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**TURKEY AND THE EU:
ON THE ROAD TO NOWHERE?**

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Turkey and the EU: On the Road to Nowhere?

*Edgar Lenski**

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Almost 40 years ago, the then European Economic Community¹ and the Republic of Turkey concluded an Association Agreement.² The primary objective of this so-called Ankara Agreement was "to promote the continuous and balanced strengthening of trade and economic relations"³ between Turkey and the Community by establishing a customs union.⁴ Yet, the preamble and Art. 28 of the Agree-

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¹ Generally, the term "European Union" will be used in order to describe the entire system despite the discussion on the nature of the EU.

² Agreement of 12 September 1963, entry into force on 1 December 1964, Council Decision 64/732, JO 3687/64; English version: [1977] JO L 361/29.

³ Art. 2 (1) Association Agreement.

⁴ Art. 2 (2) Association Agreement.

ment stated another objective, namely to facilitate accession of Turkey to the EEC "at a later date".⁵ The 1999 Helsinki European Council accorded the status of an EU candidate to Turkey⁶ and the 2002 Copenhagen European Council envisaged accession negotiations without delay after the Brussels⁷ European Council of December 2004 if Turkey fulfils the Copenhagen criteria.⁸

Since the Accession Agreements with the Central and Eastern European States, Cyprus and Malta will be signed on 16 April 2003 in Athens the current status and the possible future of Turkey's relationship with the European Union deserve a closer look.

I. The Association Agreement with Turkey

1. The Development of the Association

On 31 July 1959 the Turkish government asked the European Economic Community to enter into negotiations with them about an Association Agreement.⁹ As a further step away from the Kemalist policy of neutrality,¹⁰ Turkey continued its way which it had begun by ratifying the Treaty establishing the Organisation for European Economic Co-operation (now: OECD) in 1948, joining the Council of Europe in 1949 and acceding to NATO in 1952.¹¹

After lengthy negotiations of almost four years, the Association Agreement between the EEC and Turkey was signed on 12 September 1963 in Ankara and entered into force on 1 December 1964 after ratification by all six Member States and a Decision by the Council. At the time of conclusion, political reasons (namely concerning security policy) prevailed over economic reasons, which were of rather minor importance.¹²

The Agreement provides for a tripartite structure of the Association. According to its Art. 2 (3) the relationship between Turkey and the European Community shall be divided into a preparatory stage, a transitional stage and a final stage.

⁵ Fourth recital of the preamble, Art. 28 Association Agreement; the French version uses "qu[il] facilitera ultérieurement l'adhésion de la Turquie à la Communauté" instead of "at a later date".

⁶ European Council, Conclusions of the Presidency, Helsinki, 10 and 11 December 1999, para. 12.

⁷ According to Declaration N° 22 adopted by the 2000 Intergovernmental Conference at Nice the European Council will meet only in Brussels after the accession of the 18th Member State.

⁸ European Council, Conclusions of the Presidency, Copenhagen 11 and 12 December 2002, para. 19. Conclusions of the European Council Presidency can be found at <<http://ue.eu.int/presid/conclusions.htm>> (last visit 18 January 2003).

⁹ Initially, Turkey even wanted to start accession negotiations with the EEC immediately.

¹⁰ Ç. A k k a y a / Y. Ö z b e k / F. Ş e n, Länderbericht Türkei (Darmstadt 1998), 21-22.

¹¹ On Turkish history and political developments in general see The Europa World Year Book, 37th ed. (London 1996), 3172-3178.

¹² K. E r t e k i n, Der türkische Beitritt zur Europäischen Gemeinschaft (Frankfurt 1989), 23. This perception seems to not have changed substantially since then, cf. J. S o l a n a, Europe's Path for Turkey, IHT, 7 December 2002.

The preparatory stage was established to allow Turkey to strengthen its economy, with aid from the Community, in order to enable it to sustain the transitional and final stage.¹³ The Agreement provides for a period of 5 years for this first stage. On Turkey's initiative, negotiations to enter into the transitional stage began in 1968. The main reason of the Turkish side to proceed as fast as possible with the Association was the wish to abolish planned economy and to foster economic development by European integration.¹⁴ Moreover, the development of external trade with the Community did not grow as strongly as expected.

These negotiations about the transitional stage were brought to an end with the signing of the Additional Protocol on 23 November 1970¹⁵ and its entry into force on 1 January 1973. This instrument lays down the preparatory works for the establishment of the customs union and the alignment of the economic policies of the two partners, based on mutual and balanced obligations.¹⁶ Besides, the free movement rights were set out as guidelines for the transitional stage.¹⁷

Art. 4 (2) of the Association Agreement and Art. 61 of the Additional Protocol provide for a period of twelve years for the transitional phase. However, this ambitious aim was not achieved due to several complications in the development of Turkish politics. In the 1970s Turkey faced an almost permanent political and economic crisis.¹⁸ Another problem was (and still is) the occupation of Northern Cyprus by Turkish troops in 1974. Between 1976 and 1980 the association practically stood still,¹⁹ the Association Council – the body established by the Agreement – held no meetings and no further steps were taken to develop the relationship.

After relations improved briefly in 1980,²⁰ a military coup under General Evren led to a further set-back in the development of the Association. Despite the pro-European attitude of the junta²¹ the Community remained in a waiting position and in fact suspended the implementation of the Association from autumn 1981 onwards²² after various resolutions of the European Parliament on massive violations of human rights and the lack of re-democratisation in Turkey.²³ Due to this devel-

¹³ Art. 3 (1) Association Agreement.

¹⁴ M. B o z k u r t, *Die Beziehungen der Türkei zur Europäischen Union* (Frankfurt 1995), 14.

¹⁵ [1972] JO L293/68, English version: [1977] JO L 361/60.

¹⁶ Arts. 2 et seq. Add. Protocol, Art. 4 (1) Association Agreement.

¹⁷ Arts. 36 et seq. Add. Protocol, Arts. 12 et seq. Association Agreement.

¹⁸ For a more detailed description see B o z k u r t, *supra* note 14, 42-59.

¹⁹ E. E s e n, *Die Beziehungen zwischen der Türkei und der EG unter besonderer Berücksichtigung der innertürkischen Auseinandersetzungen um die Assoziation 1973-1980* (Bonn 1990), 223 et seq.

²⁰ Cf. Decision 1/80 of the Association Council.

²¹ European Commission, XVth General Report [1981] 263 et seq., cf. also the decision of the Turkish National Security Council (the factual government) of 25 March 1981 to prepare Turkey internally for an accession to the Community, in B o z k u r t, *supra* note 14, 60.

²² [1981] Bulletin of the EC N° 12, pt. 2.2.45 (Decision 1/83 of the Association Council, [1983] OJ L 112/2, dealt only with administrative matters, namely the introduction of the ECU).

²³ E.g. [1980] OJ C 265/55 of 18-9-1980; [1981] OJ C 101/110 of 10 April 1981; on the European Parliament's concern about Turkey see *inter alia* the "Balfe-Report" on the situation of human rights in Turkey, [1985] OJ C343/60.

opment the fixed period for the transition to the final stage of the association was not adhered to: the customs union was not established, nor was free movement of workers. The period fixed by Art. 36 Additional Protocol, which provided for a progressive safeguarding of this freedom until the end of the 22nd year after the entry into force of the Association Agreement on 1 December 1964, expired without any measures being taken.²⁴

It was only in 1986, after improvements in the Turkish political system, that the Association was revived with a meeting of the Association Council on 16 September 1986. Nevertheless, very little was achieved in the time following, mostly because of the Community's opposition to further measures in the field of the Financial Protocol and the free movement of workers. Turkey therefore wanted to improve its position in general and applied for membership to the Community on 14 April 1987.²⁵

The application was forwarded by the Council to the Commission on 17 April 1987 and considered by the latter until 18 December 1989. The Commission recommended not to enter into negotiations with Turkey before the end of 1992, the date of the completion of the internal market. Moreover it put forward economic, democratic and human rights reasons, as well as the Kurdistan problem, for which an application should be rejected.²⁶ The Council accepted this recommendation on 3 February 1990²⁷ and thereby rejected the Turkish application for the time being.

In spite of this set-back the Community and Turkey negotiated with a view to enter into the final stage of the Association. In the early 1990s Turkey showed further efforts to enter into a customs union with the European Communities by implementing measures towards this end. Decision 1/95 of the EU-Turkey Association Council²⁸ is the result of this development. By this decision,²⁹ the customs union, as provided for in Art. 5 of the Ankara Agreement, is established gradually from the entry into force of the Decision on 31 December 1995. The final stage of the Association is based on the customs union for the time being.

Turkey's will to accede to the EU is unchanged. Even the Erbakan Cabinet, dominated by (Islamist) Welfare Party (Refah Partisi, RP, 1995-1997), only slightly modified the Turkish position.³⁰ In 1996 and 1997 Turkey even threatened to veto the envisaged accession of Eastern European States to NATO if it was not accepted as a candidate for EU membership. This attempt was harshly rejected by the EU.³¹ In 1997 the Luxembourg European Council decided not to invite Turkey

²⁴ On the problems arising thereof see *infra*, I.2.b)bb).

²⁵ [1987] Bulletin of the EC N°4, pt.1.3.1 and 1.3.2.

²⁶ This issue will be considered in more detail below, ch. II.

²⁷ [1990] Bulletin of the EC N°1/2, 77 et seq.; XXIVth General Report [1990], 285.

²⁸ [1996] OJ L35/1.

²⁹ The EP approved the customs union only after a speech of the Turkish vice Prime Minister Çiller before it in which she promised further steps towards democratisation and after these were – at least partially – adopted by the Turkish Parliament, [1996] OJ C 17/35.

³⁰ Cf. H. Müller, Welzijnspartij zal democratie alleen maar versterken, De Volkskrant, 29 May 1997, 6.

³¹ Cf. T. Buerkle, EU Confirms Turkey's Right to Join, but Not Now, IHT, 17 March 1997, 5.

to the enlargement negotiations with the Central and Eastern European States.³² This led to a suspension of the political dialogue with the EU by the Turkish government³³ and a systematic blockade of all EU attempts to reconcile.³⁴ Only after the Commission proposed strategies to involve Turkey in the enlargement process and first steps to that end were made by the Cardiff European Council of 15 and 16 June 1998,³⁵ Turkey brought its self-chosen isolation to an end and engaged in the dialogue with the EU again.

The 1999 Helsinki European Council finally accorded candidate status to Turkey and in 2002 the Copenhagen European Council proposed to enter into negotiations with Turkey in 2005 after the fulfilment of the Copenhagen criteria.³⁶

2. The Substance of the Association

As already mentioned, the Ankara Agreement was supplemented by the 1970 Additional Protocol, Financial Protocols and several decisions of the Association Council. The whole of these instruments form the substance of the Association.³⁷

a) Institutional issues

The Ankara Agreement provides only for an Association Council. Yet, a number of special bodies have been set up over the last forty years.

The Association Council, has the task to "ensure the implementation and the progressive development of the Association".³⁸ It consists of Member States' government officials, members of the Council and the Commission and of members of the Turkish government. Its decision-making power is exercised by unanimous voting with each of the two partners having one vote.³⁹ The Presidency is held alternately by a representative of the European Union and a representative of Turkey.⁴⁰ The Agreement provides for the power to take decisions⁴¹ and make recom-

³² European Council, Conclusions of the Presidency, Luxembourg, 12 and 13 December 1997, para. 31.

³³ Cf. Der Tagesspiegel, Türkei kündigt aus Enttäuschung Ende des Dialogs mit der EU an, 15 December 1997, 1.

³⁴ Cf. P. de Graaf, EU wil relatie met Turkije verbeteren, De Volkskrant, 5 March 1998, 4; T. Gack, Die Türkei kommt aus dem Schmollwinkel nicht heraus, Der Tagesspiegel, 12 March 1998, 6.

³⁵ European Commission, Communication of 4 November 1998, COM (98) 124 final; cf. Der Tagesspiegel, Türkei nimmt Beziehungen zur EU wieder auf, 6 November 1998, 2; European Council, Conclusions of the Presidency, Cardiff, 15 and 16 June 1998, para. 68.

³⁶ European Council Conclusions of the Presidency, Copenhagen, 11 and 12 December 2002, para. 19.

³⁷ On the legal framework of the Customs Union see S. P e e r s, Living in Sin: Legal Integration under the EC-Turkey Customs Union, 7 EJIL (1996) 411 et seq.

³⁸ Art. 6 Association Agreement.

³⁹ Art. 23 Association Agreement.

⁴⁰ Art. 24 Association Agreement.

⁴¹ Here "decision" is used in the meaning of the German "Beschuß", on the terminology and typology of Community measures cf. A. v. B o g d a n d y / J. B a s t / F. A r n d t, Handlungsformen

recommendations in Art. 22 (1). Comparable to Art. 308 EC, Art. 22 (3) of the Ankara Agreement is the legal basis for decisions if the objectives of the Association call for joint action by the parties but no special power is granted by the Agreement.

An Association Committee is set up by Association Council Decision 3/64.⁴² It shall assist the Association Council and prepare the minutes of the latter. In general, it is there to assure continuity and co-operation within the Association.

The Ankara Agreement confers upon the Association Council the duty to promote the necessary co-operation and contacts between the European and the Turkish Parliament.⁴³ Art. 27 of the Agreement was implemented by Decision 1/65⁴⁴ setting up a Parliamentary Committee. This body consists of 15 members of the EP and the same number of members of the Turkish Grand National Assembly. It can make recommendations to the Association Council in order to promote co-operation between the two representative organs. Generally, its role is a merely advisory one.

The Customs Co-operation Committee – set up by Decision 2/69⁴⁵ – has the task to provide for the necessary co-operation in matters of the application of the customs provisions of the Ankara Agreement. It consists of an equal number of customs experts from both sides and is chaired by the Commission.

Art. 52 of Decision 1/95 establishes the Customs Union Joint Committee pursuant to Art. 24 of the Ankara Agreement. It is established with the purpose of facilitating the exchange of views and mutual information within the context of the customs union. Art. 56 of Decision 1/95 provides that Turkey is to be informed of the adoption of new Community legislation in all areas of the *acquis* which have any relevance for the customs union. Naturally, Turkey has no veto in that regard. Paragraph 1 of Art. 52 confers on the Committee the power to formulate recommendations to the Association Council and to deliver opinions. It is composed of representatives of both parties and shall meet at least once a month in order to enable a proper functioning of the customs union.⁴⁶

A further body is the Joint Consultation Committee, composed of Turkish representatives of social and economic interest groups and members of the European Economic and Social Committee. Moreover, within the framework of the accession partnership between Turkey and the EU, eight subcommittees of the Association

im Unionsrecht – Empirische Analysen und dogmatische Strukturen in einem vermeintlichen Dschungel, 62 ZaöRV (2002) 77 et seq.

⁴² Council (ed.), EEC-Turkey Association Agreement and Protocols and other basic texts (Luxembourg 1992), 322 (French version only).

⁴³ Art. 27 1st sub-paragraph Association Agreement.

⁴⁴ Council (ed.), EEC-Turkey Association Agreement and Protocols and other basic texts, 323 (French version only).

⁴⁵ Decision 2/69 of the Association Council, in: Council (ed.), EEC-Turkey Association Agreement and Protocols and other basic texts, 325 (French version only).

⁴⁶ Actually, this ambitious time schedule is not adhered to, cf. European Commission <<http://europa.eu.int/comm/europeaid/projects/countries/output/turquie.htm>> (last visit 18 January 2003).

Council have been set up in order to prepare Turkey to adopt the *acquis communautaire*.⁴⁷

The Ankara Agreement provides for dispute settlement by the Council of Association.⁴⁸ This body can either settle the dispute by decision or submit it to the ECJ as well as to any other court or tribunal. In case a dispute settlement is not possible under these rules, the Association Council itself has to determine the rules for arbitration or any other procedure.⁴⁹ Perhaps since no such procedure was ever initiated, the Court of Justice considered itself to be competent to decide on matters of Association law. In *Demirel*⁵⁰ it held that association agreements are an act of the institutions within the meaning of Art. 234 (1) (b) EC and that it had jurisdiction over these matters.

b) Substantive provisions

The substantive provisions of the Ankara Agreement are more or less shaped according to the model of the (original) EEC-Treaty: the four freedoms, competition, approximation of laws and financial assistance.

aa) Free movement of goods

In the field of free movement of goods, the Association Agreement only sets out the basic guidelines which are to be followed implementing the customs union. Art. 10 of the Ankara Agreement mentions the prohibition of any customs duties between Turkey and the EU, of quantitative restrictions as well as measures having equivalent effect.

The Additional Protocol only provides for a progressive abolition of customs duties and prohibits the introduction of new customs duties.⁵¹ Decision 1/95 finalizes this development by prohibiting all customs duties on imports or exports and charges having equivalent effect.⁵² Moreover, Arts. 5 et seq. of Decision 1/95 prohibit quantitative restrictions and measures having equivalent effect on imports as well as on exports. Art. 7, modelled on Art. 30 EC, grants the possibility of exceptions on grounds of public morality, public policy etc. (cf. also Art. 29 Additional Protocol). Turkey furthermore had to incorporate those Community instruments dealing with removal of technical barriers to trade into its legal order.⁵³ Regarding

⁴⁷ Decision 3/2000 of the Association Council, [2000] OJ L 138/28.

⁴⁸ Art. 25 Association Agreement.

⁴⁹ Decision 1/95 provides for some additional ways to arbitration, cf. Peers, *supra* note 37, 411 et seq.

⁵⁰ Case 12/86, *Demirel v Stadt Schwäbisch Gmünd*, [1987] ECR 3719. In *Sevince*, Case C-192/89 *S. Z. Sevince v Staatssecretaris van Justitie*, [1990] ECR I-3461, the ECJ extended this case-law also to Association Council Decisions.

⁵¹ Arts. 7 et seq. Additional Protocol.

⁵² Art. 4 Decision 1/95.

⁵³ *Ibid.*, Art. 8.

commercial policy Turkey had to adopt legislation which is substantially similar to the Community instruments in the areas of import and export rules, anti-dumping measures and notably trade in textiles.⁵⁴

Art. 13 of Decision 1/95 completes Art. 17 Additional Protocol by requiring Turkey to align its customs tariff to the Common Customs Tariff.

In the field of agricultural products, one of the main sectors of Turkey's exports,⁵⁵ the Additional Protocol and Decision 1/95 recognise difficulties and therefore provide only for an adjustment of the Turkish agricultural policy to that of the Community in order to achieve free movement also in this field.⁵⁶

bb) Free movement of workers

This hotly debated issue⁵⁷ can already be found – although in a vague formulation – in Art. 12 of the Ankara Agreement. This provision sets out Arts. 48, 49 and 50 EC (new Arts. 39-41 EC) as a guideline to the Association and has been further developed in the Additional Protocol and in Decisions 2/76 and 1/80 of the Association Council.

According to the Additional Protocol free movement was to be secured within the period between the end of the twelfth and the twenty-second year after the entry into force of the Ankara Agreement, i.e. until 1 December 1986,⁵⁸ however, with the reservation of the adoption of the necessary rules by the Association Council.

Due to political problems and opposition against free movement of Turkish workers within the Community⁵⁹ the Association Council achieved only minor improvements: Decision 2/76⁶⁰ provides for a progressive establishment of the freedom of workers within ten years (from 1 December 1976 until 1 December 1986, pursuant to Art. 36 Additional Protocol). Decision 1/80⁶¹ sets forth this de-

⁵⁴ *Ibid.*, Art. 12; cf. E. Ö r ü c ü , Turkey Facing the European Union – Old and New Harmonies, 25 ELRev. (2000) 526 et seq.

⁵⁵ Cf. The Europa World Yearbook, *supra* note 11, 3184.

⁵⁶ Arts. 32 et seq. Additional Protocol, Arts. 24 et seq. Decision 1/95.

⁵⁷ See P. K a p t e y n / P. V e r L o r e n v a n T h e m a a t , Inleiding tot het recht van de Europese Gemeenschappen, 5th ed. (Deventer 1995), 809; W. M ü l l e r , in: H. Smit/P. Herzog, The Law of the European Community, Vol. 6 (New York 1996), Art. 238, 405; R. Y a g l i , Die Rechtsstellung der türkischen Arbeitnehmer in der EU, 3 ZeuS (2000) 507; C. V e d d e r , Rechtswirkungen von Assoziationsratsbeschlüssen – Die Kus-Entscheidung des EuGH, 29 EuR (1994) 202; C. D e n y s , Besluit 1/80: ook Turkse onderdanen mogen werk zoeken, [1997] Nederlands Tijdschrift voor Europees Recht 65 (at 68); cf. also H. S c h m i d t , Sind die Türken Europäer?, Die Zeit 50/2002, 1.

⁵⁸ Art. 36 Additional Protocol.

⁵⁹ Notably the Federal Republic of Germany did not want to approve the position of Turkish workers and opposed further measures vigorously, see B o z k u r t , *supra* note 14, 45, 91 et seq.; K a p t e y n / V e r L o r e n v a n T h e m a a t , *supra* note 57, 809 (fn. 190).

⁶⁰ A German version exists in: Rat (Hrsg.), Assoziation zwischen der EWG und der Türkei, Sammlung von Rechtsakten, Vol. 1 (Luxembourg 1979), 24.

⁶¹ Council (ed.), EEC-Turkey Association Agreement and Protocols and other basic texts, 327.

velopment. Decision 3/80⁶² introduces social security measures for Turkish workers.

Since the Association in fact was suspended following the military coup in 1980, shortly after the adoption of Decision 1/80, no further measures towards free movement of workers were adopted by the Council of Association.

It was the European Court of Justice who continued to develop the right of free movement of Turkish workers in several decisions. In the *Demirel* judgement⁶³ the Court considered Art. 12 of the Ankara Agreement and Art. 36 of the Additional Protocol not to be sufficiently precise to confer rights upon individuals after the expiry of the period provided for in the Additional Protocol (1 December 1986).⁶⁴ However, faced with the issue whether Decisions 2/76 and 1/80, namely their Arts. 2 and 7 respectively 6 and 13, were directly effective, the Court held in *Sevince*⁶⁵ that individuals could rely on these measures⁶⁶ despite their non-publication⁶⁷ and the respective clauses in the Decisions that the Member States had to implement these provisions in their national legislation.⁶⁸ In a number of subsequent decisions the ECJ developed a solid case-law on the free movement right.⁶⁹

Free movement of Turkish workers who live and work within the EU is now achieved to a considerable level, whereas access to EU labour markets for Turks is still widely barred.⁷⁰

cc) Freedom to provide services and freedom of establishment

Similar to Art. 12 Association Agreement, Arts. 13 and 14 set out the provisions of the EC Treaty on freedom of establishment and freedom to provide services as guidelines of the Association. The Additional Protocol does not elaborate on this. However, it provides for a "stand-still clause" with regard to these free movement rights and gives the power to determine a timetable and the actual shaping of the free movement rights to the Association Council.⁷¹ Although Turkey and the EU

⁶² [1983] OJ C 110/60.

⁶³ Case 12/86 *Demirel v Stadt Schwäbisch Gmünd*, [1987] ECR 3719.

⁶⁴ This judgement was however not unequivocally accepted in legal doctrine, see C. R u m p f, *Freizügigkeit der Arbeitnehmer und Assoziation EG-Türkei*, [1993] RIW 214 (at 217 et seq.) considering Art. 36 in conjunction with Art. 48 EC to be sufficiently clear.

⁶⁵ Case C-192/89 *S. Z. Sevince v Staatssecretaris van Justitie*, [1990] ECR I-3461.

⁶⁶ *Ibid.*, at para. 22.

⁶⁷ *Ibid.*, at para. 24.

⁶⁸ Art. 12 of Decision 2/76 and Art. 29 of Decision 1/80.

⁶⁹ On Association Council Decision 1/80: Case 237/91, *Kazim Kus*, [1992] ECR I-6781; Case C-434/93, *Bozkurt*, [1995] ECR I-1465; Case C-171/95, *Recep Tetik*, [1997] ECR I-329; Case C-98/96, *Kasim Ertanir*, [1997] ECR I-5179; Case C-1/97, *Mehmet Birden*, [1998] I-7747; Case C-95/98, *Safet Eyüp*, [2000] ECR I-4747; Case C-285/95, *Suat Kol*, [1997] ECR I-3069; Case C-340/97, *Ömer Nazli et al.*, [2000] ECR I-957; on Association Council Decision 3/80: Case C-277/94, *Taflan-Met et al.*, [1996], ECR I-4085.

⁷⁰ Cf. on the other hand the situation for workers from the Central and Eastern European countries: ECJ Case C-257/99, *Barkoci and Malik*, [2001] ECR I-655; D. T h y m, *Zur Ausweitung der Niederlassungsfreiheit auf die EU-Beitrittskandidaten*, [2002] NVwZ 311.

⁷¹ Art. 41 Additional Protocol.

are currently negotiating about this issue, until now, neither did the Association Council adopt such measures, nor did the Court give a ruling in this field.

dd) Competition law

Already the Ankara Agreement contained a vague clause on competition law.⁷² Further clarification was achieved in Art. 43 of the Additional Protocol according to which the Council of Association is charged with the task of adopting measures for the application of Arts. 81, 82, 86 and 87 EC. Finally, this obligation was fulfilled by Decision 1/95 that provides for three Articles, namely Arts. 32, 33 and 34, that are substantially and almost literally the same as Arts. 81, 82, 87 EC. Art. 35 of Decision 1/95 prescribes that the assessment of practices contrary to the aforementioned Articles shall be made on the basis of the criteria established in Community law. However, Art. 37 Decision 1/95 provides for another implementing measure by the Association Council in order to lay down the exact rules for the application of Art. 35 (state aids). Until the adoption of this measure, Arts. 32 and 33 are none the less applicable under Art. 37 (2) (a). Similarly, Art. 37 (2) (b) makes Art. 34 applicable, albeit under the provisions of the GATT Subsidies Code.⁷³

ee) Approximation of legislation

Chapter IV of Decision 1/95 sets out the fields in which Turkey has to approximate its laws to those of the Community. This concerns in particular intellectual property law,⁷⁴ competition law,⁷⁵ trade defence instruments⁷⁶ and taxation.⁷⁷ Even further harmonisation of legislation is required for a possible accession of Turkey. The aforementioned subcommittees of the Association Council partly deal with these questions already.⁷⁸

ff) Financial assistance

From the beginning of the Association, Turkey received financial assistance in the form of aid, loans and investment schemes from the Community. The Financial Protocols provide for this.⁷⁹ At present Turkey fully participates in the pre-accession strategy⁸⁰ and receives aid from various Community funds.

⁷² Art. 16 Association Agreement reads: "[T]he principles laid down in the provisions on competition [...] of the Treaty establishing the Community must be made applicable in [the] relations within the Association".

⁷³ Cf. *P e e r s*, *supra* note 37, 417 et seq.; *E. Ö r ü c ü*, *supra* note 54, 526.

⁷⁴ Art. 31 Decision 1/95.

⁷⁵ Arts. 39 to 43 Dec. 1/95.

⁷⁶ Arts. 44 et seq.

⁷⁷ Arts. 49 to 51.

⁷⁸ Decision 2/2000 of the Association Council, [2000] OJ L 138/27.

⁷⁹ Ist Financial Protocol: JO 3705/64, IInd Financial Protocol: [1977] JO L 361/118, IIIrd Financial Protocol: [1979] OJ L 67/1.

⁸⁰ Regulation 390/2001, [2001] OJ L 58/1; Regulation 2500/2001, [2001] OJ L 342/1; Framework Agreement EU-Turkey of 26 February 2002, [2002] OJ L 61/29.

3. Conclusion

The law of the Association, in particular the customs union, has led to a situation in which no customs duties "protect" Turkey's economy from its EU competitors. Turkey therefore has to cope with increasing competition already preparing it for a possible accession to the EU.⁸¹ In sum, Turkey has already achieved a substantial level of legal integration into the EU system. It had to adopt a considerable amount of economic Community legislation under the association regime. But although Decision 1/95 now provides for procedures to inform and consult Turkey on new EU decision-making the firm (and only possible) attitude of the EU regarding the existing legislation was that of "take it or leave it". Yet, Turkey would have to incorporate the entire *acquis* into its internal legal order before accession anyhow. Finally, it should not be overlooked that the substantive provisions of the Association Agreement and the subsequent measures are effective only for Turkish citizens in the EU and not *vice versa*: European Union citizens still face obstacles when doing business in Turkey.⁸²

II. Accession of Turkey to the European Union?

The following part will examine the possibility of Turkey's accession to the European Union focussing on some core questions.⁸³

As already mentioned before, Turkey applied for membership in the European Communities in April 1987. This application was preliminarily rejected by the Council in early 1990 after lengthy deliberations within the Commission.⁸⁴ Despite this set-back Turkey remained strongly committed to EU membership. In 1999 the Helsinki European Council concluded to give Turkey the status of EU candidate. Since then Turkey adopted an impressive amount of internal legal amendments⁸⁵ which led the 2002 Copenhagen European Council to offer to start negotiations shortly after December 2004 if Turkey fulfils the Copenhagen criteria.⁸⁶

⁸¹ Cf. Akkaya/Özbek/Şen, *supra* note 10, 96 *et seq.*

⁸² European Commission, 2002 Regular Report on Turkey's progress towards accession, COM (2002) 700 final, 69 *et seq.*

⁸³ An in depth analysis from a political point of view is carried out by the European Commission in its regular reports, e.g. European Commission, *supra* note 82.

⁸⁴ See *supra*, I.1.

⁸⁵ Cf. the Turkish National Program for the Adoption of the Acquis, <http://europa.eu.int/comm/enlargement/turkey/pdf/npaa_full.pdf> (last visit 18 January 2003). On more recent amendments in the Turkish legal system: H. Kramer, Ein wichtiger Schritt in Richtung EU, SWP Aktuell 29/02 (Berlin 2002), 1 *et seq.*, and P. Tanlak, Turkey EU Relations in the Post Helsinki Phase and the EU Harmonisation Laws Adopted by the Turkish Grand National Assembly in August 2002, SEI Working Paper N° 55 (Brighton 2002), 8-12.

⁸⁶ European Council. Conclusions of the Presidency, Copenhagen, 11 and 12 December 2002, para. 19.

1. Accession to the European Union in General

a) Conditions for membership

Former Art. O of the Treaty on European Union⁸⁷ stated only one single requirement for accession, namely that the applicant State must be European. Art. 49 EU, as amended by the Treaty of Amsterdam, introduces further requirements for an applicant State. It makes accession conditional upon the respect of the principles set out in Art. 6 (1) EU. An applicant must adhere to "the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law".⁸⁸

Further conditions for accession were set out by the 1993 Copenhagen European Council.⁸⁹ The 1999 Helsinki European Council decided to apply these criteria to Turkey as well.⁹⁰ The first of these requirements is that the applicant State must have achieved stable political institutions, which guarantee democracy, the rule of law, respect for human rights and the rights of minorities. Secondly, a functioning market economy is required. This condition can and must be understood from the fact that the Union is based mainly on the first pillar and, although fields such as culture, public health, education and environment are now included in the EC Treaty, it still has an economy-centred basis. Interrelated with this requirement, the European Council established the hurdle that the economy of the applicant State must be able to cope with competition on the Union's market. The final criterion set out in Copenhagen is the ability and the will of the candidate to take on the obligations arising from membership, as well as "adherence to the aims of political, economic and monetary union".⁹¹ Moreover, the European Council stressed that for an applicant to be accepted, the Union must be able to absorb new members. These so-called Copenhagen criteria although internally qualified as political statements can be qualified as unilateral acts of the EU⁹² from a public international law perspective binding the European Union with regard to the candidate States.⁹³

⁸⁷ [1992] OJ C 191/1; Art. O EU had the same wording as Art. 237 of the EEC Treaty.

⁸⁸ These criteria existed politically already before – Portugal and Spain became Members only after the rule of their dictatorial regimes had ended.

⁸⁹ [1993] Bulletin of the EC N° 6, pt. I.13 (at page 13).

⁹⁰ European Council, Conclusions of the Presidency, Helsinki, 10 and 11 December 1999, para 12.

⁹¹ *Ibid.*

⁹² The EU being a subject of international law acts through the European Council as its organ, cf. J.C. W i c h a r d, in: C. Callies/M. Ruffert (Hrsg.), EUV/EGV, 2nd ed. (Neuwied 2002), Art. 1 EG para 13; cf. also the opposite views on legal personality of the EU described by W i c h a r d, *ibid.*, para. 5 et seq. Even if one follows these opposite views the acts of the European Council must be seen as joint acts of the Member States.

⁹³ To what extent States and an Organisation like the EU are bound by their unilateral acts is currently still under discussion, cf. the debate in the ILC: ILC, Report on the work of its 53rd Session 2000, General Assembly Official Records, 54th Session Supplement No.10 (A/54/10) 176 et seq.; ILC, Report on the work of its 53rd Session 2001, General Assembly Official Records, 55th Session Supplement No.10 (A/55/10), 522 et seq.; ILC, Report on the work of its 54th Session 2002, General Assembly Official Records, 56th Session Supplement No.10 (A/56/10) 193 et seq. As a basic rule, subjects of international law have to abide by their commitments, at least as long as they

It is, however, generally accepted that the Council enjoys a discretionary power in the field of accession and consequently is not obliged to accept the application of a candidate even if it fulfils all the criteria.⁹⁴

b) Procedure

The procedure to be followed is set out in Art. 49 (2) EU. Theoretically, it can be divided into two different categories: the first is a Council decision with previous involvement of the Commission and the EP on the admission of a new Member State. The second part consists of negotiations with the applicant, the signature and ratification of the treaty of accession by the Member States of the Union and the applicant State. In practice, these two stages are interrelated and cannot be separated.

As a first step towards accession, the candidate State must address its application to the Council, which will immediately forward the application to the Commission. The latter then usually gives a preliminary opinion, on which the negotiations are based. Negotiations are conducted by the Presidency of the Council instead of the Member States.⁹⁵ In the course of these negotiations the Council is usually assisted by the Commission, which in fact plays a major role in the accession process. The Council also informs the European Parliament of the progress. The EP can deliver interim reports in order to express its view on the matters agreed upon with a view to its requested assent. Even the Economic and Social Committee can prepare a report on the negotiations although it is not required to do so.⁹⁶ The final opinion of the Commission will only be given after the negotiations have been completed and the EP has given its assent adopted with a majority of its component members. After a unanimous Council decision the Act of Accession is signed by the Member States and the applicant State without any involvement on the part of the Union.⁹⁷

do not expressly revoke their statements, cf. ICJ, *Nuclear Tests* Case, ICJ Rep. 1974, 253 (at 269 et seq.), see also C. T o m u s c h a t, *International Law: Ensuring the Survival of Mankind on the Eve of a New Century – General Course on Public International Law*, RdC 281 (1999) (Den Haag 2001) 344 et seq with further references.

⁹⁴ H. S m i t / P. H e r z o g, *The Law of the European Community*, Vol. 6, Art. 237, 372; see also Case 93/78 *Lothar Matheus v Doego Fruchtimport und Tiefkühlkost e G*, [1978] ECR 2203 para. 7.

⁹⁵ Only the first negotiations with the United Kingdom in the early 1960s were conducted by the Member States themselves.

⁹⁶ See [1984] OJ C 141/131 on the accession of Spain and Portugal.

⁹⁷ For an overview over the negotiations with the UK, Ireland, Denmark, Greece, Spain and Portugal see S m i t / H e r z o g, supra note 94, Art. 237, 372-378; the negotiations with Austria, Finland, Norway and Sweden are described in an article by D. B o o ß and J. F o r m a n, *Enlargement: Legal and Procedural Aspects*, 32 CMLRev. (1995) 95; various articles deal with the accession process of the Central and Eastern European States, cf. K. I n g l i s, *Europe Agreements Compared in the Light of their Pre-Accession Reorientation*, 37 CMLRev. (2000) 1173; J. B e r g m a n n, *Die Osterweiterung der Europäischen Union*, [2001] ZRP 18 et seq.

Consequently, the Agreement of Accession, which makes possible adjustments to the Treaty and sets out the other conditions for admission, must be ratified according to the national constitutional laws of the Member States and the applicant. Once these procedures have been complied with, the new Member State takes part in the political and legal system of the Union. Usually the Act of Accession sets out a period in which certain interim measures are provided for in order to enable the Union and the new Member State to cope with the new situation.

2. The Possibility of Accession of Turkey to the Union

The Ankara Agreement obliges the European Union to facilitate Turkey's accession to the Union at a later date.⁹⁸ This provision, however, does not create a legal obligation for the EU to allow accession without conditions. In order to consider the possibility of a Turkish accession from a legal point of view it is necessary to apply the conditions established by Art. 49 EU and the Copenhagen European Council to Turkey.

a) European State

The criterion of being European is not very clear-cut, and this was probably intended. The Commission gave a vague definition of this concept in 1992, saying that "it combines geographical, historical and cultural elements", immediately limiting this when it stressed that this "is subject to review ... [and that it] is neither possible nor opportune to establish now the frontiers of [a future] Union".⁹⁹ Even though a debate on the frontiers of the European Union is currently proposed even by Romano Prodi,¹⁰⁰ no elaborated definition of the term "European" had been reached by 2002.¹⁰¹

On the occasion of the conclusion of the Ankara Agreement the then President of the Commission Walter Hallstein, stated that "Turkey belongs to Europe".¹⁰² Since that time Commission and Council seem to consider Turkey to be "sufficiently" European.¹⁰³ The 1987 application of Turkey was not (preliminarily)

⁹⁸ Turkey and the E(E)C agreed on a possible accession to the EEC. This, however, is not possible any more since the Maastricht Treaty repealed Art. 237 EEC and replaced it by Art. O (new Art. 49 EU). This amendment does not change the nature of the obligation. Today, accession to the EC can be achieved only by acceding to the EU, cf. U. Everling, Reflections on the Structure of the European Union, 29 CMLRev. (1992) 1063.

⁹⁹ European Commission's report, Europe and the Challenge of Enlargement, Supplement 3/92 – [1992] Bulletin of the EC, pt. 7.

¹⁰⁰ R. Prodi, A Wider Europe – A Proximity Policy as a Key to Stability, Speech at the 6th ECSA-World Conference, Brussels, 5-6 December 2002, SPEECH/02/619.

¹⁰¹ A thorough analysis is given by C. Dorau, Die Öffnung der Europäischen Union für europäische Staaten, 34 EuR (1999) 736 et seq.

¹⁰² "Die Türkei gehört zu Europa", W. Hallstein, Speech at Ankara on 12 September 1963, in: T. Oppermann (ed.), Walter Hallstein – Europäische Reden (Stuttgart 1979), 439.

¹⁰³ European Council, Conclusions of the Presidency, Helsinki, 10 and 11 December 1999, para. 12; cf. also Solana, *supra* note 12, and on the contrary V. Giscard d'Estaing, Pour ou contre l'adhésion de la Turquie à l'Union européenne, Le Monde, 9 November 2002.

rejected on the ground that Turkey was not European (as it was done in the case of Morocco¹⁰⁴) but for several other reasons.

The geographic element seems to be rather clear. Usually, Europe is defined as the western "peninsula" of the Eurasian continent, Ural and Bosphorus being the eastern borders.¹⁰⁵ On the basis of this definition it seems to be sufficient that a part of the Turkish territory is on the European continent. Thrace, the westernmost part of Turkey, is undoubtedly on European soil. 23,800 km² of the Turkish territory (3 %) are in Thrace and about 10 % of its population live there.¹⁰⁶

The additional elements, history and culture, are subject to debate. Whatever culture exactly is, Turkey's culture cannot be described as only Asian or fundamentalist Islamic¹⁰⁷. Although based on Islamic beliefs it is influenced by Christian, Jewish and Classic thoughts.¹⁰⁸ There has been a continuous exchange between different cultures in south-east Europe: The Balkans have embraced much of the Ottoman culture in the course of centuries.¹⁰⁹ In contrast to this historical view, some fear that Turkish culture currently orientates towards Islamic fundamentalism. This fear is fuelled by the overwhelming success of Recep Tayyip Erdoğan's Justice and Development Party (Adalet ve Kalkınma Partisi, AKP) in the 2002 general elections¹¹⁰ and the 1997 victory of Neçmettin Erbakan's Welfare Party¹¹¹. This is seen as proof of Turkey's non-European culture. Although these developments may reasonably be considered to be alarming they concern political stability instead of culture. The substantial character of Turkey's culture is not affected by these developments.¹¹² The outcome of the elections should be seen as a political decision against corruption and abuse of power rather than as a preference for Islamic fundamentalism.¹¹³

¹⁰⁴ The application of Morocco of 8 July 1987 was rejected on the ground that it was apparently no European State, [1987] Bulletin of the EC, N° 9, pt. 2.2.19.

¹⁰⁵ Cf. D o r a u , *supra* note 101, 738-9.

¹⁰⁶ The Europa World Year Book, *supra* note 11, 3180.

¹⁰⁷ Moreover, it should not be forgotten that an Islamic culture can be a European one at the same time (cf. Bosnia-Herzegovina, Albania). Cf. also the opposite view reducing Europe to Christian culture: L. S i e d e n t o p , Democracy in Europe (London 2000), 189 et seq.

¹⁰⁸ A k k a y a / Ö z b e k / Ş e n , *supra* note 10, 164 et seq.; Y. S. T e z e l , Gefangen zwischen Demokratie und Autoritarismus, Internationale Politik (11/2001) 1 et seq.; cf. Ö r ü c ü , *supra* note 54, 523 quoting former Turkish Prime Minister B. Ecevit; cf. also E. J. Z ü r c h e r , Turk is niet minder Europees dan Siciliaan, De Volkskrant, 21 April 1997, 7.

¹⁰⁹ On the general interrelations of Christianity and Islam regarding Turkey cf. also G. L u c i - a n i , Die Türkei und der Islam, Internationale Politik (3/2002) 27 et seq.

¹¹⁰ AKP received 34.2 % of the votes cast and 66 % of the seats in Parliament, G. G o l t z / H. K r a m e r , Politischer Erdrutsch bei den Wahlen in der Türkei, SWP Aktuell 48/02 (Berlin 2002), 1 et seq.

¹¹¹ The Europa World Year Book, *supra* note 11, 3186.

¹¹² Cf. G o l t z / K r a m e r , *supra* note 110, 1 et seq.; D. A k a g ü l , Le cinquième élargissement de l'Union Européenne et la question de la candidature turc, [1998] Revue du Marché Commun 359 (at 360).

¹¹³ G o l t z / K r a m e r , *supra* note 110, 2 et seq.

Finally, it should not be forgotten that the vast majority of Turkey's population is constantly orientated towards Europe and modernisation as well as secularism¹¹⁴ – despite recent ideas of military leaders to focus on a separate Eurasian perspective for Turkey.¹¹⁵

In an overall perspective, Turkey should be qualified as at least partly European and therefore generally eligible for EU membership.

b) Respect for the principles of the Union

Respect for the basic principles of the EU is an indispensable prerequisite for any accession candidate. Although these principles are subject to political assessment they are of a legal nature and therefore subject to legal scrutiny.

aa) Democracy

Democracy cannot be defined easily. Libraries full of literature have been written on all kinds of theories of democracy.¹¹⁶ Moreover, democratic systems vary considerably even within the European Union. Described in a general way, democracy requires that all government authority emanates from the citizens and that they (can) participate in government.¹¹⁷

The Turkish Constitution fulfils the requirements of this test:¹¹⁸ It vests legislative power in the unicameral Turkish Grand National Assembly,¹¹⁹ which is elected by universal suffrage. General elections are held every five years¹²⁰ on the basis of proportional representation with the tickets drawn up by political parties. Turkey has a multiparty political system. Parliament elects the President, as holder of the executive power, for seven years. The latter is empowered to appoint a Prime Min-

¹¹⁴ W. Schönbohm, *Auf dem Weg nach Europa*, *Internationale Politik* (11/2001), 18. Naturally, a simple orientation towards Europe cannot lead to a qualification as European. Still, it shows a certain tendency.

¹¹⁵ Cf. I.D. Dagi, *Competing Strategies for Turkey: Eurasianism or Europeanism?*, *Central Asia Caucasus Analyst*, 8 March 2002, <<http://www.cacianalyst.org/2002-05-08/20020508TURKEYS-STRATEGIC-CHOICE.htm>> (last visit 18 January 2003).

¹¹⁶ Cf. e.g. the overview and analysis by D. Held, *Models of Democracy* (Cambridge 1996) *passim*.

¹¹⁷ Cf. A. Lincoln's Gettysburg address of 19 November 1863, <<http://www.loc.gov/exhibits/gadd/>> (last visit 18 January 2003): "Government of the people by the people for the people".

¹¹⁸ The lecture of Art. 2 of the Constitution already shows Turkey's general commitment to democracy: "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; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble." (official translation), Turkish Constitution of 18 October 1982, as amended on 17 October 2001, Act N° 4709, <<http://www.tbmm.gov.tr/anayasa/constitution.htm>> (last visit 18 January 2003); more recent amendments are not translated and worked into the document yet.

¹¹⁹ Art. 7 Turkish Constitution.

¹²⁰ Art. 77 Turkish Constitution.

ister and senior members of the judiciary,¹²¹ which is divided into judicial, administrative and military courts and a Constitutional Court. Besides, there is a National Security Council as a (theoretically)¹²² advisory body.

However, certain doubts remain. In order to receive a seat in the Turkish Grand National Assembly any party has to receive 10 % of the votes cast. This is the highest hurdle for entry into a parliament in Europe. The outcome of the last general elections in November 2002 led to a situation in which 34.2 % of the votes resulted in 66 % of the seats in the Grand National Assembly. 45.4 % of the votes cast were not counted for seats in Parliament at all, although 36.5 % were cast for parties which received more than 5 % of the votes each.¹²³

Moreover, the role of the National Security Council (NSC) sheds a bad light on the institutional framework of democracy in Turkey. The NSC is composed of the five highest ranking military commanders on the one hand and (at least) seven civilians on the other, i.e. the President, the Prime Minister, the vice Prime Ministers (currently three) and the Ministers for Home Affairs, Foreign Affairs, Justice and Defence.¹²⁴ The NSC is set up as an advisory body but in fact has a very influential role in the field of security policy and even beyond in practically all parts of Turkish politics.¹²⁵ Even though composed of a majority of civilian members since the 2001 constitutional amendments it is still dominated by its military members¹²⁶ and therefore a source of unaccounted political decisions. The Turkish National Programme preparing for accession envisages a review of the relevant provisions on the role of the NSC.¹²⁷ Given the actual position of the NSC in Turkish politics these changes will have to be fundamental.

This brief overview already raises doubts as to democratic standards in Turkey.

bb) Respect for human rights and fundamental freedoms and the principle of liberty

The requirement of respect for human rights and fundamental freedoms still seems to constitute a major problem for a possible accession of Turkey.¹²⁸

¹²¹ Art. 104 Turkish Constitution.

¹²² See *infra*.

¹²³ See G o l t z / . K r a m e r , *supra* note 110, 1 *et seq.*

¹²⁴ Art. 118 Turkish Constitution.

¹²⁵ European Commission, *supra* note 82, 24 *et seq.*; H. K r a m e r , Die Türkei und die Kopenhagener Kriterien, SWP-Studie 39/02 (Berlin 2002), 20 *et seq.*; cf. also the official Turkish website on "National Security Policy": <<http://www.msb.gov.tr/Birimler/GnPPD/pdf/p3.pdf>> (last visit 18 January 2003).

¹²⁶ European Commission, *supra* note 82, 24-5; J.-C. P e u c h , Turkey: Frustration over EU Demands for Reform, Radio Free Europe-Radio Liberty, 15 March 2002, <<http://www.rferl.org/nca/features/2002/03/15032002113151.asp>> (last visit 18 January 2003).

¹²⁷ Turkish National Programme for the Adoption of the Acquis (adopted in March 2001), <http://europa.eu.int/comm/enlargement/turkey/pdf/npaa_full.pdf> (last visit 18 January 2003), 27.

¹²⁸ N. G ü n e y , Das Antiterrorgesetz-Urteil des türkischen Verfassungsgerichts vom 6. Januar 1999 – Zugleich ein Beitrag zu den Grenzen der Beschränkbarkeit von Grundrechten nach der türkischen Verfassung, 62 ZaöRV (2002) 473, comes to a more optimistic conclusion with a view to the case-law of the Turkish Constitutional Court.

According to the wording of Art. 2 of the Turkish Constitution the Turkish State is based on human rights. In fact the human rights situation was very poor.¹²⁹ Improvements of the relevant constitutional provisions on human rights were enacted in October 2001.¹³⁰ Yet, Turkey has not undergone a fundamental change in its factual human rights situation.¹³¹ One of the most apparent problems is that of torture in Turkish prisons. The European Committee for the Prevention of Torture (CPT)¹³² reports almost annually on torture in Turkish police custody and twice even published a public statement,¹³³ a truly extraordinary step. Even compared to other accession candidates like Bulgaria¹³⁴ or Romania¹³⁵, which bear a legacy of 40 years of dictatorial rule, the situation in Turkey is deplorable. The CPT reports reveal horrifying practices in Turkish prisons. Moreover, "disappearing" of opposition leaders and intellectuals, extra-judicial executions, oppression of trade unions and the media etc. are common as well.¹³⁶ A whole range of fundamental human rights were and are being violated,¹³⁷ in the past particularly in Kurdistan. Finally, Turkey is said to be the State with the highest number of journalists and writers held in prison.¹³⁸ Even Members of the Turkish Grand National Assembly are sentenced for their political actions.¹³⁹ During the last years slight improvements have been achieved. Particularly the abolition of the death penalty must be mentioned.¹⁴⁰ Nevertheless much remains to be done.

¹²⁹ Cf. the analysis of the state of play in the early 1990s by W. van Genugten, *Turkije en de mensenrechten*, 68 *Nederlands Juristenblad* (1993) 720 et seq.

¹³⁰ Act N° 4709 of 3 October 2001, <<http://www.mfa.gov.tr>> (last visit 18 January 2003).

¹³¹ E. Ö r ü c ü , *The Turkish Constitution Revamped?*, 8 *EPL* (2002) , 217.

¹³² Established according to Art. 1 of the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment of 26 November 1987, ETS N° 126, entry into force on 1 February 1989.

¹³³ CPT, Public Statement on Turkey, 15 December 1992, 14 *HRLJ* (1993) 49 et seq.; CPT, Public Statement on Turkey, 6 December 1996, 18 *HRLJ* (1997) 294 et seq.; CPT, Reports on Turkey, <<http://www.cpt.coe.int/en/states/tur.htm>> (last visit 18 January 2003); cf. on the problem of torture in Turkey, R. A l l e w e l d t , *Auf dem Weg zu wirksamer Folterprävention in der Türkei?*, 27 *EuGRZ* (2000) 193 et seq.

¹³⁴ Cf. CPT, Reports on Bulgaria, <<http://www.cpt.coe.int/en/states/bgr.htm>> (last visit 18 January 2003).

¹³⁵ Cf. CPT, Reports on Romania, <<http://www.cpt.coe.int/en/states/rom.htm>> (last visit 18 January 2003).

¹³⁶ Cf. T. S o m m e r , *Gesucht: ein moderner Atatürk*, *Die Zeit*, 6 June 1997, 7; H. M ü l l e r , *De waarheid van de Turkse media*, *de Volkskrant*, 7 June 1997, 51.

¹³⁷ Cf. only the following judgements of the European Court of Human Rights: *Akdivar and others v Turkey*, 18 *Human Rights Law Journal* (1997) 203 et seq.; *Zana v Turkey*, 25 November 1997, Rep. 1997-II, 2534 et seq.; *Mentes and others v Turkey*, 28 November 1997, Rep. 1997-VIII, 2690 et seq.; *Kurt v Turkey*, 25 May 1998, Rep. 1998-III, 1153 et seq.

¹³⁸ S o m m e r , *supra* note 136, 7.

¹³⁹ European Court of Human Rights, *Sakik and others v Turkey*, judgement of 26 November 1997, Rep.1997-VII, 2609 et seq.

¹⁴⁰ European Commission, *supra* note 82, 25 et seq.; cf. also G ü n e y , *supra* note 128, 468 et seq.

Although Turkey acceded to the Council of Europe already in 1954 it recognised the individual complaint procedure (former Art. 25 ECHR) only in 1987 and the compulsory jurisdiction of the European Court of Human Rights (former Art. 46 ECHR) only in 1990. However, the individual complaint procedure, the main possibility for citizens to seek protection, becomes more and more effective: In 1991 only 90 complaints were lodged against Turkey (cf. the Netherlands with a quarter of the population and 165 applications¹⁴¹). In 2001 the European Court of Human Rights registered 1059 applications.¹⁴² The number of applications is alarming and encouraging at the same time: although an enormous number of Turkish citizens feel infringed in their human rights by government authorities they do make use of the complaint procedure and therefore induce Turkey to ameliorate its human rights record. However, Turkey's willingness to execute judgements of the ECHR was quite limited.¹⁴³

Therefore one may conclude that Turkey does not fully abide by the human rights standards required by the European Union.¹⁴⁴

cc) The rule of law

The Turkish Constitution prominently states its commitment to the rule of law in its Art. 2. In order to assess whether Turkish practice regarding the rule of law corresponds with European Union standards one has to define this criterion and apply this test to the actual situation in Turkey.

In general terms, the rule of law comprises the components of freedom, legal certainty and material justice and that all public authority is bound by law.¹⁴⁵

¹⁴¹ European Commission of Human Rights, Survey of activities and statistics 1991 (Strasbourg 1992), 23.

¹⁴² European Court of Human Rights, Survey of activities 2001 (Strasbourg 2002), 31.

¹⁴³ Cf. Council of Ministers of the Council of Europe, Interim Resolution, IntResDH (2002), 98, <http://cm.coe.int/site2/ref/dynamic/resolutions_hr.asp?> (last visit 18 January 2003) and Parliamentary Assembly of the Council of Europe, Res. 1268 (2002), 23 HRLJ (2002) 110. However, recent amendments provide for the revision of judgements if the ECHR found them to be in violation of European human rights law, Arts. 445 and 448 Code of Civil Procedure, Arts. 327 and 335 Code of Criminal Procedure, as amended by Act of 3 August 2002; cf. Kramer, *supra* note 85, 5 et seq., and Tanlak, *supra* note 85, 10 et seq.

¹⁴⁴ For a more detailed description of the human rights situation see e.g. the European Commission's 2002 Regular Report on Turkey, *supra* note 82, 25 et seq.; Amnesty International, Amnesty International Report 2002 – "Turkey", <<http://www.amnesty.org/ailib/index.html>> (last visit 18 January 2003), 1 et seq.

¹⁴⁵ The concept of the rule of law differs considerably amongst legal systems. Cf. on German constitutional law: Bundesverfassungsgericht, 7 Official Reports of the Bundesverfassungsgericht (BVerfGE) 92-3. A. Dicey, Introduction to the Study of the Law of the Constitution (Indianapolis 1982), 120 (and with him most of the English legal tradition) defines the rule of law as "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, [...] equality before the law [and formal or procedural justice]"; F.A. von Hayek, The Road to Serfdom (Chicago 1994), 80, describes the rule of law as the legal situation in which "a government in all its actions is bound by rules fixed and announced beforehand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge".

Therefore, the rule of law is first of all intrinsically linked with the respect of fundamental rights and a democratic political system. As mentioned above, the fulfilment of these criteria is partly questionable. Already in 1995 the then Turkish vice-Prime Minister Tansu Çiller promised amendments in a speech before the European Parliament. But until now the situation has only slightly improved despite the constitutional changes in 1995, 2001 and especially in 2002.¹⁴⁶ Although a number of changes have been implemented into Acts of Parliament, administrative implementation and interpretation still have to follow.¹⁴⁷

Moreover, the rule of law also comprises the principle of separation of powers, the need for a legal basis for all state action interfering with the fundamental rights and freedoms of citizens as well as an effective remedy before an impartial judge. The separation of powers is guaranteed by Arts. 7 et seq. of the Turkish Constitution. However, the National Security Council – the actual government during the military rule – still retains considerable power.¹⁴⁸ A simple interpretation of the provisions dealing with the National Security Council's does not reveal its important position in the Turkish political system.¹⁴⁹ The "recommendations" issued by the National Security Council in fact have the force of law.¹⁵⁰ The National Security Council, as part of the executive, consequently holds quasi-legislative powers without political control in fields of major importance, namely in the field of fundamental freedoms which are often linked to national security matters. Therefore an effective separation of powers is considerably undermined. The requirement of an impartial judge is not entirely secured either. As the European Court of Human Rights held in a judgement of 9 June 1998¹⁵¹ National Security Courts (at the time also composed of military judges) did not fulfil the requirements of Art 6 (1) ECHR when acting as usual criminal courts. Although Turkey subsequently amended its law of criminal procedure, a considerable part of Turkish criminal pro-

¹⁴⁶ M. Charriot, *La Turquie: un difficile partenaire pour l'Union Européenne*, [1995] RMC 432 et seq.; s. also Kramer, *supra* note 125, 23 et seq.; Tanlak, *supra* note 85, 14, sees Turkey already in accordance with the Copenhagen criteria.

¹⁴⁷ Örüçü, *supra* note 131, 217.

¹⁴⁸ See *supra* II.2.b)aa).

¹⁴⁹ Article 118 of the Turkish Constitutions reads: "The National Security Council shall submit to the Council of Ministers its views on taking decisions and ensuring necessary coordination with regard to the formulation, establishment, and implementation of the national security policy of the State. The Council of Ministers shall give priority consideration to the decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the State, the integrity and indivisibility of the country and the peace and security of society."

¹⁵⁰ Cf. Kramer, *supra* note 125, 21; S. Kardas, *Human Rights and Democracy Promotion: the Case of Turkey-EU Relations*, 1 *Alternatives: Turkish Journal of International Relations* (2002) 144; on the general perception of the Army as a guarantee of political stability cf. Schönbohm, *supra* note 114, 17 et seq.

¹⁵¹ ECHR, judgement of 9 June 1998, *Incal v Turkey*, <<http://hudoc.echr.coe.int>> (last visit 18 January 2003).

ceedings, especially those before Military Courts (Art. 145 of the Turkish Constitution), still does not live up to European human rights standards.¹⁵²

To sum up, Turkey currently does not appear to sufficiently abide by the rule of law.

c) The conditions of the Copenhagen European Council

aa) Stable democracy and respect for rights of minorities

In addition to the criteria already mentioned in Art. 49 EU, the 1992 European Council of Copenhagen mentioned the requirement of a stable democracy and the respect for minority rights. In order to satisfy the condition of a "stable democracy" a candidate State must conform with EU standards of factual and institutional safeguards for democracy. It was already mentioned that the Turkish military forces retain considerable powers since the last *coup d'état* through their involvement in the National Security Council. Moreover, a new military *coup* under the guise of safeguarding secularism is not imminent but still possible and therefore a certain danger.¹⁵³ Another critical issue is the case-law of the Turkish Constitutional Court prohibiting political parties (Art. 69 of the Turkish Constitution). *Inter alia* the Welfare Party, the party of former Prime Minister Erbakan, was dissolved on application of the Chief Public Prosecutor of the Republic (the sole possible initiator of such proceedings).¹⁵⁴ Finally, corruption and political instability (in terms of governments) determine the political scene of Turkey¹⁵⁵ and the 2002 general elections led to a complete change in the political establishment represented in Parliament.¹⁵⁶ In an overall view, the current Turkish system does not seem to be a stable democracy.

The situation of minorities in Turkey is also fairly poor. The 1923 Lausanne Agreement¹⁵⁷ provided for certain rights of (some) non-Islamic minorities (Greeks, Armenians and Jews), but the major problem is still that of the Kurdish minority. After recent changes in Turkish law¹⁵⁸ legal discrimination against Kurds is partly abolished. But other minorities in Turkey¹⁵⁹ are also discriminated against in fact

¹⁵² R. Kolb, The Jurisprudence of the European Court of Human Rights on Detention and Fair Trial in Criminal Matters, Addenda 1999-2000, 22 HRLJ (2001) 351, 356 and 361; Kramer, *supra* note 125, 25.

¹⁵³ Cf. Kramer, *ibid.*, 21.

¹⁵⁴ Cf. ECHR, *Refah Partisi and others v Turkey*, judgement of 31 July 2001 <<http://hudoc.echr.coe.int>> (last visit 18 January 2003), in particular the joint dissenting opinion of judges Fuhrmann, Loucaides and Bratza, s. also De Volkskrant, Hof Turkije verbiedt Welzijnspartij, 17 January 1998, 1.

¹⁵⁵ T. Seibert, Filz zwischen Staat und Mafia in der Türkei, Der Tagesspiegel, 21 January 1998, 6; cf. Kramer, *supra* note 125, 20 *et seq.*

¹⁵⁶ Cf. Goltz/Kramer, *supra* note 110, 1 *et seq.*

¹⁵⁷ Peace Treaty between the Allies and Turkey of 24 July 1923, LNTS 28, 12.

¹⁵⁸ Cf. Kramer, *supra* note 85, 3.

¹⁵⁹ There is e.g. a Roma community and Alevi muslims are also sometimes considered a minority, cf. Akkaya/Özbek/Şen, *supra* note 10, 185 *et seq.*, and European Commission, *supra* note 82, 42 *et seq.*

and in law, e.g. regarding cultural life.¹⁶⁰ In general, problems regarding the respect for minority rights will remain since these rights are still largely considered to violate the constitutional principle of indivisible unity of the Turkish nation¹⁶¹ (Art. 3 of the Turkish Constitution).¹⁶²

bb) A functioning market economy

The issue of a functioning market economy could be another point of obstruction to accession. Although Turkey has made considerable efforts towards a more stable economy,¹⁶³ there is still a gap between the EU and Turkey. The Turkish economy is on a level equivalent to that of Bulgaria and Romania.¹⁶⁴ In order to be able to cope with competition in the Common Market Turkey will have to undergo substantial reforms, e.g. in the banking sector or regarding inflation. An examination in depth, however, has to be left to economic analysis.

cc) Ability and will to accept the duties arising from membership

The criterion "ability and will to accept the duties arising from membership" comprises the adherence to the aims of political, economic and monetary union as well as an acceptance of the *acquis communautaire*. Although the assessment of these criteria is of political nature,¹⁶⁵ at least the criterion of ability to accept the *acquis* is not fulfilled as long as the transfer of sovereign rights to any international or supranational institution is constitutionally impossible.¹⁶⁶ An amendment to

¹⁶⁰ Kramer, *supra* note 125, 35.

¹⁶¹ Turkish Constitutional Court, judgement of 30 June 1994, quoted in: C. Rumpf, *Das türkische Verfassungssystem* (Wiesbaden 1996), 254.

¹⁶² It should, however, be noted that France also has a constitutional provision that establishes indivisibility of the nation as a fundamental principle, Art. 1 French Constitution of 4 October 1958, <<http://www.assemblee-nationale.fr/english/8ab.asp>> (last visit 18 January 2003).

¹⁶³ European Commission, *supra* note 82, 48 et seq.; see for the situation in 1989: J. van Ginderachter, *L'élargissement de la Communauté: le cas de la Turquie*, [1989] RMC 587 et seq.; J. Bourrinet, *La CEE confrontée à la demande d'adhésion de la Turquie*, [1989] RMC 78 et seq. and the development since the mid 1990s: The Europa World Year Book, *supra* note 11, 3178-3179, and 3180-3185; Sommer, *supra* note 136, 7; Akagül, *supra* note 112, at 363 et seq.; B. Yilmaz, *Wirtschaftskrise in der Türkei*, *Internationale Politik* (1/1998), 35; F. Şen, *Die Türkei zu Beginn der EU-Beitrittspartnerschaft*, *Aus Politik und Zeitgeschichte* (13-14/2001), 31 et seq.

¹⁶⁴ Eurostat, *Structural indicators of candidate countries in 2000*, <<http://europa.eu.int/comm/enlargement/turkey/pdf/indicators.pdf>> (last visit 18 January 2003).

¹⁶⁵ On the political and "psychological" problems regarding this criterion cf. Peuch, *supra* note 126.

¹⁶⁶ The third recital of the Preamble of the Turkish Constitution reads: "[The Constitution embodies...] the understanding of the absolute supremacy of the will of the nation and of the fact that sovereignty is vested fully and unconditionally in the Turkish nation and that no individual or body empowered to exercise this sovereignty in the name of the nation shall deviate from liberal democracy and the legal system instituted according to its requirements" and Art. 6 of the Turkish Constitution reiterates this statement: "(1) Sovereignty is vested fully and unconditionally in the Nation. (2) The Turkish Nation shall exercise its sovereignty through the authorised organs as prescribed by the principles laid down in the Constitution. (3) The right to exercise sovereignty shall not be delegated to any individual, group or class. No person or agency shall exercise any state authority which does not emanate from the Constitution." Cf. also M. Soysal, *Introduction to the Constitutional Problems of the Accession of Turkey*, in: A.E. Kellermann/J.W. de Zwaan/J. Czuczai (eds.), *EU*

these provisions is indispensable for an accession to the Union.¹⁶⁷ However, apart from this constitutional obstacle the will to integrate into a supranational union which entails a considerable loss of powers on the national level still seems to require an enormous change in Turkish political thinking.¹⁶⁸

dd) Ability of the Union to absorb new Members

The Union's ability to absorb Turkey as a new Member State must be assessed on a political basis. However, some legal *caveats* have to be addressed.

The Union declared itself to be ready for accession of new Member States by concluding the Nice Treaty.¹⁶⁹ In fact, this goal was only partially reached.¹⁷⁰ The Convention on the Future of Europe¹⁷¹ now tries to establish a solid basis for the future EU. A widely accepted aim of the Convention is to preserve the supranational, integrationist character of the Union. This aim shall and will be the basis for any future EU. Naturally, a European Union composed of 25 States will be different from what it is now. Accession of Turkey, however, would face the EU framework with enormous institutional challenges.

It is sometimes said that in the (hypothetical) case of accession of Russia to the EU it would rather be the EU acceding to Russia. This is not the case for Turkey. But still, Turkey's size would be a problem for the European constitutional system: At present Turkey has a population of almost 70 million citizens, which will rise to almost 80 million shortly after 2010 and reach 100 million by 2035.¹⁷² The EU now has approximately 375 million inhabitants and will have some 480 million citizens after accession of the 27th Member State. Turkey would therefore become the largest Member State at the time of its accession or shortly afterwards. Not only the Member States but also the European Union must adhere to democratic principles. Therefore Turkey would become the most influential Member State in the European Union simply because of its size, i.e. the number of Turkish MEPs and Turkey's votes in the Council would be the highest respectively. As regards the EP this is not likely to create extensive problems since Turkish MEPs would probably ea-

Enlargement: The Constitutional Impact at EU and National Level (Den Haag 2001), 259 et seq.; see also the remarks by Ö r ü c ü , *supra* note 131, 218.

¹⁶⁷ S o y s a l , *ibid.*, 261.

¹⁶⁸ Cf. A. S a v a ş A k a t , Türkei spielt europäische Karte aus, Süddeutsche Zeitung, 14 January 2003, 2; Ş e n , *supra* note 163, 29; Ö r ü c ü , *supra* note 54, 535.

¹⁶⁹ Nice Intergovernmental Conference, Declaration N° 23, para. 2.

¹⁷⁰ Cf. the critique by P. P e s c a t o r e , Nice – Aftermath, 38 CMLRev. (2001) 265 et seq.

¹⁷¹ Official homepage at <<http://european-convention.eu.int>>. Turkey takes part in the Convention like the other candidate countries: Y. Y a k i ş is the Turkish government representative, Z. A k c a m and K. D e r v i ş represent the Turkish Grand National Assembly.

¹⁷² Cf. (Turkish) State Institute of Statistics, as quoted by the UN Population Fund <<http://www.unfpa.org.tr/popdynamics.htm>> (last visit 18 January 2003); but also TÜSİAD – Turkish Industrials and Businessmen's Association (ed.), Turkey's Window of Opportunity (Istanbul 1999), 34.

sily integrate into the existing European political structures. However, the maximum number of 732 Members of European Parliament (Art. 189 (2) EC, as amended by the Nice Treaty) would have to be raised again. In the Council Turkey's votes would at least be equated to those of France, Germany and the United Kingdom if they did not outnumber those. Since the Council is much more influenced by national interests than the EP Turkey could block decision-making in the EU easier than any other Member State.¹⁷³

The entire political system of the European Union, more or less balanced in Nice and now to be reshaped by the Convention on the Future of Europe, would have to be overturned again. There seems to be a lack of debate on this aspect. The accession of Turkey is mostly discussed in terms of religion or culture. This indicates that politicians and citizens are not fully aware of the institutional implications. Because of the mere size of Turkey and since the ambitious goals of political integration are not likely to be followed by Turkey, the institutional structure of the EU would almost certainly be reduced to that of an expanded customs union. If accession is really intended innovative structures will have to be found, e.g. a system of institutionalised closer co-operation of Member States willing to proceed on the path to political integration.¹⁷⁴

3. Conclusion

To sum up, the accession of Turkey to the Union is not likely to occur in the near future – not only for political but already for legal reasons. At the moment, Turkey fulfils only some conditions for accession and, taking the legal criteria seriously, will be eligible only after further substantial changes in its political system, particularly with respect to democracy and the rule of law. Turkey's particular position in the dispute about Northern Cyprus does not make accession any more likely. Moreover, the European Union would have to adapt considerably for Turkey as a Member State.

III. Outlook

For Turkey accession would mean that it could fully take part in the political system of the EU, whereas it now has to adopt a considerable amount of the *acquis* under the customs union regime without having any influence on it. Therefore,

¹⁷³ Especially the newly introduced Art. 205 (4) EC requires the concurring votes of Member States that represent at least 62 % of the EU population. This is overlooked by G. A v c i , Putting the Turkish EU Candidacy into Context, 7 EFARev. (2002) 104.

¹⁷⁴ Cf. only the "center of gravitation" proposed by J. F i s c h e r , From Confederacy to Federation: Thoughts on the Finality of European Integration, Speech within the Forum Constitutionis Europae, <<http://www.rewi.hu-berlin.de/WHI/english/fce/fcespez2/fischerengl.htm>> (last visit 18 January 2003).

Turkey could make a huge step from the status of a junior partner to that of a major player within the EU constitutional system.

For the European Union accession of Turkey would have major implications as well. Therefore the Member States' governments cannot handle the question of accession like accepting another State to a multilateral international agreement. This is constantly overlooked by the US when urging the EU to admit Turkey as a Member State for strategic reasons.¹⁷⁵ The US is clearly not aware of the particular nature of European integration. Given the transformation of the Member States' constitutions, the European Union has become a multilevel constitutional system.¹⁷⁶ As accession of a new Member State has an impact on this interrelated constitutional system, Union citizens have to be involved in the discourse on this issue. The future territorial scope and legal framework of their "supra-State" European Union is a question of constitutional dimension. Therefore, politicians should conduct an honest debate with the citizens on these issues. This debate, however, should not only focus on cultural aspects but rather address the political implications of Turkish membership in the EU.

The question of whether the accession of Turkey is a reasonable aim of EU politics remains unanswered yet. It could improve integration of Turkish citizens into the societies of those western European States where Turkish migrants live since they would acquire Union citizenship by the accession of Turkey. Whether this holds true or whether even the opposite, i.e. further segregation, could be the result is open to discussion.¹⁷⁷ Another argument in favour would be that integration of Turkey into the EU system could secure stability and peace in the region.¹⁷⁸ At the moment, however, there is no danger of Turkey turning into an Islamist State threatening Europe with terror or war. There is no danger either that Turkey would leave the so-called coalition against terrorism.¹⁷⁹ Whether Turkey is capable of stabilising its neighbouring countries or building a bridge to the Arab world is doubtful especially because the rule of the Ottoman Empire over large parts of the region is not forgotten. Besides, the European Union has to analyse carefully whether strengthening regional security outweighs the possible weaknesses in the entire EU system. Especially the Common Foreign and Security Policy is already

¹⁷⁵ Cf. A. F l e i s c h e r, Press Statement of 13 December 2002 on EU Enlargement and Turkey, <<http://www.whitehouse.gov/news/releases/2002/12/20021213-16.html>> (last visit 18 January 2003); P. W o l f o w i t z, Building Coalitions of Common Values, Address to IISS (London) on 2 December 2002 <<http://www.iiss.org/showdocument.php?docID=62>> (last visit 18 January 2003), 11 et seq., and the comment by I. B e r m a n, Losing Turkey?, National Review Online, 1 November 2002 <<http://www.nationalreview.com/comment/comment-berman110102.asp>> (last visit 18 January 2003).

¹⁷⁶ I. P e r n i c e, Multilevel Constitutionalism in the European Union, 27 *ELRev.* (2002) 511 et seq.

¹⁷⁷ Cf. the opposing views by U. W e h l e r and H. S c h m i d t, Sind die Türken Europäer?, *Die Zeit* 50/2002, 1.

¹⁷⁸ G. V e r h e u g e n, For a more Inclusive Union, Private View – Quarterly Int'l Review of the Turkish Industrialists' and Businessmen's Association (Spring 2000), 45 [the article can also be found at <<http://www.tusiad.org/yayin/private/spring00/union.pdf>> (last visit 18 January 2003)].

¹⁷⁹ H.-J. A x t, Selbstbewusstere Türkei, *Internationale Politik* (3/2002), 45 et seq.

complicated in a Union of 15 and will be so even more in an enlarged EU.¹⁸⁰ Agreeing upon coherent external policies within a European Union that includes Turkey will be a very difficult task.

The EU has a strong interest in economic welfare in Turkey since it is the largest immediate neighbour of the EU. Any economic crisis could lead to massive immigration into the EU. Whether only accession can avoid this should be discussed. Economic crises in Russia and the southern Mediterranean countries could have a similar impact on the EU. Accession of these States is, however, unthinkable.

In general, the European Union still has to find a coherent strategy towards its neighbours since most of its former neighbours are on the road to accession now. For Turkey the idea of a special relationship, short of membership, should not be forgotten.¹⁸¹ The customs union, intensified with further economic aid and political co-operation, seems to be a reasonable basis for this. Moreover, first attempts to establish a regional integration process with Turkey at the centre have already been made and some progress in that respect has been achieved.¹⁸² Turkey and the EU should evaluate whether a co-operation on that basis could lead to better results for both parties than a complicated "marriage".

Even though Turkey's way into the European Union seems paved it is still a long way towards a possible accession.¹⁸³ Both sides should take care that this way does not become the road to nowhere – neither for the European Union nor for Turkey.

¹⁸⁰ The Turkish blockade of a EU-NATO cooperation and its obstruction policy in the Cyprus conflict demonstrate what a difficult partner Turkey can be, cf. A x t , *ibid.*, 49; cf. also the rather diplomatically worded article by S o l a n a , *supra* note 12.

¹⁸¹ Cf. the ideas of P r o d i , *supra* note 100, *passim* who did, however, not mention Turkey.

¹⁸² In particular the Black Sea Economic Co-operation, cf. A k k a y a / Ö z b e k / Ş e n , *supra* note 10, 87 et seq.; H. C e t i n , Turkey: Domestic Policy, Regional Security, and the Middle East, Policywatch – Special Policy Forum Report N° 316 (summary of the speech), <<http://www.washingtoninstitute.org/watch/Policywatch/policywatch1998/316.htm>> (last visit 18 January 2003), Ö r ü c ü , *supra* note 54, 527.

¹⁸³ Not only the Member States' Parliaments have a veto on each Act of Accession, also a referendum will be necessary in some Member States before any change of the future Constitutional Treaty can enter into force. Moreover, the European Parliament will have a close look at the situation in Turkey, as it did throughout the last decades, cf. the list of EP resolutions on Turkey <<http://europa.eu.int/comm/europeaid/projects/countries/output/turquie.htm>> (last visit 18 January 2003).