual discourse today, which regularly invokes the concepts 'anti-American' or 'hating America' to protect state policy from critical scrutiny, a fact that may have some interest.

Discarding ideological fanaticism, the reality is an ominous mix. Every serious commentator emphasizes that 'Unless the social, political, and economic conditions that spawned Al Qaeda and other associated groups are addressed, the United States and its allies in Western Europe and elsewhere will continue to be targeted by Islamist terrorists,' and for every two who are killed five more are recruited.¹³

Returning to reasons for hope, among them is the work of external actors like the KHRP, the Bar Association, and others, many of them outgrowths of the general improvement in the level of civilization in the West that has its roots in the ferment of the 1960s. One indication that is highly relevant today is the protest against the coming war, which has no precedent in the history of Europe or the US, to my knowledge. Comparisons are often drawn to Vietnam, but that is a fundamental misunderstanding, and a revealing one. We have just passed the 40th anniversary of the public announcement that the Kennedy administration was sending the US Air Force to bomb South Vietnam, also initiating plans to drive millions of people into concentration camps along with chemical warfare programs to destroy food crops. There was no pretext of 'defense,' except in the sense of official rhetoric: defense against the 'internal aggression' of the Vietnamese in Vietnam (UN Ambassador Adlai Stevenson; in reality, as he presumably understood, the internal aggression of South Vietnamese in South Vietnam), and their 'assault from the inside' (President Kennedy). Protest was non-existent. It did not reach any meaningful level for several years, by which time hundreds of thousands of foreign troops were rampaging in the country, densely-populated areas were being demolished by saturation bombing, and the aggression had spread to the rest of Indochina. Today, in dramatic contrast to the 1960s, there is large-scale, committed, and principled popular protest all over the US, elsewhere much more so, before the war has been launched, except very partially. That reflects a steady increase over these years in unwillingness to tolerate aggression and atrocities, one of many such changes.

Polls reveal more support for the planned war in the US than elsewhere, but without further investigation, we do not know what these numbers mean. It can hardly escape notice that although Saddam is reviled almost everywhere, he is feared outside Iraq only by Americans, who are subjected to a drumbeat of propaganda warning that if we do not stop him today he will destroy us tomorrow. The device is second nature to the Washington leadership, mostly recycled Reaganites who employed it effectively to sustain support for their terrorist wars during the first phase of the 'war on terror' they declared on gaining office in 1981. A serious measure of support for war would extricate this factor. The residue would give a more realistic and meaningful measure of support for the resort to violence.

Other reasons for hope are internal to the societies where severe repression and violence reign. I have been greatly privileged to catch

a glimpse in Turkey, in Istanbul and Diyarbakir, the capital of the Kurdish southeast. Much to my surprise, I came back from Turkey feeling far more optimistic than when I went. It was truly inspiring to witness first-hand the courage and dedication of the leading artists, writers, academics, journalists, publishers and others who carry on the daily struggle for freedom of speech and human rights, not just with statements but also with regular civil disobedience, facing penalties that can be severe. Some have spent a good part of their lives in Turkish prisons because of their insistence on recording the true history of the miserably-oppressed Kurdish population: sociologist Ismail Besikci, to mention one notorious case, re-arrested ten years ago for publishing a book on state terror in Turkey, having already spent 15 years in prison. He also refused a \$10,000 prize from the US Fund for Free Expression in protest against Washington's strong support for Turkish repression, which is virtually unknown in the US, in accord with the standard principle that one's own crimes must be effaced.

Unlike Dr Besikci, the first Kurdish woman elected to Turkey's Parliament, Leyla Zana, did not refuse the Sakharov Prize for freedom of thought six years ago. As she wrote when she received it, 'the jailers who lock my body behind the thick walls of an Ankara prison do not have the power to prevent my spirit from travelling freely.' She is still serving a 15-year sentence for having worn traditional Kurdish colors and for her crimes when she took her oath of office in 1991, reading it in Turkish as required but then adding in Kurdish: 'I shall struggle so that the Kurdish and Turkish people can live peacefully together in a democratic framework.' Just last week, Amnesty International renewed its appeal to the Turkish authorities to release her. As in the case of other courageous and prominent dissidents in Western domains, including those who were brutally murdered by state terrorist forces armed and trained by Washington, her name is virtually unknown in the United States. There is a chance that laws just passed may finally end her torment, again something we can do a lot about.¹⁴

A current case that tells us a good deal about ourselves is that of Dr Haluk Gerger. Instead of describing it, I will quote some excerpts from an open letter to the US Ambassador by Sanar Yurdatapan, the Turkish musician and writer who is the spokesperson for the Initiative for Freedom of Expression and a leading figure in the civil disobedience actions:

I am writing to express my deep dismay at the manner in which the US Immigration Service treated former prisoner of opinion Dr Haluk Gerger. It is very galling for those who are struggling to establish freedom of expression in Turkey to see the United States, constitutionally committed to free speech, behave in such a peremptory manner to an individual who has sacrificed his academic position and even his own liberty because he was not afraid to speak out. In the 1995 State Department Report on Human Rights Practices, the imprisonment of Haluk Gerger was shown as an example of Turkey's lack of respect for civil liberties. His treatment as *persona non grata* in 2002 makes us wonder if the United States is now endorsing the Turkish state's restrictions on freedom of expression.

On October 1st, Gerger and his wife flew to the USA. At New York airport he was stopped and told that his visa, issued in 1999 for 10 yrs, had been cancelled by the State Department. US officers immediately sent back the couple to Munich after having shot his photos and taken fingerprints.

Gerger is among a number of social scientists in Turkey who have been prosecuted for exercising their right to freedom of expression. A former assistant professor at the University of Ankara, Dr Gerger is a well-known intellectual and a respected writer on nuclear weapons and strategy. He was educated at the Paul Nitze School of Advanced International Studies (SAIS) of Johns Hopkins University in Washington DC, Stockholm University in Sweden, and Herford College in Oxford, England.

Following the 1980 military coup, Dr Gerger was one of the authors of the 'Intellectuals' Petition' criticizing the military's actions, which was addressed to the head of the military junta. A military court acquitted Dr Gerger of any charges related to the petition; however, he was among hundreds of professors fired when the university system was restructured in 1982.

A founding member of the Human Rights Association of Turkey, Dr Gerger is an ardent defender of Kurdish rights. He has written extensively on the issue and has criticized governmental policies. He has likened the Turkish government's treatment of the Kurds to Serbia's ethnic cleansing of Muslims in Bosnia. He has been imprisoned and heavily fined by Turkish courts for writing letters and articles expressing his political opinions.

Upon his release from prison, the American Association for the Advancement of Science honored Dr Gerger during its

1996 Annual Meeting in recognition of the contribution he has made, through both action and example, to the promotion and protection of human rights in Turkey. At this meeting, Dr Gerger spoke passionately about the violence and human rights violations occurring in the southeast of Turkey. He urged scientists to 'exert pressure on both the government of the United States and Turkey on behalf of peace, freedom, and respect for human rights,' and added that, 'these are all values very much relevant to, or rather, preconditions for scientific endeavor.'

Same year, Dr Gerger was also one of the recipients of the Hellman/Hammett grants awarded by Human Rights Watch to writers around the world whose books have been banned or who have been exiled, imprisoned, tortured, or harassed because of their work.

In return for these contributions, he is refused entry to the United States by Colin Powell's State Department, regarded as a dangerous terrorist, not welcomed as a 'man of peace' like Ariel Sharon or a forward-looking democrat like Islam Karimov or Pervez Musharraf.

Yurdatapan was then on his way to the US to receive an award from Human Rights Watch, and though this appeal was ignored, he did receive some attention. The *New York Times* ran a semi-jocular article on a joint book of an atheist, Yurdatapan, and a well-known Islamist writer, co-authored as a call for tolerance and free speech.¹⁵ The article did mention that Yurdatapan had protested 'the long war (now subsided) with Kurdish militants,' an oblique reference to the unmentionable fact that the Clinton administration provided 80 per cent of the arms for some of the worst atrocities of the grisly 1990s, driving millions from the devastated countryside with tens of thousands killed and every imaginable form of brutal torture.¹⁶

The flow of arms was so great that Turkey became the leading recipient of US arms, apart from Israel-Egypt, a separate category. In the year 1997 alone, US arms shipments to Turkey exceeded the combined total for the entire Cold War period up to the onset of the Turkish campaign of state terror – or to keep to convention, Turkish counter-terror, the approved term for the terror that *we* carry out against *them*, close to a historical universal as far as I know, including the worst mass murderers.

Turkey is highly praised for its success in such counter-terror. In the State Department Year 2000 Annual Report, Turkey was singled out for its 'positive experiences' in combating terror, along with Algeria

and Spain, worthy colleagues. This was reported without comment in a front-page story in the *New York Times* by its specialist on terrorism. In a leading journal of international affairs, US Ambassador Robert Pearson reports that the US 'could have no better friend and ally than Turkey' in its efforts 'to eliminate terrorism' worldwide, thanks to the 'capabilities of its armed forces' demonstrated in its 'anti-terror campaign' in the Kurdish southeast. A Brookings Institution study explains that Turkey 'has become a pivotal ally in Washington's new battle against terrorism,' particularly well-positioned to help because 'Turkey has itself struggled with terrorist violence for the better part of the last two decades,' just as Milosevic did in Kosovo – though the comparison is perhaps unfair, since the US–Turkish record is more atrocious than the charges against Milosevic in the indictment concerning Kosovo, certainly before the NATO bombing.¹⁷

Thanks to these achievements, Ambassador Pearson added, it 'came as no surprise' that Turkey eagerly joined the 'war on terror' declared by George W. Bush. The Turkish Prime Minister expressed his thanks to the US for being the only country willing to lend the needed support for the terrible atrocities of the Clinton years – still continuing, though on a lesser scale now that the 'counter-terror' has succeeded. As a reward for these achievements, Washington funded Turkey to provide ground forces for fighting 'the war on terror' in Kabul. It passed without notice that protection against terror was provided on the ground by a leading practitioner of terror, funded by the only country in the world to have been condemned by the World Court for international terrorism, as well as by the UN Security Council in two vetoed resolutions, all down the memory hole along with the reasons and the terrible aftermath.

There is nothing in the least unusual about these practices, so well documented and so important that they would be common knowledge to every child in a society that valued its freedom.

Back to Turkey, and some personal impressions, which I bring up with diffidence, for what they may be worth. There seems to be a good deal of public support for the people who are carrying out the struggle for free speech and human rights, and who should inspire not only great respect but also humility among their Western colleagues. No less inspiring was what I saw on a visit to Diyarbakir, where many of those driven from the countryside live in caves in the outer walls of the city and in its slums, still barred from return to their villages despite programs that have been officially announced but not implemented, as Human Rights Watch documented in detail in

a report a few weeks ago, describing this refusal as perhaps the most serious of the current human rights violations in Turkey. Conditions seemed to me even worse for the unknown numbers trying to survive in condemned buildings in miserable slums of Istanbul, where large families are crammed into a room, young children are virtually imprisoned unable to venture into the grim alleyways outside while older brothers and sisters work in illegal factories to help keep the family alive. The record of abuses continues day after day, and could be brought to an end with public support in the West.

The courage of the people is beyond my ability to describe, from children in the streets wearing Kurdish colors – a serious offense, for which punishment of the families could be severe – to a large and enthusiastic public meeting I attended in Diyarbakir. At the end, several students came forward and in front of TV and police cameras, presented me with a Kurdish–English dictionary. That was an act of considerable bravery, and a precious gift; right at that time students and their parents were being interrogated, reportedly tortured, and facing imprisonment for submitting legal petitions requesting the right to have elective courses in their native language. On the front page of the dictionary they wrote the following words:

Do you know the pain of not seeing our dreams in our mother tongue. We would like to see our dreams in our mother tongue. And we gave 1600 applications to see our dreams in our mother tongue. And we are being judged 'human interference' in order to see our dreams in Kurdish. And we are being arrested to see our dreams in Kurdish. Our main goal is to shout our language that has lost its voice for ages.

Denial of even these minimal rights is cruel beyond words. They have the support of many brave and honorable people in Turkey, facing prison or worse. They ask only that we offer them every form of assistance within our reach, and do what we can to help them achieve their worthy and justified aims – which means, in particular, putting an end to our critically important contribution to the repression and violence to which they are subjected.

There have been effects of internal struggle and outside pressure. In August 2002, the Turkish Parliament passed new laws that have a good deal of promise. The new government last week extended them in ways that could prove important. Recent KHRP newsletters include reports by delegations of the KHRP, and the Bar of England and

Wales, outlining both the promise and the barriers to its realization, and calling on us to support the people of Turkey in overcoming the repressive acts of the Turkish state. The current record is mixed. There is general agreement that day-to-day repression has been mitigated. On the other hand, the report released by the respected Izmir Bar Association, on Human Rights Day, records increases in human rights violations (as throughout the world, under the pretext of combating terrorism), including hundreds of credible reports of torture, thousands of trials for 'thought crimes,' a continuation of the 'situation of emergency rules' despite the formal lifting of the rules, the bars against return to the villages, and other serious abuses. The Publishers Union of Turkey reported a 'rising trend' of banning of books and accusations against authors and publishers, as well as music and other publications. Kurds and Kurdish issues remain the primary targets, but not the only ones; even a dictionary about women's slang was banned, also a grammar and dictionary of a local Greek dialect. The Rights Association has reported continuing abuses, increasing in some significant categories.¹⁸

The European Union has posed human rights conditions for Turkish application for membership. The conditions are justified, but there are suspicions, justified as well, that elements within the EU may seek to raise the bars continually because of unwillingness to tolerate Turkish membership in the European club, matters that should not be ignored within Europe.

A great many people in Turkey heed Leyla Zana's call 'to struggle so that the Kurdish and Turkish people can live peacefully together in a democratic framework.' They need our support, and with it, there might even come a day when Turkey will be the 'homeland for Turks and Kurds' – the phrase used by Atatürk's lieutenant and eventual successor at the founding of the Turkish state 80 years ago.¹⁹

I mentioned that in 1997, when Turkey was the leading recipient of US arms, the flow exceeded the combined total for the entire Cold War period up to the onset of the campaign of state terror – as it is properly called not only by scholars like Ismail Besikci in the book for which he was again imprisoned, but even by a former Turkish Minister for Human Rights. 1997 was an important year for the human rights movements in other ways as well. It was the year when the world's leading newspaper informed its readers that US foreign policy had entered a 'noble phase,' with a 'saintly glow.' It was also the year when US military aid to Colombia skyrocketed,

increasing from \$50 million to \$290 million by 1999, then doubling by 2001 and still increasing.²⁰

In 1999, Turkey relinquished to Colombia its place as leading recipient of US arms. The reason is not hard to discern: Turkish state terror had by then succeeded, Colombia's still had not. Through the 1990s, Colombia had by far the worst human rights record in the Western hemisphere, and was by far the leading recipient of US arms and military training, a correlation that is well-established and would be of no slight concern if it were known outside of scholarship and dissident circles.

Since terror is high on the international agenda, quite rightly, it may be useful to look briefly at the country that replaced Turkey in 1999 as lead recipient of US arms. State terror in Colombia has a long history, but took a more dangerous form in 1962, when the Kennedy administration shifted the mission of the Latin American military from 'hemispheric defense' – a holdover from the Second World War – to 'internal security,' meaning a war against their own populations, a decision with fateful consequences throughout the hemisphere. As part of the new programs, a mission was sent to Colombia led by Special Forces General Yarborough, which recommended 'paramilitary, sabotage and/or terrorist activities against known Communist proponents,' the latter, a term with a familiar meaning in Latin America. These actions, including paramilitary terror, 'should be backed by the United States,' the mission advised. One of the leading figures in Colombia's impressive human rights movement wrote 30 years later that the US initiatives 'transformed our regular armies into counterinsurgency brigades, accepting the new strategy of the death squads,' ushering in 'what is known in Latin America as the National Security Doctrine,'

not defense against an external enemy, but a way to make the military establishment the masters of the game [with] the right to combat the internal enemy, as set forth in the Brazilian doctrine, the Argentine doctrine, the Uruguayan doctrine, and the Colombian doctrine: it is the right to fight and to exterminate social workers, trade unionists, men and women who are not supportive of the establishment, and who are assumed to be communist extremists.²¹

This is not the place to review the horrendous aftermath, which should again be well-known, at least among those who hope to

understand their own responsibilities as citizens of the world-dominant powers. Though what happened is largely kept under wraps in respectable circles, it is understood by those more closely involved – for example, by the famous School of the Americas, which trains Latin American military officers, and takes pride in the fact that the US army helped to ‘defeat liberation theology.’²²

The Latin American Church became an enemy when it committed a grave sin: it renounced its traditional mission of serving the rich in favor of the new ‘preferential option for the poor,’ and was punished accordingly, particularly during the first phase of the ‘war on terror’ conducted by many of those at the helm today in Washington, always with the loyal support of their British ‘junior partner.’ Though bin Laden would dearly love to create a ‘clash of civilizations’ between the US and the Islamic world, the truth is different: like its predecessors in world domination, Washington is quite ecumenical in its choice of targets of state-directed international terrorism, as well as its allies in the cause.

Like many other current centers of turmoil and state terror, Turkey among them, Colombia is part of an important oil-producing region, and in fact is a significant producer itself: much the same is true of Chechnya, Western China, Aceh in western Indonesia, and other places where September 11 was used as a pretext to intensify state terror on the assumption, quickly verified, that authorization would be granted by Washington. Human rights organizations and the State Department agree that the overwhelming majority of atrocities in Colombia have been attributable to the military and paramilitaries, who are so closely linked to the military that Human Rights Watch calls them the ‘sixth division’ of the Colombian army, alongside the official five. The military–paramilitary proportion of attributable atrocities (about 3:4) has been stable over recent years, but the share of the paramilitaries is increasing as atrocities are privatized in accord with good neoliberal practice, familiar elsewhere as well: Indonesia in East Timor, Turkey in the southeast, Serbia in the former Yugoslavia, and many other places. There is a corresponding privatization of international atrocities. The chemical warfare (‘fumigation’) programs that are a core part of the Clinton–Bush ‘Plan Colombia’ are being taken over by ‘private’ companies like Dyncorps, consisting of US military officers under contract by the Pentagon; again, a pattern that is worldwide.

A few months ago, in the southern Colombian province that had the distinction of compiling the worst human rights record in the

country in 2001, I listened to many hours of testimonials of peasants who had been driven from their lands by chemical warfare. They were among those who had organized a 'social bloc' that succeeded in electing their own governor, Floro Tunubalá, a thoughtful, articulate, proud indigenous man. His election, reminiscent of Haiti a decade earlier, was a shock to the elites that had run the place forever, a reflection of the success of local organizing among the popular sectors. He has described the success of the social bloc in winning 'economic and territorial rights, and social rights in the areas of education and health.' That 'attracted the attention of the paramilitaries,' who do not tolerate such deviation from the traditional structures of power they protect, and US chemical warfare, under the pretext of a drug war that few knowledgeable analysts take seriously – and that would be scandalous if the pretexts were true. For the peasants – campesinos, indigenous, Afro-Colombian – the 'drug war' means that their farms and lives are ruined, their animals killed, their children often sick and dying. They are left destitute, with little hope, and will join the millions of 'displaced people.' The displaced population in Colombia is one of the largest in the world, comparable in scale to the victims of US-backed Turkish 'counter-terror' against the Kurds: about 2.7 million according to the most recent report of the major Colombian human rights organization. The numbers are increasing at 1,000 a day along with other atrocities, among them, continued killing of trade unionists at the rate of one every other day; for years, more than half of those recorded worldwide are in Colombia. More can be expected with the planned increase of US military aid just announced by Secretary Powell, if history is any guide.²³

The crop destruction programs are functioning as another stage in the historical process of driving poor peasants from the land, thereby opening up rich resources to strip mining, mineral extraction, hydroelectric projects for investors and privileged sectors, and other forms of exploitation by foreign capital. They will probably lay the basis for agroexport controlled by multinationals using laboratory-produced seed once the biodiversity is destroyed, and along with it, the rich but very fragile tradition of peasant agriculture, developed over many centuries of careful work and experimentation, handed down usually from mother to daughter, and easy to destroy in a single generation in a peasant society. The pleas for alternative strategies of agricultural production by the governors of the targeted southern provinces, the Church, and the peasant organizations do not fit the

aims of the Colombian elite and Washington's 'Plan Colombia,' hence receive only the most marginal support.

I bring up Colombia alongside of Turkey in part for personal reasons, having recently visited the scenes of some of the worst contemporary atrocities, so memories are vivid, but also because the Colombian state and narrow privileged elites have been vying for the lead in receiving US military aid and training, and consistent with historical patterns, are leading human rights violators and central components of long-term strategies of world domination now taking new forms. But it is all too easy to add further examples.

It is perhaps the most elementary of moral truisms that we are primarily responsible for the anticipated consequences of our own actions, or inaction. It is easy, and sometimes gratifying, to wring our hands over the crimes of others, about which we can often do little. Looking in the mirror is vastly more important, not merely to preserve elementary integrity, but far more significant, because of what we can then do, if we wish, to help people who are struggling so courageously for elementary rights.

Abbreviations

AKP	Justice and Development Party
BIA	Independent Communications Network
CAT	International Convention Against Torture
CLRAE	Congress of Local and Regional Authorities of Europe
COE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DEHAP	Democratic People's Party
DEP	Democracy Party
EC	European Community
ECHR	European Convention on Human Rights
ECRI	European Commission Against Racism and Intolerance
ECSC	European Coal and Steel Community
EEC	European Economic Community
EU	European Union
EURATOM	European Atomic Energy Community
FCNM	Framework Convention on National Minorities
FIDH	International Federation of Human Rights Leagues
GAP	Southeast Anatolia Regional Development Project
Göç-Der	Migrants' Social Solidarity and Culture Association
HADEP	People's Democracy Party
HEP	People's Labour Party; now DEP
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
IHD	Human Rights Association
INSCR	Integrated Network for Societal Conflict Research
KDP	Kurdistan Democratic Party
KHRP	Kurdish Human Rights Project
Kongra-Gel	Kurdistan People's Congress
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization

OHAL	State of Emergency Legislation
OSCE	Organization for Security and Cooperation in Europe
PKK	Kurdistan Workers' Party; now Kongra-Gel
PUK	Patriotic Union of Kurdistan
RTÜK	Supreme Board of Broadcasting
SHP	Social Democratic Populist Party
STP	Socialist Party of Turkey
TOHAV	Foundation for Social and Legal Research
TSK	Turkish Armed Forces

1

Introduction

The decision by the European Union (EU) of 17 December 2004 that Turkey is to become a candidate for accession heralds a new era for the Turkish Kurds. The logic of ethnic nationalism in Turkey has long generated attempts to repress Kurdish identity. Subject to unremitting attempts by the Turkish government to disband Kurdish networks, suppress cultural expression and quell dissent, the Kurds residing in southeast Turkey have borne decades of persecution effected through discriminatory legislation, forced displacement, judicial harassment, arbitrary detention, torture and extra-judicial execution. Now, for the first time since the ascendancy of Atatürk in 1923, EU accession has the potential to offer them a real prospect of lasting security in an open, pluralist society.

EU decision-makers, spurred on by the perceived political imperative of advancing the EU accession process, have, though, adopted a rather over-optimistic interpretation of the pro-EU reforms currently being enacted in Turkey. It seems to be everywhere presumed that a modern, pluralist democracy will inexorably follow the tentative, if outwardly dramatic human rights restructuring so far enacted in Turkey. Indeed, there is a widely held perception in Europe that the Turkish administration is somehow benign, and has simply made a few small errors in relation to human rights and its treatment of the Kurds.

Will this really prove the case? And can the EU's decision to open formal accession negotiations with Turkey despite a multitude of very important reservations over her fulfilment of the relevant criteria thus be justified? Turkish society and political structures have for decades been steeped in conservative, highly reactionary nineteenth-century inspired notions of the primacy of the nation state and the central role of an official, mono-ethnic nationalism. These ideological precepts have informed the view that values and interests separate from the state are dangerous, and particularly that expressions of identity which depart from the official designation of Turkey as a nation of ethnic Turks jeopardize the integrity of the state, however peaceful or moderate. Elements of the 'deep state' in Turkey which

2 The Kurds in Turkey

lurk behind her democratic façade remain extremely influential in ensuring that these strands of thinking remain current.

Turkey's treatment of the Kurds must be seen in this context. Turkish nationalism incorporates the concept that national integration is predicated upon one nation and a unitary, indivisible state. There were accordingly deemed to be no minorities in Turkey, since the presence of non-Turkish ethnic identities within the country's borders was the very inverse of what Turkish state-builders were trying to achieve. Legislative provisions thus prohibited distinctions to be made between citizens on the basis of ethnicity, and the constitution outlawed self-determination and regional autonomy.

As a people¹ making up over 20 per cent of the population in Turkey and inhabiting a large, contiguous region on Turkey's borders with the Middle East, the Kurds were seen to constitute the greatest threat to Turkish conceptions of the integral nation state. Accordingly, Turkey has ruthlessly suppressed all expressions of Kurdish culture and punished assertions of Kurdish identity or pro-Kurdish political viewpoints. She has also fought an armed conflict against the Kurdistan Workers' Party (PKK),² accompanied by extreme brutality by state security forces towards Kurdish civilians, and sought to dissipate Kurdish regional dominance in the Southeast by destroying over 3,000 Kurdish villages and forcibly displacing their inhabitants. Turkey has doggedly refused to conceive of the Kurdish issue as a political one stemming from her repressive treatment of the Kurds, and instead sees only the much narrower, security problem in the Southeast arising from the Kurdish separatist threat. Consequently, she propounds only military solutions, is extremely reticent about broadening Kurdish cultural rights for fear of fuelling separatist tendencies, and steadfastly refuses to engage in political dialogue with representatives of the Kurds.

The situation of the Kurds is a touchstone issue for Turkey in the EU accession process. Given Turkey's autocratic leanings evidenced in her behaviour towards the Kurds, her paranoia over countenancing pluralism and her increasingly desperate attempts to cling to outdated notions of the primacy of the nation state, can she truly be said to be democratizing?

These questions are given added pertinence by events unfolding in Iraq. The new regime there has explicitly demonstrated the feasibility of state-based autonomous solutions for the Kurds, setting an important precedent and endowing Kurdish claims for similar outcomes across the Kurdish regions with added legitimacy.

Turkey, instead of moving in this direction though, is forging an anti-democratic alliance with Iran and Syria, fellow oppressors of the Kurds, in order to prop up their increasingly untenable joint positions on this issue.

The key question which this publication seeks to address is whether, behind all the fanfare of reform and rejuvenation of democracy, Turkey is really changing. How appropriate is it to open formal accession negotiations for EU membership? What should be Turkey's next steps? What prospects does EU accession hold for the Kurds?

2 Background

The Kurds, a tribal people with a cohesive and distinct identity who originate from the Zagros Mountains in northwest Iran, have endured a history of oppression and abuse. Ultimately denied the opportunity for independence provided for in the 1920 Treaty of Sèvres, the Kurds were later divided between the border areas of Turkey, Iraq, Iran and Syria where they were viewed with profound mistrust and hostility, their existence as a people was denied and they consequently endured decades of repression, violence and forced assimilation.

In Turkey, the birth of the new Republic under the tutelage of Kemal Atatürk in 1923 saw the imposition of a mono-ethnic nationalism which sought to extinguish the notion of a distinct Kurdish people. 'Security concerns', inspired by the location of Kurdish communities in Turkey's sensitive border regions, bolstered this aim. This came to a head after 1984, when a government-declared State of Emergency in the Southeast provided a framework for torture, killings, forced displacement, and severe restrictions on Kurdish cultural and political expression, against a backdrop of ongoing armed conflict.

THE KURDS

The Kurds, who are believed to number around 30 million, are widely believed to be the largest group of stateless people in the world. Despite this, they have maintained a strong ethnic identity for over two thousand years. As an ethnic group, the Kurds are the product of years of evolution stemming from tribes such as the Guti, Kurti, Mede, Mard, Carduchi, Gordyene, Adianbene, Zila and Khaldi,¹ and the migration of Indo-European tribes to the Zagros Mountains some 4,000 years ago.² The Kurds have a clan history, with over 800 tribes in the Kurdish regions.³ The Kurds have traditionally been organized into tribes and inhabited rural districts herding shepherds or goats, with some adherence to a nomadic or semi-nomadic lifestyle.

The Kurds do not have a single common language, but the most widely spoken Kurdish dialects⁴ are Kurmanji and Sorani which are usually mutually understandable. Kurmanji is spoken predominantly

in Turkey, Syria and the Caucasus, as well as by some Iranian Kurds.⁵ Sorani is spoken by Iraqi Kurds south of the Greater Zab, and by Iranian Kurds in the province of Kordestan. To the far north of Kurdistan, the Zaza dialect is also spoken. The Kurdish language(s) belong to the Indo-European language family. They have been influenced by contact with surrounding modern languages and at times evolved accordingly, for example Kurdish in Turkey contains some Turkish words.⁶

Likewise the Kurds do not share a common religion. Most are Sunni Muslims who converted between the twelfth and sixteenth centuries and are part of the Shafi'i school of Islam. Many of Iran's Kurds living in the provinces of Kermanshah and Ilam, though, are Shi'ite. Other Kurds follow Alevism, an unorthodox form of Shi'ite Islam, as well as the indigenous Kurdish faith of Yazidism. There are minor communities of Kurdish Jews, Christians and Baha'is.

The use of the name 'Kurd' dates back to the seventh century AD, and 'Kurdistan' or the land of the Kurds was a term which first appeared in the twelfth century when the Turkish Seljuk prince Saandjar created a province of that name in modern-day Iran.⁷ In the sixteenth century the term came to refer to a system of fiefs generally.⁸ The borders of Kurdistan have fluctuated over time, and the Kurds are now spread through Turkey and the Middle East with smaller populations to be found in the Caucasus. There are no fixed borders of the area commonly referred to as 'Kurdistan', but the heart of the Kurdish-dominated regions is the Zagros mountain chain which lies in the border area between Iraq, Iran, Syria and Turkey, as well as the eastern extension of the Taurus Mountains. It also extends in the south across the Mesopotamian plain and includes the upper reaches of the Tigris and Euphrates rivers. Many Kurds have fled the brutality of the regimes governing the Kurdish regions to seek refuge in Western Europe where they form a sizeable and influential diaspora, particularly in Germany, France, Sweden, Belgium and the United Kingdom.

The term Kurdistan refers to more than merely a geographical area, though, and also denotes the culture of the people who inhabit the lands. As successive regimes in Turkey, Iran and Iraq have been extremely reticent about acknowledging the presence of the Kurds within their borders, and Syria has denied that Kurdistan stretches across its boundaries, drawing a map of Kurdistan is always contentious. However, there is no doubt that there exists a large, contiguous area of predominantly Kurdish-inhabited lands, and the

idea of Kurdistan has a real meaning to the people who live there, as well as to Kurds forced into exile in Europe and across the world.

Ascertaining the numbers of Kurds is no easy task, largely because the denial of the existence of the Kurds or state desires to understate their numbers for political reasons throughout the regions they inhabit mar official census data. It is generally thought that the Kurdish population in Turkey is the largest in the regions, both numerically and in terms of the percentage of the overall population in the country it comprises. It currently amounts to approximately 15 million, and makes up around 23 per cent of Turkey's population of 69 million. Iraq is believed to contain 4 million Kurds, making up 20 per cent of the population, for Syria the figures are 1 million and 9 per cent, and for Iran 7 million and 15 per cent.

The Kurds in Turkey are concentrated into the South and East, and form a majority of the population in provinces there including Mardin, Siirt, Hakkari, Diyarbakir, Bitlis, Mus, Van and Agri.⁹ The provinces of Urfa, Adiyaman, Malatya, Elazig, Tunceli, Erzincan, Bingol, and Kars have also been traditionally dominated by Kurdish populations.

Most Turkish Kurds speak Kurmanji, but in the northwest of the Kurdish-dominated area, mainly in the provinces of Tunceli and Elazig, Zaza is spoken.¹⁰ With regard to religion, the Kurds in Turkey can largely be divided into two groups: Sunni Muslims and Alevis. 85 per cent of the Kurdish population is Sunni Muslim, while Alevi Kurds form the minority 15 per cent.¹¹

HISTORY OF THE KURDS

From the sixteenth century, the Kurds occupied the border lands between the Ottoman and Persian empires. The region was held by a varied string of rulers including the Seljuk Turks in the eleventh century, the Mongols from the thirteenth to fifteenth century, and then the Safavid and Ottoman empires. During these periods the Kurds occupied a fairly inhospitable land and, particularly under the Ottomans, were largely afforded autonomy and considerable freedom to manage their own affairs.¹²

This was all to change, however, when the Ottoman Empire was carved up in the aftermath of the First World War, and the Kurds were divided between modern-day Iraq, Iran, Syria and Turkey. At this time, strategic political considerations generated a preoccupation among the Great Powers with self-determination and the protection

of minority groups. Woodrow Wilson's Fourteen Point Programme for World Peace accordingly included the provision that the non-Turkish minorities of the Ottoman Empire should be '*assured of an absolute unmolested opportunity of autonomous development*'.¹³

As such, the 1920 Treaty of Sèvres, signed by the Allied Powers and the Constantinople government, had envisaged independence for minority peoples of the former Ottoman Empire including the Armenians, the people of Hejaz and the Kurds.¹⁴ Under Article 64 of the Treaty, the Kurds would be granted independence within a year. However, there persisted important factors with the potential to upset the realization of Kurdish independence. There were fears in Europe over the threat of the Soviet Union achieving influence over newly formed states, while the British maintained the unsubstantiated belief that a Kurdish leader could not be found who was willing to sacrifice his own tribal interests for the greater purpose of Kurdish nationhood.¹⁵ Britain was made the mandate power authority over Mesopotamia in 1920 and although she seemed at the start committed to the principle of keeping the Kurdish areas separate, pressure mounted to incorporate the area of Mosul into a new Iraqi state.

Ultimately, although the British signed a Joint Declaration with the Iraqi government in 1922 recognizing the rights of the Kurds, the emergence of the new Turkish leader Mustapha Kemal Atatürk and the war of national independence waged by the Turks turned the course of events. With the exception of Greece, the Treaty of Sèvres was not ratified by the signatory countries and the provision for Kurdish autonomy was thus never implemented. Sèvres had been seen as a humiliation by Turkey and was repudiated by the new republic. The aftermath of the Turkish War of Independence saw Sèvres superseded by a new accord in 1923, the Treaty of Lausanne, which largely established the current borders of Turkey. This new instrument ignored Kurdish claims to self-determination and recognized only religious minorities as in need of protection. However, it was recognized by the Allies, and Turkish sovereignty was restored over the Kurdish-dominated area accorded independence under the Treaty of Sèvres. The remaining Kurdish-dominated lands were divided between Iran, Syria and Iraq, with the Allied powers drawing up new national boundaries giving more heed to the allocation of oil resources and rewarding friendly Arab leaders than to the ethnic distribution of the Kurds and their right to self-rule. The Kurds had no real voice in the discussions over the future of their traditional lands.

The relative autonomy which the Kurds had enjoyed was thereafter substantially rescinded and Kurdish communities were everywhere treated with distrust. Deeply held suspicions over the ambitions of the Kurds, a large, non-Arab population inhabiting an area of significant strategic importance, came to dog the regimes governing the Kurdish regions and became a key factor informing their policies towards the Kurds. At the same time, these newly emerging, vulnerable nation states were keen to preserve their new-found independence by fostering a strong national unity and overcoming factionalism or perceived threats to their territorial integrity.

It is difficult to overstate the importance of these factors in dictating the course of Kurdish history over the following 80 years. From the start, expressions of Kurdish identity were discouraged and the Kurds were compelled to behave in accordance with the norms of the countries in which they now found themselves. In time, military incursions into Kurdish regions became common occurrences, with comprehensive attempts made to forcibly dissipate Kurdish networks in border areas and stamp out the notion of a separate Kurdish identity.

In Iraq, the ending of the British mandate with the 1930 Anglo-Iraq Treaty of Alliance did not result in the securing of Kurdish autonomy or basic rights. This was despite the fact that an International Commission of Inquiry set up by the League of Nations had specifically recommended in 1925 that Mosul remain under a League mandate for 25 years, and that due consideration be given to conferring responsibility onto the Kurds for local administration, the justice system and education, and having Kurdish as the official language. Kurdish petitions reminding the League of this undertaking were ignored,¹⁶ and Iraq became independent in 1932. A succession of weak leaders subsequent to the death of King Faisal of Iraq in 1933 ushered in an era of broken promises and betrayal for the Kurds. Conditions imposed upon Iraqi independence, including the recognition of the civil and political rights of the Kurds, were not fulfilled. The Kurdistan Democratic Party (KDP), which was to come to play a key role in Iraqi Kurdistan, was formed under Mullah Mustafa Barzani in Iran during this time.

The overthrow of the Iraqi monarchy in 1958 led to Kurdish hopes for increased involvement in the new republican government of Abdul Karim Qasim, but these hopes were frustrated and the Ba'athist governing regime sought throughout the 1960s to frustrate Kurdish calls for an autonomous Kurdish area. In 1970, Iraq at last promised

self-rule to the Kurds in an Autonomy Accord. The city of Erbil was to be the capital of the new Kurdish Autonomous Region, and it was to have authority over the Kurdish-populated provinces of Arbil, Dahuk and Suleymaniye. However, negotiations broke down, particularly as Iraq refused to concede that the Kurdish city of Kirkuk should be included in the entity, and in reality the area remained under Saddam Hussein's control.

After 1979, when the Shah of Iran was overthrown by the Ayatollah Khomeini, Iraq launched a war against Iran and, apparently in retaliation against Iraqi Kurdish support for the Iranians during this Iran–Iraq war, soon commenced a devastating campaign against the Kurds. From the early 1980s Ba'athist anti-Kurdish activities began in earnest, continuing throughout the Iran–Iraq war and culminating in attempts to 'Arabize' the Kurdish north. The Ba'athist regime destroyed hundreds of villages and forcibly expelled over 1.5 million inhabitants from Kurdish-dominated areas to replace them with Arab settlers. Hundreds of thousands of Kurds were rounded up and executed, and in 1988 an estimated 4,000 to 7,000 civilians were killed in the notorious chemical weapons attack on Halabjah.¹⁷

In 1992, following the first Gulf War, the Kurds responded to encouragement from the US and staged an uprising against the Ba'athists which was ruthlessly crushed by Iraqi forces. Around 1.5 million Kurds fled the area, leading to the establishment of the Iraqi safe haven by European and American forces under 'Operation Provide Comfort'.¹⁸ A no-fly zone was established north of the 36th parallel and policed by US–UK air patrols, which served to secure relative autonomy for the Iraqi Kurds. Over the ensuing decade, self-governing Kurdish political structures and institutions and the foundations of Kurdish civil society began to emerge under the rule of the two main Iraqi Kurdish political parties, the Patriotic Union of Kurdistan (PUK) and the KDP.

In 2003 the main Iraqi Kurdish parties aided the US and British forces to seize Kirkuk and Mosul from Saddam Hussein's regime, though Turkish fears over the emergence of an autonomous Iraqi Kurdistan led Ankara to threaten intervention in northern Iraq. More recently these fears have been revived as Turkey has threatened the use of force if the Kurds are granted control over the historically Kurdish city of Kirkuk, ostensibly on the grounds of upholding the rights of the Turkmen minority there. The Iraqi Kurds now seek to secure their rights to lasting federal autonomy in the north of the country, and under the interim 'fundamental law' federal autonomy

was preserved. The UN Security Council Resolution issued subsequent to the end of the occupation of Iraq did not refer to the interim constitution and thus failed to enshrine Kurdish federal autonomy, and fears arose that Arab elements in the Iraqi government would seek a more centralized structure when the new constitution was drafted.¹⁹ However, these fears have been offset by the tremendous boost to Kurdish hopes given by the election results of January 2005, in which the Kurdish Alliance gained 25.7 per cent of the total vote and won 75 of the 275 seats in the Iraqi National Assembly.

Turkey has brutally quashed frequent Kurdish revolts since the founding of the Turkish Republic in 1923, and has waged a 15-year military campaign against her Kurdish population from 1984 to 1999, accompanied by state security operations which sought to disperse Kurdish communities in the Southeast by destroying thousands of Kurdish villages. In the process, millions of Kurdish civilians were displaced and torture and arbitrary killings became commonplace. Recently, there has been a resurgence of violence between Turkish forces and the former PKK (now Kongra-Gel) in the area. In December 2004, Turkey succeeded in becoming a candidate for formal EU accession negotiations, an event of great significance for the Kurds.

Iranian Kurds formed the political group Komala in 1942 and succeeded in 1946 in establishing a short-lived Kurdish republic in northern Iran with the support of the Soviet Union, known as the Mahabad Republic. However, although the USSR had encouraged the formation of the Mahabad republic and the neighbouring Azerbaijani republic, Soviet troops were persuaded to withdraw a year later from the Mahabad republic after signing an agreement allowing for Soviet participation in the exploitation of oil in northern Iran. In December 1946, Iranian troops entered Mahabad and soon regained control of the area. The Kurdish printing presses and other elements of Kurdish cultural expression which had begun to flourish were abolished by the Iranian regime.

Successive Iranian regimes subsequently sought the assimilation of the Kurds. The Iranian revolution of 1979 and the advent of the Islamic Republic sparked hopes of local autonomy. However, negotiations proved abortive and the new Iranian Constitution enshrined protection for religious minorities only; it contained no reference to the Kurds.²⁰ Soon after the revolution Iran commenced a military campaign against the Kurds which continued until the early 1990s. Iranian hostility towards the Kurds is, as in other states of the Kurdish regions, founded in perceptions of the Kurds as a threat to the

unity of the Iranian state, though this is exacerbated by the fact that Iranian Kurds are predominantly Sunni Muslims while the Iranian theocracy is founded upon an overarching commitment to Shi'ite Islam. The period of military activity in the Kurdish region of Iran saw aerial bombardment of Kurdish targets and mass executions.²¹

Kurdish resistance to the actions of the Iranian state was forced underground by assassinations of major figures within the Kurdish political establishment, including PDKI secretary-general Abd al Rahman Qasimlu and his successor, Dr Sadiq Sharafkindi.²² The fact that Iranian Kurdish parliamentarians are prohibited from forming political parties, despite their involvement in governmental structures, has further contributed to the growth of active underground political networks nationally and in exile.

Recently, reformist elements in the Iranian government under President Khatemi have been active. Many Kurds initially voted for Khatemi on the basis of his undertaking to support minority rights and build an 'Iran for all Iranians', but the supposedly reformist government proceeded to ignore Kurdish rights and demands, and all six Kurdish members of Parliament resigned in protest in 2001.²³ Iran extended an open invitation to UN monitoring mechanisms in July 2003 and received the Special Rapporteur on Freedom of Expression from 3 to 10 November 2003, but in reality the conservative Islamic bloc dominates the regime and prospects for genuine reform appear bleak.²⁴

Repression of the Syrian Kurds commenced in 1956, as a succession of Arab nationalist governments sought to Arabize the Kurdish northeast of Syria. Arab settlers were brought in from 1973 to populate what was referred to as an 'Arab belt' which stretched for 375 kilometres from Ras al-'Ayn east to Malikiyyah near the Syria-Iraq border.²⁵ Syrian ambitions in the Kurdish region were founded not only in hostility towards the Kurds as such, but also in her designs on the fertile agricultural land found there, as well as its oil reserves.²⁶ Kurdish land was expropriated and resettled by Syrian Arabs up until 1975, with the aim of encouraging Kurds indigenous to the area to move away to the towns and cities beyond the Kurdish region.

The greatest assault on the Syrian Kurds came, however, with the 1962 Hasakah census which stripped around 200,000 Kurds or around 20 per cent of the Syrian Kurdish population of their Syrian nationality. The effects of this arbitrary move have been devastating. Affected Kurds cannot own property, attend state schools, vote, have their marriages legally recognized or have passports issued.²⁷ Children

of stateless citizens inherit these problems from their parents, so that the issue remains very much current today. The ostensible aim of the census was to ascertain how many people had crossed the border from Turkey, since Syria has long incorrectly asserted that she has no indigenous Kurdish population but instead is hosting exiled Kurds from neighbouring states. In fact, the stripping of citizenship was part of the broader Arabization plan for the resource-rich northeast of Syria.

Syria's hard line against the Kurds was recently revived in March 2004, when the state instituted a widespread crackdown in the Kurdish regions following riots precipitated by the gains made by Iraqi Kurds in the interim constitution. At least 30 people were killed and more than 160 injured when Syrian security forces quashed Kurdish demonstrations in Qamishli.²⁸ During the ensuing unrest hundreds were arrested and detained as security forces occupied the Kurdish region. Although a high ranking Syrian delegation travelled to the Kurdish region to meet with leaders in order to discuss the situation in the context of wider Kurdish grievances, no concrete solution has yet been reached. In March 2005, Syria agreed to pull out of northern Lebanon, a decision with potentially beneficial implications for the Kurds.

Beyond the shared Kurdish history of oppression and violence across the Kurdish regions, frequent transnational activities have further adversely affected Kurdish interests. The border area between Iraq, Iran, Syria and Turkey, where by far the largest contiguous Kurdish population is centred, is an area of significant strategic importance. The international and regional struggle for dominance over this long-troubled and much fought over part of the world is informed by defence concerns, and by anxiety to secure control over valuable oil, water and other resources there.²⁹ Moreover, shared regional aims to subjugate the Kurds and subdue calls for autonomy have prompted cross-border activities against Kurds in neighbouring states. As a result, the Kurds have long been at the mercy of the designs of the regional powers and have witnessed political activity, economic embargoes and military conflict that have intensified their marginalization and oppression.

HISTORY OF TURKEY

Prior to the establishment of the Turkish state, the area now known as Turkey was incorporated for many centuries into the Ottoman

Empire. Modern Turkey emerged in 1923 from the break-up of this empire in the wake of the First World War, though the new republic was only a shadow of the Ottoman Empire lands comprising the northern half of the Anatolian peninsula and the Zone of the Straits. From 1920 the nationalists had begun to defy the authority of the Ottoman sultan, and when Turkey was declared a new republic in 1923, it was fronted by nationalist leader, Mustapha Kemal Atatürk. Atatürk, modern Turkey's first president, formed a government from the Ankara-based revolutionary group which he led, and secured the passage of the new Turkish Constitution in 1924. He was re-elected in 1927, 1931, and 1935.

This 1924 constitution set out the new ideological premises from which Turkey would be governed; premises which retain considerable resonance today. Spurred by what was regarded by many Turks as humiliation at Sèvres, Kemal Atatürk and his followers developed a new, 'Europeanized' Turkish nationalism based around the overarching idea of the nation state. They sought to create a unified, centralized and ethnically homogeneous state with a single Turkish identity, introducing dramatic reforms aimed at displacing the importance of Islam in society, placing the military at the core of the state and looking to the secular, industrial West for inspiration.³⁰ Accordingly, the caliphate was abolished in 1924, the wearing of the traditional fez was forbidden and the Turkish language was heavily Westernized. Kemal Atatürk governed as a virtual dictator, and his Republican People's Party became the only legal party.

As the largest and most prominent non-Turkish people in Turkey, the Kurds had much to lose from Atatürk's vision. A necessary tenet of the ambition to achieve an all-Turkish national identity was the destruction of alternative identities through assimilation. Indeed, the dissolution of the Kurdish population in the Southeast became one of Atatürk's main goals in realizing his ideal Turkish state. This was demonstrated in the failure to recognize the Kurds as a minority in need of protection or to acknowledge their language and culture under the Treaty of Lausanne; a measure still of great relevance today. As time wore on, frustration among the Kurds with Turkey's repressive policies towards them spilled over into a number of revolts, and Turkey became increasingly active militarily in the Kurdish regions as she saw that she was failing in her bid to crush the Kurdish identity. The very existence of the Kurds within Turkey's borders soon came to be seen in the eyes of the state as synonymous with national disunity, and ultimately with separatism. The concentration of

Turkey's sizeable Kurdish community along her sensitive frontier with her Middle Eastern neighbours, and the presence of frustrated Kurdish communities across the border in Syria, Iran and Iraq, further fuelled Turkey's desire to subjugate the Kurds and neutralize their regional dominance.

Throughout the 1920s and 1930s, during which time Atatürk's government ruled Turkey along autocratic lines, a programme of 'Turkification' was introduced aimed at eradicating non-Turkish allegiances and suppressing non-Turkish culture and expression.³¹ The Kurds were to become its primary target, as the organs of the state sought to break up the Kurdish community in the Southeast through restrictive legislation and state-sponsored violence.

Following the advent of multi-party democracy in 1945, the presiding government was voted out of office and a Liberal government was elected in 1950. This period saw the re-emergence of Islamic influence in Turkey's governing regime, and Turkey has subsequently been pulled between Islamic elements and those, like Atatürk, who promote greater integration with the West. Atatürk's legacy lived on through a string of fractured and unstable governments during the proceeding three decades, imposing some further repressive measures such as the 1950 Press Law. Kurdish place names began to be revised in earnest and Turkish officials repeatedly denied the existence of the Kurds, arguing that they were of Turkish origin. Earlier legislation suppressing Kurdish culture and language remained in place despite a more liberal constitution written in 1961, and severe economic underdevelopment in the Southeast of Turkey generated high levels of illiteracy and poverty among the Kurds.³² During the 1960s and 1970s, expressions of Kurdish identity witnessed something of a resurgence.

However, the military coup of 1980, prompted by mounting violence between nationalists and communists, ushered in an era of one-party rule under Turgut Özal's Motherland Party with devastating consequences for the Kurds. A new constitution approved in 1982 gave the military considerable influence over civilian affairs, and a civil State of Emergency declared in the Southeast in 1987 paved the way for severe human rights abuses in the area. From 1984, Turkey fought a violent conflict against the PKK.

Turkey's domestic anti-Kurdish agenda was mirrored in her activities abroad. Following the first Gulf War in 1991, fears of increased instability in the Southeast led Turkey to close her borders to the masses of Iraqi Kurds fleeing a Ba'athist crackdown, generating a large

scale refugee crisis.³³ Turkey has since made periodic incursions into northern Iraq, ostensibly to root out the PKK and causing significant loss of life.

The conflict between Turkey and the PKK was eventually ended in 1999 with the arrest in Kenya of Abdullah Öcalan and a PKK-declared ceasefire. Later in 1999, Turkey was finally invited to apply for membership of the EU after the Union had rejected a 1997 application on the basis of the country's poor human rights record. Turkey's adherence to human rights standards has been criticized time and again in judgments of the European Court of Human Rights, reports of the European Committee for the Prevention of Torture³⁴ and the European Commission,³⁵ but more recently the 'carrot' of EU accession is seen by many commentators to have generated substantial improvements in human rights, at least on paper. On 17 December 2004 the Council of Ministers declared that a date could be set for the commencement of formal membership negotiations, a crucial step forward in Turkey's bid towards accession.

THE KURDS IN TURKEY

The Kurds in Turkey during the nineteenth century were mainly tribal agriculturalists with local religious and tribal adherences. However, as the notion of ethnic nationalism grew current in Turkey at the turn of the century, the Kurds were to suffer forced assimilation into the new Turkish national identity. Atatürk's programme of 'Turkification' in the Southeast began as senior administrative appointments in the Kurdish region were filled by ethnic Turks, and all reference to Kurdistan was excised from official materials.³⁶ In 1924, use of the Kurdish language in official domains, including in schools, was prohibited in spite of a provision in the Treaty of Lausanne calling for the protection of Kurdish. Traditional Kurdish clothing and music were also banned.

The Kurds responded in 1925 with an uprising led by Sheikh Said, but this was brutally suppressed. Martial law was imposed in the Kurdish region, 52,000 Turkish forces were moved in³⁷ and brutal reprisals were conducted by Turkish security forces with thousands of Kurds being killed or driven into exile. Subsequent Kurdish uprisings included that in Ararat in 1930 and in Dersim in 1938, and both were met with violent repression by Ankara. During this period, the Turkish army was deeply involved in developments in the Kurdish region and Kurds were subject to systematic destruction of their villages,

forced displacement and mass killings. In 1934 a new Turkish law divided Turkey into three zones, and the state was vested with the power to compulsorily transfer those from the third 'zone' deemed to 'require assimilation'.³⁸ The aim of the law, the implementation of which was a contributory factor in the Dersim uprising, was to disperse the Kurdish population to areas where it constituted only a small minority, and thus break down the Kurdish identity.

The most devastating period of recent history for the Turkish Kurds was that following the 1980 military coup and the instigation of martial rule in southeast Turkey. The new 1982 Turkish Constitution rescinded what limited liberal developments had been incorporated into the 1961 constitution, and was based fundamentally on the notion of military control. Villages were renamed with non-Kurdish names and the use of the Kurdish language was again prohibited.³⁹ After 1984, violence in the region intensified considerably, and in time large numbers of state troops were deployed.⁴⁰ The ensuing armed conflict fought by the Turkish state against the PKK, which had come to prominence in the early 1980s in response to the widespread and systematic oppression of the Kurds and a concomitant rise in Kurdish ethnic awareness, lasted 15 years and resulted in the deaths of around 37,000 people, mostly Kurds.

On 19 July 1987, in response to the deteriorating security situation, the Turkish Parliament declared a civil State of Emergency in southeast Turkey.⁴¹ State of Emergency Legislation (OHAL) provided for the establishment of an emergency civil administration and the appointment of a Regional Governor in which all powers of the State of Emergency administration were vested.⁴² Considerable licence was granted to this office, and there was no provision for independent judicial review of its actions; a situation which substantially contributed to the breakdown of the rule of law under OHAL.

An atmosphere of intimidation and violence prevailed in this period. State security forces targeted both the PKK and Kurdish rural communities, and security operations in Kurdish villages were accompanied by arbitrary arrests, looting of moveable property, beatings, torture and 'disappearances'.⁴³ Few Kurds escaped the trauma of the actions of state security forces. In detention, Kurds were frequently subject to ill-treatment, torture and extra-judicial execution, including *falaka* (feet torture), electric shock treatment and rape. This was facilitated by the relative ease with which public authorities could subject Kurds to prolonged, incommunicado detention and

a climate of impunity among the police and gendarmerie in which convictions for such acts were rare and sentences light.⁴⁴

The Kurds were subject to further violence by the Village Guard, a defence force of 65,000 recruited from villagers in the Kurdish southeast and armed and funded by the state to counter PKK incursions. The Village Guard were inadequately supervised, and achieved widespread notoriety following repeated accusations of theft, beatings and rape. The existence of the village guard also provoked the additional danger for the Kurds that those unwilling to join risked retribution from the Turkish state, probably through the razing of their village.

Comprehensive controls on freedom of expression substantially limited the ability of the Kurds to expose their treatment to the outside world,⁴⁵ while Turkey conducted a concurrent campaign to stamp out Kurdish culture once and for all. The use of the term 'Kurdish' was banned in 1983, as were Kurdish folk songs and giving children Kurdish names. Exemplary sentences designed to enforce these provisions were periodically meted out. Throughout the period of the conflict, the National Security Council, a military-dominated body with considerable sway over the civilian government, continued to advocate for a solely military solution to the Kurdish issue and opposed any cultural concessions.

In addition to torture and killings, activities of the state security forces had a further, destructive consequence for the Kurds. Decree 285 of July 1987 granted the Governor General power to evacuate villages on a temporary or permanent basis, and officially sanctioned village evacuations were accompanied by violent state security operations against Kurdish villages considered unsupportive of the government agenda, also generating displacement. Kurds were humiliated, degraded, ill-treated, tortured and sexually assaulted during evacuations. By 1999 it was estimated that 3,500 villages had been evacuated and around 3 million people, mainly Kurds, were displaced. The economic infrastructure of the Kurdish countryside had been decimated, and agricultural livelihoods lay in ruins. The per capita income in the Kurdish regions was, by the 1990s, less than half that of the rest of Turkey. The rationale of the village evacuation programme was not only to root out the PKK, but also to forcibly disband Kurdish dominance in the region. In 1993, President Özal called for 'a planned, balanced migration, including members of all segments of [Kurdish] society, to predetermined settlements in the West'.⁴⁶

Kurdish attempts to further their agenda politically were frustrated by the Turkish government in this period. Political parties dedicated to securing equal rights for the Kurds were repeatedly declared illegal as they dissolved and reformed, and in 1994 Leyla Zana and her fellow Kurdish parliamentarians were imprisoned for wearing Kurdish colours and speaking in Kurdish before Parliament. Pro-Kurdish political leaders were judicially harassed regardless of whether they advocated secession, and some were violently attacked. Nevertheless, the pro-Kurdish HADEP still succeeded in gaining 1.2 million votes in 1995.

An opportunity for rapprochement had seemed likely in 1992–93, but the violence in the Southeast and the brutal village evacuations did not begin to truly decline until 1999 with the arrest of Abdullah Öcalan and the subsequent PKK ceasefire. Even then, state security forces continued to target PKK units and those they considered sympathetic to the PKK, and battle-related deaths continued to be reported. In 2002, OHAL was finally lifted, and Turkey commenced in earnest her programme of pro-EU reforms, bringing in legislative packages aimed at bringing Turkey up to European standards on democracy and human and minority rights. For the moment, however, deep-seated problems remain, particularly with regard to torture, the cultural and linguistic rights of the Kurds, continued displacement, and freedoms of expression and association, and in 2004 southeast Turkey saw a resurgence of the conflict which wrought such tragic consequences in the 1980s and 1990s.

The opportunities now exist through EU accession for Turkey to at last become a democratic, pluralist state in which the Kurds can finally shake off this legacy of persecution and participate in society and in public life on an even footing with other Turkish citizens. However, the past experiences of the Kurds provide an indication of the formidable obstacles facing Turkey in her movement towards EU accession: attitudes among public authorities which countenance the deliberate subjugation of the Kurds are long established; habits of imposing obstacles to assertions of Kurdish identity are deeply embedded; the will to subjugate the Kurds and break up regional Kurdish networks remains entrenched; and the problems in the Southeast continue to be viewed by Turkey as requiring only a military, rather than a political response. Fundamentally, the past treatment of the Kurds, and the way in many instances that the Kurds continue to be treated today, underlines the importance of changing ingrained mentalities through which the Kurds are viewed

with a great deal of hostility as 'yet-to-be-assimilated Turks' set upon fostering national disunity.

The EU has a duty to ensure that these obstacles are surmounted and that the plight of the Kurds is not forgotten, ignored or marginalized in EU accession negotiations. Europe has a historical responsibility towards the Kurds, having engineered their languishing as minorities under hostile state regimes after the First World War and having sold arms to their oppressors. Europe must now ensure the long-term security of the Kurds in the EU, and this can only be achieved through political dialogue between Turkey and the Kurds and the reaching of a negotiated, lasting solution to the conflict in the Southeast.

3

Turkey, the Kurds and the EU

Turkey's bid for EU membership is, without doubt, a defining issue for the Kurds. It has also been frequently described as an important 'crossroads' for Turkey, marking a seminal point in her history and tying her future firmly to Europe.

Turkey's efforts to achieve closer integration with Europe have a long history, but various factors have previously served to frustrate her ambitions, not least her poor human rights record. However, on 17 December 2004 the European Council decided to open formal accession negotiations with Turkey. Now, for the first time, Turkey's political future seems assured and she looks set to become a full member of the exclusive EU 'club' within the next decade.

The EU accession process will bring Turkey within the civilizing influence of European democratic values and strict human rights standards, imposing important checks and balances on state behaviour and pressing forward the reform process. For the Kurds, the stipulations in the field of minority and human rights attendant to the accession process offer unparalleled scope to achieve long-term justice and security. Already, the prospect of accession has triggered rapid and extensive legislative reforms since 2002.

However, questions must be asked as to whether Turkey has truly changed her colours, and whether the EU's decision to open accession talks was based on a genuinely objective appraisal of Turkish progress on democratization and human rights. There are indications that factors extraneous to the consideration of Turkey's fulfilment of the political elements of the Copenhagen Criteria¹ have been allowed to sway decision-making in Brussels. The European Commission's 2004 report on Turkey, a decisive factor in the resolution to open accession negotiations, presented a considerably sanitized picture of the human rights situation in Turkey and made only oblique reference to the situation of the Kurds.

THE ROUTE TO ACCESSION

Since modern Turkey was founded in 1923 upon Atatürk's vision of a secular, Westernized state, she has long sought closer ties with Europe.

Turkey's foreign policy has not been exclusively Western-oriented; she has also sought influence in the Central Asian republics and has defended her interests in the Middle East. However, successive Turkish governments have looked to Western organizations and institutions to form alliances and realize foreign policy objectives; Turkey joined the North Atlantic Treaty Organization (NATO) in 1952, the Council of Europe in 1949, and the Organization for Security and Cooperation in Europe (OSCE) in 1975.

Turkey's path towards membership of the EU, however, has been a slow one, and has given rise to considerable debate among existing Member States. Despite being in many ways aligned with Western Europe, including as a NATO ally, the tenuous status of multi-party democracy in Turkey, its poor human rights record, its relative economic underdevelopment and its majority Muslim population have long been sources of disquiet in the corridors of Brussels.

Turkey applied for associate membership of the European Economic Community (EEC) in 1957, and accordingly entered into an Association Agreement in 1963 which offered the future possibility of full membership. The Association Agreement, which covered trade-related issues and various other areas of cooperation, was intended as a step towards an eventual customs union.² These early Association Agreements contained no provisions for mandatory political dialogue, substantially limiting their utility in encouraging Turkey to improve its human rights record and treatment of the Kurds, although some such dialogue did later take place on the basis of specific Association Council resolutions.³

For years, though, economic flux and internal strife militated against further progress towards closer Turkish integration with the then European Community (EC),⁴ and the 1970s in particular saw a standstill in relations. A formal application for full accession to the EC was finally lodged by Turkey on 14 April 1987, at a time when interaction between Turkey and the EC was being revived in the wake of the restoration of civilian government in Turkey following the 1980 military coup. However, on 18 December 1989 the EC concluded that 'it would be inappropriate for the Community ... to become involved in accession negotiations at this stage'.⁵ This decision was based on a number of factors which included internal restructuring issues within the EC, as well as Turkey's lack of adherence to human rights standards, its population size and its underdevelopment. Turkey's application had been submitted at a time when the armed conflict in the Kurdish regions was gaining in momentum, and in the same

year that the State of Emergency in the Southeast, which was to have such horrific consequences for the Kurds, was declared.

A major step towards EU accession came when, on 6 March 1995, the Turkey–EU Customs Union was finally agreed. This agreement allowed Turkey preferential access to the European single market, and projected that Turkey would receive US\$470 million in adjustment funds between 1996 and 2000. A brief consideration of the events leading up to and immediately following the agreement are instructive in relation to the current direction of Turkey's EU bid.

During the negotiation stages of the customs union the European Parliament, which was required to ratify the agreement, had stipulated that Turkey must fulfil set human rights criteria, while the European Commission had called for further improvements in human rights standards.⁶ Various public undertakings were accordingly made by the Turkish government to implement reform as a priority, and specifically to address the Kurdish issue. Some MEPs reportedly branded legal reforms which Turkey did then enact as 'cosmetic',⁷ but the Commission and Council of Ministers were keen to push forward the Treaty. In October, the EU external affairs commissioner Hans van den Broek echoed warnings made by Turkish prime minister Tansu Çiller⁸ when he reportedly stated that failure to reach an agreement could lead to 'a severe backlash in Turkey', where only Muslim fundamentalists opposed closer links with Europe.⁹ Ms Çiller also propounded the view that Turkey could only progress through incremental reform with strong European backing.¹⁰ These forecasts have been much echoed in recent months in relation to Turkey's current EU bid.

However, although Ankara did amend the constitution and rewrite its anti-terrorism law, the much vaunted improvements in human rights standards did not follow. It was concluded in 1996 that Turkey had been 'unable to produce any substantive democratization improvements or human rights legislation',¹¹ and for the Kurds the outcome was particularly sour. Village destruction, mass killings and torture and ill-treatment continued in earnest. While EU accession negotiations amount to a far more robust process than negotiations over the 1995 customs union, and incorporate binding human rights criteria, this episode in Turkey–EU relations should serve as a salutary lesson to key actors in Brussels. The EU must not be duped by empty Turkish promises again.

From the late 1990s, progress towards Turkish accession continued apace. The Copenhagen European Council Presidency Conclusions

had included the provision in 1993 that: '[T]he associated countries in Central and Eastern Europe that so desire shall become members of the European Union. Accession will take place *as soon as* an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.'¹²

A relaxation in violence in southeast Turkey in the late 1990s, combined with enthusiasm for EU enlargement in the wake of the fall of the communist bloc, laid the groundwork for Turkey's progression to EU candidature in 1999. The Helsinki European Council of 1999 then concluded that Turkey was a candidate for EU membership on the basis of the same criteria as the other candidates. This meant that before Turkey could commence formal accession negotiations with the EU, she would have to fulfil the Copenhagen Criteria. These minimum standards which all EU candidate states must fulfil before opening accession talks include a political element: 'Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.'¹³

This requirement had posed a significant impediment to the granting of EU candidature to Turkey. For years, Turkey lagged behind Europe in meeting even the most basic human rights standards. Cases brought by the London-based Kurdish Human Rights Project to the European Court of Human Rights against Turkey established unequivocally that the most severe abuses of human rights in the Council of Europe took place there. In 2000, the European Commission concluded in its annual report that 'the situation on the ground has hardly improved and Turkey still does not meet the Copenhagen political criteria'.¹⁴

However, in 2002 the Turkish electorate rejected the traditional political establishment and voted in the Justice and Development Party (AKP), a pragmatic, 'pro-European' Party with Islamic roots which united less radical Islamists, nationalists and secular interests around what is broadly comparable to a Western European style centre-right Christian democratic party. It commenced an unprecedented programme of reforms in the country which brought about a number of important legislative changes and some improvement in the behaviour of public authorities. The legal regulation of torture was vastly improved, restrictions on freedom of expression and association were lessened and prohibitions on Kurdish language broadcasting and teaching were theoretically lifted. Public support for EU accession generally in Turkey helped to smooth the passage of

reform in some more sensitive areas. As shall be seen, there remain substantial problems with these reforms, but it was this apparent momentum towards change in Turkey which the EU was to seek to harness through the incentive of accession.

Following the decision to make Turkey a formal candidate for accession, the European Commission devised Turkey's Accession Partnership detailing how she would meet the Copenhagen Criteria. The document was revised during 2002, and in the same year the European Council agreed that accession negotiations would open 'without delay' if, following a Commission report on Turkey's fulfilment of the Copenhagen Criteria and a subsequent recommendation by the Commission on the appropriateness of opening negotiations, EU leaders decided that Turkey met the required standards.

THE OPENING OF FORMAL EU ACCESSION NEGOTIATIONS

On 6 October 2004 the European Commission issued its recommendation as anticipated, concluding that Turkey had sufficiently fulfilled the criteria necessary to open accession negotiations.¹⁵ This was moderated by the provision that Turkey should first be obliged to bring into force six specified pieces of legislation.¹⁶ The decision was described by the EU's President as a 'qualified yes'.

On 17 December 2004 the European Council substantially endorsed the Commission's recommendation, stating that Turkey had fulfilled the political elements of the Copenhagen Criteria and that, subject to the provisos set out by the Commission, accession negotiations could commence.¹⁷ Entry talks are currently set to start in October 2005.

The Council, in its decision,¹⁸ invites the Commission to continue to monitor Turkey's progress in human rights reform, and asserts that the EU will continue to monitor closely the political reforms on the basis of Turkey's Accession Partnership. The Commission is also invited to present to the Council a proposal for a framework for negotiations with Turkey. Accession talks are subsequently set to proceed in the usual way through inter-governmental conferences between the EU and Turkey, in which Turkey's current legislation and administrative structures are comprehensively 'screened' against each of the 31 chapters of the *acquis communautaire*: that is, the body of economic, social, administrative and environmental legislation that all member states of the EU must implement. The negotiations focus on the terms under which the applicants will adopt, implement and enforce the *acquis*.

Additional provisions in the Council decision allow for 'long transition periods, derogations, specific arrangements or permanent safeguards' and the negotiation process is defined as open-ended, 'the outcome of which cannot be guaranteed beforehand', implying that accession may be several years away yet. Furthermore, an unprecedented, explicit provision allows that accession talks may be suspended in the event of 'a serious and persistent breach ... of liberty, democracy, respect for human rights and fundamental freedoms'.

THE POLITICAL CONTEXT OF TURKEY'S EU BID

The decision to open accession talks with Turkey was ostensibly based on her fulfilment of the objective, EU-defined Copenhagen Criteria. Beyond this however, it should be remembered that Turkey is progressing towards EU membership against a complex backdrop of issues relating to European politics, international security and economic affairs which play a key role in shaping EU decision making.

The prospect of Turkish membership of the EU has not been welcomed everywhere; in parts of the EU it has met a lukewarm reception, with France and Germany in particular facing deep internal division on the issue. French president Jacques Chirac is thought to favour accession, but polls within the country have indicated high levels of opposition¹⁹ and Mr Chirac has been forced to concede to a referendum on ratification of the accession treaty. If France decides not to ratify on the basis of a 'no' vote, the accession treaty would not come into effect and Turkey would be prevented from becoming an EU member state. The same scenario is possible of any member state committed to holding a referendum on Turkish accession. In Germany, opposition conservative politicians likewise express trepidation over Turkey's application,²⁰ although German chancellor Schroeder has been at the forefront of efforts to press forward accession. In both countries, calls have been made for full accession to be substituted with a 'privileged partnership'.

Concerns over Turkish membership of the EU are in part attributable to her size and underdevelopment. If present demographic trends continue, Turkey is projected by 2025 to have the largest population among EU member states, endowing her with the greatest number of votes in the European Council. Turkey's per capita income, though, is only approximately one-third of the average of EU member states

in Western Europe,²¹ potentially imposing substantial strain on EU resources.

Moreover, the presence of a large, poor, largely agrarian and overwhelmingly Muslim state within the borders of Europe is generating substantial disquiet. The dictates of electoral politics within the EU compel European governments to take into account public fears that Turkish membership would alter the cultural makeup and geographic reach of the EU. In particular, in the context of rising anti-immigrant feeling in Western Europe, there is apprehension within Germany and France that accession would bring 'floods' of immigrant labour; Turkey's admission would stretch the borders of the EU to Iraq, Iran and Syria. Similar hysterical fears of 'mass influxes' of labour migrants from the ten new member states joining the EU in 2004 proved unfounded, and the Council decision on accession provides for 'Long transition periods, derogations, specific arrangements or permanent safeguard clauses' in the area of free movement of persons.²²

In any case, these factors are substantially overridden by prevailing regional security concerns, and on balance Turkey's pending EU accession is strongly welcomed among European leaders. Most importantly, Turkey is seen to potentially create a 'bridge' between Europe and the wider Muslim World. Turkey has historically played a key role in European defence policy and stands at the nexus of areas of great geopolitical significance, including the Balkans, the Caspian and, importantly, the Middle East. There has also been encouragement of Turkey's accession bid from the US, which sees Turkey as an ally in the 'War on Terror'. In today's tense political climate, the strategic reach into the heart of the Middle East which Turkish accession would offer the West is of immense significance. Key political actors within the EU have explicitly referred to strategic incentives for backing Turkish accession.²³

In a similar vein, it is broadly perceived that through meeting EU accession standards, Turkey could potentially prove a role model of a progressive, secular state with a majority Muslim population imbued with Western values; Turkey is the only Muslim candidate for entry to what has frequently been described as an exclusive Christian 'club'. This would further the notion that Islam and democracy are not mutually exclusive; British prime minister Tony Blair said that the December decision to open accession negotiations 'shows that those who believe there is a fundamental clash of civilizations between Christians and Muslims are actually wrong; that they can

work together; that we can cooperate together'.²⁴ There are hopes that Turkey's example may lead the way to the spread of democratic pluralism in other predominantly Muslim states.²⁵

Opening accession negotiations with Turkey is also pushed by Turkey herself on the basis of the threat that a negative decision in December 2004 could have had harmful repercussions on Turkey's entire reform process. The AKP, currently in power in Turkey, has explicitly pledged itself to pursue EU accession and has staked much on this course, including reducing the traditionally powerful influence of the military in government and implementing reforms which rescind some of the power of the unaccountable state. Turkey has claimed, as she did during negotiations over the 1995 customs union, that imposing further delays on Turkey's accession prospects would play into the political hands of Islamist elements of the political establishment and so undermine Prime Minister Erdogan's pro-EU, secular government. It is true that Islamic elements have continued to vie for power in Turkey in recent years, and the AKP's predecessor, the Welfare Party, had an openly Islamic agenda. The logic of this argument, which is effectively that the EU should admit Turkey to the negotiating table despite substantial outstanding problems with human rights standards and the Kurdish issue for fear that a more repressive government may otherwise come to power, is not particularly convincing. In fact, it is verging towards blackmail.

Prime Minister Erdogan has also forcefully insisted that Turkey has fulfilled her part of the accession deal, implementing a dramatic series of pro-EU reforms inspired by the prospect of accession, and that the EU is consequently obliged to open its doors to Turkey. Turkey's instigation of reform means that she 'deserves' to be recognized as an EU negotiating partner. Prior to the Council decision of 17 December 2004 on the opening of formal accession negotiations, Mr Erdogan had threatened to withdraw from EU relations if unduly harsh conditions were imposed on Turkey to achieve full membership.²⁶ Again, attempts to sway EU decision-making by issuing unreasonable demands and making threats does little to enhance Turkey's reputation as a modern, democratic state.

More generally, though, EU enlargement remains a broadly popular current notion. The search for an 'ever closer union' is seen to have proved successful in Western Europe in consolidating economic prosperity and democracy, and to have helped foster stability and cohesion in Central and Eastern Europe since the gulf left by the demise of the former Soviet Union. Bringing Turkey into Europe, it

is argued, would build upon these successes, extending the political and economic benefits of EU membership to the far reaches of the continent and strengthening the Union's global position.²⁷

The net implications of these observations are that the eagerness of key actors within Europe to press forward Turkish accession is determined to a significant extent by political and strategic imperatives. That this is the case is not a new observation, and nor is it necessarily controversial. The role of these factors in EU decision-making is explicitly referred to by the European Commission,²⁸ and forging ahead with Turkish accession is certainly desirable from the perspective of those who hope to see the accession process bring about improved respect for human rights and a resolution to the Kurdish issue.

As shall be seen, however, the matter is less straightforward when considering the recent decision of the European Council to open formal accession negotiations, and particularly the conclusion that she has fulfilled the political elements of the Copenhagen Criteria. This has led to allegations that instead of applying the same standards to Turkey as to the other accession states, as promised, the Council has instead 'lowered the bar' and sought to press through Turkish membership despite continued shortcomings, particularly in the fields of human rights and Turkey's willingness to address the Kurdish issue.

ACCESSION AND THE KURDS

There has been some debate among the Kurdish community as to the desirability of Turkey entering the EU. Most Kurds, though, have tended towards being supportive; EU accession was seen to offer the Kurds their best hope of an end to decades of oppression and violence, of seeing their rights protected and their status secured, and most importantly, the opportunity to reach an enduring political settlement with Turkey and to consequently have a say in their own futures. Kurdish support for EU accession, though, is by no means a given. If the Kurds are ignored and the situation in the Southeast is left to smoulder unaddressed, as currently appears to be the case, many of the projected advantages of EU membership will be lost.

How far, then, is the accession process fulfilling Kurdish demands, and what is its potential to realize Kurdish security and a lasting solution to the situation in the Southeast?

Accession has proved it can act as a catalyst for change, demonstrated in the process of constitutional and legislative reform enacted by Turkey aimed at readying the country for the opening of formal accession negotiations. Although Turkey is still dogged by reactionary elites and human rights reforms have been largely cosmetic, she deserves some credit for the tentative steps towards an internal consensus in favour of liberal democracy, even if this consensus proves to be merely an outward show aimed at demonstrating to the EU that Turkey is changing.

The accession process itself presents the Kurds with potential 'hooks' upon which they may be in a position to press for their rights to be better respected. In particular, if the three-pillar approach to accession negotiations set out by the Commission in its Resolution of October 2004 is followed, the Commission will continue to play a central role in monitoring the reform process under the first pillar, including reviewing Turkey's continued compliance with the Copenhagen Criteria. As noted above, a 'serious and persistent breach' of human rights can lead the Commission, on its own initiative or on the request of one-third of the member states, to recommend the suspension of negotiations and propose the conditions for eventual resumption.²⁹ The Council will decide by qualified majority on such a recommendation. Whether or not this mechanism would, in fact, be used, is another issue. Prime Minister Erdogan has, perhaps predictably, argued that suspension of negotiations would show a lack of respect for Turkey's democratization process and conflict with the EU's own principles.³⁰ It does, though, offer a significant point of departure for Kurds to argue forcefully that accession negotiations should be suspended if there are no substantial improvements in Turkey's respect for Kurdish cultural and linguistic rights, if a further intensification in fighting in the Southeast occurs, or if Turkey maintains her unwillingness to move towards democratically resolving the Kurdish issue.

Under the third pillar, the EU is expressly committed to strengthening political and cultural dialogue between Turkey and the EU, and civil society is set to play a key role in any such dialogue, facilitated by the EU itself.³¹ Thus fora will be created to discuss viewpoints and concerns on issues including minority rights.³² Dialogue and debate engaged in by non-governmental organizations (NGOs) and civil society actors can supply an arena for raising information levels and generating interest in the ongoing plight of the Kurds in Turkey, as

well as providing a platform for the exchange of ideas on how best to move forward.

More broadly, accession heralds new possibilities to mainstream Kurdish concerns, and opens unprecedented political space to press for human rights and to draw attention to the need for political dialogue between Turkey and the Kurds. It is evident that accession negotiations will invite a great deal of attention over the coming years, particularly in the event of significant milestones such as the drawing up of the new framework for negotiations expected in spring 2005. Attention drawn to EU–Turkey relations can be utilized to bring the Kurdish issue to the fore of political debate in Brussels and Turkey. This observation is, though, substantially qualified by the fact that the situation of the Kurds received rather scant consideration in the run-up to the Council decision of 17 December 2004, with political debate and media outlets focusing instead on immigration concerns, Turkey's economic underdevelopment and, to a lesser extent, the broader human rights picture. Where the Kurds were mentioned, this was virtually exclusively in relation to Turkey's non-recognition of cultural and linguistic rights in the Southeast; virtually nothing has been made of the resurgence of armed conflict and Turkey's refusal to countenance a political solution to the Kurdish issue.

Full EU membership will impose checks on the behaviour of the Turkish state, and could ultimately provide the Kurds with some of the tools necessary to protect their political and legal status within Turkey. From inside the EU, Turkey can be brought under the sway of liberal democratic ideals, and transgressions of acceptable behaviour can be controlled through political influence and legal action. EU directives impose direct and legally enforceable obligations on member states to prohibit racial and other forms of discrimination, and to provide practical support to victims of discrimination.³³ Moreover, the Treaty of the European Union sets out that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, and under Article 49 only a state which respects these principles can become a member of the Union. It should be added, though, that the term 'human rights and fundamental freedoms' here is generally seen to refer to the rights and freedoms guaranteed in the European Convention on Human Rights (ECHR), to which all EU member states are party. Unlike the political elements of the Copenhagen Criteria, there is no explicit inclusion of the protection of minorities.³⁴

The Union's recently agreed Charter of Fundamental Rights³⁵ is the most detailed and comprehensive EU document on human rights. The Charter is professed to combine in a single text for the first time the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU. Importantly, again, there is no reference to the rights of minorities as such, and the Charter only prohibits discrimination on the basis of membership of a national minority and advocates respect for cultural, religious and linguistic diversity.³⁶ In any event, the Charter is not a treaty, constitutional, or legal document, but has only the rather indefinite status of a 'solemn proclamation' by the Commission, Council and Parliament. While the institutions subject to the proclamation, as well as the European Court of Justice, are unlikely to act in contravention of it,³⁷ and it may be taken into account by individual national law courts, it is not yet legally binding³⁸ and cases cannot be brought on the sole grounds of a violation of the Charter. The new EU Constitution, signed in October 2004 but yet to enter into force, incorporates the rights set out in the Charter and specifically expounds the rights of minorities.

The current lack of explicit minority protection provisions in EU legislation is of considerable concern to the Kurds in Turkey, given growing uncertainty over their future status as Turkey progresses closer towards EU membership despite the absence of a Turkish-Kurdish settlement. It also, then, serves to underline the importance of the EU recognizing and addressing the Kurdish issue openly, and fulfilling its duty to press for the establishment of genuine democracy and respect for minorities in Turkey by setting up a democratic platform for the discussion of possible solutions to the Kurdish question.

More broadly, it is this crucial element of facilitating political dialogue – crucial both to the future security of the Kurds and to the process of democratization in Turkey – which must be incorporated into the accession process for EU membership to have any resonance for the Kurds, and which has so far been ignored in Europe and by the institutions of the EU. Certainly the aspects of the EU accession process and eventual membership which point to a greater voice for Kurds, improved access to European networks and a greater capacity to press for their rights are all positive developments, as are any improvements in the human rights situation in the Southeast which occur as a result of EU pressure. However, at root the Kurdish question is a political one and it demands a political answer. The marginalization of the Kurds from public discourse, including on

EU accession, and the severe human rights abuses which have taken place in the Kurdish region are symptomatic of the deeper problem of the status of the Kurds in Turkey. As long as the Kurds are not acknowledged in Turkey, as long as they are excluded from constitutional recognition and viewed by the state essentially as unassimilated Turks, EU accession will prove little more than an unfulfilled promise.

So far, Turkey has got away with ignoring the Kurdish question in implementing her series of pro-EU reforms, conceding only to make very limited concessions to the Kurds in the field of cultural and linguistic rights. The EU, in its turn, has not pushed the issue, and indeed seems to have made no overtures to Turkey suggesting that opening a political dialogue with the Kurds in the context of EU accession negotiations would be appropriate. Given the tragic consequences wrought by Turkey's hostility towards her 15 million-strong Kurdish population over the years, the deep-seated historical roots of the Kurdish question and its ongoing centrality to the process of democratic change in Turkey, it is a great shame that the EU has not yet taken advantage of the substantial leverage available to it to carry out its obligation to push for a lasting, peaceful solution in the Southeast.

The great optimism with which many Kurds greeted Turkey's recent push towards accession is, then, fast evaporating as it is becoming increasingly apparent that the much hoped for opportunity for both the Kurds and Turkey to openly recognize and address the Kurdish issue is being squandered. The prospects for the Kurds to finally shake off their historical oppression and enforced subservience to a hostile governing regime through the EU accession process, which at first appeared a real possibility, is gradually diminishing as the EU appears shy of bringing about the resolution of the Kurdish issue. Of course, accession negotiations proper have not even begun, and there may yet be a renewal of Kurdish hopes that they will ultimately have a say in their own futures if the EU comes to acknowledge that a political solution to the Kurdish question is pivotal to Turkey's democratic future.

FULFILMENT OF THE COPENHAGEN CRITERIA FOR EU ACCESSION?

Ongoing concerns over the situation of the Kurds, combined with serious doubts over human rights standards in Turkey, have inspired

substantial concerns that the decision of 17 December 2004 to open formal accession negotiations with Turkey, based on the Council's determination that Turkey has fulfilled the Copenhagen Criteria, was reached prematurely. The desire to bring Turkey into the European fold as expeditiously as possible may have overwhelmed objective analysis of whether or not Turkey in fact meets the required standards, thus accelerating the accession process at the expense of a genuine commitment by the Turkish government to human rights and the achievement of an enduring solution to the Kurdish issue.

Decisions on the commencement of official accession negotiations are formally based upon fulfilment of the criteria for EU membership as determined at the Copenhagen meeting of the European Council in 1993. The political elements of the Copenhagen Criteria require that candidate countries should have achieved: 'The stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.'³⁹ Given these criteria, the appropriateness of the Council's decision of 17 December 2004 to begin accession talks is highly questionable and has generated criticism in some quarters. Certainly, Turkey has outwardly moved towards closer compliance with international standards on human rights, democracy and the rule of law through her enactment of pro-EU reforms. Even if, as appears to be the case, the reform process is directed solely towards satisfying minimum EU criteria on democratization with no accompanying commitment by Turkey to bring about genuine change, it is still fair to say that the current AKP government has staked much on achieving EU accession. It has reduced, at least formally, the traditional influence of the military in government and refused to pander to the religious right on issues such as education; measures which have the potential to substantially alienate the government's current supporters.

It is also true to say that whatever the motivation behind Turkey's reform process, including if it is purely a matter of doing the minimum possible to tick EU-dictated 'boxes', Turkey has enacted a noteworthy series of reforms over a very short period of time. There have been some, albeit faltering, improvements in human rights generally; the legal regulation of torture has been tightened and the prohibition on broadcasting and teaching in the Kurdish language has, at least formally, been lifted.

However, it must be considered whether Turkey's progress is in fact sufficient to warrant the beginning of accession negotiations. It is highly likely that political imperatives are overriding other concerns

in the drive to achieve EU membership. Ongoing problems in Turkey pertinent to the decision as to whether the Copenhagen Criteria are satisfied, including in relation to the human rights situation in Turkey and the status of the Kurds, are described in more detail later in this publication, but some preliminary points are made here.

Primarily, the Commission's 2004 Report⁴⁰ on Turkey's progress towards accession, which formed the basis of the Commission's recommendation and the Council's subsequent decision that Turkey has fulfilled the Copenhagen Criteria, presents a considerably sanitized version of the situation in Turkey. Although the Report is by no means wholly positive, criticizing both substantive gaps in Turkey's reform programme and failures to adequately implement new legislation, it is argued that the report as a whole fails in its wording and emphasis to reflect the depth and severity of the continued human rights violations in Turkey. A constructive approach is certainly desirable, but not to the extent of 'toning down' the seriousness of the current continued violations. Overall, the evidence presented in the Report of continued violations, as well as its omissions, are very difficult to reconcile with the largely positive picture painted and the subsequent recommendation of the Commission that the political aspects of the Copenhagen Criteria are fulfilled.

Particular criticisms include the 'glossing over' of significant shortcomings in the reform process, and the presentation of ongoing violations as mere qualifications to generally encouraging progress. In a number of sections a positive 'spin' is put on Turkey's failings, even where serious and ongoing abuses of key human rights are detailed at length, sometimes by emphasizing Turkey's efforts at compliance rather than the results she has achieved.

A brief consideration of the Commission's treatment of Turkey's record on torture is illustrative of these failings. Detailed consideration is given to the progressive measures which Turkey has enacted in her endeavour to eradicate torture, with occasional qualifications encouraging greater efforts to pursue reform objectives. It is ultimately concluded that the Turkish government is 'seriously pursuing' its policy of zero tolerance, and that torture is no longer systematic.⁴¹ However, the Commission recognizes that 'numerous' cases of ill-treatment including torture continue to occur in Turkey.⁴² It is difficult to conceive that the Turkish state's failure to combat the 'numerous' cases of torture and ill-treatment taking place is consistent with the 'stability of institutions guaranteeing ... human rights' as required under the Copenhagen Criteria, particularly given that

torture is defined by the international community as one of the most severe violations of human rights and subject to an absolute prohibition under international law⁴³ and under the EU's own Charter of Fundamental Rights.⁴⁴

Furthermore, the Commission's approach appears a somewhat superficial assessment of change in Turkey, focusing on legislative and administrative reforms enacted by the current administration and putting forward little *de facto* analysis of the situation on the ground. No real attempts are made to place political reform in the context of a state grappling with its secular identity, struggling to overturn decades of impunity for human rights abuses and permeated by a seemingly unrelenting hostility to minority ethnic identities. It is interesting that similar criticisms have been made of the Commission's reporting on the accession states that joined the EU in 2004.⁴⁵

Especially significant in this regard is the Commission's approach to the Kurdish issue. This is not addressed in any kind of substantive and coherent manner; instead the Report appears to adopt a piecemeal approach to the situation in the Kurdish southeast which consists of dealing with the occasional Kurdish dimensions of a series of discrete human rights violations. Elements of the Kurdish issue which are touched upon, largely tangentially to other topics, are not examined in the framework of Turkey's deep-rooted antipathy towards her Kurdish population.

In view of the Kurds' long and turbulent history of brutal subjugation and violence at the hands of the state, it is argued that the Commission's approach constitutes an inadequate response to the Kurdish issue, and represents an inappropriate departure point for the commencement of accession negotiations. The Turkish state's treatment of the Kurds cannot be separated from embedded Turkish hostility towards the presence of a non-Turkish ethnic identity within the country's borders. The severe human rights violations to which the Kurds have been subject are much more than an occasional slip in the behaviour of public bodies or a result purely of inadequate legislative controls on practices such as torture. They are an external expression of deep-seated ideological precepts in Turkey which value the integrity of the state above the liberties of the group or individual, and which conceive of the Kurds as an aberrant community whose attempts to assert their non-Turkish identity are tantamount to separatism. Put simply, the Kurds are persecuted and harassed in Turkey *because* they assert their Kurdishness. No amount of obfuscation by the Commission can alter this observation, and the

Kurdish issue cannot be resolved unless it is tackled. It is submitted that such a fundamental barrier to the realization of peace, justice, stability and democracy in Turkey must be addressed openly and comprehensively before Turkey be allowed to accede to the EU.

More fundamentally, the Commission's approach towards the Kurds fails to account for the fact that the problems in Turkey's Southeast are much more than merely a series of human rights violations. The Kurds have been marginalized by Turkey for decades, an armed conflict has been fought against them, affecting almost every Kurdish family, and they have been excluded from political participation. Turkey has failed even to acknowledge their existence or to grant them any constitutional recognition. A far more comprehensive solution is therefore required, including the holding of political dialogue between Turkey and the Kurds, efforts to reach a negotiated settlement to bring about lasting peace in the Southeast, and opportunities for the Kurds to decide their own futures. There is no mention whatever of this urgent need in the Commission Report.

The Commission's approach to human rights and to the Kurdish issue set out in its 2004 Report appears to have set the tone for future EU action in these areas; the Commission's conclusions are essentially accepted in the Council decision that Turkey complies with the Copenhagen Criteria.

The Luxembourg European Council of December 1997 confirmed Turkey's eligibility for accession would be judged on the 'basis of the same criteria' as the other applicant states.⁴⁶ In its paper 'Agenda 2000: For a Stronger and Wider Union',⁴⁷ the Commission decided in 1997 that of the ten then candidate states, Slovakia did not fulfil the political elements of the Copenhagen Criteria, and a brief comparison with the situation in Turkey is illustrative. In reaching its decision, the Commission refers principally to the insufficient respect paid by the Slovakian government to the powers devolved by the constitution to other bodies, and its tendency to disregard the rights of the Opposition, but also sets out the need to improve Slovakian treatment of her Hungarian and Roma minorities.⁴⁸

At this stage, Slovakia had ratified the Council of Europe's Framework Convention on minorities, the constitution granted minorities the right to develop their own culture, to receive information and education in their own language and to participate in taking decisions which concerned them, and funding was allocated to encourage cultural and educational activities for minorities. Ongoing problems referred to by the Commission included the lack of comprehensive

legislation on the use of minority languages (although other texts governed the use of minority languages in many specific fields), a government decision to reduce the subsidies granted to Hungarian cultural associations, inadequate police protection of Roma against skinhead violence, and the poor social position of the Roma. When considered alongside the comprehensive abuse and violence faced by Turkey's Kurdish population, including torture, judicial harassment, protracted internal displacement and a recent resurgence in armed conflict, as well as Turkey's refusal even to recognize the Kurds, the Commission's position on Turkey appears rather anomalous.

In the light of these observations, it certainly appears that considerations beyond that of whether Turkey has fulfilled the objective standards of the political elements of the Copenhagen Criteria have played a role in EU decision-making, and that a lower standard has been applied to Turkey's application for EU accession.

What are the implications of this alleged 'lowering of the bar' for Turkey?

It may prove the case that the reform process will draw further impetus from the December decision to open negotiations. Certainly, the Ergodan government has argued that its successes so far in balancing political backing and public support from different sections of Turkish society in favour of pro-EU reforms may have suffered a setback by a negative Council decision, with key winners from a backlash against Erdogan's pro-EU policies likely to have been the Euro-sceptic True Path Party. However, it has been mentioned above that this type of argument is unconvincing, and in any case is wholly inadequate to justify the opening of accession negotiations in the face of continued serious human rights abuses and a failure to address the Kurdish question. Assessing whether or not Turkey has fulfilled the political elements of the Copenhagen Criteria ought to have been made on the basis of tangible improvements in democratization, and not dictated by extraneous political factors.

It has also been argued that adequate controls have been placed upon Turkey by the EU to ensure that key criteria are met before she is allowed to proceed to full accession. The Commission expressed many reservations over Turkey's human rights record in its 2004 Report, referring to a need for reforms to be 'further consolidated and broadened'.⁴⁹ The undertaking in the Council decision that the Commission will continue to monitor the political reform process under the first pillar, including the zero tolerance approach to torture, combined with the human rights 'break clause' for the suspension of

accession negotiations following a fundamental breach, imply that the EU projects continued close supervision of Turkey's progress. The Commission also recommended that existing legal obligations in line with the *acquis* must be fulfilled before the opening of negotiations on related chapters can occur, and that long transition periods may be necessary. These safeguards are, though, of little solace to the Kurds; since the institutions of the EU have set a precedent of not openly addressing the Kurdish question, no commitments to gradualism or precautions in the accession process can ensure that Kurdish needs will be met by EU membership and that their status within Turkey will finally be acknowledged and accepted.

If the approach adopted by the Commission and endorsed by the Council, based on a failure to substantially address human rights concerns and a fudging of the Kurdish issue, is to be indicative of the EU's line on accession negotiations in the future, then the projected advantages of the accession process for advancing justice and democracy in Turkey will be substantially undermined. It wrongly implies that the behaviour of the Turkish state is broadly compliant with international human rights standards, and belittles the severe ongoing human rights violations taking place in the country. It should be remembered in this context that promises to enact human rights reforms and address the Kurdish question made by Turkey prior to the establishment of the 1995 customs union proved empty, though this observation is qualified somewhat by the fact that the Copenhagen Criteria are far more authoritative than the relatively insubstantial and non-binding political prerequisites attached to the customs union.

Furthermore, granting Turkey access to the EU negotiating table without significant progress towards resolving the Kurdish issue has serious implications for the future security of Turkey's Kurdish population. Forging ahead with accession before the situation of the Kurds is adequately addressed attaches unwarranted legitimacy to Turkey's treatment of them, and suggests that the issue is of secondary importance and requires no particular sustained or comprehensive attempts at resolution. It thus detracts from attempts to demonstrate the significance of the pressing outstanding need to achieve a negotiated solution to the Kurdish issue. In deciding that Turkey has fulfilled the Copenhagen Criteria, then, the EU has manifestly failed to fulfil its responsibilities towards the Kurds. It has given Turkey a green light to go on ignoring the Kurdish question altogether and dashed the hopes of 15 million Kurds that EU accession would herald

a process of true democratization in Turkey in which their status would at last be addressed.

The EU's decision to open accession negotiations despite the absence of progress on the Kurdish issue has also served to weaken voices calling for much-needed political dialogue between Turkey and the Kurds. It cannot be stressed enough that the situation of the Kurds in the Southeast is not just a result of a series of unhappy coincidences which have left them marginalized and impoverished; Turkey has pursued a deliberately anti-Kurdish agenda for decades, comprehensively subjugating them, persecuting any expression of Kurdish identity and fighting an armed conflict against them. The Kurds and Turkey can only move on from here against a background of a political settlement mutually and openly agreed between Turkish and Kurdish representatives. The EU has a clear opportunity to strongly encourage Turkey to achieve justice and stability in the Southeast, using its substantial influence to bring about transparent discussion between the two parties which could result in an enduring resolution of years of conflict and oppression. So far, the EU has seemed unwilling to make use of this opportunity.

On the EU side, opening membership talks with a country which continues to frequently violate fundamental rights is damaging to the EU's own human rights commitments. The EU professes itself to be founded upon 'the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law',⁵⁰ and its apparent relaxation of these principles in relation to Turkey could jeopardize its long-term credibility. The EU's evasive approach to the Kurdish issue also has the potential to bring into the territory of the EU a volatile, unresolved conflict situation.

TURKEY IN EUROPE: THE FUTURE

Turkey's political future is undoubtedly now firmly anchored in the EU. The December 2004 Council summit made clear that accession is the ultimate goal of negotiations with Turkey. The next phase of accession negotiations will bring substantial new challenges for Turkey, but if EU scrutiny is robust it is still possible that the process could result ultimately in real change in Turkey and bring about a modern, open and multi-cultural state in which a comprehensive and sustainable solution to the Kurdish conflict is realized.

However, there remain very important question marks over the future of accession. Whether or not Turkey's reform process can be

directed to fully realizing democratic pluralism through the accession process will depend to a considerable extent on the approach taken by the EU. The omens so far have not been positive. The political background against which Turkey's accession bid is played out, points to a considerable potential for rushing through the accession process before human rights reforms have been adequately enacted or allowed to take route; the undertaking that accession negotiations will be conditional, gradual and open-ended is a sensible one, though it remains to be seen whether it will be realized in practice. If the approach exemplified by the Commission Report of October 2004 and the decision that Turkey has fulfilled the Copenhagen Criteria endures, the projected benefits of accession in stimulating respect for human rights are likely to be undermined. Membership could be cemented without adequate enactment and implementation of reform, and the EU could find itself embracing a Member State which has implemented superficial change but is still fundamentally rooted in outdated autocratic mentalities. The robustness of the Commission's future approach in prescribing and reviewing political reforms and the commitment to principle by leaders in the Council will be crucial in this context.

For the Kurds, their sidelining from the accession process poses a serious danger of putting paid to their aspirations of a new Turkey in which their cultural rights and political freedoms are respected, and, crucially, their Kurdish identity embraced. Without a stronger profile in accession negotiations, the transformation in Kurdish prospects offered by accession will be substantially lessened. It has been emphasized that the EU's failure to promote the discussion of a political solution to the Kurdish question and to compel Turkish participation renders the achievement of such a solution far less probable. Of course, it is not yet too late. The institutions of the EU should, now that Turkey is secure in her position as an EU negotiating partner, revise its approach to the Kurdish issue and engage in transparent negotiations with the parties, advancing steps towards reconciliation and resolution. It is imperative that this is done before it is too late and this opportunity for ending years of conflict and human suffering is missed altogether.

4

Civil, Political and Cultural Rights in Turkey

It has been observed in preceding chapters that Turkey was founded upon a militarized, secular, mono-ethnic conception of national identity, which has long generated a relatively repressive state, a poor human rights record and considerable hostility towards the Kurds.

Turkey's EU accession has been heralded as a dynamic catalyst for change, inspiring radical political reforms which further democracy, human rights, the rule of law and the protection of minorities. It has also been noted in this publication, though, that Turkey's reform agenda is advancing within a framework of political dynamics which is generally favourable to expediting Turkey's EU membership. The decision of the European Council of December 2004 to open accession talks was arguably premature, with the Commission Report of Turkey's progress presenting a considerably sanitized picture of the human rights situation in Turkey.

A key question to be asked, therefore, is whether Turkey is really changing. What is the real impact of the reform process? How far has Turkey come in improving respect for human rights? The evidence suggests that whilst progress has been made in some areas, the pro-EU reform process is far from ushering in a new era of openness and respect for human rights in Turkey. Instead, those regarded as disloyal to the state continue to suffer ill-treatment and oppression, and are excluded from social and political participation. Crucially, human rights violations are not merely occasional glitches committed by recalcitrant public authorities far from Ankara. Rather, they are systematic practices of the state designed to silence dissent, repress non-Turkish identities, intimidate those expressing views which differ from official state lines and preclude disfavoured groups from having a say in the running of the country.

These conclusions raise important questions about the EU decision to welcome Turkey as an EU negotiating partner, reinforcing concerns described above that Turkey's EU application is being expedited at the expense of objectively assessing whether a genuine transformation has taken place in the country.

THE PRO-EU REFORM PROCESS

The reform process came about as the European Commission set out reform priorities for Turkey in an Accession Partnership in March 2001 aimed at improving human rights standards in line with the Copenhagen Criteria. Turkey's unprecedented series of pro-EU reforms commenced in earnest in 2002 with the election of the AKP government.

The reform process to date has consisted principally of a series of legislative and administrative reform packages aimed at harmonizing Turkish law with EU norms, seven of which have been enacted since 2002.¹ These were complemented by two sets of constitutional amendments. In September 2004 a new penal code was agreed in the Turkish Parliament, and is due to come into effect in April 2005.

It should be emphasized from the outset that Turkey's pro-EU reform process is a remarkably positive development, and that a considerable amount has been achieved over the past three years in particular. Turkey deserves credit for the steps that she has taken towards a new, more constructive approach to human rights and the instigation of reforms impinging upon deeply embedded historical taboos. Particular achievements include the abolition of the death penalty, the limited easing of restriction on broadcasting and education in minority languages, shorter police detention periods, and the lifting of the State of Emergency in the Southeast.

The AKP government's achievements in uniting diverse sections within Turkey under the banner of EU accession, a key factor in facilitating efforts at domestic reform, must also be acknowledged. This delicate balance of interests will require great care and sensitivity to sustain, and the ability to point to external demands and conditions imposed by the EU has no doubt been instrumental in promoting sensitive reforms which may otherwise have been highly contested.² However, deep-seated fears, suspicion and resistance towards reform remain ingrained in key sectors of the 'deep state' including in the military, civil service and judiciary, and the continued presence of these elements lurking behind Turkey's official governing structure is a key impediment to reform. It can be assumed that for many, the demise of their previously assured positions of power within the state induces hostility towards the new order, while the reform process may also be regarded as a 'betrayal' of Atatürk's legacy of ethnic nationalism.

Indeed, it must be stressed that the reform process in Turkey is still largely in its infancy, not least because Turkey is progressing from a starting point of deeply-held historical suspicions towards certain groups within society, a culture of impunity for the commission of human rights abuses, a very tentative adherence to the rule of law and a pronounced tendency to engage in extra-legal punitive sanctions. Turkey's penal code and other legislative provisions have traditionally been geared overwhelmingly towards protecting the state against 'attacks' by individuals, rather than, as the rule of law is commonly conceived in liberal democracies, protecting vulnerable individuals from arbitrary incursions by the state. The judicial system has accordingly been used to harass and intimidate those seeking to exercise their legitimate right to express non-violent, alternative viewpoints, and the state is viewed as an often hostile, all-powerful, unaccountable institution.

As such, it is unsurprising that Turkey has made only very limited progress in human rights reform to date; three years is a very short period of time to move away from an atmosphere of endemic torture and ill-treatment, comprehensive restrictions on the media and publishing and the absolute exclusion of alternative cultural and linguistic expression. Inadequate opportunity has so far been allowed for reforms to take hold within society and among public authorities, and a great deal of further effort is needed before Turkey can be regarded as even approaching European and international human rights standards.

To date, the measures enacted have only scraped the surface of the entrenched authoritarian, anti-democratic tendencies within the Turkish establishment, and for the most part human rights violations continue to reflect administrative practices of the Turkish state. Any consideration of Turkey's history and political background makes clear that alongside further regulatory improvements, only a fundamental transformation in outdated mindsets and bureaucratic resistance to change can secure the ultimate success of Turkey's endeavour to align herself with European human rights standards.

TORTURE AND 'ZERO TOLERANCE'

The eradication of torture was identified early on by the European Commission as a vital step in the improvement of human rights in Turkey.³ Consequently, Turkey adopted a string of legislative reforms and constitutional amendments with this aim from 2001, against

the backdrop of her much applauded and often repeated pledge to enforce a 'zero tolerance' policy on torture.⁴

The EU's particular focus on torture in Turkey, and the institution's evident discomfort over the scale of the practice there, stems from the near-universal abhorrence with which torture is met throughout the world. Torture is an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person to obtain information or a confession, punish him, intimidate or coerce him, or for any reason based on discrimination of any kind.⁵ The pain or suffering must be inflicted by, at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁶ In Turkey, torture is particularly used to extract confessions, punish human rights defenders and journalists and publishers who dissent from official state positions, and to generate fear and intimidation among certain communities.

Torture is defined by the international community as one of the most severe violations of human rights, and the international prohibition against torture and ill-treatment is well-known, evident and absolute. The practice is proscribed by the International Covenant on Civil and Political Rights (ICCPR),⁷ the ECHR,⁸ and the UN Convention Against Torture (CAT).⁹ International law imposes specific and onerous obligations on states to take effective legislative, administrative and judicial measures to prevent torture,¹⁰ to enforce appropriate sanctions to punish torture,¹¹ to instigate a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed,¹² and to ensure that victims of torture have an enforceable right to fair and adequate compensation.¹³ The prohibition on torture is non-derogable and there is never any exceptional justification for commissioning torture. This includes the citing of political instability or public emergencies as extenuating circumstances.¹⁴

Although the subsequently rescinded 'Alvarez memo' apparently justifying torture methods in the US and the recent UK court judgment sanctioning the use of evidence gained by torture suggest disturbing trends in the regulation of torture, no country admits to conducting torture. Indeed, the prohibition on torture is regarded as a judicial norm of *jus cogens*.¹⁵

The absolute nature of the prohibition on torture and the duties placed on states to prevent and adequately punish the practice stem from the seriousness of the effects of torture on the victim. Torture seeks to annihilate the victim's personality and denies the inherent

dignity and worth of the human being, a key principle upon which the idea of human rights is founded. There can never be any rationalization for torture, not only because of the depth of immorality and contemptibility of the practice, but also because it is fundamentally ineffective. Victims will often say anything under torture to stop the pain, and such information is often incorrect or unreliable.

Turkey's undertaking to pursue 'zero tolerance' towards torture was thus warmly welcomed by the EU, and certainly accords in theory with the absolute international prohibition on torture and the EU priority to eradicate the practice. What Turkey's 'zero tolerance' policy has meant in practice, though, is a rather different matter.

In the first place, as in relation to Turkey's progress on human rights generally, it should be noted that there is a vast gulf between the endemic levels of torture present in Turkey until just a few years ago and the achievement of 'zero tolerance'. Turkey, therefore, is only at the very beginning of a long and difficult path towards meeting European standards on torture levels. Torture was for many years an integral aspect of Turkish interrogation and detention practices; something which particularly came to light in the West in the wake of the 1980 military coup. For Turkey's security forces, meting out torture and ill-treatment was routine and implicitly endorsed from the top levels of government. As such, the habit of torture and the expectation of impunity became deeply embedded throughout the Turkish police forces, gendarmerie and other law enforcement bodies, while turning a blind eye to torture allegations was habitual among public prosecutors. Under Turkish law, wide discretion was granted to detain individuals 'incommunicado' and sentences for torture were short. Kurds were particularly susceptible to torture, particularly under Martial Law and the subsequent State of Emergency in the 1980s and 1990s in the southeast of Turkey.

It is true that Turkey's leaders have since sought to dismiss the old idea that torture is unofficially tolerated in Turkey through the repeated and public issuing of strong condemnations of torture in all circumstances. It was the effective governmental endorsement of torture which had previously excluded the necessary controls on detention practices and fostered widespread impunity among law enforcement officials.

Furthermore, while Turkey's reform process is certainly not approaching completion, she has achieved much very rapidly on paper. The current regulation of the treatment of detainees in comparison to that in force five years ago is transformed, and the judicial framework

for penalizing perpetrators of torture is likewise greatly changed. It has been commented that Turkey's 'formal protections [against torture] are now among the strongest in Europe'.¹⁶

However, it is clearly apparent that the vast strides made by Turkey in the official outlawing of torture in recent years have not been matched by equivalent tangible progress in tackling torture on the ground. Although some limited efforts have been made to comply with the new legislative and regulatory framework governing torture, and the message of 'zero tolerance' has had some resonance among local law enforcement officials,¹⁷ the much-cited apparent decline in the scale of torture in Turkey¹⁸ masks a much less welcome reality.

While it is fairly unequivocal that there are less reported cases of customary methods of 'heavy torture',¹⁹ including electric shock treatment, *falaka*, and hanging by the arms, it must be recognized that reported torture cases continue to reach levels which would be wholly unconceivable in a modern, Western democracy. The IHD alone, for example, received a total of 455 reports of torture or ill-treatment in the first six months of 2004.²⁰ Other human rights organizations and torture rehabilitation centres report similarly high incidences of torture.²¹ Even the European Commission report of October 2004 conceded that: 'numerous cases of ill-treatment including torture still continue to occur'.²² Reference has already been made to the Commission's failure to concede that the continued commission of 'numerous' cases of ill-treatment and torture meant that Turkey has not fulfilled the Copenhagen Criteria for the opening of formal accession negotiations.

The continued high incidences of torture in Turkey stems to a significant extent from partial and uneven implementation of the reforms aimed at combating the practice. Incommunicado or 'unacknowledged' detention continues to occur as detainees are denied access to legal counsel²³ and their families are not informed of their detention. Impunity for torture also remains rife,²⁴ as medical reports documenting torture are stifled, and law enforcement officials continue to be present during medical examinations.²⁵ Incommunicado detention is a key factor perpetuating torture,²⁶ as it removes external restraints from the behaviour of potential perpetrators, placing the victim totally under their control. Investigations into torture allegations are inadequate and the prosecution of law enforcement officials remains extremely rare.²⁷ Impunity for torture sends entirely the wrong message to law enforcement officials, keeping alive the old idea that torture is an

acceptable state practice and preventing the internalization of the idea that such levels of brutality are unacceptable.²⁸

Even more damning for Turkey, however, is the fact that the decline in customary torture methods has been offset by a parallel rise in torture incidences outside of detention facilities. A regional human rights organization reports a striking increase in torture and ill-treatment occurring in 'other places' such as open spaces and vehicles,²⁹ and of the 455 cases reported by IHD, 208 (46 per cent) were of incidents occurring outside official detention.³⁰ The comparable statistic for 2003 is 25 per cent.³¹ Similarly, there has been an increase in less detectable methods of torture or ill-treatment. Torture practices which do not leave visible marks on a prisoner, including deprivation of basic needs, spraying with high pressure water, and death threats are frequently reported. The Foundation for Social and Legal Research of Turkey in 2003 reported new torture methods such as isolation from outside stimulus in a cell, sleep deprivation, assault, sexual harassment, and mock execution.³²

These reports are extremely important because they indicate that rather than progressively taking on board the notion that torture is not tolerated, law enforcement officials are instead finding ways of circumventing controls on torture. As such, the problem is not being resolved but merely displaced, and the reality is that little is changing in Turkey. Ingrained patterns of thought by law enforcement officials which conceive torture as an acceptable means of countering dissent, extracting confessions, and intimidating people deemed 'hostile' to the state are proving slow to dislodge, and it will take a much deeper and more sustained effort to truly stamp out torture.

These observations prompt examination of the now much-discussed question of whether torture in Turkey is correctly described as 'systematic'. Much has ridden on this issue, since the EU considered it imperative to show that torture is no longer systematic before judging that Turkey had fulfilled the political elements of the Copenhagen Criteria. It is hardly conceivable that the EU could commence accession negotiations with a state which routinely advocated the use of torture against its citizens.

Following allegations of systematic torture by human rights NGOs, an EU envoy was sent to Turkey in September 2004. EU enlargement commissioner Guenter Verheugen concluded from the visit that there were individual cases of infringement and abuse but found no evidence of systematic torture.³³

This conclusion is, though, decidedly difficult to uphold, and perhaps even a little perverse. In defining what amounts to systematic torture, the Committee Against Torture states that:

torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question.³⁴

In Turkey, it is agreed by all sides that torture is 'widespread'; even the European Commission admits that 'numerous' cases continue to occur. The very scale of torture also points to the practice being 'habitual' rather than an occasional anomaly, as do the similarities between many torture allegations in terms of both methods used and the types of victims targeted. The 'habitual' nature of torture is also underlined by the fact that torture in Turkey springs from long-established ingrained practices among law enforcement bodies accustomed over many years to receiving a green light from above to integrate torture methods into interrogation techniques and use it as a means of harassing disfavoured individuals and groups. Old habits of holding detainees in solitary confinement without informing their families, allowing independent medical examinations or permitting access to legal counsel are not yet fading, and the prevalence of conditions in detention centres elsewhere which facilitate torture clearly indicate that torture incidences are not just odd, chance occurrences.

As to the requirement contained in the committee's definition that torture is deliberate, this is evidenced particularly by the intentional evasion of regulatory measures by law enforcement agents through the use of less detectable torture methods and the increased commission of torture outside detention facilities. Continued high levels of impunity among alleged perpetrators, including unwillingness among prosecutors to file cases, judges permitting cases to expire and police reluctance to detain alleged torture perpetrators, all signify that torture is tolerated from above, as does Turkey's abject failure to adequately supervise detention facilities. Furthermore, the scale and severity of torture in Turkey can only result from the acceptance of its use at the highest level.

The fact that Turkey has announced a 'zero tolerance' policy towards torture and enacted a wide range of regulatory provisions

aimed at stamping out torture, while welcome, is not relevant to an assessment of whether torture is systematic. The committee adds to its definition that:

Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration.³⁵

National human rights NGOs in Turkey support the assertion that torture remains systematic, alleging, for example, that since prosecutors, judges, forensic medical experts and the police do not pursue torture cases,³⁶ torturers are being protected and torture is therefore in fact systematic.

It can be concluded, therefore, that in spite of ostensible government commitment to a 'zero tolerance' policy, all the evidence suggests that torture in fact remains widespread, officially sanctioned and habitual, and hence part of state policy and a systematic practice of Turkey. In any event, torture levels are unacceptably high and the Turkish government has manifestly failed so far in its responsibility to eradicate the practice.

PUBLISHING AND THE MEDIA

Restrictions on publishing and the media have long been a central tenet of Turkish determination to maintain the *status quo* of the monolithic, unaccountable state. Accordingly, books, journals, newspapers, radio and television broadcasting and other media are subject to comprehensive legislative restrictions on their content, which serve to stifle criticism of government policy as well as repressing the expression of alternative ethnic identities and quashing discussion of 'taboo' subjects such as the role of the military in government, the role of Islam in Turkish politics and society, the issues surrounding the alleged Armenian genocide and the Kurdish question. Prosecutions have been and continue to be brought regularly against publications or broadcasts deemed to have impinged upon these 'taboo' subjects or otherwise challenged the integrity of the state, with forms of non-violent expression which would be considered perfectly acceptable in a pluralist, democratic society being punished under the heads of

'inciting separatism' or 'terrorism', insulting the organs of the state, inciting racial hatred or aiding an illegal organization.

The routine repression of non-violent expression in Turkey is fundamentally linked to both her strict adherence to the notion of the homogeneous and secular Turkish identity, and her elevation of the idea of the state. The concept of an ethnically based nationalism, which denied even the existence of the Kurds, inspired pervasive restrictions and prosecutions where references were made to the existence of a separate Kurdish identity or where government policy towards the Kurds was criticized. Indeed, any form of expression seen to threaten the total cohesion and unity of all the groups who made up the Turkish people were traditionally repressed. The perceived necessity of protecting territorial integrity was intensified during the conflict in the Southeast, and the regional Governor was accorded sweeping powers to confiscate material judged offensive.

Similarly, the idea of an omnipotent, centralized state that transcends the individual³⁷ has long been prevalent in Turkey, and before it was amended in 1995 the preamble to the 1982 constitution even spoke of a 'sacred state'.³⁸ Thus the state is elevated to something far above the rights and interests of the ordinary citizen, to be revered and protected at all costs against attacks and intrusions by non-state institutions (the 'state' constitutes the executive, the military, the police and the judiciary), hence the legislative provision which sets out punishments for insulting the state. The Turkish Penal Code enacted in 1926 even prohibited organizations and propaganda 'seeking to destroy or weaken nationalist feeling'.³⁹ Expression seen by state organs as indicating particularistic interests distinct from the state was also viewed with suspicion.⁴⁰

The Turkish Penal Code and the Press Law accordingly contained a whole host of provisions facilitating the initiation of judicial proceedings for non-violent forms of expression, and typical offences included insulting the president, insulting government officials or the military, spreading separatist propaganda, and inciting racial, ethnic, or religious hatred. Convictions resulted in imprisonment or crippling fines which forced the closure of local media establishments.

To what extent is Turkey overcoming these factors inhibiting free expression in the publishing industry and the media? The answer is, unfortunately, rather negative. It is certainly true that pro-EU reform packages have brought in some positive changes, with many of the laws used habitually to repress non-violent expression, such as Article 8 of the Anti-Terror Law which prohibited the dissemination of 'separatist

propaganda', subject to amendment or repeal. An amendment to Article 30 of the constitution ensures that printing presses can no longer be subject to confiscation or seizure, and the new Press Law strengthens the rights of journalists not to disclose their sources and replaces prison sentences with heavy fines in some instances. Official figures do show a decrease in the number of prosecutions and the conviction rate for alleged breaches of the reformed articles of the Penal Code and Anti-Terror Law previously used most frequently to punish legitimate forms of expression.⁴¹ Furthermore, the European Commission has stated that since January 2004, 103 judgments in the Turkish courts have contained a reference to Article 10 of the ECHR, and that these cases have ended in acquittals.⁴²

However, on balance Turkey's progress in this sphere is highly limited. It is patently apparent that the habitual instinct to suppress the expression of opinions contrary to traditional Turkish nationalist or statist ideology continues to motivate the police and the judiciary, and interference with freedom of expression remains decidedly widespread.

Examples are abundant, and a high-profile recent case is that of former editor Hakan Albayrak who served six months of a 15-month sentence for acts constituting an 'insult to the memory of Atatürk'. According to the BIA (Independent Communications Network), excluding the months April–June the Supreme Board of Broadcasting (RTÜK) ordered twelve local media organizations off the air for a total of 360 days for 'disseminating separatist propaganda' and 'inciting hatred and enmity'.⁴³ Turkey's worst excesses are generally reserved for Kurds or pro-Kurdish activists. Fikret Baskaya, a renowned writer, is currently facing trial for insulting the state, state institutions and the military, despite the recent legislative reforms, and could receive a sentence of up to three years imprisonment. His alleged 'crime' is the publication of an article critical of Turkey's policy towards the Kurds. Distributors of the pro-Kurdish publication *Yeniden Özgür Gündem* have been particularly targeted with reported raids on offices in October 2003 and February 2004.⁴⁴

Furthermore, Turkey's new Penal Code, which is due to come into force in April 2005 and was supposed to contain important improvements on freedom of expression, manifestly fails to alter the articles of the Code customarily used by the police and judiciary to punish non-violent expression and leaves the door wide open to continued judicial harassment.⁴⁵ The revised Article 312 (now 216), for example, slightly narrows the scope of 'incitement to enmity

and hatred', but only through the potentially subjective test of whether such incitement constitutes an immediate danger, while the other key articles penalizing insults to Parliament, the army, republic, or judiciary, insulting the Turkish Republic and aiding an illegal organization remain largely unchanged. Further remaining legislative provisions including Articles 6 and 7 of the Anti-Terror Law and a number of remaining provisions of the Press Law still impose unjustifiable restrictions on press freedom.

An upshot of the incomplete reform process is that what legislative and administrative amendments have been implemented are limited in their effects due to the preponderance of alternative, anti-democratic provisions which remain on the statute books and under which arrests and prosecutions can still occur. Perhaps the clearest example of this, which has been broadly observed by human rights commentators within and outside Turkey, is that circumstances where previously charges would have been brought under the now repealed Article 8 of the Anti-Terror Law (prohibiting separatist propaganda), can now result in charges under the Penal Code. Articles 169 (aiding an illegal organization) or 312 (incitement to racial, ethnic, or religious enmity) are prime candidates. Indeed, it appears from some reported cases that in situations where charges could have been brought under now amended or repealed legislation, prosecutors scour the statute books to seek alternative legislation under which to initiate proceedings, indicating that even what limited legislative changes have occurred are being deliberately circumvented by over-zealous public authorities clinging to outdated notions of state power.

Furthermore, cases continue to be launched by prosecutors even where reformed legislation protects freedom of expression. For example, Feray Salman, HRA general secretary, and Ridvan Kizgin, chairman of HRA Bingöl branch, were prosecuted for speeches they had made including a statement that torture was continuing in Turkey and that charges against perpetrators were rarely brought. The defendants were acquitted because the statements of the defendants remained within the limits of freedom of expression and thought,⁴⁶ but frequent judicial proceedings brought against those seeking to express themselves in legitimate, non-violent ways, even where such prosecutions do not result in convictions, substantially hamper free expression. The constant threat of prosecution is likely to deter groups viewed with hostility by the state from publishing and disseminating apparently contentious works, imposing considerable stress and effectively pushing them to censor their own publications. Frequent

arrests, confiscation of materials, repeated attendance at hearings and intermittent detention impair the capacity of media outlets and other targeted organizations to carry out their daily work.

State treatment of the publishing industry and the media in Turkey is, then, still predominantly governed by concerns over perceived 'attacks' on the fundamental precepts of Turkish nationalism, including national integrity, and the perceived omnipotence of the state. A recent Council of Europe report found that 'the underlying philosophy is still largely dominated by security considerations' and that it is 'inadmissible in a democracy for freedom of expression to be so frequently punished by sentences of imprisonment'.⁴⁷ Tolerance of pluralism and alternative viewpoints are still viewed by the police and judiciary as dangerous, and this is reflected both in Turkish legislation and judicial practice. Spurious arrests and prosecutions continue on a very broad scale and Turkey has failed so far to create an environment in which freedom of expression is a valued democratic principle.

The European Commission conceded in its October 2004 report that there were still a 'significant number' of cases where 'non-violent expression of opinion is being prosecuted and punished'.⁴⁸ The institution also found that among other extensive qualifications remaining on the right of freedom of expression in Turkey, that sentencing of journalists, writers and publishers continues for reasons that contravene the standards of the ECHR and that 'overall the new Penal Code provides limited progress on freedom of expression'.⁴⁹ Despite this, the Report's section on freedom of expression opens with the statement that 'the situation of people sentenced for the non-violent expression of opinion is now being addressed',⁵⁰ and goes on to recommend that the adoption of the Penal Code be one of the preconditions to opening formal EU accession talks in October 2005.⁵¹

Does the European Commission's conclusion that the continued prosecution and punishment of non-violent expression of opinion is compatible with the 'stability of institutions guaranteeing ... human rights' matter? Freedom of expression is a fundamental right, and the ability to put forward alternative viewpoints without government censorship and to openly discuss political and other topics is viewed as an integral element of modern liberal democracy. Turkey's obligations in this area are set out in a number of international treaties, particularly the ICCPR⁵² and the ECHR.⁵³

Core justifications for the import attached to freedom of expression include the promotion of a tolerant society, at ease with itself and able

to absorb the views of all its citizens. This in turn sets a precedent for the peaceful co-existence of heterogeneous members of society and militates against other forms of harassment and persecution of groups and individuals otherwise viewed as hostile to the state. Politically, the open discussion of electoral candidates in a democratic state is essential to allow voters to make informed decisions about candidates and to have a say in the running of the country. It also facilitates the voicing of criticisms of the government, a vital process in enforcing democratic accountability.

A further important rationale for free speech is that it advances personal autonomy. Free speech allows an individual to engage in forms of self-expression and self-definition at will, which contributes to the individual's capacity to fulfil aspects of their personality. Finally, freedom of expression is classically seen as essential to the discovery of the truth. In the metaphor of the 'marketplace of ideas', the most effective test of the truth is deemed to be the power of an idea to get itself accepted in the 'competition of the market'.⁵⁴

The importance of freedom of expression means that although it is not an absolute right, it must be balanced carefully against other interests and can only legitimately be restricted in limited circumstances where such restrictions are prescribed by law, have a legitimate aim and are necessary in a democratic society. The balance established in Turkey between the right to free expression and the interests of the state is entirely inappropriate. The idea that non-violent expression can be restricted where it simply criticizes government policy or upholds the rights of minority groups is unpalatable in a modern democracy and gives far too much sway to the perceived interests of the state. Indeed, Turkish restrictions on free expression founded in statism and ethnic nationalism thoroughly negate key democratic principles, including the protection of the individual against the power of the state and the promotion of pluralism.

CIVIL SOCIETY IN TURKEY

The democratic values of tolerance and the acceptance of alternative identities and viewpoints are also important elements in the evolution of civil society. Civil society is a relatively elastic concept but broadly refers to the 'third sector', beyond the spheres of government or business. It provides space for the operation of the third sector, and allows for collective action centred on shared interests and values outside the public arena. It thus gives a voice to the various sections of

society and enriches public participation in democracies. A developed civil society is an integral element of democratic pluralism, and an indication of democratic maturity and a political system sufficiently comfortable with itself to countenance peaceful dissent.

Turkey has traditionally mistrusted non-governmental organizations, particularly those whose aims pertain to the better protection of human rights or the resolution of the Kurdish question: aims which are seen to fundamentally contradict Turkish conceptions of nationalism and the role of the state. Turkey has accordingly kept the third sector under a tight rein. State interference in the establishment of associations and their subsequent activities has been pervasive, and as a result a genuine civil society is proving very slow to emerge, while state–civil society relations have long been strained.

There have been some limited, theoretical advances in Turkey's willingness to tolerate the activities of NGOs, and therefore the evolution of some political space in which civil society can operate. The new Law on Associations, for example, places some restrictions on the capacity of government to restrict and interfere with the legitimate activities of associations, in particular the security forces can no longer access an association's premises or confiscate goods without a prior court decision,⁵⁵ but broadly the new legislation represents very little progress in this area. Turkish hostility towards the NGO sector continues to be reflected in a plethora of requirements, restrictions and criteria which impede the formation and activities of associations in Turkey. For example, associations must produce a statute detailing their aims and the type and field of activities to be carried out, and are not permitted to carry out activities other than those indicated in the statute. In addition, an association cannot be founded to serve a purpose expressly excluded under the constitution; a provision with potentially broad scope to place undue limitations on the establishment of legitimate associations. Broad powers to conduct investigations of associations are retained, and burdensome annual reports must be submitted to local authorities on activities undertaken and income and expenditure.

These bureaucratic hurdles are part of the constant, low-level intrusion conducted by public authorities into the affairs of organizations that criticize state behaviour. Reporting and auditing requirements, subjection to regular and extensive investigations and intricately detailed prerequisites to establishing an association combine to foster an environment which is hostile to the evolution of civil space autonomous of the government. Excessive and often

arbitrary state control over organizations greatly impedes their functionality and effectively renders the concept of civil society virtually meaningless.

More blatant, unwarranted interferences with the legitimate activities of NGOs are also rife in Turkey, particularly against those whose activities focus on matters viewed as contentious by the state. Judicial harassment is commonplace and numerous judicial proceedings are brought against NGOs, particularly those defending human rights. Turkish security forces also monitor NGO activity very closely indeed. In this context, Turkey maintains a highly coercive state bureaucracy, tending towards social control and committed to upholding the official ideological dominance of the state as against individuals and groups within society; a situation which contradicts the very notion of civil society as the acceptance of interests and values separate from the state.

Ingrained Turkish tendencies towards repressing manifestations of collective actions distinct from the state are also evident in Turkey's treatment of civil society organizations involved in public demonstrations or meetings. These groups continue to meet with harsh treatment by the police, including the use of excessive force, and are subject to regular prosecutions and convictions. Pro-EU reforms amending the Law on Demonstrations and Public Meetings have been insignificant, and substantial restrictions on free assembly remain in place. Hostility and heavy-handedness is particularly apparent towards those perceived to be dissenting from official state positions. In March 2005, the EU expressed shock over 'disproportionate force' used by Turkish police against women protestors demonstrating peacefully for equal rights.⁵⁶ Demonstrations are required to be authorized by the state, and the notification which those organizing public assembly are obliged to provide is still highly onerous and likely to deter those planning such events. Notices are frequently issued banning proposed demonstrations or meetings, and many people have been arrested in 2004 for staging unauthorized peaceful demonstrations. Indeed, NGOs have reported that in the first seven months of 2004, the numbers of detentions which relate to demonstrations have substantially *increased* in comparison to 2003.⁵⁷

Ongoing monitoring of civil society organizations by plainclothes police, and the videoing of their activities, contribute to an atmosphere of pervasive repression and intimidation. The holding of press conferences by human rights groups has proved particularly susceptible to state repression, reportedly resulting in hundreds of

trials and many convictions under the Law on Demonstrations and Public Meetings, many of which were merely small gatherings for open-air press conferences.⁵⁸

Thus neither the broader legitimacy of the pursuit of particularistic interests unrelated to the state, nor the concept that public protest at state policies can be legitimate and legally permissible, are yet taking hold among public authorities in Turkey. The European Commission acknowledges that 'civil society, in particular human rights defenders, continues to encounter significant restrictions in practice'.⁵⁹ Despite these 'significant restrictions', the European Commission recommended on the basis of its Report that 'Although some practical restrictions still exist, the scope of fundamental freedoms enjoyed by Turkish citizens, such as freedom of expression and assembly, has been substantially extended. Civil society has grown stronger.'⁶⁰

As such, it is recommended that the Copenhagen Criteria are fulfilled. It is submitted that the restrictive behaviour of the state in fact denotes rather more than the continuation of 'some practical restrictions' in a broader context of encouraging progress, and in fact civil society in Turkey remains substantially underdeveloped and constrained by the persistence of reactionary state ideologies.

The primacy of the state in Turkey and consequent bureaucratic hostility to alternative viewpoints has informed the continued prevalence of a 'security-first' system of government, whereby groups or individuals advocating interests deemed a 'threat' to the integrity of the nation state are subject to repression. There appears to be very little understanding among the Turkish government that NGOs and the expression of non-state interests are a valid and integral element of modern pluralism, indicative of a mature government confident in its citizens' capacity to partake in democratic governance. Instead, the reverse is true. Criticism of the state is still seen, in the model of pre-democratic states, as something which denotes weakness within a state rather than strength, and is repressed accordingly. The gulf between Turkish and Western conceptions of civil society was perhaps most tellingly revealed when Prime Minister Erdogan himself denounced the reporting activities of domestic NGOs critical of Turkey in the run-up to the 17 December 2004 EU decision, failing to appreciate that a publicly expressed intolerance for NGOs undermines rather than strengthens Turkey's claim to fulfil the EU political elements of the Copenhagen Criteria.⁶¹

POLITICAL PARTICIPATION

Political participation is a contentious issue in Turkey. Although the country is, in the strict sense, run along democratic lines, Turkey has shown a decided reluctance to countenance the participation in government of individuals or groups representing interests which are deemed to potentially jeopardize the national integrity of the Turkish state. Thus whilst periodic, multi-party elections in Turkey give a semblance of political democracy, a series of regulatory hurdles in fact exclude large sections of the population from participation in government.

The primary hindrance to full political participation is the provision in the electoral system that parties must gain 10 per cent of the national vote to enter Parliament. This high bar discriminates against minority groups such as the Kurds, whose representative political parties have strong regional support among their constituencies but whose share of the national vote does not reach the stipulated 10 per cent minimum. The Democratic People's Party (DEHAP), for example, gained more than 45 per cent of the vote in the five largely Kurdish provinces in the November 2003 elections, but received only 6 per cent of the total national vote and so received no parliamentary seats.⁶² Currently, the result of the 10 per cent threshold on entering Parliament is the prevention of the Kurds from participating in public affairs, and it is certainly arguable that the threshold was raised from 5 to 10 per cent largely to keep pro-Kurdish parties out of Parliament.

Since the Turkish state has, for many years, comprehensively failed to respect Kurdish interests in developing national and regional policy, and indeed has launched devastating attacks on the Kurdish community, more effective national political representation for the Kurds is vital to achieving genuine democracy in Turkey. Under the current system, not only the Kurds but other great swathes of interests and opinions in Turkey are not represented in the Turkish Parliament, effectively nullifying the votes of several million voters in general elections.

A further hindrance to the realization of minority political participation in Turkey is the capacity of the Chief Prosecutor of the Court of Appeals to bring cases seeking the closure of political parties before the Constitutional Court. Relevant in this context is section 81 of Law No. 2820 on Political Parties, which prohibits parties from claiming that there are minorities in Turkey or protecting

or developing non-Turkish cultures and languages. This law, which dates from 1983, was born of the Kemalist notion of nation-building in which ethnic diversity was viewed as a danger to the integrity of the state. Together with further provisions in the Law on Political Parties and articles of the Turkish Penal Code referred to above, it has been used frequently by the Turkish courts in proceedings against political parties.

Some improvements to this situation have been made under pro-EU reforms of January 2003, in particular the provision that a three-fifths majority is now required in the eleven-member Constitutional Court to order the dissolution of a party. In addition, parties can no longer be closed in accordance with the broad provisions of the Law on Political Parties, but only for reasons specifically stated in the constitution.

However, despite these improvements the fact remains that political parties, and particularly political parties seeking to express alternative, non-Turkish ethnic identities, continue to be subject to severe judicial harassment. Pro-Kurdish parties have particularly suffered, with every party which has sought to articulate Kurdish concerns in a peaceful, democratic forum since the 1970s having been condemned as 'separatist' and closed down. A string of explicitly pro-Kurdish parties in particular have been subject to relentless persecution, with one after another being closed down since the founding of the People's Labour Party (HEP) in 1991. HEP parliamentary successes in 1991 were marred by presumptions by reactionary elements within the Turkish state that equated the democratic representation of Kurdish viewpoints in parliament with Kurdish separatism. March 1994 saw the trial of Democracy Party (DEP) (HEP's successor) leaders Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak for supporting the PKK after they spoke in Kurdish and wore Kurdish colours during their inauguration in Parliament. The trial, which was later condemned as unfair by the European Court of Human Rights, sentenced the Kurdish parliamentarians to 15 years imprisonment. Although it was never suggested that any of the parliamentarians had been involved in violence, their retrial is still currently being pursued by state prosecutors.

Pro-Kurdish parties today are still viewed as synonymous with political violence and harassed accordingly, no matter how peaceful and moderate their aims and activities; in March 2003, the Constitutional Court unanimously ordered the permanent closure of the pro-Kurdish political party HADEP (People's Democracy Party)

on charges of supporting the PKK and committing separatist acts under Article 169 of the Penal Code.⁶³ Forty-six HADEP leaders were also prohibited from participating in political life for five years.⁶⁴ Another pro-Kurdish political party, DEHAP,⁶⁵ established as HADEP was confronted with likely closure, is subject to ongoing judicial proceedings initiated by the Chief Prosecutor at the Supreme Court of Appeal seeking its dissolution. Neither party is alleged to have advocated or been involved in any kind of violent activity.

Turkey's behaviour was found by the European Court of Human Rights in November 2003 to have violated the right to freedom of association under Article 11 when the Socialist Party of Turkey (STP) was dissolved by the Constitutional Court in 1998 on the grounds that its programme was liable to undermine the territorial integrity of the state and the unity of the nation.⁶⁶ The Court examined the STP's programme and found nothing in it that could be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. The Court referred to the 'essential role' of political parties in 'ensuring pluralism and the proper functioning of democracy'.⁶⁷ It also described the 'irreplaceable contribution' of political parties to political debate to be 'at the very core of the concept of a democratic society'.⁶⁸ It was stated that 'an association, including a political party, is not excluded from the protection afforded by the Convention simply because its activities are regarded by the national authorities as undermining the Constitutional structures of the State ...'.⁶⁹

There could be no justification for hindering a political group merely because it sought to publicly debate the situation of part of the state's population and to take part in the nation's political life in order to seek solutions by democratic means. The Court found no evidence to support Turkey's assertion that the STP had been responsible for terrorism and, as the party had not yet commenced operations at the time of the ban, the dissolution order was disproportionate.⁷⁰

Similarly, the London-based Kurdish Human Rights Project brought a case on behalf of renowned Kurdish parliamentarian Leyla Zana and twelve other former DEP MPs whose party was dissolved by the Turkish Constitutional Court in 1994 after the party members had taken their oaths of parliamentary allegiance in Kurdish.⁷¹ Here it was found that Turkey had breached the right to free elections under the ECHR⁷² by impeding the right of individuals to stand for Parliament. The Court held that Turkey had violated 'the very essence of the right to stand for election and to hold parliamentary office' and

'had infringed the unfettered discretion of the electorate which had elected the applicants'.⁷³

Turkey has also resorted to other legal and extra-legal means of silencing disfavoured political parties. Raids, threats, arrests and arbitrary detention of pro-Kurdish politicians and sympathizers have long been a feature in Turkey and remain commonplace; party offices have been subject to frequent raids, while members are harassed, arbitrarily detained by security forces, ill-treated and subjected to trials for 'inciting separatism' or on charges brought under the Law on Meetings and Demonstrations. Examples of repression and excessive force used against DEHAP supporters and their predecessors are numerous; for instance, three members of DEHAP's women's wing alleged they had been beaten and insulted by the police when they attempted to hold a press conference about Öcalan's prison conditions in Cizre,⁷⁴ and police attempted to forcibly prevent female DEHAP supporters from making a press statement critical of the government in October 2003. In 2003, former DEHAP chairmen, Mehmet Abbasoglu and Veysi Aydin, and former DEHAP secretaries, Nurettin Sonmez and Ayhan Demir, were sentenced to one year, eleven months and eleven days imprisonment for alleged 'irregularities' in the conduct of the February 2002 election. According to an article in *The Economist*, Diyarbakir's DEHAP mayor, Feridun Celik, reported that 600 DEHAP members and supporters were arrested between January and August 2003.⁷⁵

A further important impediment to the capacity of minorities to participate in public life is the prohibition on the use of Kurdish in electioneering under Article 81 (c) of the Political Parties Law. Prosecutions have and continue to be brought frequently under this law; in July 2004 former chairman of HADEP Murat Bozlak and twelve others were sentenced to five months imprisonment under the Law on Political Parties for using a language other than Turkish in election campaigning after playing Kurdish music during a meeting.⁷⁶ The Nusaybin prosecutor's office investigated DEHAP head Tuncer Bakirhan in July 2004 on allegations that he had violated Article 81 (c) of Law No. 2820 on Political Parties when saying 'goodbye' and 'thank you' in Kurdish at an election rally speech on 26 March 2004.

The European Commission fails to give any substantive weight to the harassment of pro-Kurdish political parties, concluding in this context that 'no developments can be reported since the last Regular Report',⁷⁷ and making no further recommendations. Only cursory reference is made in the Commission Report of prosecutions

pursued during the March 2004 elections for speaking Kurdish during political campaigning.

These issues deserve fuller attention; under Article 25 of the ICCPR, everyone has the right to participate without unreasonable hindrance in the conduct of public affairs, and to vote and to be elected at genuine periodic elections. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) obliges states parties to guarantee the right of everyone to participate in elections and to take part in the government as well as in the conduct of public affairs.⁷⁸ Article 3 of Protocol 1 to the ECHR guarantees the right to free elections under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. These provisions can also be taken to mean something further, giving voice to a political ideal that democratic government ought to be based upon the free expression of the will of the electorate.⁷⁹

Restrictions on the capacities of pro-Kurdish and other unpopular political interests to operate in Turkey inhibit pluralism and the realization of democratic participation. The capacity of the Kurds to be represented politically is significantly undermined, leaving them unable to protect their rights and interests through the institutions of the state. Furthermore, the effective marginalization of the Kurds from political life in Turkey hinders open discussion of the Kurdish question in the political sphere, and impedes much needed attempts to revitalize the search for peace and justice in the Southeast. Bringing the debate on Kurdish issues into the heart of Turkey's established political discourse would allow the positive exchange of ideas on the subject which is part of a normal democratic process, potentially curbing violence and focusing energies on a politically negotiated and peaceful solution.

In the current political climate, it is doubtful whether a political discourse on the Kurdish issue can be established between pro-Kurdish politicians and the Turkish state, regardless of how peaceful and moderate are any overtures made by pro-Kurdish politicians. Until Turkey acknowledges the legitimacy of pro-Kurdish political representatives as negotiating partners, it will prove extremely difficult to move forward on the Kurdish question and realize true democratization in Turkey. Turkey needs to learn that the greatest danger to democracy in Turkey is not the political ambitions of parties such as HADEP, but rather her determination to pass by the opportunity to engage in dialogue with the elected representatives of the Kurdish people and so achieve peace and justice in the Southeast.

The fact that the votes of several million Turkish citizens, who are often aggrieved with current government policies and further excluded from democratic participation by other means, are not reflected by their representation in Parliament is also a great impediment to democracy.

CULTURAL AND LINGUISTIC RIGHTS

The granting of cultural and linguistic rights in Turkey is a highly sensitive issue, and constitutes a key benchmark in assessing Turkey's progress towards democratization. Broadly, the importance of cultural and linguistic rights stems from the very painful consequences for individuals belonging to a minority. Such individuals are frequently compelled to live a diminished existence, robbed of the life chances enjoyed by the majority through exclusion from public services and educational and employment opportunities which frequently accompany the denial of cultural and linguistic rights.⁸⁰ States which do not confer cultural and linguistic rights tend to also deny civil and political rights, since they are hostile to ideas and opinions which diverge from the official state line. Further, restrictions on linguistic rights can, for those who do not speak the majority language, lead to problems accessing medical services, participating in political processes and fulfilling their potential in the education system.

Cultural and linguistic rights are also crucial to the capacity of the individual to fully and effectively fulfil their identity, since restrictions on linguistic and cultural expression prevent access to many of the most important institutions in fostering identity such as schools and the media.⁸¹ Minorities denied cultural and linguistic rights are also prevented from accessing their own literatures and histories, and thus the ability to interpret the world through their own eyes.⁸² Cultural background is one of the primary sources of identity, and the basis for key elements of self-definition, expression, and a sense of group belonging. Thus cultural rights are not a 'luxury' to be realized at a later stage of development. Culture is inseparable from the quality of being human, and from the human sense of self-respect; its denial is the inverse, it diminishes the group or individual and undermines their sense of worth. Life without culture starts to lose its meaning and its context. Furthermore, where minorities are not granted cultural and linguistic rights, the state makes a clear statement that such minorities are not valued or accepted; instead they are treated

as outsiders, demeaned and alienated from mainstream conceptions of the state.

On the other side, states denying cultural and linguistic rights are impoverishing their own societies; refusing large sections of a population the ability to realize their potential makes for lower standards of living and less productive societies.⁸³ The denial of linguistic and cultural rights also has a further, holistic effect on the state. Where a state allows or facilitates the flowering of alternative identities and cultures within its borders, this is seen now to cultivate something of value in itself, namely a richer, more open and vibrant society. In an increasingly interconnected world, where minority groups frequently retain cross-border relationships, the protection of cultural and linguistic rights within a state's borders is also an important factor in promoting international peace and security.

Accordingly, cultural rights are protected in a number of international treaties, including especially the Universal Declaration of Human Rights,⁸⁴ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸⁵ as well as the ICCPR,⁸⁶ the ICERD,⁸⁷ the Convention on the Rights of the Child,⁸⁸ and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.⁸⁹

One of the greatest challenges to cultural rights, though, is that for some governments, the haunting spectre of group identities distinct from the official national identity provokes acute fears that the territorial integrity of the state will be undermined. Accordingly, it is perceived that conferring cultural rights will lead to a greater cultural awareness among minorities, inspire the radicalization of minority claims and ultimately fuel demands for autonomy.

Such fears have certainly been evident in Turkey. To date, Turkey has refused to sign up to the key national and regional treaties imposing obligations to protect minority cultural and linguistic rights. Had Turkey ratified the Framework Convention on Minorities, she would be obliged to recognize that minorities have 'the right to use freely and without interference his or her minority language, in private and in public, orally and in writing',⁹⁰ and to guarantee minorities the right to maintain educational establishments and to teach their mother tongue. Under Article 27 of the ICCPR, States Parties are obliged not to deny 'the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'. However, Turkey has issued a reservation to this provision effectively excluding its

application to the Kurds;⁹¹ a reservation which in fact substantially undermines the very essence of the right.⁹²

This does not mean that Turkey has no obligations in this sphere. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires that states ensure that minorities 'have adequate opportunities to learn their mother tongue', and goes on to assert that minorities have 'the right to enjoy their own culture ... to use their own language, in private and in public, freely without interference or any form of discrimination'.⁹³ This declaration is non-binding, but serves to clarify contemporary international standards on the linguistic rights of minorities. The OSCE Copenhagen Document guarantees to national minorities the right to freely express, preserve and develop their cultural and linguistic identity, to freely use their mother-tongue in public and in private, and to disseminate, have access to and exchange information in their first language.

Turkey's reticence in taking on express, binding obligations to grant linguistic and cultural rights to the Kurds is rooted in the dominant Kemalist ideology of the unitary nation state, and her consequent ambition to assimilate non-Turkish ethnic groups under the banner of a unified Turkish national identity. Turkey has categorically refused to accept that there could be more than one ethnic identity with Turkish nationality, and the Turkish Constitution defines the citizens of Turkey specifically as 'Turks'. National integrity is seen to be forged by the integration of all communities irrespective of their ethnic origin, and the law precludes the formation of any nation or minority distinct from the Turkish nation. Attempts to promote the cultural and linguistic rights of the Kurds have been officially dismissed as trying to 'create' minorities and thus undermine the unity of the Turkish nation. Of course, the Kurds, their language and distinct culture have been present within modern-day Turkey for many centuries.

There have, then, been comprehensive denials of Kurdish cultural and linguistic rights virtually since the founding of the Kemalist Republic, despite guarantees to the Kurds of fundamental and non-derogable linguistic rights made in the Treaty of Lausanne.⁹⁴ Repression of the Kurdish language, as one of the most palpable and easily identifiable outward expressions of Kurdish identity, has a long history. In 1928, the Law on the Adoption and Application of the Turkish Alphabet was introduced, dictating that state and private organizations' written correspondence, notices, publicity material

and publications be in Turkish. From 1 January 1929, it became illegal to write Turkish using Arabic script.⁹⁵ Further restrictions prohibited the registration of Kurdish names and the changing of non-Turkish village names, and later excluded the use of Kurdish in election campaigns and broadcasting.⁹⁶

Anti-Kurdish repression was again revived in the wake of the 1980 military coup, and the 1982 Turkish Constitution underlines Turkey's ambition of imposing a culturally homogeneous state from culturally heterogeneous foundations. Turkish was declared as the official state language, and the study or teaching of any other language was prohibited.⁹⁷ The constitution further proscribed publishing in any language prohibited by law,⁹⁸ and entrenched Atatürk's key Reform Laws including the Law on the Adoption and Application of the Turkish Alphabet.

During the period of military rule, far reaching legislation was passed further repressing Kurdish culture and language. The Kurdish language was banned even for the 'expression, dissemination and publication of opinions', criminal responsibility was imposed for the use of Kurdish in print media under an amendment to the Press Law of 1950, and extensive self-censorship of the enjoyment of Kurdish culture through cinema, video and music was achieved by the Law on Works of Cinema, Video and Music.⁹⁹ These restrictions were intrinsically linked to Turkey's conception of the escalation of the conflict in the Southeast as a purely security-based issue, and her refusal to entertain the idea that a political solution which relaxed restrictions on Kurdish language and culture could dissipate tension and rein in violence. Instead, Turkey saw the absolute quashing of all things Kurdish, along with a military victory against the PKK, as the only means of resolving the conflict.

Liberalizing long-established and deeply entrenched restrictions on Kurdish language and culture thus amounted to one of Turkey's greatest challenges in her pro-EU reform programme. Moreover, the conferring of cultural and linguistic rights became a touchstone issue in the EU accession process because such moves were closely tied to the need for a negotiated political solution to the Kurdish issue generally. Cultural and linguistic freedoms would represent a dramatic change in attitude in Turkey, indicating a willingness to acknowledge the presence of alternative identities within the country and to concede the legitimacy of a distinct Kurdish culture.

Constitutional changes implemented in 2001 did not materially improve minority protection, but reforms brought in via the sixth

and seventh reform packages have had some limited impact, particularly in the fields of broadcasting, personal names and language tuition. Thus some tentative, albeit reluctant, steps have been taken towards greater visibility and public sanctioning of the Kurdish language. It is in the context of these reforms that Turkey's progress on linguistic and cultural rights is considered. Overall, an enormous amount of progress remains to be made before Kurdish is used widely and freely in key public institutions, the media and other aspects of day-to-day life.

The new Law on Broadcasting in Traditionally Used Languages and Dialects¹⁰⁰ finally provided enforceable provisions allowing the state TRT channel, as well as private, national television channels, to broadcast in minority languages. TRT accordingly began broadcasting in Bosnian, the Kurmanci and Zaza dialects of Kurdish, Arabic and Circassian on 7 June 2004, and these broadcasts continue to be aired.¹⁰¹

This development is without doubt very much to be welcomed; broadcasting in Kurdish very openly and publicly challenges fixed conceptions of the mono-ethnic Turkish state and traditional hostility towards outward manifestations of Kurdish identity. The very fact of individuals in the Kurdish regions being able to watch television in their native language represents a vast change on the ground there. Breaking such a fixed taboo as the prohibition on broadcasting in Kurdish also explicitly demonstrates that Turkey recognizes the presence of the Kurds. However, the measure has a decided appearance of being an outward concession to EU watchdogs, with the host of restrictions which remain in place on Kurdish broadcasting significantly weakening the real progress it represents.

A tangle of red tape renders the measure far less meaningful than it initially appears, and substantially calls into question Turkey's commitment to language reform. The maximum duration permissible for broadcasting programmes on radio and television are 60 minutes per day and five hours per week, and 45 minutes per day and four hours per week respectively. There are significant restrictions on the content of programmes retained from previous regulations, including that programmes in languages other than Turkish are restricted to news, music, or traditional culture; children's programmes and films are prohibited. Reports have indicated that the programmes which have been broadcast contain very limited information about the culture and daily lives of the Kurdish people.¹⁰² Additional obstacles include the restriction that stations cannot broadcast until the State

Institute of Statistics has ascertained regional audience figures, a provision which seems to have been used as a pretext for delaying the opening of private Kurdish television channels. In October 2004, stations which have applied for licences, including Gün TV, Söz TV, ART TV and Çagri Radio and TV Station, were told that the delay to their applications was due to such research being carried out on the profile of the audience.¹⁰³

Furthermore, permission is still required for broadcasts in Kurdish by private television and radio stations, and, on the ground, officials have been slow to adapt to the new legislative position. A great deal of bureaucratic intrigue and delay has followed applications from media outlets for permission to air programmes in Kurdish, and crucially, no private broadcasting company has yet been allowed to broadcast in Kurdish over a year after the new regulation was introduced. A number of television and radio stations based in the Kurdish regions have applied and are awaiting the results of their applications.¹⁰⁴ The European Commission reported in October 2004 that although permission has not yet been granted, 'it has been reported that these applications will be assessed favourably'.¹⁰⁵

In the meantime, those making broadcasts in Kurdish without having been able to receive the necessary permission have received fines and suspensions or annulments of their licences. In a much publicized case in March 2004, ART TV based in Diyarbakir was closed after broadcasting Kurdish love songs in August 2003 on the grounds that this violated 'the principle of the indivisible unity of the state'. Gün TV in particular has been subjected to periodic harassment, including a suspension order for one month after the broadcast of speeches by two politicians as part of a live symposium on local governance. The politicians had called for recognition of the Kurdish language and identity.¹⁰⁶ The concept that the airing of legitimate, peaceful sentiments in Kurdish can in itself constitute a threat to territorial integrity is thus still very much alive.

This conclusion is given further weight by the fact that the state-controlled RTÜK continues to deny broadcasting rights to Kurds despite the regulation passed on 25 January 2004 on the basis of a 1994 Law on the Establishment and Broadcasting of Radio Stations and Television Channels. This law grants RTÜK powers to issue and revoke licences and ensure that broadcasts comply with the general principles of the constitution, fundamental rights and freedoms, national security, and general moral values under Article 4 of the Act. Broadcasters must also respect the 'indivisible unity of the state'.

The state thus still has very broad discretion to prevent Kurdish broadcasting where it is seen to impinge upon traditional Turkish nationalist ideology.

Another field in which the liberalization of restrictions on the Kurdish language has proved contentious is that of personal names; an issue of central importance to the Kurds which fails to find reference at all in the European Commission's Report of October 2004. Kurdish parents have for many years been unable to even name their children with Kurdish names, being compelled instead to give each child two names, a Turkish name for public use and a Kurdish name for use among family and the local community. Kurdish names were effectively prohibited in the public domain. An individual's name is a highly personal and integral element of his or her identity, and these restrictions accordingly had a deeply detrimental impact on the ability of Kurds to define and express themselves in accordance with their own traditions.

Apparent concessions were made in the Sixth Harmonization Package, whereby the condition that children may not be given names that are not appropriate to the 'national culture' and Turkish 'customs and traditions' was replaced with one stating that only names which contravene 'moral norms' or that 'offend the public' are prohibited.¹⁰⁷ However, despite the lifting of these restrictions a Government Circular of 23 May 2002, which remains current, clarifies that names must consist of letters contained in the Turkish alphabet. As such, an effective ban has been seen by local authorities to be in force on the use of names including the letters 'q', 'w', and 'x', (common letters in the Kurdish language), due to the letters not existing in the Turkish alphabet. Courts upheld in 2004 that names including these letters cannot be registered in several applications made during that year. Allegations have also been made following the enactment of the new regulations that authorities have refused to register Kurdish names *without* the letters 'q', 'w', and 'x', and that children have been assigned alternative names.¹⁰⁸

Finally in the context of cultural and linguistic rights, an important area of reform has been in Kurdish language teaching. Since the 1920s, the use of the Kurdish language beyond the spheres of the family and local community has been tightly controlled, and accordingly it has not been possible for Kurds to learn or teach their language even in private institutions. The Law on Teaching in Different Languages and Dialects Traditionally Used by Turkish Citizens in their Daily Lives, part of the seventh harmonization package, has marked an apparently

dramatic departure from this norm by facilitating the opening of private Kurdish language courses. The past months have consequently seen several private Kurdish language courses open, beginning in May 2004 with schools in Van, Batman and Şanlıurfa.¹⁰⁹

However, as with developments in Kurdish broadcasting, the initial fanfare which accompanied the announcement of this step in the run-up to the EU decision of 17 December 2004 has not been followed by encouraging progress. In several instances local authorities have proved unwilling to implement the legislation, and have imposed petty bureaucratic hurdles to organizations seeking to commence lessons. For example, on 5 November 2003 Aydın Unesi's preparations to begin teaching were stalled by an official notice stating that the lack of an emergency staircase (which did in fact exist) violated safety regulations.¹¹⁰ Moreover, the regulation contains considerable restrictions on the establishment of private languages schools, and on their operation. Courses are only permitted to last for ten weeks and for no more than 18 hours per week. Private language schools receive no state financial support, and restrictions are in place on the appointment of teachers, timetable, attendees and the curriculum, including the provision that lessons must not contravene the 'indivisible unity of the state';¹¹¹ a number of applications to establish language courses have been rejected by the authorities on the grounds that the curricula focus on culture and history and not on language teaching.¹¹²

Moreover, the teaching of Kurdish remains banned from the state education system. Article 42 of the constitution maintains that 'no language other than Turkish shall be taught as a mother tongue to Turkish citizens'. As such, there is no provision for teaching in Kurdish in state schools, thus precluding children from receiving education in their mother tongue. For children who have learnt only Kurdish at home, this presents very real educational problems, notwithstanding that it is an affront to their cultural identity. There are also no facilities for the study of Kurdish at university-level in Turkey.¹¹³

Turkey, then, whilst having made concessions in the field of cultural and linguistic rights which at first sight appear groundbreaking, can on closer inspection be seen to be doing little more than paying lip service to the pro-EU reform process. At root, she remains committed to promulgating official Turkish nationalism, and tied up in paranoia over increased cultural and linguistic rights spelling the break-up of the Turkish Republic. She has a great way to go before cultural

pluralism is realized. Fundamental to this process must be the realization by Turkey that conferring cultural and linguistic rights upon the Kurds is hardly likely to spark greater Kurdish discontent and discord. Instead, the reverse is true; it is through denying linguistic and cultural rights that Turkey is stoking Kurdish dissatisfaction and impeding the achievement of a peaceful and enduring solution to the Kurdish question.

HUMAN RIGHTS REFORM AND EU ACCESSION

It has been suggested that politically motivated eagerness within Western Europe to advance Turkey's integration into the EU looks likely to have unduly hastened the decision by the European Council that Turkey has fulfilled the political elements of the Copenhagen Criteria for the commencement of formal accession negotiations. In assessing in some detail the outstanding human rights issues which Turkey must address, it is easy to see that this assertion is well-founded. The European Commission's perspective on changes in Turkey, which is substantially followed by the Council, lacks depth and penetration as to the reality of the situation on the ground in Turkey and casts an unjustifiably positive light on Turkey's progress. The EU decision in favour of opening accession talks rewards the superficially dramatic changes that Turkey has effected, and wrongly intimates that the bulk of the human rights reform process is complete.

While Turkey should certainly receive some credit for what she has achieved so far, the reform process is in many ways still in its formative stages, both in terms of Turkey's implementation of existing reforms and the considerable way to go before the regulatory framework for human rights is on a par with modern, democratic standards within the EU. In fact, while the rest of Europe is advocating pluralism and the capacity of mature, democratic societies to embrace diverse opinions and ideas, Turkey remains trapped in outdated nineteenth-century ideologies of nationalism and the primacy of the unitary nation state, seen to justify the repression of all outward manifestations of alternative ethnic identities and particularistic interests. Turkey shows only very limited signs of being prepared to truly move on from this juncture and modernize her outlook, and it is essential that the European Council decision to open accession negotiations, and the approach to change in Turkey upon which it is based, does not set a precedent for EU decision-making on Turkey's accession bid in the future. Accession must not be pressed forward at the expense of

realizing genuine respect for human rights, and it is manifestly clear that Turkey has a long road before her to meet this objective.

The EU has underlined that Turkey must continue to make progress in the human rights sphere, both through conditioning the opening of accession talks on the adoption of key legislation and through inserting the human rights 'break clause' into the Council decision of December 2004. The EU has also stressed that Turkish accession talks are likely to be protracted, and it has been suggested that accession may not take place until 2018. Since it is now too late to influence EU decision-making on the opening of accession negotiations, it is to be hoped that during the accession process Turkey will be encouraged to sustain momentum for human rights reform, and that the process will be gradual and evolutionary, allowing adequate time for changes to take root in Turkish society. It is essential that talks are indeed suspended if there is a 'serious and persistent breach' of respect for human rights and freedoms, and that full accession does not take place unless and until a fundamental change in Turkish attitudes to human rights has occurred.

A QUESTION OF IMPLEMENTATION?

It has been commonly asserted among NGOs that Turkey has made vast strides in improving the legislative and administrative protection of human rights, but that she has some way to go to ensure that these rights are sufficiently implemented. This conclusion is borne out at least in its latter part by the study made of Turkey's progress on human rights. Strong regulatory provisions outlawing torture have not been complemented by a substantial decline in the practice; instead new, less detectable torture methods have evolved and torture has been displaced to locations outside official detention centres. Reform of the Penal Code and Anti-Terrorism legislation has been circumvented and prosecutions of legitimate, non-violent expression have continued, and despite the new Law on Associations and Law on Demonstrations and Public Meetings, judicial harassment of civil society groups critical of the state remains commonplace and peaceful public demonstrations and meetings are broken up by the police. There have been improvements in the provisions under which restrictions can be imposed upon political parties, but parties viewed as hostile to the state, and particularly pro-Kurdish parties, continue to be subject to raids and dissolution orders. There has been only very limited progress on Kurdish broadcasting and Kurdish

language teaching so far, notwithstanding seemingly revolutionary legislative provisions.

In many respects, the fact that implementation of Turkey's pro-EU reforms has lagged behind legislative measures is unsurprising. Turkey has, from a formal perspective, changed considerably over a very short period of time. To expect those responsible for implementing reform to adjust as quickly to new concepts and methods would, perhaps, be unrealistic. Time will be needed for police, gendarmes, the civil service and the judiciary to 'catch up', particularly in areas such as the Southeast where there has traditionally been a relatively free rein granted to public authorities to repress public espousals of 'Kurdishness'.

However, this focus on implementation issues is highly problematic. Many NGOs and civil society organizations, by focusing upon the failure of Turkey to implement reforms, appear to have inadvertently made light of the substantive problems in Turkey which continue to plague her human rights record and thus have given credence to the European Commission's finding that Turkey fulfils the Copenhagen Criteria. Difficulties in implementing reform, rather than within the substance of the reform process itself, can be more easily dismissed as merely requiring patience as attitudes evolve over time. Provided that the fundamental regulatory frameworks are in place, Turkey's public authorities will get used to the new way of doing things and soon match the improved formal regulation of human rights with more robust protection on the ground.

In fact, this scenario is not a given. It is imperative that the substantial implementation gaps in Turkey's reform programme are not downplayed, nor presented as a minor hindrance to an otherwise positive reform process. Resistance to human rights reform within Turkey, and particularly where it touches upon traditionally unmentionable areas such as the recognition of Kurdish identity, is the result of decades of nationalist ideology entrenched within political and society structures. Instruments of the state are accustomed to officially sanctioned Kemalist nationalism, antipathy to the public expression of Kurdish identity, the notion of the unaccountable state, and recourse to military support. Effective implementation of pro-EU reforms, and the development of a pluralist democracy in which respect for human rights is a touchstone, depends upon new values and ideals permeating Turkish mores and becoming internalized among the Turkish governing structures and the Turkish people. The protection of human rights must come to make sense

to local authorities, and not be regarded as something imposed from outside.

This is by no means to suggest that Turkey cannot change, but the approach adopted by bodies such as the European Commission whereby it is implicitly presumed that reform is merely a technical matter of implementing agreed legal reforms over a specified period of time is questionable. Transforming deep-rooted behavioural patterns is a sizeable task which will demand extensive further efforts, including in the development of appropriate institutional structures, robustly monitoring human rights at a local level, changing the ethos within sections of local government, the civil service, the judiciary and the police, and seeking to bring about a more general modification in deeply entrenched Turkish mindsets. All the evidence suggests that this process has, as yet, hardly got off the ground and it is very far from apparent that Turkey's governing elites have any real intention of implementing such changes. Instead, much of the pro-EU reform process looks like a series of box-ticking, with reforms designed to concede the minimum possible to achieve the right decision by the EU. Continued resistance to reform from within Turkey is perhaps most clearly demonstrated by her dogged refusal to grant sufficient political space for the effective operation of political parties and human rights NGOs, continuing to regard any peaceful and legitimate criticism of the government as divisive and a threat to the 'indivisible unity' of the state.

Furthermore, it is simply not the case that Turkey's remaining obstacles to accession are solely or even largely a question of implementing existing reforms. Indeed, it is crucial that too much weight is not placed on problems of implementation in Turkey, to the point that attention is detracted from the urgent need for further legislative and administrative reform. Turkey has made some important steps forward in human rights reform over the past decade, and particularly since 2002, albeit primarily in order to win EU approval. She has, at least from a formal perspective, begun tackling long-standing prejudices and taken tentative steps away from Atatürk's notion of the unitary state. This has been done at considerable risk of provoking disaffection within key state institutions, where the reforms are seen as a threat to traditional Turkish ideals and notions of sovereignty.

However, what has been highlighted in the preceding sections is not only that Turkey's pro-EU reforms have not been sufficiently implemented, but also that to a very significant extent the reforms

in themselves are inadequate. There remain in place a great number of legislative provisions through which the right to free expression can be unjustly interfered with, and the amended Law on Associations and Law on Demonstrations and Public Meetings, whilst a partial improvement on previous legislation, fall woefully short of complying with international standards. Regulations continue to impede minority political participation in Turkish government and a plethora of restrictions limit the public use of the Kurdish language. Attention must be turned to the great gaps which remain in Turkey's legislative framework pertaining to the protection of human rights. The vast array of remaining provisions which make it still possible to harass and persecute the expression of peaceful, legitimate interests within the boundaries of the law, and the endless restrictions which impede the participation in Turkish society and public life of sections of the population seen to threaten the integrity of the nation state, particularly the Kurds, must be repealed before Turkey can be deemed to have made any real progress on human rights.

5

Internal Displacement

The protracted displacement to which hundreds of thousands of people, mainly Kurds, have been subject in Turkey's southeast is a vital yardstick in any consideration of Turkey's progress towards democratization, and is an acid test for measuring her willingness to genuinely address the situation of the Kurds. Internal displacement is a very visible reminder of the abuses committed by Turkish security forces under OHAL and the accompanying atmosphere of violence and disorder, as well as holding severe consequences for the large numbers still living in dire socio-economic conditions on the peripheries of overcrowded towns and cities.

BACKGROUND TO DISPLACEMENT

It has already been mentioned that Turkey sought to dissolve Kurdish communities in the southeast of the country as part of her aim of imposing a new, unified Turkish nationalism following the founding of the Turkish republic in 1923. This logic of displacement whereby Kurdish networks were broken up, the population makeup in what were large and contiguous Kurdish areas was altered and Kurds were forcibly assimilated into mainstream Turkish culture is central to the continued relevance of the issue today. Displacement was seen as a means to destroy Kurdish identity and mitigate the perceived threat of national disunity and separatism. Still today, the conclusion cannot be avoided that these aims remain to a significant extent unaltered.

These ideas were first translated into concrete strategies in the 1920s, as Atatürk's 'Turkification' programme mandated the first instances of forced displacement of the Kurds, accompanied by violence, abuses and the destruction of homes and property. The most devastating period of displacement, however, occurred in the wake of the 1980 military coup, against the background of the subsequent armed conflict fought between the PKK and the Turkish government. Ostensibly as part of its bid to overcome the PKK by annihilating its networks of support in the Kurdish countryside, the

Turkish government began in the 1980s to forcibly expel Kurds from their villages in the Southeast.

The professed aim of countering the PKK's support network is no doubt partially true, but the patterns of displacement which occurred tell a more sinister story. Villages and other settlements were routinely 'cleansed' of their civilian Kurdish inhabitants, often as a form of collective punishment for refusal to join the state-sponsored civilian militia, the Village Guard (*koruculuk*). Evacuations were accompanied by extreme brutality, including beatings, enforced disappearances, humiliating treatment, threats, sexual assault and rape. In some instances, food embargoes were imposed which starved villagers out of their homes.¹ Security forces then ensured that the entire economic and social fabric of community life was wiped out by burning houses, farmland and forests, slaughtering livestock and refusing villagers the opportunity to recover their personal possessions.² Victims of this treatment, rendered homeless and left with no resources to rebuild their shattered communities, were compelled to resettle elsewhere even where they were not formally evacuated. According to official figures, during the conflict 3,848 settlement units were partially or wholly evacuated,³ of some 5,000 villages and hamlets that existed before 1985.

Village evacuations were, then, far more than merely a method of combating PKK activities. They provided a means of consolidating government control in the Southeast, centralizing Kurdish communities in order that the state could more closely monitor their activities.⁴ Furthermore, dispersing the Kurdish population would frustrate calls for autonomy, advance assimilation of the Kurds into majority Turkish culture and further the aim of diluting the notion of 'Kurdishness'.

Turkey, however, still refuses even to acknowledge the predominant role played by the Turkish security forces in effecting displacement. As recently as 2003 it was officially declared that:

The root cause of internal displacement in Turkey has been the scourge of terrorism that Turkey has suffered for two decades. Large numbers of our citizens were compelled to leave their homes due to the terrorist organisation PKK's intimidation, harassment and attacks ... it is indeed incorrect to portray the cause of displacement as the equal responsibility of the terrorist organisation and the authorities.⁵

The European Court of Human Rights has refuted this view by observing that whilst village evacuations occurred in the context of violent confrontations between the security forces and members of the PKK, Turkish security forces had 'deliberately destroyed the homes and property of applicants, depriving them of their livelihoods and forcing them to leave their villages'.⁶

It is estimated by the London-based Kurdish Human Rights Project that around 3 million people were displaced during this period.⁷ It should be added that the actions of state security forces were the main, but not the only factor responsible for displacement. The PKK at times burnt villages and carried out other abuses against those seen as 'collaborating' with the state,⁸ and there is a small grain of truth in the Turkish government's repeated assertion that displacement has occurred in part as a result of general rural-urban migratory processes, though these processes were considerably exacerbated by military activity in the region, the deliberate destruction of livestock and prohibitions on grazing animals in mountain pastures.⁹

Beyond the realm of conflict-induced displacement, further weight is given to the argument that Turkey pursues a wider strategy of ousting the Kurds from their regional homelands by her policy of constructing large-scale infrastructure projects in the Kurdish regions. The Southeast Anatolia Regional Development Project (GAP),¹⁰ for example, is a vast network of dams and hydro-electric plants to be constructed in the Kurdish regions which will, if realized, flood 74,000 square kilometres of Kurdish land¹¹ and displace tens of thousands of people with little or no compensation. Displacement has already proved a serious consequence of the implementation of the GAP project in the Kurdish region. A fact-finding mission by the London-based Kurdish Human Rights Project and the University of Galway in August 2004¹² found that the project would displace thousands of local people, and the Ilisu Dam alone is likely to displace up to 78,000 people, mostly Kurds. The fact-finding mission also found that there was no evidence of free and fair consultation with populations local to the areas of the planned dams in the Munzur valley, Ilisu or Hakkari regarding their impact, and nor was there consultation with communities already displaced from the region.

These schemes – ostensibly designed to meet Turkey's power needs – unequivocally form part of Turkey's longstanding efforts to break up Kurdish communities in the Kurdish heartlands and consolidate Kurdish settlements in order to keep them under tighter governmental control. A leaked 1993 memo from President Özal to

Prime Minister Demirel, which deals systematically with methods of solving the 'Kurdish question', states that:

Starting with the most troubled zones, village and hamlets in the mountains of the region be gradually evacuated ... [and] resettled in the Western parts of the country according to a careful plan ... Security forces should immediately move in and establish complete control in such areas ... To prevent the locals' return to the region, the building of a large number of dams in appropriate places is an alternative.¹³

THE GOVERNMENT RESPONSE TO DISPLACEMENT TODAY

The EU has taken an interest in the circumstances of the displaced,¹⁴ and Turkey is now officially committed to tackling displacement. However, it is manifestly apparent that Turkey has no real interest in addressing the problems faced by the displaced, or in reversing her achievements in altering the population distribution and ethnic makeup of the Southeast.

There are a range of current circumstances within Turkey which support this conclusion. In the first place, although large-scale displacement as a result of conflict abated in the late 1990s, village evacuations continue to be reported in some areas. As recently as August 2004, a regional NGO reported that residents of the Ilıcak village of the southeastern district of Beytusebap were forced to leave their homes in August 2004 under the orders of the local gendarme commander as military operations were carried out in the region.¹⁵ State-mandated displacement resulting from large-scale infrastructure projects is also ongoing.

Furthermore, in spite of the fact that Turkey is patently liable for causing much of the displacement which continues to blight the lives of many hundreds of thousands of people today, as evidenced in multiple decisions by the European Court of Human Rights,¹⁶ she has done very little or nothing to ease the dire struggles of their daily lives. Instead, IDPs are left to suffer severe deprivation, scraping a living in slums located on the peripheries of severely overcrowded provincial towns¹⁷ and subject to extreme poverty and appalling levels of multiple deprivation. Having been dispossessed of their homes and personal possessions during displacement, many now lack the skills necessary to join the urban workforce,¹⁸ and are forced to crowd into sub-standard housing¹⁹ away from healthcare and education

services. IDPs suffer disproportionately high levels of psychological problems²⁰ resulting from the trauma of beatings, torture, the loss of family members and severe social dislocation. An astonishingly high proportion of IDP children receive no schooling,²¹ and there are large numbers of vulnerable, unaccompanied children living in the peripheries of the provincial cities in the Southeast, many of whom are forced to live on the streets.²² Even the European Commission reported in 2004 that the situation of IDPs was 'critical', with 'many living in precarious conditions',²³ and observed that 'no integrated strategy with a view to reducing regional disparities and addressing the economic, social and cultural needs of the local population has yet been adopted'.²⁴ No programmes of resource support for the displaced have been implemented, and with the exception of the GAP dam-building project, which has *increased* displacement in the region, Turkey has shown no inclination to comprehensively address economic underdevelopment in the Southeast.

GOVERNMENT ASSISTANCE FOR RETURN

Turkey has also shown pronounced reticence in assisting those wishing to return to their villages. It has been widely documented by the London-based Kurdish Human Rights Project and other organizations that large numbers of Kurds wish to return to their home towns.²⁵ Government assistance in return is essential; poverty-stricken displaced peoples clearly lack the means themselves to rebuild their shattered communities, and this is compounded by the devastation wreaked upon many evacuated villages, either through the actions of security forces or because houses have fallen into disrepair over time and the agricultural economy has been left to ruin. However, the principal return projects launched by Turkey have achieved remarkably little, and implementation has been extremely slow and inconsistent.²⁶ Meaningful statistics on government-assisted return are very hard to come by, but official sources apparently report that since January 2003, 124,218 IDPs (approximately one-third of the official total of 350,000) have returned to their villages.²⁷ This is, of course, one-third of the total made public by the Turkish authorities; it is worth reinforcing at this point that around 3 million people are believed to have been internally displaced.

Why, then, is there such a discrepancy between the numbers wishing to go back and the numbers actually returning? A cursory examination of Turkey's much-vaunted return plans so far and her

record on implementation makes it apparent that, quite simply, Turkey has no real interest in facilitating return. The Village Return and Rehabilitation Project announced in March 1999, for example, has reportedly produced only an unpublished feasibility study for return to twelve model villages.²⁸ Indeed, Turkey herself has expressed a wish to limit its potential achievements when she implied to the United Nations in March 2004 that she has a preference for a minimum of 30 households at the place of return in order to render 'the economic and financial investments to that area economically sustainable and viable'.²⁹

Return plans generally have received massive under-investment. With reference to the Centralized Villages Project, the government had dispensed only 10 per cent of the planned budget of TL 700 million by spring 2000.³⁰ At a more localized level, a fact-finding mission by the London-based Kurdish Human Rights Project, Bar Human Rights Committee and Human Rights Association found that respondents on the ground in the town of Tunceli had seen none of the sums apparently allocated to resettlement in the region.³¹

There is, then, a clear lack of political will to bring about appropriate and sustainable return in the Southeast, and it is certainly arguable that government projects were formulated largely to give an outward impression of action as Turkey sought closer ties with Europe. Government-assisted return in Turkey has been under-funded, subject to a plethora of bureaucratic hurdles and massively under-implemented. Even more worryingly, however, is the fact that beyond merely failing to facilitate return, the government projects which have been devised appear to be designed not so much to redress past wrongs by assisting displaced villagers to return to their homes, but rather to complement Turkey's original aim in enforcing displacement from Kurdish villages. In short, government-assisted return plans look to aim at furthering Turkish ambitions to counter the perceived threat to national integrity of the presence of numerous Kurdish settlements spread across the Southeast region.

A number of factors point to this conclusion. Firstly, there has been a lack of transparency in devising and executing projects, and insufficient or non-existent consultation with displaced populations and relevant organizations.³² The Centralized Villages Project was reportedly developed without consultation of those affected or any public debate, and was prepared in only nine weeks including field research.³³ NGOs and humanitarian organizations' attempts to engage in government resettlement plans have not been welcomed;

Göç-Der, for example, was investigated in June 2002 for publishing a Migration Report, and the president Sefika Gürbüz was fined TL 2.180 billion in January 2004 for publishing a report on forced displacement.³⁴ In 2001, the Diyarbakir municipality was denied permission to organize a survey entitled 'the Impact of Migration on Municipal Services' in which the possible options for respondents to cite for leaving included pressure to become village guards or practices of the security forces during OHAL. The State Statistics Institute said that the report was 'inconvenient' in its substance.³⁵ The results of this failure to consult has been inappropriate and ill-thought-out return plans, and NGOs and international organizations are broadly in agreement that these provide a wholly inadequate framework for resolving internal displacement.³⁶

Furthermore, rather than returning displaced families to their original villages, government programmes instead direct energies towards resettling them in new, centralized villages close to municipal centres and subject to close state direction. It is extremely difficult to conceive that such a policy is in any way of benefit to IDPs wishing to return to their home villages, and Dr Francis Deng, the UN Representative on Internally Displaced Persons, pointed out that the centralization of new settlements clashes with the traditional pattern of hamlet settlements.³⁷ As such, centralized villages cannot be seen as much other than an attempt to facilitate closer state control over the predominantly Kurdish IDPs who are resettled in them.³⁸ The removal of Kurdish villagers from the countryside and their relocation to more centralized, easily monitored settlements was one of the key aims of displacement during the 1984–99 conflict in the Southeast. The Council of Europe refused to grant funds for the initial Centralized Villages Project over fears that the programme would be used to coerce IDPs into resettling in the new villages.³⁹ Some centralized villages were nevertheless created; by November 2000 US\$100,000 had been spent on a pilot project to rebuild Cetinkol, a village located outside of the provincial capital of Siirt. Other centralized villages have been established at Basagac, Konalga and Bayrakli.⁴⁰

Turkey's preference for resettlement in centralized villages is further evidenced by the fact that villagers wishing to return to the villages or hamlets from which they fled do not receive adequate state support. In March 2004, the Turkish authorities stated that, 'the government continues to attach great importance to the return on a voluntary basis of those who were displaced from their homes'.⁴¹

However, support for such return is by no means forthcoming. For example, the Assistant to the Governor of Diyarbakir, Vahdettin Özkan, was asked during a 2004 fact-finding mission by the London-based Kurdish Human Rights Project about the installation of basic services including electricity and water in evacuated Kurdish villages. He responded that 'it is not economical to install these services in the many outlying villages; we have built centralised settlements instead'.⁴² In the case of *Dogan and Others v. Turkey*, which concerned state obstructionism preventing displaced villagers from returning home, the European Court of Human Rights found that 'the refusal of access to the applicants' homes and livelihood constituted a serious and unjustified interference with the right to respect for family life and home' and as such violated Article 8 of the ECHR.⁴³

STATE IMPEDIMENTS TO RETURN

In fact, far from facilitating the return of the displaced through specific government projects, Turkey has failed to deal with the substantial impediments which prevent villagers from going back, as well as herself creating hurdles to return. Important among these is the continued presence of the Village Guard, the government-sponsored militia responsible for causing many villagers to flee during the 1980s and 1990s and widely accused of violence, human rights abuses, corruption and drug trafficking. Official figures reportedly state that 58,416 village guards are still on duty,⁴⁴ retaining strong authority within the villages in which they are based and deliberately preventing return. Reports⁴⁵ have indicated that village guards hinder return by setting up checkpoints, denying displaced villagers access to their fields and pastures, occupying abandoned homes, and attacking or intimidating those attempting to return to their homes. Despite the preponderance of such reports, and the obvious anomaly in the government both apparently encouraging return and continuing to arm the Village Guard which was partially responsible for generating displacement, Turkey shows no apparent inclination to dissolve the Guard. Minister of Interior Abdülkadir Aksu reportedly replied to a written question on the subject submitted by independent MP for Istanbul, Emin Sirin, by stating that the abolition of the system of village guards was not on their agenda.⁴⁶

Turkey has also failed to take desperately-needed measures to address the significant social and economic obstacles to return. Villages have often lain deserted for prolonged periods, and the

economic infrastructure of the region has been destroyed. However, the substantial state investment necessary to restore housing stock, arable lands, roads and sustainable livelihoods so as to render villages inhabitable has not been forthcoming. Indeed, deliberate under-investment by the state has contributed over many years to widespread illiteracy and low household incomes, leaving large swathes of the Southeast destitute.⁴⁷ There is a chronic lack of public services including health centres and schools, and basic needs such as electricity and water are not met by the state.⁴⁸ The Council of Europe reports that with the exception of Gaziantep and to a lesser extent the Bitlis region, the East and Southeast still suffers from a chronic lack of social facilities and infrastructure,⁴⁹ and goes on to recommend that 'improving economic and social conditions is a *sine qua non* for the return of the population'.⁵⁰

Other means by which the state has frustrated return include compelling potential returnees to sign forms containing a disclaimer that they would not seek damages from the state for displacement, thus relinquishing their legal right to gain compensation and absolving the government of responsibility for their displacement. In some cases villagers reported being obliged to state that they were displaced due to terrorism⁵¹ or that they left voluntarily.⁵² A strong military presence is also maintained in the countryside. Military vehicles are increasingly sighted, military checkpoints are cropping up again,⁵³ and individuals are prevented from accessing grazing land on the basis of 'security concerns'. While the scale of the fighting is by no means on a par with that which occurred in the 1990s, it threatens to destabilize the region again and overturn the very tentative steps towards return which are being taken. Furthermore, the increase in state military presence in the Southeast is basically a political decision aimed at continuing the harassment of the Kurds and perpetuating displacement.

REMEDIES AND REDRESS FOR DISPLACEMENT

Turkey has been very reticent about providing remedies for state-induced displacement. Homes, crops and livestock, infrastructure and personal property were unlawfully destroyed or confiscated by the state during the conflict years and little or no compensation was usually paid, leaving large numbers of displaced villagers impoverished. A local NGO found that 96.6 per cent of IDPs had suffered loss due to forced eviction or house demolition, 72.4 per

cent noted personal property loss, and 88.4 per cent had their houses destroyed or were forced to evacuate.⁵⁴ Provision for compensation was set out in Law No. 2510 under OHAL, but because many of the village evacuations were carried out extra-legally without the authorization of the Governor, victims were left without redress. Under both the Turkish Constitution and Turkish administrative law, the state is strictly liable for 'any damage caused by its own acts and measures',⁵⁵ and IDPs and organizations acting in their interests have argued that the government is obligated to pay compensation for their losses.

On 27 July 2004, in a rare positive move on this issue, Turkey passed the 'Law on Compensation of Losses Resulting from Terrorist Acts' which should allow individuals subject to losses during the armed conflict in the Southeast to apply to commissions established in relevant provinces to determine the payment of damages. It is too early yet to comment on the potential efficacy of the law, and whether it will prove a viable means of achieving meaningful compensation for the thousands of victims of displacement stripped of their property by the Turkish security forces. Certain reservations have been expressed, including that the law excludes those found to have left their homes of their own 'free will', and those convicted of aiding and abetting members of armed gangs.⁵⁶ The Commission notes that the assessment criteria 'may allow for the possibility of restricting considerably the scope of the law'.⁵⁷ There is also the drawback that commissions will be authorized by provincial governors and led by deputy governors. These are 'the very authorities who presided over the original displacement and have performed so poorly in achieving returns'.⁵⁸

There are also grave concerns that security forces who carried out illegal acts including killings, torture and the destruction of property have largely met with impunity. Turkey has showed no willingness to bring prosecutions against these individuals, and the European Court has ruled that Turkey has been reluctant to admit that its security forces were involved in these acts or to carry out impartial or meaningful investigations.⁵⁹ Convictions of security forces or village guards remain rare and sentences light.⁶⁰

INTERNATIONAL OFFERS OF ASSISTANCE

That Turkey favours the perpetuation of displacement in the Southeast is further evinced by her resistance to implement return even where

international assistance is offered. International organizations have sought over a number of years to engage Turkey in multi-lateral initiatives aimed at achieving return, and between 26 May and 2 June 2002, the UN Representative of the Secretary-General on Internally Displaced Persons, Dr Francis Deng conducted an important review of the situation in Turkey. Dr Deng observed that there was a lack of coordination between the government and the international humanitarian and development organizations based in the country due to the latter's mistrust regarding the government's commitment to the returns process.⁶¹ He then urged the Turkish government to collaborate with international governmental and non-governmental organizations in order to facilitate the return of displaced persons.⁶² The European Commission in October 2004 recommended that future measures aimed at tackling internal displacement should 'address specifically the recommendations of the UN Secretary General's Special Representative for Displaced Persons'.⁶³

It is to be hoped that the small number of meetings so far held by Turkey with international partners will prove more than mere lip service designed to counter criticism at this crucial stage in the EU accession process, and be followed by implementation of realistic and appropriate return plans with adequate financial support and logistical backing, with inter-governmental collaboration as an integral element. Turkey has, however, been historically unwilling to internationalize the issue of displacement. The Commission reported in October 2004 that Turkey has begun a dialogue with international organizations to address the weaknesses of the Village Return and Rehabilitation Project and is 'preparing a survey as a first step in following up on these recommendations'.⁶⁴ Given the scale of displacement, the dire needs of IDPs in Turkey and Turkey's abject failure to date to implement suitable return plans or remove impediments to return, the preparation of a survey seems a remarkably paltry step towards addressing the situation. Nevertheless, and despite expressing serious concerns over the current circumstances of the displaced, the European Commission recommended that Turkey had fulfilled the Copenhagen Criteria for the opening of accession negotiations, perhaps missing an important opportunity to seek the imposition of more robust conditions on return.

INTERNATIONAL STANDARDS ON INTERNAL DISPLACEMENT

Turkey's response to internal displacement is not only politically and morally reprehensible, but also breaches international standards. The

problem of internal displacement has been increasingly recognized in recent years, and in response to mounting concern a series of Guiding Principles on Internal Displacement were drawn up by the UN Special Representative on Internally Displaced Persons.⁶⁵ These principles consolidate existing international standards, and have been widely endorsed within the UN, by the OSCE and among governments, NGOs and displaced communities. They now represent the benchmark for treatment of IDPs.

It is evident that displacement which occurred in Turkey during the 1980s and 1990s did not comply with these Principles. The Principles grant the right to protection against arbitrary displacement,⁶⁶ and set out that displacement should last 'no longer than required by all the circumstances'.⁶⁷ During displacement the right to life must be respected,⁶⁸ persons must not be subjected to acts of violence,⁶⁹ and no one should be arbitrarily deprived of property or possessions, including from 'direct or indiscriminate attacks or other acts of violence', or from 'being destroyed or appropriated as a form of collective punishment'.⁷⁰

Of particular significance for the current situation of the displaced in the Southeast, Principle 28 provides:

Competent authorities have the primary duty and responsibility to establish the conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, *to their homes or places of habitual residence*, or to resettle *voluntarily* in another part of the country. [Emphasis added]

Turkey's programmes to assist the displaced, which focus on resettlement in new villages, and her reluctance to allow or facilitate villagers to return to their original homes, raise problems under this provision.

The European Court of Human Rights has ruled in the considerable number of cases brought against Turkey by Kurds with the assistance of the London-based Kurdish Human Rights Project that she bore responsibility for destroying the applicants' homes,⁷¹ and that the suffering of some of the applicants during the destruction of their homes was so serious as to amount to a violation of the prohibition on inhuman treatment under Article 3.⁷²

Further international standards of relevance include those relating to forced eviction in accordance with the right to adequate housing

and other economic and social rights, for example the UN Commission on Human Rights confirmed that forced eviction constitutes a gross violation of human rights, in particular the right to housing.⁷³

DISPLACEMENT: A DE FACTO CHANGE IN THE ETHNIC MAKEUP OF THE COUNTRYSIDE?

A public commitment to return and resettlement by the Turkish government masks massive under-investment and bureaucratic stalling in relation to resettlement plans, an almost total absence of efforts to remove the substantial impediments to return, the perpetuation of state-designed obstacles to return, a preference for resettlement in state-controlled, centralized villages, and the continued employment of enforced displacement through military means and via large-scale infrastructure projects.

These factors all serve to underline that Turkey is content to 'wear the villagers down to a state of resignation'⁷⁴ and make permanent the *de facto* change in the ethnic makeup of the countryside. Frustrating the return of the displaced is not just a series of bureaucratic oversights by Turkey, nor an indication of a lack of resources or failure to supervise the implementation of return plans at a local level. Turkey's reasons for generating displacement from the Kurdish villages in the first place have not substantially receded, and with the security threat now growing again, Turkey remains content to uphold the current *status quo* whereby Kurds have been removed from their villages and resettled in provincial towns, cities in the east or new, centralized villages close to municipal centres. This suggests that little has truly changed in Turkey, as she continues to aim at dissipating Kurdish regional dominance in the Southeast and thus lessening the 'threat' of Kurdish separatism. She is not prepared to tackle the problem at root, as discussed above, and it seems that the international community, and particularly the EU, is unwilling to fulfil its responsibilities to compel her to do so. Meanwhile, thousands of poverty-stricken IDPs live in abject conditions in the city slums and are denied socio-economic relief.

6

The Kurds and Human and Minority Rights

The Kurds have borne the brunt of Turkish attempts to impose ethnic homogeneity in the country, subject particularly over the past 20 years to mass killings, torture, ill-treatment, forced displacement and comprehensive attempts to destroy any sign of a distinct Kurdish culture. Today, hurriedly ushered-in pro-EU reforms purportedly address the situation of the Kurds, and Turkey is on her way towards becoming a fully fledged member of the EU. How far, though, has Turkey really moved away from her customary perception of the Kurds as a dangerous threat to national unity, to be subjugated at all costs?

It is true that the Kurds are broadly supportive of the EU accession process, since it finally offers a way out of decades of repression and violence. However, the projected benefits of accession for the Kurds will be substantially diminished if, as is indicated by recent EU decision-making, the Kurdish issue is sidelined from accession negotiations.

Recent events in Iraq have brought the problems faced by the Kurds in that country to the fore, and the world has watched with approval the process of democratic renewal in Iraqi Kurdistan as Kurds are at last free from the brutal tyranny of the Ba'athist regime. British prime minister Tony Blair made regular reference to Saddam Hussein's human rights record, particularly as it became increasingly apparent that Iraq's much-talked about Weapons of Mass Destruction were nowhere to be found, as a supplementary justification for the invasion of Iraq, and in this context Mr Blair condemned the 'butchering' of Kurds in northern Iraq.¹ Britain now vows to build 'an Iraq which respects fundamental human rights, including freedom of thought, conscience and religion and the dignity of family life, and whose people live free from repression and the fear of arbitrary arrest'.²

At the same time, Turkey's Kurds are substantially marginalized, engaged in an armed conflict with the Turkish state and subject to serious human rights abuses, while the West considers allowing Turkey membership of the exclusive EU 'club' of civilized nations. The Kurdish situation has remained largely beyond the public eye,

as the European debate on Turkish accession becomes tied up in migration issues and the occasional reference to Kurdish cultural rights. It remains to be seen whether the Kurdish situation in Turkey will finally be placed on the world's agenda.

A willingness to address the situation of the Kurds in the Southeast would be indicative of a sincere change in attitude by the Turkish establishment. It is Turkey's 15 million-strong Kurdish population, their separate language and culture and their unwillingness to bow to Turkish attempts at assimilation which have, over the years, posed the greatest challenge to Atatürk's ideal of a single, unified ethnic identity in Turkey. Sustained efforts to respect Kurdish rights would signify that Turkey was finally prepared to cast off her time-honoured practice of repressing outward manifestations of Kurdish identity, to tackle entrenched mentalities among public authorities and to move towards democratic pluralism.

PRO-EU REFORMS

Certainly, Turkey has enacted dramatic changes, at least on a symbolic level. The decisions to allow Kurdish broadcasting and Kurdish language classes that are described above (see Chapter 4) are illustrative, as they represent an unprecedented encroachment into deeply held anti-Kurdish sentiments. Allowing Kurds to openly and publicly express their ethnicity through the use of perhaps the most potent and enduring mark of Kurdish identity, the Kurdish language, defies many years of efforts by Turkey to stamp out 'Kurdishness'. Restrictions upon the use of Kurdish in printing, broadcasting, publishing, political campaigning and schools had been in place for decades. A fact-finding mission report by the London-based Kurdish Human Rights Project, Bar Human Rights Committee and the Human Rights Association in 2002 found that Kurds were greatly encouraged by the early pro-EU reforms, in part because the opportunities provided for using the Kurdish language were regarded as a symbolic gesture.³ The first ever TRT broadcast in Kurmanji reportedly met with jubilant scenes in the Southeast.⁴

There is a good deal of value in such a gesture; unequivocal, state recognition of Kurdish language rights challenges official, mono-ethnic conceptions of the state, creates new spaces for the expression of Kurdish identity and sends a clear message to public authorities in the country. It provides acknowledgement of the existence of a

separate Kurdish identity, and bestows formal legitimacy on long-voiced Kurdish demands for improved recognition of their rights.

What, though, is the real meaning of these reforms? They are eye-catching changes which appear dramatic when reported, and are readily cognizable across Europe. As such, they have met with considerable recognition among European media commentators as indicative of Turkey's efforts to satisfy EU demands to improve the protection of Kurdish rights.⁵ However, they have also faced criticism by Kurds and human rights organizations as constituting mere tokenism,⁶ and in view of the substantial restrictions which continue to inhibit moves to carry the reform process beyond these initial steps, it is not difficult to perceive an element of justice in this view. As has been outlined above (Chapter 4), private broadcasters are as yet unable to air shows in Kurdish, Kurdish language schools face a plethora of restrictions on their capacity to function, and Kurdish is still prohibited from the state education system. Breaking the initial taboo on the public use of Kurdish is certainly a major breakthrough, but it only marks the beginning of a much longer, more difficult path towards major ideological and structural change within the Turkish establishment upon which, to date, Turkey has made only very limited progress.

Moreover, what progress has been achieved in the recognition of Kurdish cultural and linguistic rights is marred by being set against a background of continuing oppression of the Kurds more generally across the Southeast. It is true that pro-EU reforms have brought a number of welcome improvements, including in the formal regulation of torture, the repeal of some of the most repressive legislation used to inhibit free expression, the abolition of the death penalty, and some limited growth in civil society. Relative normalization has occurred as a result of the lifting of OHAL and violence has decreased since the conflict years, while the era of EU reforms have apparently seen some relaxation in attitudes towards the Kurdish community.⁷

CONTINUED OPPRESSION

Nonetheless, there remains considerable repression of pro-Kurdish sentiments in the press, in published works, in the activities of human rights defenders and in political campaigning. The police continue to harass and detain members and suspected supporters of the legal, pro-Kurdish political party DEHAP,⁸ and to subsequently initiate prosecutions for 'supporting an illegal organization', or

'inciting separatism'.⁹ Censorship and judicial harassment of those advocating for a democratic and peaceful solution to the Kurdish question remains commonplace, and free assembly faces particular restrictions in the Southeast.¹⁰ Publicly asserting Kurdishness is still a high-risk undertaking; it is widely documented that Kurds are more likely to suffer torture than ethnic Turks.¹¹ Thousands of Kurds are still effectively prevented by the Turkish authorities from returning to their homes in the Kurdish villages. The gap between government-announced reforms and practices on the street and in the villages is particularly wide in the Kurdish regions,¹² and many Kurds remain suspicious of whether state-directed reforms will bring genuine and sustainable benefits to them.¹³ In 2003, the European Court of Human Rights found Turkey to have committed at least one violation of the ECHR in 76 cases, most of which were cases brought by Kurds with the assistance of the London-based Kurdish Human Rights Project and the Diyarbakir branch of the IHD.

THE NEED FOR A COMPREHENSIVE SOLUTION

A crucial point in this regard is that addressing the situation of the Kurds in Turkey is not simply a matter of improving respect for Kurdish cultural and linguistic rights. Frequently the issue is framed in these terms in the press and in human rights reports. The Kurds in Turkey suffer disproportionately at the hands of the Turkish state from a range of human rights violations, and abuses which bear no overt relation to Kurdish cultural or other rights will frequently have a Kurdish element. The Turkish state's behaviour towards the Kurds is rooted in their ethnicity; the continued prevalence of state-administered human rights violations in the Southeast stems from the fact that Kurds are targeted by police, the gendarmerie and other public authorities *because* they are Kurds. The Kurdish situation must, then, be addressed as a compound array of interlinked human rights violations and other injustices, and not as an issue which can be resolved solely by granting cultural and linguistic concessions. A Council of Europe report found in 2003 that 'one of the most complex problems' facing Turkey was 'undoubtedly that of the south-eastern regions of Turkey where the population is predominantly Kurd'.¹⁴ The European Commission, in urging Turkey to address the situation in the Southeast in 1998, found that 'many of the violations of civil and political rights observed in the country are connected in one way or another with this issue'.¹⁵

In view of the only slight tangible progress made in enacting Kurdish language reforms and the need to comprehensively address the human rights situation in the Southeast, harnessing the great opportunities for change and regeneration presented by the current reform process underway in Turkey will be no easy task. While there is support for democratic liberalism among some members of Turkey's political leadership in Ankara, there has so far been little sustained effort to confront ingrained mindsets throughout the arms of government or to institutionalize a culture of respect for Kurdish rights within public bodies in the Southeast accustomed to operating with impunity. Effecting change is not simply a matter of commissioning training programmes, dealing with recalcitrant public officials or waiting for the effects of administrative and legislative reform to somehow penetrate the national consciousness. Real reform demands the wholesale dismantling of the ideological premises upon which state behaviour and treatment of the Kurds has been predicated for over 80 years. Countering the psychological impact of a prolonged period of military rule, under which civilian Kurds were treated with brutal violence and a blind eye was turned to instances of torture and killings by state security forces, is necessarily a long-term process demanding sustained investment by the Ankara government. Without such investment, human rights reform in the Southeast, and particularly advances in linguistic and cultural rights, will be little more than a series of external, cosmetic changes designed to satisfy the EU bureaucrats monitoring the accession process.

THE KURDS AND MINORITY RIGHTS

The issue of minority rights in Turkey, particularly in relation to the Kurds, is a difficult one, not least because some Kurds oppose being classified as a 'minority' on the basis that they seek recognition as a 'constituent element' of Turkey.¹⁶ This publication expresses no opinion on this issue, but considers that the provisions mandating ethnic recognition, enhanced participatory rights and cultural protection contained in international minority rights instruments can contribute towards countering the chronic subjugation endured by the Kurds.

The idea of granting minority rights to the Kurds fundamentally contradicts the very *raison d'être* of the Turkish Republic. The reasons for this have already been well-rehearsed in this publication: strict adherence to a single Turkish nationalism, the perceived need to

extinguish alternative ethnic identities, and pronounced trepidation over the threat to national unity posed by Kurdish separatism. These ideological principles inspired efforts to 'Turkify' minority communities, penalize non-Turkish cultural expression and violently disband Kurdish settlements in the Southeast. Turkey's treatment of the Kurds has been the inverse of what is mandated by international standards in this area.

MINORITY RIGHTS STANDARDS IN TURKEY

The question of precisely which standards Turkey is obliged to meet in relation to minority rights is not straightforward, and little more than a preliminary appraisal can be set out here. Conceptions of minority rights have altered substantially since their first incarnation in the inter-war years. Initially they were looked upon largely as a means of satisfying the legitimate demands of non-dominant groups in order to lessen threats to international peace and security. The security element remains, but now the substantive content of minority rights is more developed, less nervous about national integrity, more closely integrated with human rights and no longer dominated by equality provisions. Standards aim at addressing structures and systems which perpetuate the marginalization of minorities in economic, social and political life.¹⁷ In addition, pluralism, tolerance and the promotion of diversity are increasingly seen as prerequisites for democracy.¹⁸ Minority rights standards now tend towards the protection of the identities of minority groups, the promotion of the cultural and related rights of minorities, including in education¹⁹ and the media,²⁰ and the facilitation of minority participation in public life.²¹

The rationale of minority rights, in the form that they are currently conceived, is twofold. The doctrine that respect for the rights of minorities acts as a bulwark against the escalation of conflict has already been touched upon; socio-economic marginalization and exclusion from political participation contributes significantly to inter-community tensions and the escalation of conflict.²² Furthermore, it is considered that non-discrimination provisions alone are insufficient to realize genuine and effective equality, and that accordingly states should facilitate the preservation of minority identity and characteristics through the introduction of special measures in the fields of education, culture, religion, and political, social and economic affairs.²³ Certain groups, particularly those who have historically suffered oppression or violence, require explicit

recognition in law and practice, increased sensitivity to their needs, and opportunities to promote their traditions and culture.

Turkey's explicit obligations towards minorities are largely political; she is predictably reticent in signing up to binding international standards in this field. The primary international standard on minority rights currently is Article 27 of the ICCPR, which prohibits States Parties from denying national minorities 'in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'. Although Turkey ratified this treaty in September 2003, she submitted a reservation stating that Article 27 would be implemented in accordance with the Turkish Constitution and Treaty of Lausanne, effectively excluding its application to the Kurds. This reservation prompted a number of objections from other States Parties, including from Sweden who stated that the 'subjugation of the application of article 27' to the Turkish Constitution and Treaty of Lausanne was 'incompatible with the object and purpose of the Covenant'.²⁴ Under the Vienna Convention on the Law of Treaties, a state cannot issue a reservation incompatible with the object and purpose of a treaty.²⁵

Turkey has attached a similarly restrictive reservation to Article 13 of the ICESCR, limiting the applicability of education rights to accord with constitutional provisions prohibiting the use of languages other than Turkish in state schooling.²⁶

Turkey has so far resisted pressure to become a party to the Framework Convention on National Minorities (FCNM). The Convention is important, particularly in view of Turkey's reservation to Article 27 of the ICCPR, because it is the first and so far only multi-lateral, binding treaty on minority rights. It sets out regionally agreed benchmarks on the promotion of full and effective equality through enabling minorities to preserve and develop their culture and to retain their identity. The Parliamentary Assembly of the Council of Europe has called the rights set out in the FCNM 'minimum rights of national minorities'.²⁷ Council of Europe bodies have requested that Turkey sign the FCNM on several occasions. The Parliamentary Assembly has repeatedly called on Turkey to sign the Convention, and stated that:

Persistent refusal to sign or ratify this instrument, and to implement its standards, should be the subject of particular attention in the monitoring procedures conducted by the Committee of Ministers,

the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (CLRAE), as appropriate.²⁸

Most recently the European Commission against Racism and Intolerance, an independent monitoring body established by the Council of Europe, has recommended that Turkey become a party to the FCNM.²⁹ Of the 45 member states of the Council of Europe, only two have not signed the treaty.³⁰

The European Commission, though, has appeared far less concerned by Turkey's reticence in assuming legally binding obligations towards her minority communities. In its October 2004 report it finds the reservations attached by Turkey to the ICCPR and the ICESCR to be 'of concern',³¹ and reference is made annually in the Commission's regular reports to Turkey's failure to ratify the FCNM. However, the Commission nonetheless found in 2003 that Turkey had 'aligned itself to a large extent with international conventions and rulings',³² and in 2004 that she had fulfilled the Copenhagen Criteria. This is despite the fact that the EU asserts that the protection of minorities is an 'inherent part of the EU policy on human rights',³³ and that '[p]articular attention is paid to minorities within the context of the current EU enlargement process to countries of Central and Eastern Europe'.³⁴ Crucially, the political elements of the Copenhagen Criteria themselves include the provision that EU membership 'requires that the candidate country has achieved stability of institutions guaranteeing ... the respect for and protection of minorities'.

The London-based Kurdish Human Rights Project and other non-governmental institutions are concerned that in the context of Turkey's current and historical treatment of the Kurds, her reluctance to sign up to international standards on minority rights casts serious doubt upon the sincerity of her undertakings to respect the rights of minorities under her jurisdiction. This reservation is granted further weight by the recent political furore which materialized following the publication within Turkey of a report by the Human Rights Advisory Board. The report highlighted widespread hostility to the cultural freedoms conceded to Kurdish and non-Muslim communities, asserted that minority rights in Turkey fell below universal norms and proposed far-reaching changes to the Turkish Constitution.³⁵ It was reported that the Head of the Board in presenting the report had his papers ripped from his hands by a fellow member who shouted 'This report is a fabrication and should be torn apart.'³⁶ Some members of the Advisory Board were said to have referred to

the report as a 'document of betrayal', and even President Ahmet Necdet Sezer issued a warning that the unitary structure of the state was an untouchable issue.³⁷ The Deputy Chief of Staff, General Ilker Basbug, was reported as stating 'The Turkish Armed Forces [TSK] cannot accept any debate over the unitary structure of the Turkish state, an untouchable provision of the Constitution.'³⁸ Government officials, including Foreign Minister Abdullah Gul and Justice Minister Cemil Cicek, have also reportedly expressed distaste for some of the reforms recommended in the report.³⁹

In a separate recent event, Cemil Cicek said that Turkey and the EU speak 'different languages' on minorities, and warned against engaging in a debate that would 'call into question the unity of Turkey' since such a debate would only benefit Kurdish extremists who seek division of the country.⁴⁰

It is far from clear, then, that the Turkish government is moving towards European conceptions of minority rights, or that she has any real intention of implementing international norms in this area; the idea that the expression of alternative identities is a threat to the unitary, secular state remains powerful among Turkey's leaders. Given this, and in view of the EU's undertaking to uphold minority rights in the accession process, it is to be trusted that the European Commission will adopt the ratification of the EFCNM as a condition precedent to Turkey's eventual entry into the EU.

Beyond the ICCPR and the FCNM, Turkey does have obligations in the realm of minority rights. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁴¹ reaffirms the universal import attached to minority rights, and elaborates upon the standard set out in Article 27 of the ICCPR. Under the Declaration, states undertake to protect the existence of the 'national or ethnic, cultural, religious and linguistic identity of minorities',⁴² and to 'encourage conditions for the promotion of that identity'.⁴³ Substantively, the Declaration provides for non-discrimination;⁴⁴ for the creation of conditions favourable to the expression of minority characteristics and the development of culture, language, religion, traditions and customs;⁴⁵ and for participatory rights in cultural, religious, social, economic and public life.⁴⁶ Specific references are made to participatory rights in the fields of education,⁴⁷ national and regional decision-making⁴⁸ and economic development.⁴⁹

The OSCE, of which Turkey is a participant, sets out the most developed standards on minority rights. The OSCE's interest in

human rights arises from its mandate to promote peace and security in Europe, and it has issued a number of normative documents specifying provisions for the treatment of minorities. The most important of these is the Copenhagen Document, which sets detailed standards in relation to the adoption of special measures to promote full equality, the right to freely express, preserve and develop minority identities, cultural and linguistic rights, freedom of expression and of association, protection against racial discrimination and ethnic violence, and the establishment of autonomy regimes where appropriate. Turkey maintains that she 'believes that security and stability in the OSCE area can be strengthened only if all OSCE commitments are invariably implemented'.⁵⁰

The OSCE also has a High Commissioner for National Minorities, who visited Turkey for the first time in 2003 with the aim of starting a dialogue on the situation of national minorities. However, no such dialogue followed from this initial meeting.⁵¹

The ECHR does not expressly protect minority rights, but the European Court of Human Rights has found that the protection of national minorities is a 'condition *sine qua non* for democratic society'.⁵²

COMPLIANCE WITH MINORITY RIGHTS STANDARDS: DEFINITIONAL ISSUES

How far does Turkey's treatment of the Kurds comply with international minority rights standards? Reference has already been made to hostility within the Turkish establishment towards the concept of minority rights, while severe limitations on the expression of Kurdish culture and language, and even public manifestations of Kurdish identity, have been described above. Related to these factors, and comprising probably the greatest formal impediment to the realization of minority rights, is Turkey's failure to even acknowledge the identity of the Kurds.

The Turkish Constitution of 1982 (as amended in 2001) provides contradictory guidance on the rights of minority groups within the state. Whilst Article 2 states that 'the Republic of Turkey is a democratic, secular, and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice, respecting human rights ...', the preamble of the constitution states:

no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk.⁵³

Thus the principles of territorial integrity and a unified nationalism which have proved so damaging to Kurdish rights are embedded within the Turkish Constitution.

Furthermore, section 3 of the Treaty of Lausanne (1923) restricts the definition of minorities to non-Muslim nationals of Turkey. As the majority of Kurds follow Sunni Islam,⁵⁴ they are excluded from protection. This was despite the Kurds having inhabited the area that is now modern-day Turkey for more than 2,000 years,⁵⁵ and the 1920 Treaty of Sèvres signed by the Allies which envisaged independence for the Kurds.

The exclusion of the Kurds from the Lausanne definition is highly problematic. In the first place, recognition of a minority's identity is a fundamental prerequisite for achieving minority rights; further rights can only flow when the existence of a minority is acknowledged as such. Objective definitions of minorities dominate international thinking on this issue, and the 1979 statement by Francesco Capotorti, Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, represented current thinking on the issue when he defined a minority as:

a group that is 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 to 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.⁵⁶

The Parliamentary Assembly of the Council of Europe has set out a similar objective definition,⁵⁷ and the Human Rights Committee has issued a General comment stating that the existence of a minority in a given State Party 'does not depend upon a decision by that State party but requires to be established by objective criteria'.⁵⁸ It is not within Turkey's discretion to herself decide who should or should not benefit from minority rights protection within her jurisdiction. Indeed, the government-commissioned report by the Turkish Human

Rights Advisory Board found that Turkey's minority definition was too restrictive and did not accord with current thinking, which accepts that minorities exist where communities are 'ethnically, linguistically and religiously different' and feel this difference is an inseparable part of their identity.⁵⁹

The exclusion of the Kurds from the constitutional definition of a minority has had highly detrimental results. In the first place, references to minorities within the constitution and other legislation refer back to this definition, barring the Kurds from inclusion in any protective provisions. Furthermore, it sends the wrong signal to institutions of the state and others seeking to deny Kurdish rights, granting apparent formal legitimacy to Turkey's denial of a distinct Kurdish identity and consequent attempts to subjugate and forcibly assimilate the Kurds.

Turkey has revealed no intention to change the Lausanne minority definition, or other related failings in the constitution including the absence of provisions prohibiting discrimination or promoting equal treatment, despite criticism from international bodies. In May 2003, the report of the European Parliamentary Commission on Foreign Affairs, Human Rights, Common Security and Defence Policy condemned the continuing refusal of Turkey to accommodate the cultural and linguistic rights of the Kurds. It stressed that a new constitution is required which respects 'the rights of all individuals and of minorities balanced against their collective rights in accordance with customary European standards'. The Council of Europe Parliamentary Committee recommended a major reform of the 1982 constitution and further recognition of national minorities.⁶⁰ ECRI recommend revision of the constitution in order that it enshrines 'the commitment of the state to promote equality'.⁶¹ Most recently, Turkey's own Human Rights Advisory Board advised that amendments be made to the constitutional provision which refers to 'the indivisible unity of the nation', on the basis that it rejects the existence of different cultural groups.⁶²

The European Commission raises the issue of the Lausanne minority definition and its lack of application to the Kurds, noting that in this context Turkey's reservations to the ICCPR and the ICESCR could 'be used to prevent further progress in the protection of minority rights'.⁶³ Very little is made of this issue, but the EU Commission's representative in Ankara, Ambassador Hansjoerg Kretschmer, reportedly said in an interview with *Turkish Daily News*: 'It looks somehow not necessarily compatible with the existing international

instruments that the only minorities that Turkey recognizes as minorities in Turkey should be non-Muslim religious minorities and that any other minority would by definition not exist in Turkey.⁶⁴

The Kurds believe that a constitutional resettlement in which the existence and rights of the Kurds are recognized must be achieved before Turkey can legitimately accede to the EU. Until the Turkish state has constitutionally redefined itself, and in so doing rid itself of the ethnic nationalist element of Atatürk's legacy, democracy cannot become a reality. The potent ideology of Turkish nationalism, which has historically dictated the subjugation of heterogeneous ethnic identities to a monolithic Turkish identity, goes to the heart of what Turkey is and what she conceives herself to be. It is this ideology which has required the state to suppress all manifestations of Kurdish culture and existence. Constitutional recognition of the Kurds would go some way towards promoting ethnic reconciliation and cohesion.

COMPLIANCE WITH INTERNATIONAL STANDARDS: SUBSTANTIVE RIGHTS

With regard to substantive minority rights, Turkey fares little better. Governmental hostility towards pro-Kurdish expression and association, as well as continuing impediments to cultural and linguistic rights, have been set out in further detail in Chapter 4.

Despite important symbolic steps in the right direction, Kurds are still broadly prevented from freely using and developing their language. They are unable to learn Kurdish except in very limited circumstances, and cannot yet use Kurdish in broadcasting or in the press in any meaningful way. As recently as 6 October 2004, the Malatya Police HQ threatened to take legal measures against 17 private local radio and five television stations allegedly broadcasting in Kurdish, noting that broadcasts were monitored 24 hours per day.⁶⁵ The pro-Kurdish newspaper *Özgür Gündem*⁶⁶ had 64 out of a total of 164 editions seized on the day of publication, and the editor and owner faced 82 criminal proceedings against him.⁶⁷ Turkish authorities evidently remain extremely apprehensive about relaxing restrictions on Kurdish media, restrained by deep-seated ideological views of the Kurdish language as a threat to national unity. Pro-Kurdish associations continue to be treated with deep suspicion. The Bingöl (East) IHD section, for example, is currently faced with nearly 50 prosecutions on various charges.⁶⁸

Far from creating conditions favourable to the preservation and development of Kurdish characteristics and traditions, or taking 'special measures' to facilitate the expression of Kurdish culture, Turkish authorities continue to react defensively to outward shows of 'Kurdishness'. A number of applications to establish language courses, for example, have been rejected by the authorities on the grounds that the curricula focus on culture and history and not on language teaching.⁶⁹ In February 2004, three individuals were detained in response to Kurdish songs being sung during a wedding in Unsaldi village in the Kozluk district.⁷⁰

The recent report of Turkey's own Human Rights Advisory Board strongly criticized the lack of respect for minority cultures in Turkey, and described concerns that innocent calls for greater cultural rights for minorities could threaten the indivisibility of the nation as 'paranoia'.⁷¹ The report went on to argue that 'more humane treatment by the state of its own people' would promote national unity, and that '[t]he citizens the state should fear the least are the ones whom it has granted their rights'.⁷² The report also noted that if the provisions of the Lausanne Treaty had been fully implemented, armed conflict between Turkey and the Kurds could have been prevented. The report gives the example of Article 39 of the treaty, which allows Turkish citizens to use 'any language they wish in commerce, in public and private meetings and all types of press and publication'.⁷³ The storm of protest with which the report met has been described above in some detail. The Head of the Advisory Board Ibrahim Kabaoglu, and Baskin Oran, the author of the report, are being investigated for treason by state prosecutors.⁷⁴ The government is reportedly now denying that it commissioned the report.⁷⁵

Kurdish participation in decision-making and in political life generally is virtually entirely barred by the 10 per cent threshold in national elections which effectively prevents Kurdish or pro-Kurdish candidates from taking office, and the prohibition on the use of Kurdish in electioneering.

Kurds are broadly unable to partake in the economic development of the country. Substantial economic underdevelopment in the Kurdish areas, combined with the devastation to the rural economy caused by the actions of Turkish state security forces under OHAL, have generated disproportionately high levels of economic and social deprivation, illiteracy and poverty in the Southeast. The rural infrastructure has been destroyed, cultivatable land has fallen into disuse and the traditional agricultural economy has disintegrated;

Kurds are crowded into the peripheries of towns and cities with high unemployment.⁷⁶

The European Commission reports that in Turkey the Secondary Committee for Minorities, established by decree in 1962 to conduct secret surveillance on minorities, was replaced by the new Minority Issues Assessment Board.⁷⁷ The Board's aim is to alleviate the problems of non-Muslim minorities, but the Commission states that the Security Directorate of the Ministry of the Interior is still responsible for relations with minorities.⁷⁸

THE FUTURE OF MINORITY RIGHTS IN TURKEY

The Turkish authorities are evidently still deeply uncomfortable with the idea of acknowledging the legitimacy of Kurdish calls for recognition of their existence and rights; of relaxing tight controls on public use of the Kurdish language, be it in the media, in the political domain or in schools; or of loosening its grip on pro-Kurdish expression. Despite the raft of positive, pro-EU reforms, minority rights lag behind other areas and genuine acceptance of the legitimate presence of minorities and the facilitation of their full participation in democratic society is proving elusive. In short, the still sacrosanct principles of ethnic nationalism in Turkey serve at almost every turn to frustrate the reform process and foil efforts to extend recognition and rights to the Kurds.

Turkey will not become a civilized country until her administration is able to throw off these historical shackles and instigate institutional change so that minorities can participate fully and freely in Turkish political, cultural, social and economic life. There is nothing inherently frightening about such a proposition. As the Council of Europe notes: 'more than eighty years after the republic's foundation, the authorities ought to have greater confidence in Turkish citizens, who are just as attached to democratic values as their counterparts elsewhere in Europe'.⁷⁹

It is imperative that a more mature, progressive stance comes to light in Turkey, and that dialogue and other confidence-building measures are implemented to promote tolerance, understanding and pluralism. With sustained effort, perceptions of the Kurds as adversaries should give way to peaceful accommodation, cultural diversity and a concept of the state based on democratic inclusion. This will not happen until the issue of ideological reform is fully and forcefully addressed by the Turkish authorities.

Conflict in the Southeast

Conflict is not new to the Kurdish regions; two major Kurdish rebellions broke out in Sheikh Said in 1925 and in Dersim (Tunceli) in 1937.¹ Still, the bloody conflict which reigned in southeast Turkey for 15 long years between 1984 and 1999 was of an entirely different scale. According to official figures, 23,638 Kurds, 5,555 security forces and 5,302 civilians were killed in the fighting in the period up to the end of 1998,² while 3 million were displaced from their homes in the Kurdish villages. The relaxation of judicial supervision of government behaviour under OHAL opened the door to chronic abuses commissioned by state security forces in their actions against 'terrorist' targets, while the pro-Kurdish press, publishers, associations and cultural initiatives were comprehensively silenced. In the government's view, the situation in the Southeast was characterized solely by terrorism inspired by Kurdish separatism, justifying all-pervasive state repression of manifestations of Kurdish identity and pro-Kurdish expression.

ORIGINS AND DEVELOPMENT OF THE CONFLICT

It is true that the activities of the PKK, an outlawed Kurdish organization which came to prominence in the early 1970s, generated significant destabilisation in the Southeast. In the general disorder which characterized Turkey in this period, as government control broke down and leftist groups fought right-wing organizations, many Kurds were drawn to organizations with a specifically Kurdish agenda. The PKK was the most successful of these, not least because it drew significant support from the Syrian government. PKK insurgency was one of the causal factors inspiring the reassertion of state authority in the 1980 military coup, but it wasn't until 1984 that the PKK armed struggle commenced in earnest. Gendarmerie posts were the initial objects of raids, and later Turkish military and police outposts were attacked.³ The PKK's methods were violent, and those perceived as collaborating with the state, including the government-sponsored

Village Guard militia and civilian state employees such as teachers, were especially targeted.⁴

The government responded to the violent tactics of the PKK by employing large numbers of Turkish troops and gendarmerie against their forces, and by arming the Village Guard. State security operations became notorious for extremely high casualty rates, extra-judicial killings of non-combatants, torture of civilians and the destruction of Kurdish villages. Indeed, PKK violence served the government's purposes to some extent by providing apparent justification for a large-scale assault on the Kurdish southeast, publicly touted as counter-terrorism measures but also with the aim of forcibly removing Kurds from the southeast and resettling them in the west.

The Kurds at this time were placed in an untenable position, unable to stay out of the armed conflict which was devastating their communities. Turkey's military response to the PKK was not limited to attacks on the PKK itself, but amounted to a full-scale assault on the Kurdish countryside. Rural Kurdish communities were obliged by the Turkish state to prove their loyalty by joining the Village Guard: the state-sponsored militia employed to fight the PKK and responsible for violence, corruption and human rights abuses. If villages failed to put forward volunteers for the Guard, they would be placed in the dangerous position of being viewed as PKK sympathizers, and thus liable to attack by Turkish security forces. However, those who did sign up were deemed traitors by the PKK, who conducted violent raids on guards and their families. Kurdish villagers were thus placed in a catch-22 situation. They could become village guards and chance being attacked by the PKK, or refuse and risk becoming victims of a state security operation.

At this time there remained a dynamic, influential movement in the Southeast committed to a democratic solution to the Kurdish issue, despite Turkey's refusal to address the legitimate concerns of the Kurds over their status in Turkey, or even to engage in dialogue with Kurdish representatives to look to a political solution to the Kurdish question. Pro-Kurdish political advocates have sought throughout the conflict period to openly address the Kurdish struggle for recognition through the domestic political system, and prior to 1991 they operated within national political parties. They tended towards support for left-wing parties which were sympathetic to their aims of achieving equality with other Turkish citizens, in particular the SHP (Social Democratic Populist Party).⁵ After 1991, Kurdish politicians began forming their own political parties, beginning with the foundation of

HEP by Leyla Zana and her fellow Kurdish deputies. OHAL legislation, though, was consistently used to gag their messages through judicial harassment of their members and the initiation of dissolution proceedings. Successive pro-Kurdish parties have accordingly been forced to form and re-form, and have been substantially impeded from participating in Turkish democratic processes. Most recently, in a move criticized by the Council of Europe,⁶ HADEP was prosecuted for alleged links to the PKK and for supposedly committing separatist acts under Article 169 of the Penal Code.⁷ The exclusion of Kurdish parties from democratic processes in Turkey removes the possibility of a democratic outlet for Kurdish demands.

Peace looked viable for a short period after 1991, as the True Path government signalled a willingness to examine the situation in the Southeast and broke significant taboos by openly naming the Kurdish issue. Kurdish voices calling for a peaceful, democratic solution began winning through and the PKK announced a unilateral ceasefire. However, President Tansu Çiller came to power in 1993 and seemed unwilling to exert any real control over the army in their dealings with the PKK, and fighting resumed with renewed intensity. PKK members and supporters were executed with no reference to the judicial system, and human rights defenders, pro-Kurdish politicians and sections of the media were also killed by the security forces.

By the late 1990s, however, the situation was changing. Trans-border backing of the PKK began to wane, and in October 1998 the PKK leader Abdullah Öcalan was expelled from Syria where he had long been granted refuge.⁸ Öcalan was then apprehended in Kenya and flown to Turkey to stand trial in February 1999, where he was convicted of treason and sentenced to death.⁹ This marked a turning point in the conflict. Öcalan called upon PKK fighters to withdraw from the Southeast to bases outside Turkey,¹⁰ and made a statement to reporters via his lawyer to the effect that 'a ceasefire would ease the deadlock over the Kurdish question and open the way to dialogue on a democratic solution'.¹¹ Öcalan was also reported to have referred to the PKK's war for Kurdish independence as a 'historic mistake'.¹²

A unilateral ceasefire by the PKK subsequently led to a great reduction in hostilities, and virtually ended the targeting of civilians.¹³ Throughout the period September 1999 to June 2004 the conflict remained at a very low level, though reports by a regional human rights organization referred to around 100 deaths per year resulting from armed conflict.¹⁴ The Council of Europe also referred to isolated incidences of hostilities in March 2004, but noted that the situation

had improved considerably since 1999.¹⁵ Village evacuations slowed in pace, and what is often referred to by international bodies as a process of 'normalization' began. In 2000, the word 'Kurdistan' had been dropped from the PKK's name in recognition of its abandoning of its former demands for Kurdish independence, and its strategy became one of pursuing Kurdish interests through non-violent, conventional political channels.¹⁶ Other radical Kurdish organizations continued to operate, including the Workers' and Peasants Army of Turkey, the Revolutionary People's Liberation Front and the Islamic Raiders of the Big East Front.¹⁷

RESURGENCE OF THE CONFLICT

However, the PKK, now known as Kongra-Gel, announced via the Mesopotamian News Agency that the unilateral ceasefire would be called off with effect from 1 June 2004.¹⁸ The reason given for the resumption of violence was ongoing state military operations against the organization's fighters.¹⁹ Divisions in the party were reported at the time, and it was mooted that a large faction within Kongra-Gel were pressing for a permanent renunciation of armed violence.²⁰ An earlier announcement of an end to the ceasefire made in September 2003 on the basis of the government's failure to grant greater political and cultural rights to the Kurds²¹ had resulted in some increase in armed activity.

Still, although the conflict levels in the Southeast are not now approaching the pre-1999 situation, there have been widespread reports of an intensification in violence since June 2004. Selahattin Demirtas, the Diyarbakir head of the Turkish Human Rights Association, has referred to the current situation as 'controlled fighting',²² though its scale should not be underplayed. AFP reported over 50 clashes between Kongra-Gel's fighters and Turkish security forces between 1 June 2004 and 13 August 2004.²³ In September 2004 a major outbreak of violence in Pervari, Siirt Province was reported, with government forces announcing that they were expanding their operations in order to target guerrillas in the region.²⁴ Some 166 battle-related deaths were reported in 2004 and fighting has reportedly been focused in the Tunceli, Bingol, Batman, Diyarbakir, Van and Mardin provinces. Some reports have referred to increased activity in the Iraqi border areas, possibly as a result of the American military presence in Iraq.²⁵

IMPLICATIONS OF THE RENEWED ARMED CONFLICT

There is an obvious and tragic human cost of a resumption in violence in the Kurdish region. Mainly Kurds, thousands have died there throughout the twentieth century as a result of armed hostilities, and communities have been terrorized, intimidated and made victims of extreme violence by both sides to the conflict. The psychological effects of mass killings; of villagers fleeing as their homes, crops, agricultural equipment and livestock were burnt; of abuse, humiliation, ill-treatment and torture at the hands of state security forces mandated to protect civilians; can so far only be guessed at.

Furthermore, there are real fears that the resurgence in the conflict will see a regression into old habits on the part of the Turkish authorities. The military presence in the area is being stepped up again, and state security operations in July 2004 in which hundreds of residents of the village of Ilıcak in Şırnak province were forcibly removed from their homes for six weeks during a state security operation²⁶ was chillingly reminiscent of mass forced displacement in the 1980s and 1990s. Turkey's tentative steps towards granting the Kurds hard-won cultural and civil rights would be significantly threatened by a return to fully-fledged state counter-terror operations. The fragile process of normalization, as the region begins to shake off almost two decades of armed violence and life under OHAL, is still in its early stages, and would be turned on its head by renewed village evacuations, domestic terror, civilian casualties, further economic devastation, and security-inspired crackdowns on Kurdish expression. What limited psychological progress Turkey's old elites have made towards relinquishing outdated mindsets which link the acknowledgement of the presence of a distinct Kurdish ethnic identity within the Turkish republic as a repudiation of the integrity of the state would be severely jeopardized.

THE CONFLICT AND DEMOCRATIZATION IN TURKEY

In any event, it is inconceivable that democratization in Turkey can be achieved while the conflict in the Southeast looks to be boiling over as it does currently. Stability and security, predicated on an absence of violence or armed conflict, is a touchstone of democracy. Democracy necessarily entails a commitment to the civil, non-violent resolution of disputes. The UN Secretary General has stated that: 'The

non-violent management of conflict is the very essence of democracy. In an era when more than 90 per cent of wars take place within, not between, states, the import of this finding for conflict prevention should be obvious.²⁷ As long as Turkey maintains her dogged resistance to engaging with non-violent Kurdish representatives through democratic processes to seek a peaceful resolution to the situation in the Southeast, and instead focuses on security operations in the region, she cannot claim to be truly democratizing.

Moreover, key elements of democracy which pertain towards the preservation of peace and the management of conflict, including the facilitation of the expression of a plurality of opinions, the promotion of political participation, and the fostering of peaceful co-existence of different communities within state borders, are markedly absent from Turkey. These democratic elements allow for tensions to be worked through in the political and legislative arenas, replacing battlefield confrontations with peaceful bargaining and detailed negotiation processes. Turkey's persistence in stifling forms of expression which allude to the existence of a Kurdish identity, harassing pro-Kurdish political parties, and conducting ruthless security operations against Kurdish civilians thought to harbour 'separatist' sympathies, therefore substantially impedes the peaceful resolution of the conflict in the Southeast. Until Turkey sets aside her disinclination to comply with these basic democratic criteria and thus to take concrete steps towards effecting long-term peace and security in the Kurdish region, she cannot be deemed a member of the ever-growing international community of democratic states. Her unwillingness to leave behind policies of forcible assimilation based on a mono-ethnic conception of the nation state, and her reticence in accommodating alternative identities and ethnicities, further contributes to this conclusion; such steps towards democratic pluralism provide bulwarks against the outbreak or escalation of conflict.

In this context, the appropriateness of Turkey acceding to the EU is highly questionable. Turkish EU membership would bring an unresolved conflict situation with no immediate prospect of a democratic process of resolution into the Union. The EU has long prided itself on its commitment to the creation of 'an area of freedom, security and justice',²⁸ seen as a fundamental element of European integration and the promotion of peace and prosperity, and the EU has also expressed that this concept will inform its policies on enlargement.²⁹

The incorporation of Turkey threatens to undermine these principles, which have so far proved extremely successful in avoiding warfare; no outbreak of armed conflict has occurred within EU borders since its founding. It is true that some EU members, particularly Spain and the UK, have experienced relatively low-level violent hostilities generated by dissatisfaction among minority groups, but, and this is very important, this occurred within the context of democratic societies. Notwithstanding the many obstacles encountered on the path to peace in Northern Ireland, the peace process itself has involved protracted, multi-party negotiations giving voices to both sides to the dispute through democratic channels.³⁰ Spain has similarly been engaged in peace talks with the Batasuna, the political wing of the outlawed separatist organization ETA, and is currently conducting political dialogue over the possibility of granting regional autonomy to the northern Basque region.³¹ Turkey, conversely, continues to refuse political space to Kurdish representatives, and to exclude pro-Kurdish activists from political processes. As the situation currently stands, democratic moves to end the conflict in the Southeast or prevent its escalation look unlikely, and thus the presence of Turkey within the EU would substantially endanger the great achievement of peaceful and democratic consensus which has dominated the EU for so long.

RESOLVING THE CONFLICT

How, then, can these undesirable eventualities be avoided? Resolving conflict and building peace are not easy tasks, the Council of Europe points out that 'Fifteen years of armed conflict have clearly left deep wounds on both sides that will not be easily healed.'³² However, firstly, and most obviously, all parties to the conflict should lay down their arms and cease military hostilities. The continued security operations by the Turkish government and the ending of the ceasefire by Kongra-Gel are doing nothing to further reconciliation in the region. The renunciation of violence by both sides is necessary to the evolution of democratic society in the Southeast.

Furthermore, dialogue and debate between the parties to the conflict should be initiated in order to set in motion a process of change and peaceful resolution of the dispute. This would constitute a first step in the use of diplomatic means to persuade parties to the conflict to cease hostilities and to negotiate a peaceful settlement. There are various means by which parties in conflict can be encouraged to

abandon armed violence and bring their disputes to the negotiating table, and the establishment of a democratic platform which brings in a range of actors close to the conflict is one suggestion which has been mooted.³³ The Council of Europe has similarly recommended that a 'discussion forum' be established where facts could be objectively established and the reasons for the conflict ascertained, and that this could evolve into a 'reconciliation commission'.³⁴ This would provide a neutral medium to exchange ideas, sound out reconciliation strategies and identify ways of overcoming the accumulated hatred and antagonism in the region, potentially providing space for the discussion of possible peaceful solutions and thus encouraging the different sides to move towards conciliation and shared objectives. Mediation, or the involvement of an external 'impartial facilitator', can also prove an essential element of preventive diplomacy or peacemaking, contributing to the resolution of conflicts or preventing tensions from escalating too far.³⁵

Overtures from Turkey indicating willingness to engage with the Kurds have not, though, been forthcoming. Turkey did not recognize the unilaterally declared PKK ceasefire of June 1999, and flatly refused to take part in any kind of negotiations even when the conflict was at its height. There have been no reports of conflict-resolution initiatives being implemented in the region, and Turkey has not responded to any calls by the Kurds for the opening of democratic dialogue on the issue. External attempts to facilitate peace have fared no better, with Turkey continually insisting that the situation in the Southeast is a matter internal to Turkey. For example, in 1998 Turkey's prime minister Mesut Yilmaz rejected German and Italian plans to launch a European effort to end the conflict.³⁶ Prime Minister Yilmaz reportedly stated: 'If the problem at issue here is the one between Turkey and its citizens of Kurdish origin, then the only place for a solution is Turkey.'³⁷

Instead, Turkey resolved in September 2001 to take advantage of the renewed international focus on terrorism to intensify her anti-Kurdish policies in the Southeast. The then Turkish foreign minister, Esmail Cem, said that 'Turkey intends to make the best of the post-September atmosphere to demonstrate its own stances towards the issue of terrorism',³⁸ and Turkey has continued to press the US to take action against Kongra-Gel in Iraq.³⁹ She also pushed EU leaders to include KADEK/Kongra-Gel on a list of proscribed terrorist organizations after the unilateral ceasefire and the promulgation of the organization's new democratic agenda.⁴⁰ Thus Turkey's behaviour

indicates a profound reluctance to accept Kurdish representatives as negotiating partners, including through external mediation, and so to move towards resolving the situation in the Southeast. The UN Secretary General has identified 'the reluctance of one or more of the parties to a conflict to accept external intervention of any kind'⁴¹ as a key impediment to peacemaking.

INTERNATIONAL PEACEMAKING

Turkey's aversion to engaging in democratic dialogue has been mirrored by reticence on the part of the international community either to name or to become involved in the conflict in the Southeast. There has been a noticeable absence of references to the conflict in inter-governmental and international fora; instead, reference is made to 'the situation in the Southeast' to refer to the conflict in dialogue and reports, obscuring somewhat the fact that an armed conflict is taking place and doing little to encourage Turkey to face up to the need for democratic resolution. Among organizations which may be expected to take the lead in addressing conflict, the Kurdish issue has been treated virtually across the board as at root a human rights problem, presumably based on the notion that progressive democratization and human rights reform will mitigate Kurdish discontent and push those advocating militancy to the extreme margins of political opinion.

Of course, there is some validity in this view, but on its own it is inadequate, particularly since Turkey is making only very tentative progress towards these goals. A broader undertaking by the international community is needed to address the situation. The OSCE for example, which has played a very constructive role in other European conflict zones such as Nagorno-Karabakh and the Balkans and lists preventative diplomacy and democratization as among its aims,⁴² has had no real involvement in southeast Turkey. The Council of Europe has been more open than other institutions in asserting that it is time for Turkey to 'think about reconciliation' with regard to the 'Kurdish question' following the end of the armed struggle.⁴³

Readiness on the part of the international community to press parties to a conflict to move towards reconciliation is crucial to securing conflict resolution. This is particularly the case with seemingly intractable conflicts, or where one actor will not otherwise name the problem or countenance reconciliation initiatives, as is the case with Turkey. The UN Secretary General identified 'the lack of

political will at the highest levels of the international community' as the most important factor impeding peacemaking.⁴⁴ It can be seen in this context that the leverage of the EU could prove crucial in encouraging Turkey to achieve a lasting solution to the conflict, and the EU's limited utilization so far of its unique position is discussed in more detail in a later section.

THE CONFLICT AND TURKISH ETHNIC NATIONALISM

Moving beyond the need for democratic dialogue and reconciliation, progress on peace in the Southeast is likely to depend more broadly upon Turkey's willingness to make fundamental changes to the current *status quo*, and particularly to engage in concerted and demonstrable efforts to openly address the Kurdish issue.

The Kurdish problem is made up of a multi-faceted and complex range of interrelated issues, but its root, and at the root of ongoing armed hostilities in the Kurdish region, is Turkey's adherence to ethnic nationalism and her consequent attitude to the Kurds which defines them as 'yet-to-be-assimilated' Turks. Chief among the symptoms of ethnic nationalism in Turkey, and thus key factors to be addressed in resolving endemic instability in the Southeast, is the repression of Kurdish culture and language. Turkey's attempts to quash all external evidence of Kurdish distinctiveness and assimilate the Kurds under an ethnic Turkish banner have been realized particularly through comprehensive restrictions on Kurdish linguistic and cultural expression, and the full realization of Kurdish rights in these areas would go a considerable way towards effacing official anti-Kurdish policies and achieving normalization in the Southeast. Similarly, an unequivocal, outward recognition of the Kurds, probably through constitutional reform, would make a vital contribution towards mitigating decades of Turkey's refusal to countenance the existence of the Kurds, and her enactment of policies whereby Kurds publicly or politically asserting their Kurdish identity or publicly espousing the use of Kurdish in the public domain were subject to censure, harassment, prosecution and state violence.

Countering the continued impunity of the Turkish state security forces responsible for the commission of severe human rights abuses against civilian Kurds, the tolerance of pro-Kurdish media and publishing, and the facilitation of Kurdish political participation would also mark important steps towards reconciliation and evidence a desire by Turkey to build a culture of peace in the Southeast.

Importantly, the continued displacement of hundreds of thousands of Kurds from their villages remains a stark and very immediate reminder of the devastating effects of the behaviour of Turkish security forces during the height of the conflict. The implementation of a clear and coherent programme to realize Turkey's stated intention of effecting their rehabilitation would demonstrate a commitment to making amends for Turkey's actions during that period, and would make clear that she no longer sought the dissolution of Kurdish settlements in the Southeast.

To date, however, Turkey has showed no real inclination to address the Kurdish issue as such, or its ideological precepts. Certainly she has made some important concessions on loosening her grip on the Kurdish language, suggesting an acceptance of the legitimate presence of an alternative culture within her borders, but in essence little has changed and calls for constitutional reform appear to be falling on deaf ears. A recent occurrence in Bismail is illustrative of Turkish reticence to acknowledge a distinct Kurdish identity. A 15-year-old boy who replaced the traditional Turkish maxim 'Happy is the one who calls himself a Turk' with the words 'Happy is the one who calls himself a Kurd' during a class at school was prosecuted for 'inciting hatred and enmity on the basis of religion, race, language or regional differences'.⁴⁵

AMNESTIES

Although Turkey has not addressed the heart of the problem in the Southeast, she has made some noteworthy steps towards settling the conflict. Firstly, the Reintegration Law passed in July 2003 offered partial amnesties for some of those involved in the conflict. The provisions of the legislation were rather limited. PKK/KADEK/Kongra-Gel combatants who agreed to lay down their weapons and provide information to the authorities were granted reduced sentences, though leaders were excluded. Full amnesties were granted only to those who had not themselves carried out attacks. The law had a shelf life of only six months, although it was reportedly relatively successful in terms of numbers. As of 19 December 2004, the Turkish government reported that 2,486 prisoners had applied for benefits under the provisions and 586 militias had turned themselves in.⁴⁶ Ultimately though, it has had little apparent effect on the conduct of hostilities, and most of those to take advantage of the legislation were not active militants but those already imprisoned.⁴⁷ Allegations

were made in some quarters that the law was largely a response to American pressure to bring PKK units out of Iraq and hence stem Turkish security operations there, and as such ignored 'national sensitivities'.⁴⁸ It is also alleged that the government's claim that hundreds of militants had applied for pardons was exaggerated.⁴⁹ Kurdish groups were reported to denounce the legislation as merely a means of creating more state informants,⁵⁰ and DEHAP called for the granting of a full amnesty.⁵¹

A full amnesty would certainly be desirable in many ways. It could go a considerable way towards ending the violence, and would allow for Kurdish political parties and other organizations to develop an inclusive, democratic platform for change. Turkey defines one of the aims of the law as 'reinvigorating and maintaining social peace and solidarity'.⁵² The Council of Europe has stated that the Reintegration Law, in falling short of a full amnesty, 'will not be enough to create the climate of confidence that Turkey and its inhabitants so greatly need'.⁵³ Turkey's conservative and uncompromisingly anti-Kurdish military, however, would oppose such a move, and high levels of violence committed by both sides to the conflict render it less feasible from the perspective of the Turkish public.⁵⁴

THE CONFLICT IN THE SOUTHEAST AND THE KURDISH QUESTION

Why has Turkey not made greater progress towards breaking down the barriers to reconciliation in the Southeast? Essentially, calls to end the ethos of ethnic nationalist-inspired repression of the Kurds by granting them constitutional recognition and fully realizing Kurdish cultural rights are regarded by the Turkish establishment as tantamount to subversion or separatism. Turkey's military and sections of the judiciary and civil service tend to associate the public expression of ethnic differences, even where they are made within the cultural sphere, as tending towards more militant demands for secession. The granting of cultural and other rights to the Kurds is seen as a precursor to further extremism in ethnic politics. Conversely, in more mature democracies the accommodation of alternative ethnicities and cultures is seen to lead to the neutralization of demands by minority groups, rather than fuelling their radicalization. These ideological barriers to recognizing the legitimacy of Kurdish grievances have prompted the official position that there is no Kurdish problem in Turkey, only a terrorist problem.⁵⁵

'Counter-terrorism' has consequently been held up over many years as an all-embracing moral, political and legal justification for government behaviour in the Southeast. All expressions of Kurdish dissatisfaction with state oppression have been subsumed under the headings of terrorism or inciting separatism. Charges have regularly been brought against Kurds peacefully calling for recognition of their language rights, or even referring to the existence of the Kurds, on these bases. In December 2004, pro-Kurdish groups took out advertisements in the *International Herald Tribune* and *Le Monde* newspapers outlining what Kurds living in Turkey want from Ankara in its European Union membership bid and comparing Turkey's political system to autonomous and federative structure in other European countries.⁵⁶ Ankara's reaction was predictable: the advertisement met with a storm of protest expressing paranoia over perceived threats to national integrity through the peaceful expression of legitimate Kurdish demands, and equating such demands with separatism. Prime Minister Erdogan in particular stated: 'Daring to abuse the democratization efforts in order to subvert national unity, social peace and the will to live together is a political assassination directed against the nation's will'.⁵⁷ Prime Minister Erdogan also accused those responsible for placing the advertisement of 'damaging a millennium-old brotherhood', of 'clouding' a time of peace and of using language which would embarrass Turkey.⁵⁸ Turkey's leader, then, seems still wrapped up in his fixation upon the 'threat' of Kurdish separatism, and a long way from accepting democratic negotiations and a participatory peace process to resolve the conflict in the Southeast.

Furthermore, and absolutely fundamental to Turkey's failure to date to address the Kurdish issue, virtually all issues pertaining to the situation in the Southeast, many of which would be regarded in modern, liberal democracies as political in nature, are instead classified as security issues. Indeed, the parameters of the conflict in the Southeast have been determined almost exclusively by reference to security considerations, with the government bent upon imposing a narrow, military solution to the problem rather than addressing the broader issues of cultural and linguistic rights upon which the conflict has arisen. Pro-Kurdish politicians with wholly peaceful agendas are not recognized by the state as legitimate negotiating partners, and are instead dismissed as terrorists or separatists. The most high-profile example of this is the ongoing trial of Leyla Zana and her fellow Kurdish parliamentarians initiated after they spoke their oath of allegiance to the Turkish Parliament in Kurdish. As recently as July

2004, the police pushed for charges to be brought against the four for making 'separatist' speeches at rallies after a top general criticized the speeches.⁵⁹ The parliamentarians, who have long advocated a peaceful struggle for Kurdish rights, were reportedly calling upon Kongra-Gel to resume its ceasefire with the Turkish state.⁶⁰

The revision of Turkey's security-centred perspective on the Kurdish issue is vital to achieving normalization and long-term stability in the Southeast. Recognition by Turkey that the southeastern security threat must be dealt with as part of a broader issue, which includes legitimate calls for Kurdish cultural and linguistic rights and a political solution to the situation there, is necessary to move forwards. Acceptance of ethnic diversity *within* Turkey, rather than defining Turkey as the collective nation of only ethnically Turkish citizens and dismissing alternative identities as separatist, is a prerequisite for the emergence of Turkey as a modern, stable democracy and a member of the democratic community of states.

8

The International Dimensions to the Conflict

A complete picture of the relationship between Turkey and the Kurds, and the process of democratization in Turkey more broadly, cannot be achieved without reference to international and transnational factors. Indeed, it is Turkey's behaviour beyond her borders which gives one of the clearest refutations of Turkey's aspiration to be recognized as a liberal, democratic state along Western European lines.

TURKEY, HER NEIGHBOURS AND THE KURDS

The Kurds inhabit a large and contiguous area which extends across the border regions of modern-day Turkey, Iran, Iraq and Syria, and for many centuries the region acted as a buffer between the Ottomans and the Persians. The Kurds were accordingly divided and subject to the control of one or other of these empires. Following the First World War, state borders in the region were artificially imposed by the Great Powers with little or no respect for Kurdish linguistic, cultural or familial continuity. Thus although there is no one, overriding concept of 'Kurdishness', Kurdish identities transcend state borders, regional ties can be strong and the Kurdish issue is conceived very much as a trans-border one.

However, all the governing regimes of the Kurdish regions have been keen to assimilate the Kurds within the confines of the nation state and through state-based nationalist ideology. Strategies have mirrored those practised by Turkey, including enforced 'Arabization', forcible dissipation of Kurdish regional dominance through village destruction, torture, cultural restrictions, political exclusion and military assaults. These brutal and oppressive activities stem to a significant extent from the shared aim of preventing the evolution of Kurdish autonomy, and there are deep-rooted fears that the realization of such autonomy in any one state could trigger parallel demands elsewhere.

A commitment to ethnic nationalism is not the only decisive factor informing such policies; the considerable geo-strategic importance

of the Kurdish regions and anxiety to secure control over valuable oil, water and other resources there also play an important role.¹ Furthermore, as states in the region have sought military rather than political solutions to the Kurdish issue, and this is particularly true of Turkey, cross-border armed incursions have occurred causing significant loss of life. Finally in this context, factors extraneous to the situation of the Kurds have motivated state behaviour with regard to the Kurdish regions, and the Kurds have been repeatedly exploited as pawns in regional relations. A complex interplay of political machinations, inter-state military threats and skirmishes, and trans-border state backing of guerrilla organizations has resulted, of which Kurdish civilians have been the primary victims.

Turkish military and diplomatic activities in the Kurdish regions beyond her own borders have thus long been motivated by Ankara's obsession with dissipating the perceived 'threat' of Kurdish autonomy, resolving her own Kurdish issue through military means, that is, by flushing the PKK out of northern Iraq, and by her apparently incongruous tendency to support foreign Kurdish organizations where this is seen to further her own aims.

TURKISH MILITARY ACTIVITY IN NORTHERN IRAQ

It has already been mentioned that state borders did not mark divisions in Kurdish links and loyalties, and thus there was a good deal of interaction among the Kurds of neighbouring countries. Kurdish opposition to the government's attempts to impose cultural homogeneity was spurred in part during the 1960s and 1970s by agitation in Iran and Iraq on behalf of an autonomous Kurdistan, to include Kurds from Turkey, Iran, Iraq, and Syria.²

In relation to the Ankara government, though, cross-border activities commenced in earnest from the 1990s with the intensification of violence in the Southeast. From this period Turkey made repeated incursions into northern Iraq, ostensibly with the aim of ousting PKK bases there. The PKK/KADEK/Kongra-Gel has for many years maintained a presence in the region, which was used as a staging post to conduct raids into Turkey. The first major incursion occurred in August 1992 as a joint operation with the PUK, and succeeded in flushing 5,000 guerrillas out of the mountains in Iraqi Kurdistan.³ PUK support for the operation stemmed from the organization's frustration with the continued presence in northern Iraq of the PKK, with whom its relations were stormy, from pressure from the US to

oust the PKK, and from PUK dependence upon Turkey to effectively conduct its operations. It should be noted that Turkey cynically engaged in periodic, transitory alliances with guerrilla organizations as and when this suited her wider purposes, and relations between Turkey, the PUK, the KDP and the PKK were remarkably complex and fluid.

Another, larger scale operation in 1995 saw Turkey send 35,000 troops into northern Iraq in order to overcome around 2,500 PKK guerrillas believed to be based there.⁴ This was ostensibly on the basis that a power struggle between the Iraqi Kurdish organizations had led to a breakdown in the previously effective system whereby the PUK and KDP had 'policed' the PKK in Iraq, preventing it from launching attacks across the border into Turkey. Turkey thus argued that she needed to protect her citizens from such attacks.⁵ In May of that year, Turkish president Süleyman Demirel briefly went so far as to propose a change in Turkey's border with Iraq, potentially granting Turkey swathes of territory in northern Iraq. A further major invasion took place in 1997, as an estimated 50,000 troops were sent over the border with the backing of the KDP, supposedly with the aim of annihilating the PKK.⁶ From 1997, Turkey announced the establishment of a 15-kilometre 'security zone' within northern Iraq that would be patrolled and extensively monitored by 5,000 troops. The security zone was officially aimed at protecting Turks against the PKK.⁷ In 2000 Turkey launched yet another major incursion to back the PUK against the PKK.⁸ In March 2003, more than 60,000 Turkish troops and heavy artillery were deployed near the border of South Kurdistan.⁹ It should be pointed out at this juncture that Turkey is a very important player militarily within the region; she has the second largest army in NATO after the US.¹⁰

Ankara's assertion that military activity in northern Iraq aims at preserving Turkish national security and integrity represents a partial truth. Ankara continues to pursue this course today; she has recently expressed extreme frustration with US unwillingness to deal with the 5,000 or so Kongra-Gel guerrillas still based in the mountains in the far north of Iraq.¹¹ Turkey's security operations against the PKK in Iraq are intrinsically linked to her very narrow conception of the Kurdish issue as a security matter, to which she has sought to respond with purely military solutions. President Turgut Özal toyed with a different approach before his death in 1993, cooperating with Iraqi Kurds and hoping to defuse the domestic Kurdish issue by introducing limited reforms at home and by channelling Kurdish aspirations away from

the broader, autonomy solution then current in northern Iraq.¹² However, this proved a brief interlude and Turkey has before and since sought to pursue the PKK vigorously both at home and abroad, and to take military measures aimed at countering the 'threat' of Kurdish separatism, rather than acknowledge the broader, *domestic* origins of her troubled relations with the Kurds, namely her persistent denial of a separate Kurdish identity.

In addition, and aside from rooting out the PKK, it is unequivocal that Turkish incursions into northern Iraq were a show of military might designed to intimidate those supporting moves towards Kurdish autonomy there. The creation of the safe haven in the wake of the first Gulf War following Turkey's refusal to accept hundreds of thousands of Iraqi Kurds fleeing a brutal Ba'athist crackdown intensified Turkey's deep-seated paranoia that moves towards Kurdish autonomy in northern Iraq could spill over into southeastern Turkey. She accordingly sought to militarily 'protect' herself from the improving fortunes of the long-oppressed Kurds of Iraq from further inspiring legitimate calls for greater rights and a democratic solution to the Kurdish issue from the Kurds within her own borders.

KIRKUK: TURKISH FEARS OVER KURDISH AUTONOMY

These observations are in no way confined to the history books, and Turkish anxiety over developments in northern Iraq has been dramatically boosted by political changes following the US-led invasion. The establishment of democratic, federal government in Iraq, particularly since Kurdish parties won second place in the January 2005 elections and are expected to hold the balance of power in the national assembly,¹³ is of enormous significance for the Kurds. After decades of abuse and oppression at the hands of regimes determined to crush Kurdish identity or to utilize the Kurds as vassals in quests for regional dominance, the Kurds of Iraq have a historic opportunity to realize their future security and the protection of their rights and freedoms. The Kurds have genuine prospects of gaining influence in central government, of establishing an autonomous Kurdish entity in the north and of achieving justice for past wrongs. The new Iraq is set to be governed on the basis of political inclusion and respect for human rights and freedoms. It is a symbol of the collapse of the *status quo* of subjugation of the Kurds, and could act as a beacon for Kurds suffering oppression throughout the Kurdish regions and seeking state-based solutions.

The fiction of homogeneity upon which ethnic nationalism in Turkey is founded renders such a scenario anathema to Ankara, as is the unlikely but much feared potentiality of a Kurdish declaration of independence in northern Iraq.¹⁴ Far from relishing the establishment of democratic pluralism in a neighbouring state previously run by a brutal, authoritarian regime, Turkey is extremely concerned that the precedent in Iraq will underline still more heavily the lack of legitimacy in her treatment of the Kurds within her borders. Nowhere are her fears more apparent than in her recent political and military response to the dispute over the status of the Iraqi city of Kirkuk in the province of Mosul.

The city of Kirkuk was historically within Kurdish territories but its status has been disputed, particularly since the finding of large oil reserves in the surrounding area. The evidence of the Iraqi censuses of 1922 and 1924¹⁵ show the city to be overwhelmingly populated by Kurds. Kirkuk, which contains 40 per cent of Iraqi petroleum and 6 per cent of the world's known oil reserves,¹⁶ became subject to a power struggle between the Iraqis and the British in the 1920s. In addition, the Treaty of Sèvres had envisaged an independent Kurdistan, and Kirkuk and Mosul would have formed the south of this new state. In 1930, however, an Anglo-Iraqi agreement was signed ending the British mandate in Iraq, and the newly independent Iraq was granted sovereign power over Kirkuk and Mosul. This decision was based not on an assessment of the legitimacy of Kurdish claims to self-determination, but on unwillingness among the Great Powers to push for the secession of northern Kurdistan from Turkey, which substantially weakened the feasibility of an independent Kurdistan, and a conception that Kirkuk's oil wealth made its incorporation into Iraq important to the economic stability of this new state.

Soon, Baghdad began to 'Arabize' Kirkuk, preventing Kurds and other non-Arabic peoples from buying land or houses, and from the 1980s the Ba'athist regime forcibly displaced the Kurds from Kirkuk as part of a deliberate ploy to alter the ethnic balance there. Today, many Kurds who were illegally and often brutally forced out from their homes are seeking to return and reclaim their property. Tensions have been escalating in the city since the overthrow of the Ba'athist regime in April 2003, as historical claims, economic interests and political ambitions overlap to produce a potentially destabilizing power struggle.¹⁷ The legitimacy of Kurdish dominance in Kirkuk was recently affirmed in the January 2005 elections, after the final

results showed the two main Kurdish parties won nearly 60 per cent of the vote in the northern region that includes Kirkuk.¹⁸

Turkey, however, remains adamant that Kirkuk must not be incorporated into a Kurdish entity within a federal Iraq. This is principally because Turkey fears that control over Kirkuk would provide the Iraqi Kurds with the necessary economic resources and contiguous territory to feasibly operate with relative autonomy from Baghdad, or, at worst, declare independence. This, of course could act as a model for Turkey's Kurdish population – Ankara's worst nightmare.¹⁹ Turkey has repeatedly voiced her refusal to accept any future attempt by the Kurds to assert control over Kirkuk or the surrounding oilfields,²⁰ albeit through democratic, peaceful means. For example, on 21 February 2003 the Turkish foreign minister Yaşar Yakış said: 'At present the Kurdish area enjoys a certain autonomy We do not want this to be consolidated further and to be transformed into a federal state or an independent state.'²¹

Ankara's concerns over the future of Kirkuk have been considerably exacerbated by what she has seen as American failure to rein in Kurdish ambitions there,²² and the US has sought to reassure its old strategic ally Turkey somewhat by stressing that she will not countenance the splintering of Iraq. Condoleezza Rice told leaders in Turkey that the US is 'fully committed' to achieving a 'unified Iraq'.²³

Ankara has thus employed a range of strategies aimed at avoiding such a scenario. In particular, she has sought to exploit the situation of the Turkmen, who also have a presence in Kirkuk, by propounding the view that they should have the city as their capital. Turkey has accordingly asserted that Kirkuk is a multi-ethnic city and the home of the Turkmen, and as such should have a 'special status'.²⁴ This is despite the fact that the Turkmen form a relatively small minority in the city; in spite of the displacement of many thousands of Kurds from Kirkuk under the Ba'athist regime, the Turcoman Front took only 18 per cent of the vote in the January 2005 election.²⁵

Prime Minister Erdogan officially alleges manipulations and irregularities in the January elections, suggesting that Kurds from other areas were brought to Kirkuk to boost their votes against Turkmen and Arabs.²⁶ General Ilker Basbug, deputy head of the Turkish military, reportedly said at a news conference: 'Hundreds of thousands of Kurds migrated to Kirkuk and registered to vote,' and added: 'This could make the results of the elections questionable.'²⁷ In fact, Kurds entering the city to vote were those illegally driven out of their homes

as part of Saddam Hussein's Arabization policy. General Basbug went on to state: 'these developments could threaten the territorial and political unity of Iraq. We're worried that such a development would pose an important security problem for Turkey.'²⁸ Allowing its phobia of legitimate Kurdish demands to contribute to exacerbating tension in Kirkuk indicates that Turkey has not embraced Western liberal ideals; she should be working towards regional peace and democracy by furthering Turkomen-Kurdish reconciliation rather than inciting conflict.

A TURKISH INVASION OF NORTHERN IRAQ?

There are further substantial and credible concerns that Turkey will engage in military action if her 'national interests' are seen to be at risk, that is if the Kurds successfully win control of Kirkuk. Military deployment along the Iraqi-Turkish border has been considerably stepped up, including on Iraqi soil. When combined with public pressure resulting from Ankara's 'manipulation of the Turkmen issue'²⁹ and general instability in Iraq, it could take on a dynamic of its own and produce overwhelming pressure for an armed incursion among Turkey's less moderate leaders.³⁰ Prime Minister Erdogan has warned that Turkey will not stand by if Kurds try to realize the objective of including Kirkuk in a Kurdish autonomous region.³¹ A Turkish diplomat recently stated: 'Kirkuk is a potential powder keg. For us it has special status. It is like Jerusalem. It belongs to all the people. We do not want to intervene in Iraq. But we have red lines – Kirkuk and attacks on ethnic minorities.'³² Turkish foreign minister Abdullah Gul has issued an even more direct threat: 'in case of fighting in Kirkuk, Turkey cannot remain a spectator'.³³

A Turkish invasion of Iraq would potentially have deeply worrying implications for civilian inhabitants of the region. Turkish incursions into northern Iraq during the 1990s resulted in breaches of international humanitarian law and numerous human rights violations, including torture, killings, mutilations and the destruction of up to 70 villages.³⁴ Important in this context is the precedent-setting case of *Issa and Others v. Turkey*,³⁵ decided by the European Court of Human Rights, which concerned the killing and mutilation of seven Kurdish shepherds by Turkish troops during cross-border incursions in 1995. In *Issa* it was found that States Parties to the ECHR could be liable for violations of the Convention committed

in the course of military action where that State in practice exercised effective control of an area situated outside its national territory.³⁶ States Parties could also be held accountable for any breaches of Convention standards against individuals in another states' territory commissioned by the State Party's agents, if such agents were found to be acting under the State Party's authority and control. This followed from Article 1 of the Convention which mandates that Contracting States' obligations are engaged in relation to any violation of the Convention committed against individuals in their 'jurisdiction'. The legal meaning of jurisdiction was found, in accordance with public international law definitions, to be primarily territorial, but it was also ruled in exceptional circumstances to include state acts performed outside a State Party's borders. This ruling stems from the Court's finding that: 'Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory.'³⁷

The Court in *Issa* set a high standard of proof on the jurisdiction point and found on the facts that although large numbers of Turkish troops were involved in military operations in northern Iraq,³⁸ the applicants did not establish that Turkey had conducted operations in the specific area in question, namely the hills above the village of Azadi.³⁹ Accordingly, Turkey was not held liable, though the case is currently under consideration by the Grand Chamber.

Notwithstanding the negative decision on the facts in *Issa*, it is of great relevance that Turkey can be found liable under the ECHR for human rights violations committed in northern Iraq. She can no longer behave as though she has a *carte blanche* in her treatment of the Iraqi Kurds, as occurred during the 1990s, and instead can be brought to account for extra-judicial killings, torture and ill-treatment which may occur in any future incursions.

This avenue of accountability is also important given that it is unclear as yet whether the new Iraqi regime would be sufficiently established and authoritative to subject Turkish forces operating there to administrative or judicial scrutiny, and so constrain their conduct. Of particular concern for the Kurds in Turkey is the fact that Ankara has indicated that it wishes to reinstate OHAL within the southeast Kurdish regions in the event of war. OHAL was a fundamental factor facilitating the horrific human rights violations which occurred in the Kurdish regions of Turkey between 1987 and 2002.⁴⁰

RESPONSE IN THE WEST

A unilateral military intervention by Turkey in Iraq would cause considerable strain in Turkey's relationship with the US, and would presumably lead to a suspension of any negotiations with the EU. To date, however, the West has been reticent about getting involved in Turkey's extra-territorial military adventures. Indeed, the response of the West to Turkey's aberrant behaviour has been, like its reaction to Turkey's record on torture, mass killings and other serious human rights abuses, at best ambivalent.

Turkey's refusal to admit Iraqi Kurdish refugees fleeing Saddam Hussein's regime in 1992 was deplored, but received little outward condemnation. Turkey is an important strategic link for the West; for example, without her willingness to host coalition airbases from 1992, overseeing the no-fly zone established to contain the refugee crisis in northern Iraq would have been difficult. The 1995 incursion by Turkey into northern Iraq did appear to generate disquiet in the West. France and Germany condemned the invasion as disproportionate and temporarily froze a US\$106 million subsidy to Turkey,⁴¹ though the same year Turkey was granted entry into an EU customs union.

TURKEY, IRAN AND SYRIA: A NEW COMMON GROUND

The consequences of the US-led invasion of Iraq and the subsequent establishment of democracy there have had a dramatic effect on the relationship between Turkey, Iran and Syria. Increasingly drawn together by their common refusal to concede the legitimacy of Kurdish calls for recognition of their identity and rights, these countries have overcome substantial differences on other issues in order to cooperate on policies towards the Kurds. As they appear more and more isolated to the outside world in their refusal to accept democratic pluralism, these regimes are forming alliances in a last-ditch attempt to cling to their outdated and illegitimate conceptions of the Kurdish issue.

SYRIAN-TURKISH RELATIONS AND THE KURDS

The history of Turkey, the Kurds and Syria is a complex one. Syria has herself enacted highly discriminatory policies against her Kurdish population. She is governed by a military regime, and the influence of the Ba'th Party, whose primacy in state institutions and the Parliament is mandated by the constitution,⁴² permeates all

branches of government. A key issue for the Kurds in Syria is their exclusion from the general Syrian policy of granting ethnic minorities freedom to conduct their traditional activities. The use and teaching of the Kurdish language is severely limited and other expressions of Kurdish cultural identity, including publications in Kurdish and the celebration of Kurdish festivals, is similarly curtailed. A 1962 census saw the government strip around 140,000–200,000 Kurds of their Syrian nationality,⁴³ and those affected remain unable to obtain crucial documents including passports, identification cards and birth certificates. These stateless Kurds are denied fundamental civil, political, economic and social rights. They are unable to own land, use the health service, vote and travel freely. They also encounter difficulties in enrolling their children in school and in registering their marriages.

However, in an emblematic example of a state manipulating the Kurds to further its own interests, Damascus has nonetheless been the PKK's main patron, giving shelter to PKK leader Abdullah Öcalan from 1979 and providing training facilities for PKK guerrillas in the Beka'a Valley of Syrian-controlled northern Lebanon.

Syrian support for the PKK, which has unquestionably been one of the most important factors in the organization's survival, is not inspired by sympathy for the oppression suffered by the Kurds. It was reported that Syrian president Hafez el Asad levelled villages and murdered Syrian Kurds when he felt they too were supporting the PKK.⁴⁴ Instead, Syria's behaviour was motivated by frustration with Ankara over apparently unconnected issues. Syria has an ongoing border dispute with Turkey over the Hatay province, which is claimed by Syria but was ceded to Turkey in 1939, and has expressed a great deal of frustration at Turkey's close military ties with Israel, one of Syria's staunchest enemies. Probably of greatest importance among these factors, however, is Syrian aggravation with Turkey's dam-building projects on the Tigris and Euphrates rivers.

Turkey's programme for developing southeastern Anatolia, known by its Turkish acronym 'GAP', not only threatens to destroy thousands of Kurdish homes but is also jeopardizing water supplies to her downstream neighbours, Syria and Iraq.⁴⁵ Export credits were granted for the construction of the project on the basis that Turkey must make provision for upstream water treatment plants capable of ensuring water quality is preserved, and must give an assurance that adequate downstream waterflows would be maintained.⁴⁶ However, a fact-finding mission by the London-based Kurdish Human Rights

Project, the Corner House and the Ilisu Dam Campaign in 2002⁴⁷ found that the GAP dams had caused a significant deterioration in the flow regime of the Euphrates and to a lesser extent the Tigris, and increased salinity levels. It was concluded that the full implementation of GAP would have major adverse consequences for agriculture in the lower reaches of the Euphrates. Turkey has used her ability to control the water flow of the Tigris and the Euphrates to her downstream neighbours as a weapon against Damascus over Syrian support for the PKK; hardly the behaviour of a responsible, modern democracy. Turkey has also consistently refused to comply with her international responsibilities with regard to GAP, for example to consult with her neighbours over the implementation of the project, and has preferred instead to treat the water flowing through her lands as her own resource regardless of the adverse downstream consequences.⁴⁸

As a mark of the level of hostility between Syria and Turkey, the two countries very nearly came to blows in 1998 as Syrian exasperation with Turkey's aggressive manipulation of valuable water resources intensified and Ankara repeatedly warned that 'time was running out' for Syria to end her support of the PKK.⁴⁹ Partly out of fear over a joint Turkish-Israeli military incursion, Syria complied with this demand and expelled Öcalan in October 1998.

As the probability of a Washington-led assault on Iraq became increasingly likely however, Turkish and Syrian interests began converging as they weighed up the war's potential political ramifications, namely the evolution of an autonomous Iraqi Kurdistan, and the two regimes sought to put aside decades of mistrust and hostility to conclude a military cooperation agreement in 2002.⁵⁰ General Huseyin Kivrikoglu, Turkey's chief of staff, stated that 'A new era will be opened in the relations between Turkey and Syria with military cooperation.'⁵¹ The agreement sent a clear message that any change in the current situation in Iraq deemed unsatisfactory to the governing regimes of Iraq's neighbours, that is, the emergence of an independent Kurdish entity in Iraq's north, would be resisted by Turkey and Syria together.

Syrian fears were intensified as the evolution of democratic, federal government in northern Iraq after the US-led invasion, and particularly the gains made by Iraqi Kurds in the interim constitution, precipitated riots among the Syrian Kurds. These were met by a widespread crackdown in the Kurdish regions within Syria in March 2004. Many Kurds were killed in the clashes, and during the ensuing unrest hundreds were arbitrarily arrested and detained as security forces

occupied the Kurdish region. Developments in northern Iraq have also furthered Syrian–Turkish cooperation on the Kurdish issue. The September 2004 decision by Syria to turn over a senior Kurdish leader and six other rebels to Turkey is indicative of increased cooperation between the two regimes on security matters.⁵² Furthermore, Syrian president Bashar al-Assad made a landmark visit to Turkey in January 2004, and in December 2004 Ankara and Damascus moved yet closer together when Turkish prime minister Erdogan flew to Damascus on a two-day visit aimed at cementing improved ties between the two countries.⁵³ A bilateral trade agreement was concluded, and discussions held on how to prevent Kurdish secession from Iraq and thus quell calls for improved treatment among their own disgruntled Kurdish populations.

IRANIAN–TURKISH RELATIONS AND THE KURDS

Iranian–Turkish relations have followed a course broadly comparable with Syrian–Turkish relations. The Iranian Kurds have suffered at the hands of the Iranian state, having historically had a volatile relationship with the Shi'a-dominated government; their status as Sunni Muslims has led them to be characterized as an ongoing threat to territorial integrity.

Although Iran is a multi-ethnic society, the 1979 constitution recognizes religious minorities only and the constitutional prohibition of discrimination has had the effect of entrenching the denial of any recognition of ethnic difference. Like other non-Persian ethnic groups and national minorities, the Kurds are denied concessions in the fields of language, culture or self-governance. Despite their involvement in governmental structures, Kurdish parliamentarians are not allowed to form political parties, and the Kurds face economic, cultural and political marginalization. The Iranian Constitution guarantees some key human rights such as the right to life and freedom of association, though most are subject to caveats concerning Islamic principles or supplementary legislation. Recently, reformist elements in the Iranian government under President Khatemi have been active, and Iran extended an open invitation to UN monitoring mechanisms in July 2003 and received the Special Rapporteur on Freedom of Expression from 3 to 10 November 2003, but in reality the conservative Islamic bloc dominates the regime and prospects for genuine reform appear bleak.

Notwithstanding their common repression of their Kurdish populations, Turkey and Iran have for many years been at loggerheads over a range of issues, including differing interests in the Nagorno-Karabakh conflict on the Armenian–Azerbaijani border, Turkey’s relationship with Israel, and competition over oil resources in central Asia. The relationship between the two countries suffered a further blow in 1997 when the Turkish military accused the Iranians of supporting Islamists in Turkey and, importantly, the PKK in northern Iraq.⁵⁴ The Border Security Research Committee of Turkey’s parliament reportedly made public a report on the location of PKK training and logistical support to camps in Iranian territory, along with border violations, attacks, and mine-laying activities by PKK guerrillas infiltrating from Iran.⁵⁵ The substantial Turkish incursion into northern Iraq of May 1997 aimed in part to counter Iranian influence in the region, and was effected largely through Tehran’s patronage of the Iraqi Kurdish political organization the PUK.⁵⁶ The PUK was in turn believed by Turkey to be assisting the PKK.⁵⁷

Iran, on her side, blamed Ankara for sheltering the other main Iraqi political group the KDP, and indeed, the provision of logistical and other support to the Kurdish militants in northern Iraq have provided the means for Tehran and Turkey to vent their frustrations against each other by proxy.⁵⁸ Although many of the Kurdish political parties are interlinked and have played a formative role in each others’ development⁵⁹ – transnational relations between Kurdish political parties have achieved a breathtaking complexity – the behaviour of Turkey and Iran (and Syria) aimed at furthering their own base feuds against one another has fuelled intra-Kurdish rivalries in northern Iraq and caused considerable loss of life.

More recently, Ankara and Tehran have managed to put aside their differences as they seek a joint response to their fears that the ten-year democratic experiment in Kurdish self-rule which has proved so successful in northern Iraq will be formalized in a federal arrangement with the new Iraqi government.⁶⁰ Iranian military presence in Kurdish-dominated areas has been stepped up and repression intensified, and Tehran and Ankara have held talks in July 2004 on cooperation in their mutual obsession with sustaining the subjugation of the Kurds, resulting in an agreement to implement joint, anti-Kurdish policies. Turkish prime minister Erdogan then travelled to Tehran in July 2004, from where Iran officially declared Kongra-Gel a terrorist organization,⁶¹ and stated ‘we will do what is necessary regarding PKK/Kongra-Gel in the possible shortest

time';⁶² a significant concession to Turkey after many years of Iranian utilization of the PKK as a tool to exert pressure on Turkey. Iran has so far kept to her word and launched a crackdown on PKK militants located along her border with Turkey,⁶³ although it is less clear that Iran truly shares Turkey's commitment to annihilating the PKK, an organization which has proven so useful to her in the past. Prime Minister Erdogan and Iranian vice-president Mohammad Reza Aref reportedly also discussed the Iraq issue during their meeting, with Erdogan stressing that Turkey attached importance to Iraq's territorial integrity, and that domination of one Iraqi ethnic group by another was unacceptable (presumably a reference to Turkey's rather cynical support for Turkmen interests in Kirkuk).⁶⁴

Thus it can be seen that in Turkey's relationship with Iran, as in her relationship with Syria, the haunting spectre of Kurdish self-rule has so panicked Ankara as to push her into making extraordinary moves towards cooperation with age-old enemies.

AN ANTI-DEMOCRATIC ALLIANCE

A new understanding between Turkey, Syria and Iran has emerged in the wake of the mounting probability of a peaceful, democratic, autonomous Kurdish entity in south Kurdistan, based on mutual aversion to the notion of granting even the most basic cultural rights to their own Kurdish populations, let alone countenancing autonomy. This new understanding has overcome previously hostile relations between the three regimes, evidencing the strength of anti-Kurdish sentiment. Indeed, tripartite cooperation by Turkey, Syria and Iran on combating the 'threat' of Kurdish autonomy in northern Iraq is not unprecedented. The three held an *ad hoc* series of conferences from 1992, not long after the establishment of the Iraqi safe haven, aimed at improving border security and preventing the formation of a Kurdish state in northern Iraq.⁶⁵ These conferences continued until 1995 despite high levels of hostility between Ankara, Damascus and Tehran, and only ended as tensions mounted over Turkish and Iranian support for opposing Iraqi Kurdish groups in northern Iraq.⁶⁶

This situation is, though, unacceptable in the modern world, and particularly in view of Turkey's EU application which is predicated upon respect for democracy and human and minority rights. Turkey may be able to produce taboo-breaking domestic reforms at home which suggest to the outside world that she is opening up and democratizing, but her activities in the international sphere tell a

different story. She is building alliances with undemocratic states and pursuing highly undemocratic objectives, undermining precepts upon which she has achieved the opening of formal EU accession negotiations, namely her undertaking to grant further rights to the Kurds and improve their status.

It is not possible for Turkey and her neighbours, which have for so long unjustly subjugated the Kurds, to simply ignore what is happening in Iraq. Democratic, pluralist governance is prevailing throughout the world and it is becoming less and less feasible for repressive, chauvinistic regimes to avoid this trend. The successful institution of a democratic, state-based solution to the Kurdish issue in Iraq could potentially act as a model for the other states of the Kurdish regions, contributing to the resolution of their troubled relationships with their respective Kurdish populations. This is not something to fear, to shy away from and to form alliances against. Indeed, it is arguably a prerequisite for the achievement of peace and stability in the Middle East; history has shown us that this cannot be achieved without resolving the Kurdish situation.

9

The EU and the Kurds

EU accession offers the Kurds a crucial and unprecedented opportunity to finally shake off Turkish oppression, end the cycle of violence and vilification to which they have been subject for so many years and live freely as Kurds within the borders of their home state. This prospect, though, can only be achieved if it becomes the mutual aim of Turkey, the Kurds and the EU. The pro-EU reform process has a great capacity for stimulating change, and a number of taboo-breaking, albeit largely symbolic, transformations have already occurred. The 'carrot' of EU accession is proving in Turkey to be a more potent incentive for improving democratic standards than any other form of outside pressure, bringing together different voices from across Turkish society in support of democratic reform.

For the EU to ensure that Turkey genuinely tackles the substantial outstanding impediments to democratization, it is imperative that the Union deals openly and robustly with the situation of the Kurds. The severe human rights violations which continue to occur in the Kurdish regions, Turkey's extreme reticence in countenancing greater minority rights protection or constitutional reform, and the ongoing conflict situation in the Southeast together constitute major obstacles to Turkey's fulfilment of EU standards. The apparent intractability of Turkish hostility towards the Kurds suggests that this is not a situation which will simply dissipate in time, and nor will the fundamental change necessary to transform deep-rooted ideological beliefs be achieved unless sustained efforts are directed towards this end.

THE EU'S RESPONSIBILITY TOWARDS THE KURDS

The EU has a clear responsibility to address the Kurdish situation. Most obviously this is because Turkey's treatment of the Kurds continues to defy the political elements of the Copenhagen Criteria, that is the protection of human and minority rights, the fulfilment of which is a prerequisite to the opening of formal EU accession negotiations. The potential for the EU accession process to fail to bring about a modern, democratic Turkey if the relevant criteria for accession are

not applied with sufficient vigour has been discussed,¹ as has the potential damage to the EU should such an eventuality arise.² If the Kurdish issue is not addressed, the EU will pass over an unparalleled opportunity to bring lasting peace to the Southeast and implicitly legitimize Turkey's treatment of the Kurds, as well as sidelining what must, in the broader context of the need to overcome chauvinistic sentiments of ethnic nationalism within Turkey, be regarded as a touchstone issue in the accession process.

The EU itself has recognized the centrality of the Kurdish issue to Turkey's reform process. In its 1998 report on Turkey's progress towards the accession, it was observed that: 'A civil, non-military solution must be found to the situation in south-eastern Turkey, particularly since many of the violations of civil and political rights observed in the country are connected in one way or another with this issue.'³ The European Parliament, in its consideration of the situation in Turkey, has similarly underlined the importance of taking steps directly to deal with the Kurdish issue. It has urged 'a comprehensive solution for the aspirations and problems of the Kurdish population and to Constitutional provisions on cultural rights'.⁴ Interestingly, the Parliament has also expressed concern in calling 'for the issue of the rights of the Kurdish people and other ethnic groups not to be overlooked in negotiations for Turkey's accession'.⁵

EUROPE'S RESPONSIBILITY TO THE KURDS

More generally, Europe has a clear responsibility towards the Kurds, and is politically and morally obliged to facilitate a just and peaceful resolution of the Kurdish issue. European states did, after all, build the foundations of the current situation in the Kurdish regions by failing to uphold an independent Kurdistan in the wake of the dissolution of the Ottoman Empire. At a time when self-determination effected through the creation of independent, ethnically-based new states was in vogue, American President Woodrow Wilson had specifically undertaken in his well-known 'Fourteen Point Programme for World Peace' to assure to the non-Turkish minorities of the Ottoman Empire 'an absolute unmolested opportunity of autonomous development'.⁶ This was part of a broader Allied strategy to redraw the map of Europe along ethnic lines, and hence stave off outbreaks of ethnic conflict. The post-First World War Peace Conference at Versailles endorsed the notion that self-determination was an 'imperative principle of action', and went on to carve up old empires and allow groups

in Poland, Czechoslovakia and Yugoslavia self-rule. The principles expounded at Versailles proved extremely influential in international thinking on the nation state, and the right to self-determination was later incorporated into the UN Charter and the major human rights treaties.

Accordingly, the Treaty of Sèvres, signed by the Allied Powers and the Ottoman government in 1920, envisaged an independent Kurdish state. Under Article 62 a Commission appointed by the French, Italians and British would draft a scheme of local autonomy for the Kurdish areas lying east of the Euphrates, south of Armenia and north of Syria and Mesopotamia, with safeguards for Kurds in other areas.⁷ Under Article 64 Turkey would renounce all rights to the area if, after one year, the majority of Kurds called for independence, subject to a recommendation by the League of Nations.⁸

However, the dictates of *realpolitik* took over. The British, who were appointed as the mandate authority over the former Ottoman provinces of Mesopotamia, failed to make substantive progress towards Kurdish independence and, in the face of considerable opposition from Baghdad and Ankara, ultimately deemed instead that the predominantly Kurdish vilayet of Mosul must be ceded to the new Iraq. This effectively meant an end to plans for an autonomous Kurdish homeland, and was decided despite a provision in the Treaty of Sèvres that a plebiscite would be held in the area. It is hard to avoid the conclusion that British interests in keeping Mosul's rich oil supplies within British-controlled Iraq played a significant role in her failure to insist upon the implementation of Sèvres, although issues such as British concerns over the feasibility of border defences also played a role.⁹ In any case, the Treaty was rejected by the new Turkish Republic, and the Kurds were abandoned to their fate under Atatürk's nationalist government when Turkish sovereignty over what is now southeast Turkey was officially recognized in the Treaty of Lausanne.

Developments since Europe washed its hands of the Kurds in the 1920s further compel the view that responsibility for ameliorating the situation of the Kurds must be placed firmly at Europe's door. Europe has failed substantially to issue any real condemnation of Turkey's policies towards the Kurds, despite the fact that for many years a brutal armed conflict accompanied by a high incidence of torture was occurring on her doorstep. This stems to a significant extent from European conceptions of the Turkish regime as a benign Western ally, a NATO member and a prospective EU partner. The

Kurds in Turkey are seen in Europe through Ankara's eyes, frequently portrayed in the press and elsewhere as violent terrorists engaged in an illegal separatist campaign. It has often been pointed out that mention of the PKK/KADEK/Kongra-Gel in European media are usually followed by a stock reference to the deaths of over 30,000 people in the Turkish–Kurdish conflict, but the fact that most of the deaths were of Kurds is not mentioned.¹⁰ The Iraqi Kurds, on the other hand, have been portrayed far more sympathetically as their interests have been aligned with those of the West in their opposition to the Ba'athist regime. This is despite the severe violations of human rights which have occurred in both countries.

Indeed, far from calling Turkey to account for her treatment of the Kurds, Europe has provided the raw materials for her anti-Kurdish military operations in the form of assisting Turkey to develop a formidable arms industry and supplying weapons often for free or at greatly reduced cost.¹¹ Two reports in the 1990s highlighted that specific weapons systems supplied by EU member states and used in Turkey were linked to individual incidents of Turkish violations.¹² Such equipment was found to have been used to carry out village evacuations, indiscriminate fire, torture, and summary executions.¹³ It has been suggested that the lack of public criticism of Turkey's treatment of her Kurdish citizens was a reward for her support for Operation Provide Comfort (the enforcement of the northern Iraqi safe haven).¹⁴ The EU continues to supply arms to Turkey¹⁵ in spite of the fact that the Union has undertaken not to supply weapons where there is a 'clear risk that the proposed export might be used for internal repression'.¹⁶

Further examples of European behaviour towards Turkey are illustrative of a marked failure to defend Kurdish rights against the Turkish state. The current construction of the BTC pipeline is a case in point; the project, which will transport Caspian oil to the West via the Kurdish regions, involves numerous ongoing and potential social, human rights and environmental violations. It is also predicated on the provision of at least \$1.5 billion in public money from international financial institutions, including the European Bank for Reconstruction and Development, as well as from the export credit agencies of the major Western nations. Within Europe, the EU bowed to pressure from Turkey to include Kongra-Gel on its list of terrorist organizations in spite of a five-year unilateral ceasefire enforced by the organization at that time. Demands from Ankara

are also responsible for repeated closures of Kurdish satellite media networks in Europe.

Europe's response to the hardships endured by the Kurds over the past 80 years has, then, been at best muted, and at worst suggestive of complicity. This provides a stark contrast with European reactions to Saddam Hussein's treatment of the Iraqi Kurds, which has been condemned by the European Parliament as 'an active policy of persecution' which included 'the complete destruction of their identity',¹⁷ and served as a partial justification for the US-led invasion of Iraq in March 2003.¹⁸ Now, more than ever, as Turkey prepares to move yet closer towards her European allies and seek membership of the exclusive EU 'club' of civilized nations, Europe should not back away from its responsibilities, and should make use of the historic opportunity to assist Turkey towards a peaceful future based on full respect for the equal and fundamental rights of her Turkish and Kurdish populations.

THE EU APPROACH TO THE KURDISH SITUATION

Signs from the EU over the past three to four years do not portend a constructive approach to the situation of the Kurds in the accession process. Although the EU made a remarkably positive start in 1998 by openly naming the Kurdish issue and citing its resolution as a precondition to accession, references to the Kurds in EU documentation have become more and more subdued and oblique as time has worn on.

Prior to the Helsinki Council decision of December 1999, which concluded that Turkey would become a candidate for EU accession on the same basis as the other accession countries, open references were made to the need to resolve the Kurdish situation fully and comprehensively before accession could occur. It has already been noted that the Commission referred in 1998 to the imperative of finding 'A civil, non-military solution'¹⁹ to the situation in southeast Turkey. This was reiterated in 1999 when the Commission criticized Turkey's failure to make progress on the 'Kurdish question'.²⁰

In more recent EU literature, however, there is a striking tendency to skirt around the Kurdish issue using euphemisms such as 'the situation in the Southeast' or 'regional disparities'. By the time Turkey's first Accession Partnership was drawn up in 2001, although reference is made to the need to address the Kurdish situation as a short-term priority, the language used is decidedly more obscure.

Turkey is obliged to: 'Develop a comprehensive approach to reduce regional disparities, and in particular to improve the situation in the south-east, with a view to enhancing economic, social and cultural opportunities for all citizens.'²¹ The words 'Kurd' or 'Kurdish' do not appear in this context.

The tendency to tone down references to the Kurds is particularly noticeable in the Commission Report of 2004, in which the only real reference made to the Kurdish issue as a discrete question is heavily cloaked in bland, sterile terms and fails to convey either the reality or the seriousness of the issue: 'The normalisation of the situation in the Southeast should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds.'²² Upon reading the 187-page Commission Report, it is glaringly apparent that the language used to refer to the Kurds is concertedly and very deliberately chosen to avoid describing the treatment of the Kurds as an 'issue' in itself. The Report pointedly steers clear of alluding to 'the Kurdish question' or of making any statements which could imply that the situation of the Kurds in Turkey is a substantive and complex issue in its own right. It follows, then, from the Commission's failure even to name the Kurdish issue, that there is no mention anywhere in the report of the need to seek a comprehensive solution to it. Many recommendations are made with regard to the Kurds throughout the report, but none encourage consideration of the issue as such, or promote the achievement of a negotiated, political solution. The Commission's assertion in 1998 to the effect that such a solution was required has been effectively abandoned, despite the fact that no tangible progress has been made on achieving this goal since that time.

There is, then, no attempt by the Commission to bring any kind of reasoned analysis to bear on the Kurdish issue. Instead, the Commission's approach to the Kurds is to treat their plight as merely incidental components of a wide and seemingly disparate array of other outstanding issues in Turkey's record on human and minority rights. Many of the various aspects of the Kurdish issue, or at least their outward manifestations, do find reference in the Report, but only as subsidiary elements of whichever topic is then under consideration by the Commission.

This can be illustrated by way of a number of examples. Fairly detailed reference is made to Turkey's progress on permitting Kurdish language television and radio programmes to be aired in

the context of changes in broadcasting and freedom of expression, and legislative reforms which allow the limited teaching of Kurdish in private language schools is discussed in relation to cultural rights. Harassment of Kurdish organizations is mentioned as an element of freedom of association, and the restrictions on Kurdish political participation are referred to in the Report's section on political rights. Thus the Kurdish issue is treated in the 2004 Report as if its resolution were possible through responding to the Kurdish dimension of an assortment of unrelated human rights abuses which should not be specifically differentiated from Turkey's overall record on compliance with the Copenhagen Criteria.

There would be nothing inherently wrong with this approach – except that the reality of the serious and continued violations of human rights in Turkey is substantially underplayed – had the Commission also acknowledged that a broader and more complex problem existed at a deeper level, and accordingly provided an analysis of the Kurdish issue *per se*. There is a section in the Report which refers to the situation in the Southeast, but this does little more to set out a pertinent analysis of the multifarious problems there. The only general reference to the circumstances of the Kurds in the Southeast is the guarded, rather nebulous, and with regard to the supposed improvement in the security situation, incorrect, observation that: 'Overall the situation in the East and Southeast of the country, where people of Kurdish origin mostly live, has continued to improve gradually since 1999, both in terms of security and the enjoyment of fundamental freedoms.'²³

The circumstances of the internally displaced are rightly referred to as 'critical',²⁴ and reference is made to legislative changes established to address this and related issues, as well as to continued barriers to return. Largely, however, the situation is dealt with simply at face value, primarily as a failure of the Turkish government to adequately facilitate the return of the displaced. It was later asserted in the Commission Recommendation to the Council on the opening of accession negotiations that 'the process of normalisation has begun in the Southeast'.²⁵

By contrast, the 1998 Commission Report, albeit in the somewhat different circumstances which reigned in the Southeast at that time, gives a far fuller assessment of the Kurdish issue. It notes that Kurds are 'mainly concentrated in the south-east'²⁶ and that they are 'economically and socially disadvantaged'.²⁷ It goes on to acknowledge that the Kurds suffer disproportionate violations of

their civil and political rights as a result of the State of Emergency legislation which was then in effect, and importantly recognizes the ethnic component of the plight of the Kurds and that the roots of the disorder in the Southeast are found in Turkish ethnic nationalism. It accordingly advocates 'A civil solution' to 'include recognition of certain forms of Kurdish cultural identity and greater tolerance of the ways of expressing that identity, provided it does not advocate separatism or terrorism'.²⁸

To return to the 2004 Report, the Commission at no stage acknowledges that the problems faced by the Kurds in Turkey have a single cause, namely the tenacity of ethnic nationalism in Turkey and its concomitant hostility to any expression of Kurdish identity. Despite frequent references to the Kurds as victims of human rights violations, there is no attempt to place these issues in the context of the deep-rooted antipathy towards the Kurds as a people from which they spring. The Report, for example, lists several examples of impediments to the return of hundreds of thousands of Kurds to their homes which cannot be deemed anything other than intentional policies of the state, yet it is never intimated that these practices amount to a broader, state campaign to prolong displacement. Similarly, limitations on pro-Kurdish expression, restrictions on Kurdish cultural rights, judicial harassment of Kurdish human rights defenders and the exclusion of Kurds from effective political participation are not presented by the Commission as having any kind of ethnic dimension. By way of contrast, the 1998 Commission Report refers explicitly to the fact that 'objective and independent reporting by Turkish media of the Kurdish issue is not possible',²⁹ and that 'Kurds who publicly or politically assert their Kurdish ethnic identity risk harassment or prosecution'.³⁰

It might be thought that the consideration afforded to minority rights by the Commission must provide a context for an examination of the situation of the Kurds. In fact, the Report's section on minority rights barely refers to the Kurds. Very little is made of the absence of the Kurds from the state definition of a minority contained in the Turkish Constitution, despite the fact that the Kurds make up nearly a quarter of Turkey's population. The only comment on the Kurds contained in the section on minority rights is a qualification to the observation that the Treaty of Lausanne recognizes only non-Muslim minorities, with the Commission noting: 'However, there are other communities in Turkey, including the Kurds.'³¹ The 1998 Commission Report by contrast gives a fuller and more explicit analysis, noting:

'In Turkey there is a *de jure* and *de facto* difference in the treatment accorded to minorities officially recognised under the Lausanne Treaty and those outside its scope.'³² It added that 'The Turkish authorities do not recognise the existence of a Kurdish minority, considering them to be simply Turks of Kurdish origin.'³³

The 2004 Commission Report effectively appears to accept Turkey's constitutional denial of the existence of the Kurds as a minority by providing no examination of Turkey's fulfilment of the substantive elements of minority rights provisions in relation to the Kurds, and no analysis of their situation as a group or people within Turkey. Furthermore, Turkey's failure to sign the Framework Convention for the Protection of National Minorities or to adhere to any other minority protection treaty is not placed in the context of her deep-rooted antipathy towards her Kurdish population, and nor is it insisted upon as a precondition to accession.

It is interesting to note in this context that the EU took a very different approach to the status of another marginalized minority, the Roma, during the EU enlargement process. Far from sidelining examination of their situation, the EU has developed a specific and comprehensive policy towards the Roma. The EU's Agenda 2000 set out how each candidate country was fulfilling the Copenhagen Criteria, including the protection of minorities, and referred specifically to 'the situation of the Roma minority in a number of applicant[s] [countries], which gives cause for concern',³⁴ while EU Annual Enlargement Strategy Papers referred repeatedly to the need to address widespread discrimination against the Roma.³⁵ National Action Plans designed to tackle these problems were implemented in each relevant state in close cooperation with Roma representatives and with extensive EU 'Phare' funding.³⁶ The European Initiative for Democracy and Human Rights, under the leadership of the Directorate General for External Relations, has also allocated considerable resources to projects directed at the Roma communities of Central and Eastern Europe.³⁷

THE ADEQUACY OF THE EU'S APPROACH

It must be asked, then, whether the approach to the Kurds exemplified in the Commission Report 2004 constitutes an adequate response to the Kurdish issue. This is particularly important given the fact that this report is now set to provide a departure point for the commencement of accession negotiations.

It should be pointed out at the outset that the EU's approach to the Kurdish issue is of crucial importance to the future security of the Kurds in southeast Turkey. The EU is the first institution for many years which has proven capable of exerting a 'civilizing' influence over Turkey; the Council of Europe, for example, has encountered many problems in trying to encourage Turkey to comply with judgments of the European Court of Human Rights. The EU currently has considerable leverage over internal developments within Turkey, and wields the best opportunity for inducing Turkey to improve her treatment of her Kurdish population.

Not all European institutions have followed the Commission's current 'fudging' of the Kurdish issue, and have instead openly named it and called for its resolution. The European Parliament's Foreign Affairs Committee responded to the release of the 2004 Commission Response by urging 'the Turkish government to take more active steps to build reconciliation with those Kurdish forces who chose to abandon the use of arms' and calls on Turkey 'to put an immediate end to all activities discriminating against ... religious communities and to protect the fundamental rights of all minorities and Christian communities'.³⁸ The European Parliament expressed hope for:

a comprehensive solution for the aspirations and problems of the Kurdish population' *including* 'Constitutional provisions on cultural rights that will entitle the different cultural communities on Turkish soil to affirm their identity freely without jeopardising the unity of the country.'³⁹

It also calls for the taking of 'all necessary measures to establish a lasting social peace' in the Southeast.⁴⁰ The European Commission's own 2004 Working Document asserts that 'The situation of the Kurdish and other minorities in particular will have to be addressed comprehensively.'⁴¹

The Council of Europe, which is, of course, much freer from political constraints than the European Commission, continues to refer openly to the 'Kurdish question' and included an entire section on this issue in a 2004 report.⁴² Indeed, it even goes so far as to call for the instigation of local autonomy in the Southeast, particularly through the decentralization of educational and cultural powers to the regional level, adding:

Without wishing to create a direct link between the reform of local and regional government and the terrorism that blighted the region until 1999, the co-rapporteurs believe that such changes could help to remove the frustrations that developed during the era of PKK activities.⁴³

What, then, are the implications of the 2004 Commission approach? Does the failure to name the Kurdish issue or to present any recommendations for its resolution matter, or can the situation be settled purely by calling for some amelioration in Turkey's human rights record and hope that the rest will follow?

The primary point to make in this regard is that the Kurds have been subject to repression and attempts to crush their identity for decades. The concept that the Turkish state is founded upon an overarching, unified national identity remains extremely powerful, and the imposition of cultural homogeneity continues to be seen as vital to securing Turkey's future as a national republic. The Kurds, as by far the largest non-Turkish ethnic group in Turkey, have endured a particularly brutal and long-standing policy of subjugation and marginalization, and the expression of Kurdish identity is still currently met with outright hostility both politically and legally.

Turkey's behaviour towards the Kurds is, then, rooted in hostility towards Kurdish identity, and cannot be separated from their status as Kurds. Kurds are harassed and ill-treated not simply as a result of legislative gaps in the pro-EU reform process or inadequate controls on public authority behaviour, as implied by the Commission Report. Nor are human rights violations against the Kurds a series of unconnected instances of state behaviour, or the mark of an occasional tendency to discriminate against a non-dominant minority. Rather, they are the outward manifestation of a long-standing and deeply embedded hostility towards the Kurds as a people. The Kurds are targeted *because* they are Kurds.

As such, it has previously been stressed that human rights violations which bear no overt relation to Kurdish cultural or other rights will frequently have a Kurdish element. Torture, for example, remains most prevalent in the Kurdish-dominated Southeast, but there is no acknowledgement in the report that Kurds may be particularly vulnerable to torture. Nor is there any mention in the section on freedom of expression that those advocating pro-Kurdish viewpoints or openly discussing the traditionally taboo subject of the Kurdish

question are particularly subject to harassment. Moreover, the abuses suffered by the Kurds are compound and interlinked. There is a close and obvious relationship between, for example, state unwillingness to implement return programmes for the displaced, state repression of publications referring to protracted displacement and judicial harassment of groups aiming at ameliorating the situation of the displaced.

In this context, the implications of the Commission's failure to prescribe an acceptable solution to the Kurdish issue as a precondition for the commencement of accession negotiations are potentially serious. It is difficult to conceive that the complex and enduring difficulties faced by the Kurds in Turkey can be resolved purely by occasional reference to individual human rights violations. Furthermore, the Commission's approach in denying the integral nature of the situation in the Southeast edges out the prospect of encouraging Turkey to acknowledge that there exists a Kurdish 'issue' to be addressed at all. Instead, it implicitly upholds the widely held Turkish view that there is no problem in the Kurdish regions requiring resolution except a 'terrorism' problem which occupies only the military domain. Those advocating sustained and comprehensive efforts to achieve peace and justice in the Southeast, including the Council of Europe, are effectively sidelined, with the highly unfortunate result that the grave need for constructive political dialogue between the parties, and for a politically negotiated solution in the Southeast, is undermined.

In recent years, EU leaders have singularly failed to issue any statement on the Kurdish issue or promote any democratic platform or meaningful discourse about the issue. Crucially, this also means that the Kurds themselves are precluded from contributing to the search for a negotiated solution in the Southeast, and certainly there has been a marked failure by the Commission to consult adequately with Kurdish groups and representatives and to take into account Kurdish views. The acceptance of Turkey as the only real party to EU negotiations exacerbates the risk that the accession process will fail to address the Kurdish issue in a locally coherent way or respond to Kurdish concerns on the ground.

There is also the fact that the glossy picture of an overall dynamic towards democratization, respect for human rights and pluralism painted by the Commission, aside from failing to account for the grave human rights problems which remain in Turkey, belies the

reality that Turkey's attitude towards the granting of minority rights and the Kurds shows little sign of genuine change. It is true that important steps recognizing Kurdish language rights have been taken, but the idea that the expression of alternative identities is a threat to the unitary, secular state remains powerful in Turkey. Democracy is extremely fragile, and behind its façade Turkey's old elites within the military and what is commonly referred to as the 'deep state' still secretly call the shots in the government of the country. These shadowy powers retain a tenacious adherence to a nationalist conception of the state based on the exclusion of alternative identities. It follows that true democratic reform in Turkey is fundamentally predicated on ideological reform. Until the reactionary forces within Turkey which cling to their exclusionary Kemalist nationalism are overcome, there will be no acceptance of minority rights within the country. A pluralist democracy in which the rights of the Kurds are recognized and enshrined cannot be constituted in Turkey without reform to the official ethnic nationalist ideology of the state.

Therefore, it *cannot* simply be presumed that the subjugation of the Kurds will simply dissipate in time with the implementation of incremental legislative reforms, and it is worth recalling that Turkey has refused to implement a constitutional resettlement recognizing the existence of the Kurds and has so far gotten away with refusing to sign up to any international standards requiring her to protect minority rights. This is despite the Copenhagen Criteria mandate that she achieve the 'stability of institutions guaranteeing ... respect for and protection of minorities'.⁴⁴ Turkey's own Justice Minister has referred to the profound differences between European and Turkish conceptions of minority rights.⁴⁵ The Kurdish issue will not go away unless it is addressed fully, openly, and at its ideological roots; and unless this is achieved, the EU will find that it is bringing a volatile, unresolved conflict within its borders.

THE EU AND THE CONFLICT IN THE SOUTHEAST

The disengagement of the European Commission from the Kurdish issue is also problematic with regard to the recent resurgence of the conflict in the Southeast. The 1998 Commission Report, submitted prior to the unilateral PKK ceasefire, referred to the direct consequences of the conflict in the Southeast as 'large-scale forced evacuation and destruction of villages accompanied by abuses of human rights perpetrated by the Turkish security forces'.⁴⁶

The Commission, in its Report, went on to state that: 'Turkey will have to find a political and non-military solution to the problem of the south-east. The largely military response seen so far is costly in human and financial terms and is hampering the region's social and economic development.'⁴⁷ The Parliamentary Assembly of the Council of Europe noted in 2004 that 'The conflict and how it has been waged by Turkey has undoubtedly delayed its entry into the European Union',⁴⁸ while the EU Parliamentary Committee on Foreign Affairs in 2004 urged 'all parties involved to put an immediate end to the hostilities in the south-east of the country' and invited 'the Turkish Government to take more active steps to bring about reconciliation with those Kurdish forces who have chosen to abandon the use of arms'.⁴⁹

However, in its 2004 Report the Commission barely refers to the need to end the conflict, mentioning only that 'Terrorist activities and clashes between Kongra-Gel militants and the Turkish military have been reported' and that the 'security threat' has increased since the ending of the Kongra-Gel ceasefire in June 2004,⁵⁰ although the Report assesses there generally to have been gradual improvements in security in the Southeast since 1999.⁵¹ The only other references which touch upon the conflict are to the Law on Compensation of Losses Resulting from Terrorist Acts, and the moves towards granting partial amnesties made by Turkey in 2003/2004.⁵²

There is no reference in the Report to the pressing need for constructive dialogue between the different sides to the conflict, and to reach a sustainable, peaceful resolution. Unless Kurdish and Turkish representatives sit around a negotiating table to exchange ideas and possible solutions to the situation in the Kurdish regions today, it is difficult to see that long-term peace and security in the Southeast can be achieved. Resolving conflict in the Kurdish regions is of critical importance. From 1984 the region saw over 15 years of armed hostilities which resulted in widespread human rights abuses, the displacement of millions, economic and infrastructural devastation and the deaths of over 30,000 people, mainly Kurds. The Commission's downplaying of the current scale of violence in the region in this context is, then, potentially very serious; if the hostilities are allowed to escalate rather than being openly confronted, there is a risk of a reversion to the disorder and violence which characterized Turkey under OHAL, and a consequent challenge

to what limited progress has so far been made on human rights in the Kurdish regions.

Furthermore, the EU's decision that it is appropriate to open EU accession talks with Turkey despite her failure to properly address the security situation in the Southeast is highly contentious, and sets an uncomfortable precedent for future negotiations. Primarily, it is simply not feasible that effective, participatory democracy and a culture of respect for human rights can exist in Southeast Turkey while armed conflict continues.

Furthermore, the EU approach appears to give credence to Turkey's rejection to date of attempts to promote meaningful dialogue over the conflict, as well as her dogged refusal to concede the role of broader issues of Kurdish identity and cultural rights in shaping the situation in the Southeast, and her blinkered insistence that there is only a 'terrorism' problem there. It has been observed above that a lack of international political will to address a conflict situation is one of the key factors leading to its perpetuation, and, in view of the EU's power to direct the course of government within Turkey, the organization is currently in a particularly strong position to advance the resolution of the conflict. History tells us that when the international community seeks to turn a blind eye and ignore the plight of a people or a minority which has been subjected to unrelenting injustice, those same elements come back to haunt it. One need only look to the Middle East to see examples of that fact.

Besides, Europe's responsibility towards ameliorating the situation of the Kurds and facilitating resolution of the conflict has already been described. The critical situation facing the Kurds and the Turkish people is not a distant problem unrelated to European affairs; its roots are in the dissolution of the Ottoman Empire in the aftermath of the First World War, and issues such as the use of weapons exported to Turkey from Europe in unlawful acts against Kurds places the human rights situation in Turkey firmly at Europe's door.

Is the EU's approach to the conflict, based on a presumption that the process of democratization in Turkey will acquire its own momentum and thus remove the causes of the conflict, likely to prove successful? Given the complexities of the situation in the Southeast and state hostility to acknowledging its wider causal factors, it is submitted that this is unlikely, and nor is it a responsible way of dealing with a conflict situation. The EU needs to acknowledge and confront the root causes of the conflict, that is, the continued subjugation of the Kurds in Turkey grounded in nationalist hostility.

THE KURDS AND THE FUTURE OF EU ACCESSION NEGOTIATIONS

An analysis of the current EU approach towards the Kurdish issue makes it difficult to avoid the conclusion that factors extraneous to the objective criteria of the EU accession process have been allowed to infringe upon EU decision-making. The EU's failure to address comprehensively the situation of the Kurds, including the resurgence of the conflict in the Southeast, suggest that considerable deference was accorded by the Commission to Turkey's sensibilities over her Kurdish population.

It is not entirely clear why this is, but probably it relates to EU fears of offending Turkey's influential, backward-looking elites in the military and bureaucracy and thus sparking a backlash against the AKP's implementation of pro-EU reforms. European states may also be at pains not to be seen to interfere with the so-called 'internal political affairs' of another country, particularly that of a NATO ally whose geopolitical and strategic position is paramount to the stability of the region. Europe may be simply unwilling to deal with the resolution of such a difficult and seemingly far-away issue as the Kurdish conflict. Or the real reason why Europe has been so consistently unwilling to fully confront the political dimension of the Turkish reform process may stem from reticence within certain quarters over incorporating Turkey as a fully fledged European partner.

In any case, it has already been stated that accession is ultimately a very positive step for Turkey and for the Kurds, but the 2004 Commission Report in particular is not an encouraging development for them. If this approach, based on a fudging of the Kurdish issue, is to be indicative of the EU's line on accession negotiations in the future, then the projected advantages of the accession process for advancing justice and democracy for the Kurds will be substantially undermined. It wrongly implies that Turkey's treatment of her Kurdish population is broadly compliant with international human rights standards, and weakens voices calling for much-needed political dialogue. Premature accession would place the long-term credibility of the EU at stake, jeopardizing its commitment to human rights and bringing into the territory of the EU an unresolved conflict situation.

It is of considerable importance, then, that concerns are raised in Brussels over the EU failings and omissions, and that the civil society sector seeks a constructive and sustained input into the accession process. Ensuring a secure future for the Kurds should be made pivotal to Turkey's progression towards accession, and the

decision to allow Turkey membership must be based in the end on an impartial assessment of whether the necessary criteria have been fulfilled. Ongoing dialogue on the peaceful resolution of the Kurdish issue is fundamental to these requirements. It is time for the EU to stop giving awards to the Kurds and instead focus on addressing the issue at hand.

Notes

FOREWORD

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1 INTRODUCTION

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2 BACKGROUND

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3 TURKEY, THE KURDS AND THE EU

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30. *Guardian*, 'EU puts Turkey on a long road to accession', 7 October 2004.
31. Commission of the European Communities, 'Recommendation of the European Commission on Turkey's Progress Towards Accession'.
32. Council of the European Union, 'Brussels European Council, 16/17 December 2004, Presidency Conclusions'.
33. Directive 2000/43/EC.
34. Indeed, such a provision was deleted from the original text. M. Nowak, 'Human Rights Conditionality in Relation to Entry to, and Full Participation in, the EU', in P. Alston (ed.), *The EU and Human Rights* (Oxford, Oxford University Press, 1999), p693.
35. Charter of Fundamental Rights of the European Union, (2000/C 364/01).
36. Ibid., Articles 21 and 22 respectively.

37. The Commission has stated that: 'The European Parliament, the Council and the Commission cannot, whether acting in a legislative, administrative or policy-making role, ignore a text that they have solemnly proclaimed and is part of the draft European Constitution.' <http://europa.eu.int/comm/justice_home/unit/charte/en/about-impact.html>.
38. This may change in accordance with developments relating to the EU Constitution.
39. European Council in Copenhagen, 'Conclusions of the Presidency'.
40. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004.
41. *Ibid.*, p35.
42. *Ibid.*, p35.
43. Article 4 of the International Covenant on Civil and Political Rights; Article 2 (2) of the United Nations Convention against Torture; Decision of the International Criminal Tribunal for the Former Yugoslavia in the case of Furundzija, 10 December 1998, para 153.
44. Article 4, Charter of Fundamental Rights, of the European Union.
45. Nowak, 'Human Rights Conditionality', p691.
46. Luxembourg European Council, 'Presidency Conclusions', 12–13 December 1997.
47. European Commission / European Union, 'Agenda 2000: For a Stronger and Wider Union', Communication of the Commission, DOC 97/6, Strasbourg, 15 July 1997.
48. European Commission, 'Agenda 2000 – Commission Opinion on Slovakia's Application for Membership of the European Union', DOC/97/20, Brussels, 15 July 1997.
49. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p55.
50. Article 6 (1) of the Treaty on European Union.

4 CIVIL, POLITICAL AND CULTURAL RIGHTS IN TURKEY

1. Three in February, March and August 2002 and four more in January, February, July and August 2003.
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4. Deputy Prime Minister Abdullah Gul's statement to the Grand National Assembly, 10 December 2003.

5. CAT Article 1 (1).
6. CAT Article 1 (1).
7. Article 4.
8. Article 3.
9. Article 2 (2).
10. CAT Article 2 (1).
11. CAT Article 4 (2).
12. CAT Article 12.
13. CAT Article 14 (1).
14. CAT Article 2 (2).
15. Decision of the International Criminal Tribunal for the Former Yugoslavia in the case of Furundzija, 10 December 1998, para. 153.
16. Human Rights Watch, 'Eradicating Torture in Turkey's Police Stations: Analysis and Recommendations', September 2004.
17. CPT, 'Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 15 September 2003', CPT/Inf (2004) 16, Strasbourg, 18 June 2004.
18. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p13.
19. CPT, 'Report to the Turkish Government on the visit to Turkey'.
20. Including torture and ill-treatment in police custody, outside official detention premises, by village guards and in prisons. Human Rights Association (IHD), 'Human Rights Violations in Turkey – Summary Table', January-June 2004.
21. Human Rights Foundation of Turkey, 'Current Evaluation of the Work of the Treatment and Rehabilitation Centers of the HRFT', 2004 Monthly Reports; Foundation for Social and Legal Research (TOHAV), 'People exposed to violence by state officers in 2003'; International Rehabilitation Council for Torture Victims, 'Stop the denial of torture', Media Release, 17 December 2004.
22. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p17.
23. Human Rights Foundation of Turkey, 'Current Evaluation of the Work of the Treatment and Rehabilitation Centers of the HRFT'.
24. Ibid.
25. CPT, 'Report to the Turkish Government on the visit to Turkey'.
26. UN Committee Against Torture, 'Fact Sheet No.4 (Rev.1) – Methods of Combating Torture', <www.unhchr.ch/html/menu2/6/cat/index.html>.
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28. Amnesty International, 'Turkey: Memorandum to the Turkish Prime Minister'.
29. Human Rights Foundation of Turkey, 'Current Evaluation of the Work of the Treatment and Rehabilitation Centers of the HRFT'.

30. IHD, 'Human Rights Violations in Turkey – Summary Table'.
31. IHD, 'Human Rights Violations in Turkey – Summary Table', 2003.
32. DIHA, 'Torture report: There is increase in number of women victims of torture' by Meryem Yilmaz, Istanbul, 27 July 2004. See also CPT, 'Report to the Turkish Government on the visit to Turkey'.
33. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p35.
34. CAT, 'Article 20 Examinations Re: Systematic Torture, Part V.: Activities of the Committee under Article 20 of the Convention', CAT A/55/44, 2000.
35. Ibid.
36. These include TOHAV, IHD and the Human Rights Foundation of Turkey.
37. Human Rights Watch, 'Turkey: Violations of Free Expression in Turkey', February 1999.
38. Ibid.
39. Articles 141 and 142.
40. Human Rights Watch, 'Turkey: Violations of Free Expression in Turkey'.
41. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p37.
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43. BIA, 'Annual Media Report 2004', January 2005.
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45. See further on this issue, International Publishers Association and International PEN, 'New Turkish Penal Code: A Long Way to Freedom of Expression: A Guide to Reform', December 2004.
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47. Council of Europe (COE), Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, 'Turkey: Explanatory memorandum by the co-rapporteurs, Mrs. Mady Delvaux-Stehres and Mr. Luc Van den Brande (Co-rapporteurs)', March 2004.
48. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p37.
49. Ibid., p38.
50. Ibid., p17.
51. European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's Progress Towards Accession', COM(2004) 656 final, Brussels, 6 October 2004.
52. Article 19.
53. Article 10.
54. Justice Oliver Wendell Holmes, *Abrams v. United States*, 250 U.S. 616 (1919).
55. Associations Law, Law Nr. 5253, Passed on 04.11.2004.
56. BBC, 'Turkish police beatings shock EU', 7 March 2005.

57. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p42.
58. Human Rights Watch, 'Turkey: Continuing Restrictions on Freedom of Assembly, Letter to Deputy Prime Minister Abdullah Gül', 28 April 2004.
59. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p40.
60. European Commission, 'Recommendation of the European Commission on Turkey's Progress towards Accession', p3.
61. Hughes, 'The Political Dynamics of Turkish Accession to the EU', p20.
62. Minority Rights Group International, 'Minorities in Turkey – Submission to the European Union and the Government of Turkey', July 2004.
63. BBC, 'Turkey's Kurd Party Ban Criticised', 14 March 2003; *Turkish Daily News*, 'Wrong Timing', 15 March 2003.
64. *International Herald Tribune*, 'Turkey Moves to Ban Leading Kurdish Party', 14 March 2003.
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66. *Socialist Party of Turkey (STP) and Others v. Turkey*, Application no. 26482/95.
67. Ibid.
68. Ibid.
69. Ibid.
70. Ibid.
71. *DEP (Democratic Party) v. Turkey*, Application No. 25141/94.
72. Article 3 of Protocol 1.
73. Ibid.
74. Human Rights Watch, 'Turkey: Continuing Restrictions on Freedom of Assembly, Letter to Deputy Prime Minister Abdullah Gül'.
75. *The Economist*, 'Hope Versus Fear: Turkey's Kurds', 2 August 2003.
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78. ICERD Article 5 (c).
79. H. Steiner, 'Political participation as a human right', in 1 *Harvard Yearbook of International Law* 77 (1988) at 78.
80. Robert Dunbar, 'Foreword', in Fryer and Yildiz, *The Kurds: Culture and Language Rights*, p9.
81. Ibid., p10.
82. Ibid.
83. Ibid.
84. Articles 22 and 27 (1).
85. Articles 1 (1) and 15.
86. Articles 1 (1) and 27.
87. Articles 1 (1), 2 (2) and 5 (e) (iv).
88. Articles 4, 17, 29 (1) (c), 30 and 31.
89. Articles 1 (1), 2, 4 (2) and 4 (4).
90. Article 10 (1).

91. The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes.'
92. Under Article 19 (2) of the Vienna Convention on the Law on Treaties, a state cannot enter a reservation which is incompatible with the object and purpose of a treaty.
93. Articles 4 (3) and 2 (1) respectively.
94. Article 39 (4).
95. Fryer and Yildiz, *The Kurds: Culture and Language Rights*, p19.
96. Ibid., p26.
97. Under Article 3 and Article 4 (29) respectively, Constitution of Turkey. These provisions have subsequently been amended.
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102. See, for example, Minority Rights Group International, 'Minorities in Turkey', p20.
103. Human Rights Foundation of Turkey, 'Monthly Report', October 2004.
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108. *Radikal*, 'Interview with Diyabakir Bar Chair Sezgin Tanrikulu', 25 August 2003.
109. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p49.
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113. Amnesty International, 'Turkey: Teachers' union under pressure', 21 January 2005.

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2. Migrants' Social Solidarity and Culture Association (Göç-Der), 'Recommendations on the Kurdish problem and internal displacement to the Turkish Government, Kongra-Gel (Kurdistan People's Party) and the EU', 8 December 2004.

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4. US DOS, 'Country Reports on Human Rights Practices for 1993: Turkey', February 1994.
5. United Nations Commission on Human Rights, 'Letter dated 19 August from the Permanent Mission of Turkey to the United Nations Office at Geneva addressing the Acting High Commissioner for Human Rights', E/CN.4/2004/G/15, 7 November 2003.
6. European Court of Human Rights, Press Release, 'Chamber Judgement in the Case of *Dogan and Others v. Turkey*', 29 June 2004.
7. Government officials put the number of displaced at 352,576, but this probably includes only those subject to 'official' village evacuations and does not include the much larger numbers forced to leave as a result of the activities of Turkey's security forces. Permanent Mission of Turkey to the United Nations, 'Information provided to the NRC from the Permanent Mission of Turkey to the United Nations, Geneva concerning Internally Displaced Persons (IDPs) and 'Back to Village and Rehabilitation' Project', Geneva, 18 March 2004.
8. KHRP, *Internally Displaced Persons: The Kurds in Turkey* (London, KHRP, June 2002) p9.
9. Ibid.
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11. See <www.gap.gov.tr>.
12. The report on the fact-finding mission is due to be published by KHRP in March 2005.
13. The letter was published in mid-November 1993 in the English language weekly *Turkish Probe* and the *Turkish Daily News*. See also Republic of Turkey Prime Ministry, 'GAP Regional Development Administration, Social Policy Objectives', October 1998.
14. European Commission Reports on Turkey's progress towards accession, 1998–2004.
15. AFP, 'Turkish Watchdog Accuses Security Forces of Forcible Village Evacuation', Diyarbakir (Northern Kurdistan), 24 August 2004.
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19. Council of Europe, 'Humanitarian situation of the displaced Kurdish population in Turkey', Doc. 9391, 22 March 2002.
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Punishment against the Kurdish Population. Notes presented to the Committee against Torture (CAT) by OMCT and HRA' May 2003.

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23. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p50.
24. Ibid., p19.
25. For example, according to a survey by Göç-Der of 18,000 people in six provinces in 2000, 87 per cent of people who had been compelled to evacuate their villages wished to return. Reported in Yildiz Samer, 'Kurdish Villagers Still Far From Home', 1 September 2004.
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27. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p51.
28. Statement of Jonathan Sugden, Turkey Researcher, Europe and Central Asia Division, Human Rights Watch to the Commission on Security and Cooperation in Europe, 10 June 2003.
29. Permanent Mission of Turkey to the United Nations, 'Information provided to the NRC from the Permanent Mission of Turkey to the United Nations, Geneva concerning Internally Displaced Persons (IDPs) and "Back to Village and Rehabilitation" Project'.
30. *Turkish Daily News*, 'Return to vacated villages at turtle-speed', Ankara, 25 May 2000, quoted in KHRP, *Internally Displaced Persons: The Kurds in Turkey*, p35 n186.
31. KHRP, Bar Human Rights Committee and Human Rights Association, *The Lifting of Emergency Rule: A Democratic Future for the Kurds?* (London, KHRP, November 2002), p34.
32. These concerns are reflected in European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2003, p40; Göç-Der, 'The Research and Solution Report on the Socio-Economic and Socio-Cultural Conditions of the Kurdish Citizens Living in the Turkish Republic', 2002.
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35. Human Rights Foundation of Turkey, 'Monthly Report', February 2001.
36. Human Rights Watch, 'Last Chance for Turkey's Displaced?', 4 October 2004; Göç-Der, 'The Research and Solution Report on the Socio-Economic and Socio-Cultural Conditions of the Kurdish Citizens Living in the Turkish Republic', 2002.
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38. Fédération Internationale des Droits de l'Homme, 'Turkey – Human Rights in the Kurdish Southeast: Alarming Situation Despite Extensive Legal Reforms', No. 367/2, July 2003.
39. KHRP, *Internally Displaced Persons: The Kurds in Turkey*.
40. Ibid.
41. United Nations Commission on Human Rights, 'Letter dated 19 August from the Permanent Mission of Turkey to the United Nations Office at Geneva'.
42. KHRP, *Turkey's Implementation of Pro-EU Reforms: Fact-Finding Mission Report* (London, KHRP, November 2004), p20.
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46. Human Rights Foundation of Turkey, 'Monthly Report', June 2004.
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49. Council of Europe (COE), Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, 'Turkey: Explanatory memorandum by the co-rapporteurs, Mrs. Mady Delvaux-Stehres and Mr. Luc Van den Brande (Co-rapporteurs)', March 2004, pp45–6.
50. Ibid., pp44–5.
51. Ibid., p51.
52. Human Rights Foundation of Turkey, 'Newsletter', November 2003.
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55. Article 125, Turkish Constitution.
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62. Ibid.
63. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p50.
64. Ibid.
65. UN Document E/CN.4/1998/53/Add.2 of 11 Feb 1998.
66. Principle 6.
67. Principle 6.3.
68. Principle 10.
69. Principles 10 and 11.
70. Principle 21.
71. See *Akdivar v. Turkey*, Application No. 21893/93; *Mentes v. Turkey*, Application No. 23186/94; *Selcuk and Asker v. Turkey*, Applications 23184/94 and 23185/94; *Bilgin v. Turkey*, Application No. 23819/94; *Dulas v. Turkey*, Application No. 25801/94; *Orhan v. Turkey*, Application No. 25656/94; *Gundem v. Turkey*, Application No. 23144/93; *Yöyler v. Turkey*, Application No. 26973/95.
72. *Selcuk and Asker v. Turkey*, Applications 23184/94 and 23185/94; *Bilgin v. Turkey*, Application No. 23819/94; *Yöyler v. Turkey*, Application No. 26973/95.
73. Resolution 1993/77, adopted on 10 March 1993 during the 49th session of the UN Commission on Human Rights.
74. Statement of Jonathan Sugden, Turkey Researcher, Europe and Central Asia Division, Human Rights Watch to the Commission on Security and Cooperation in Europe, June 10, 2003.

6. THE KURDS AND HUMAN AND MINORITY RIGHTS

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2. Prime Minister Tony Blair, 'A vision for Iraq and the Iraqi People', 17 March 2003, <www.number-10.gov.uk/output/page3280.asp>.

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4. AFP, 'Turkey's Kurds welcome broadcasts in Kurdish, but with broken hearts', 9 June 2004.
5. See, for example, *The Economist*, 'Two big steps forward for Turkish Kurds', 10 June 2004; BBC, 'Kurd activists leave Turkish jail', 9 June 2004; *Guardian*, 'Kurd MPs freed as Turkey lifts broadcast ban Thursday', 10 June 2004.
6. Al Jazeera, 'Turkish media bows to EU pressure', 9 June 2004.
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13. K. Hughes, 'The Political Dynamics of Turkish Accession to the EU: A European Success Story or the EU's most Contested Enlargement?', Swedish Institute for European Policy Studies, 2004, p17.
14. Office of the Commissioner for Human Rights, 'Report By Mr Alvaro Gil-Robles, Commissioner For Human Rights, on his Visit to Turkey 11–12 June 2003', para. 216.
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17. Office of the High Commissioner for Human Rights, 'Minorities: Working Group' <www.unhchr.ch/minorities/group.htm>.
18. United Nations High Commissioner for Human Rights, 'Tolerance and pluralism as indivisible elements in the promotion and protection of human rights', Commission on Human Rights resolution 2002/55.
19. 'Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities', Adopted by General Assembly resolution 47/135 of 18 December 1992, Article 4 (4); ECHR Article 3 of Protocol 1; OSCE Hague Recommendation Regarding the Education Rights of National Minorities 1966.
20. Article 10 together with Article 14 of the ECHR; OSCE Oslo Recommendations Regarding the Linguistic Rights of National

Minorities 1998; OSCE Guidelines on the Use of Minority Languages in the Broadcast Media.

21. OSCE, 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE', para. 35.
22. Minority Rights Group International, 'Minorities and Conflict Prevention: The Case for a Special Representative, Advocacy Briefing No 4', March 2002.
23. Minority Rights Group International, *The Framework Convention for the Protection of National Minorities: A Guide for Non-Governmental Organizations* (London, MRG, 1999).
24. International Covenant on Civil and Political Rights, 'Declarations and Reservations: Sweden', 30 June 2004, <www.ohchr.org/english/countries/ratification/4_2.htm>.
25. Article 19 (c).
26. 'The Republic of Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural Rights in accordance to the provisions under the Article 3, 14 and 42 of the Constitution of the Republic of Turkey.' Turkey has made a similar reservation to Article 29 of the Convention on the rights of the Child, which also mandates that a child should be educated in a manner which promotes respect of his or her own cultural identity, language and values.
27. Parliamentary Assembly of the Council of Europe, 'Rights of national minorities', Recommendation 1492 (2000)1.
28. Parliamentary Assembly of the Council of Europe, 'Rights of national minorities', Recommendation 1623 (2003)1.
29. European Commission against Racism and Intolerance, 'Third Report on Turkey', adopted on 25 June 2004.
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31. European Commission, 'Regular Report on Turkey's Progress Towards Accession', 2004, p48.
32. European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', COM(2004) 656 final, Brussels, 6 October 2004.
33. European Commission, External Relations, 'The EU's Human rights and Democratisation Policy, Protecting and Promoting the Rights of Minorities', <http://europa.eu.int/comm/external_relations/human_rights/rm/>.
34. Ibid.
35. Al Jazeera, 'Rights report sparks row in Turkey', 2 November 2004.
36. Ibid.
37. *Turkish Daily News*, 'Minority Phobia Haunts Turkey', 7 November 2004.
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40. AFP, 'Turkey and EU Speak "Different Languages" On Minorities, Says Minister', 4 November 2004.

41. Adopted by General Assembly resolution 47/135 of 18 December 1992.
42. Article 1 (1).
43. Article 1 (1).
44. Article 2 (1), Article 3 (1), Article 4 (1).
45. Article 4 (2).
46. Article 2 (2).
47. Article 4 (3) and 4 (4).
48. Article 2 (3).
49. Article 4 (5).
50. Republic of Turkey – Turkish Embassy in Washington DC, ‘OSCE – Organization of Security and Cooperation in Europe’, <www.turkishembassy.org/governmentpolitics/foreignrIOSCE.htm>.
51. European Commission, ‘Regular Report on Turkey’s Progress Towards Accession’, 2004, p48.
52. *Gorzelik v. Poland*, Application No. 44158/98, para. 68.
53. Constitution of the Republic of Turkey.
54. David McDowall, *A Modern History of the Kurds* (London, IB Taurus and Co Ltd, 2004), pp1–2.
55. Ibid.
56. Special Rapporteur Francesco Capotorti, ‘Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities’, E/Cn.4/Sub.2/384/Add.1–7.
57. This classes minority groups as those which: reside within the territory of the State and are citizens thereof, maintain long-standing ties with the State, display distinctive ethnic, cultural, religious or linguistic characteristics, are sufficiently representative, and are motivated by a concern to preserve together that which constitutes their common identity. Parliamentary Council of Europe, ‘Recommendation 1202 on religious tolerance in a democratic society’, 1993.
58. UN Human Rights Committee, ‘General Comment 23’, CCPR/C/21/Rev.1/Add.5, para. 5.2.
59. *Turkish Daily News*, ‘Minority Phobia Haunts Turkey’, 7 November 2004.
60. Council of Europe, ‘Council of Europe Parliamentary Committee recommends ending monitoring of Turkey Strasbourg’, 3 March 2004, <[http://press.coe.int/cp/2004/106a\(2004\).htm](http://press.coe.int/cp/2004/106a(2004).htm)>.
61. European Commission Against Racism and Intolerance, ‘Third Report on Turkey’, adopted on 25 June 2004.
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65. Human Rights Foundation of Turkey, ‘Monthly Report’, October 2004.
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