The European Union's Human Rights Promotion to Turkey:
A Question of Legitimacy

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Thesis submitted in fulfilment of the requirements for the Degree of PhD

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January 2014

Summary

Scholars have regularly presented the EU as a 'normative power' that promotes human rights as a legitimate standard of international behaviour. Yet, the legitimacy of EU normative power within enlargement has not been well-defined or investigated. The overarching issue that this thesis aims to address concerns the legitimacy of EU human rights promotion to Turkey. It aims to provide an answer to a politically and intellectually challenging question: How should the European Union promote human rights to Turkey, if the country's human rights progress is to be understood not simply as a result of domestic dynamics, but as dependent on the legitimacy of EU human rights promotion? The central aim of the thesis is to explore ideas and practices that contribute to improving the EU policy of human rights towards its non-European partners. The theoretical focus offers a fresh perspective to the study of Turkey-EU relations that relates to 'normative power Europe' and the legitimacy of human rights promotion. The empirical focus of the thesis explores legitimacy as being a highly significant issue which affects the long-term success or failure of EU human rights policies. It assesses the prospects and implications of EU policy and determines what is required in terms of external incitements for optimal outcomes. The original contribution of the thesis lies in its argument that EU normative power within enlargement is not intrinsic to the EU, but ought to be recognised as such through its interaction with non-European 'others'.

DECLARATION

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Contents

List of Abbreviations

AKP – *Adalet ve Kalkınma Partisi*, Justice and Development Party

ALT – Association of Liberal Thinking

CAP – Common Agricultural Policy

CEE – Central and Eastern Europe

CHP – *Cumhuriyet Halk Partisi*, Republican People's Party

CoE – Council of Europe

DG – Directorate General

ECHR – European Convention of Human Rights

ECtHR – European Court of Human Rights

ECJ – European Court of Justice

ECSC – European Coal and Steel Community

EDC – European Defence Community

EEC – European Economic Community

EFTA – European Free Trade Association

EIDHR – European Instrument of Democracy and Human Rights

EP – European Parliament

EPC – European Political Community

EU – European Union

EUPC – European Political Cooperation

FYROM – Former Yugoslav Republic of Macedonia

GDP – Gross Domestic Product

HRA – Human Rights Association

HRFT – Human Rights Foundation of Turkey

IPA – Instrument for Pre-Accession Assistance

JPC – Joint Parliamentary Committee

LGBT – Lesbian Gay Bisexual Transexual

MHP – *Milliyetçi Hareket Partisi*, Nationalist Action party

MIPD – Multi-Annual Indicative Planning Document

MEP – Member of European Parliament

MP – Member of Parliament

MÜSİAD – Independent Industrialists' and Businessmen Association

NGO – Non-Governmental Organisation

NHRI – National Human Rights Institution

NPE – Normative Power Europe

NSC – National Security Council

BDP – *Barış ve Demokrasi Partisi*, Peace and Democracy Party

PHARE – Poland and Hungary Assistance for Restructuring of Economy

PKK – *Partiya Karkerên Kurdistan,* Kurdistan Workers' Party

TAIEX – Technical Assistance and Information Exchange

TEU – Treaty on European Union

TÜSEV – Third Sector Foundation of Turkey

TÜSİAD – Turkish Industrialists and Businessmen's Association

UDHR – Universal Declaration of Human Rights

UK – United Kingdom

UN – United Nations

UNDP – United Nations Development Programme

Introduction

1. Overview and original contribution

The overarching issue that this thesis aims to address is one concerning EU human rights promotion and legitimacy. It aims to provide an answer to a politically and intellectually challenging question: How should the European Union promote human rights to Turkey, if the country's human rights progress is to be understood not simply as a result of domestic dynamics, but as dependent on the legitimacy of EU human rights promotion? The central aim of the thesis is to explore ideas and practices that contribute to improving the EU policy of human rights to Turkey as a candidate state. The theoretical focus offers an alternative perspective to the study of the relationship between Turkey and the EU that relates to 'normative power Europe' and the legitimacy of human rights promotion. The empirical focus of the thesis explores legitimacy as being a highly significant issue which affects the long-term success or failure of EU human rights policies, and determines what is required in terms of external incitements for positive outcomes.

Theoretically, the thesis will question the assumption that human rights promotion to Turkey is legitimate on its own terms. It will emphasise that what EU, as a 'normative power', promotes as 'normal' in international political behaviour, might not be normal for everybody else, including Turkey. Accordingly, the thesis will search for alternative sources of legitimacy that can justify EU human rights promotion to Turkey as an allegedly non-European 'other', which also has an entrenched state doctrine and important human rights problems on the ground. Thus, human rights promotion within enlargement will be discussed in relation to sources of legitimacy that are external to the concept of EU normative power itself, but which connect the normative base of human rights with established values in policymaking. Empirically, the thesis will apply in detail two sources of legitimacy: legitimacy as procedural propriety for human rights policies (procedural legitimacy), and legitimacy as recognition of EU normative power by the non-European 'other' (substantive legitimacy). It will be argued that a process of EU

human rights promotion without underlying legitimacy will be fragile and only partially effective, as well as heavily dependent on the EU's external constraints and governmental/political control within Turkey.

The empirical examination of EU legitimacy will have a dual nature, relating both to policy performance and to attitudes in Turkey. Concerning the former, the empirical focus will explore specific EU human rights policies with instruments of financial and technical assistance as cases in point: the Instrument of Pre-Accession Assistance (IPA), the European Instrument of Democracy and Human Rights (EIDHR), and human rights consultations. The qualitative analysis of the policy documents and projects stemming from these instruments will show that they have been instituted according to European human rights norms and in solidarity with vulnerable citizens. Yet, their function presents a challenge for prospects of human rights protection in terms of their pertinence to Turkey's particular human rights issues, their inclusiveness, and their outcomes for vulnerable citizens. EU stakeholders' norm-laden visions frequently juxtapose with the function and outcomes of the aforementioned instruments and with those who stand to benefit from them most.

Concerning EU legitimacy in terms of domestic attitudes, the thesis will demonstrate that unless EU human rights promotion and accession membership are regarded as 'values as such' by Turkish political and societal actors, then norm diffusion will be superficial and EU-related reforms will be dependent on cost-benefit analyses. It will be shown that the success of the EU as a 'normative power' in Turkey largely depends on compatibility between the EU 'standard of legitimacy' (liberal conceptions of human rights, democracy, and the rule of law) and Turkey's accepted 'standards of legitimacy' (dimensions of nationalism and secularism). It is worth noting that domestically accepted standards of legitimacy differ between different actors in Turkey. The empirical exploration is not delimited to official policy only, e.g. policy emanating from Turkish governmental authorities. It includes goals expressed by the major opposition party and non-governmental human rights organisations. Therefore, even if EU human rights promotion is

recognised as a powerful resource of change by some political actors, it still encounters resistance by opposing interests. On the basis of the qualitative analysis of domestic attitudes, it is found to be hardly the case that EU human rights promotion within enlargement can be accepted uncritically by Turkey as a 'force for good'.

This thesis aims to contribute to the ongoing literature about the EU's norm-shaping role in the world with specific reference to human rights promotion within enlargement. The choice of human rights promotion to Turkey as a main unit of analysis results from the multifaceted relationship between the two actors, and the challenges this creates for the theory and practice of EU normative power. Many countries seek political and economic ties with the EU through membership or other association. Yet, Turkey's EU accession process becomes a source of contestation for the EU's norm-diffusing role. Turkey has been and continues to serve as a key 'other' in the definition of the EU's normative agenda (human rights, democracy, and the rule of law). This renders its legitimation of the EU agenda even more significant, given that recent normative power scholarship argues that the EU cannot be considered a 'normative power' unless it is recognised as such by 'others' through the context of their interaction. In addition, Turkey's interaction with Europe has played a critical role in shaping the EU's normative power and European identity. In this setting of mutual identity-shaping, it is not accurate to assume that normative power manifests as an intrinsic property of the EU, nor that Turkey will accept it at face value.

This study, therefore, is an attempt to address the question of what happens when Europe attempts to reshape a powerful actor whose political behaviour is also embedded in normative standards and value-based judgments, albeit distinct from those of the EU. In order to address this question, the thesis will develop an alternative 'normative power Europe' analysis, questioning how NPE should be applied to countries which also have an idiosyncratic strategic culture that frames their international interactions and the way they practice policymaking.

2. Why study EU human rights promotion to Turkey from a perspective of legitimacy?

As highlighted previously, this thesis seeks to analyse the European Union's human rights promotion to Turkey as a candidate state. Contrary to the dominant literature on Turkey-EU relations, the analysis here takes as its starting point ideas of legitimacy in international policy-making and human rights promotion in particular. This is a somewhat unusual exercise, for the EU's mechanisms of human rights promotion within enlargement, let alone Turkey's accession process, have rarely been analysed from a legitimacy perspective. This is despite the proliferation of 'legitimacy analyses' in the study of EU enlargement and external relations, and many interesting insights into the EU's tools in particular country-cases. It is argued here that applying a legitimacy perspective in examining human rights policies with enlargement is a fruitful exercise. This is because such a perspective, despite its imprecisions, seeks to highlight the contradictions between actual EU human rights promotion (what it is doing) and its better potential (what it could do). The usage of legitimacy transforms the analysis of human rights promotion from a situation describing an intergovernmental bargaining exercise between EU-Turkey elites, to an analytical framework in which human rights actions on the ground and local socio-political dynamics (including civil society organisations) can be studied jointly. This fits into the agenda of EU normative power analyses which argue that the EU cannot be a normative power without an external recognition of its legitimacy.

Based on these guiding assumptions, the main objective of the thesis is to develop a legitimacy-oriented analysis of the EU's human rights promotion within enlargement, and to operationalise it in the case of Turkey. The choice of Turkey amongst other candidate states seemed particularly suited for the purpose of this study. Firstly, Turkey as an alleged 'non-European other', as adopted in public

debates and segments of the literature on European self-definition,[1] supports the legitimacy study of a top-down human rights policy and its fit/misfit with the target country. Secondly, the extent of Turkey's human rights problems justifies a study that is inspired, at bottom, by perceptions of significance of human rights norms. Although Turkey is not the first candidate state with a weak human rights record (Greece, Spain, and Portugal are several examples discussed in Chapter One), it is the only one that has been criticised for human rights violations that are 'inadmissible and under no circumstances tolerable'.[2] Thirdly, Turkey's human rights problems are embedded in the country's established state doctrine and political/administrative values, as discussed in Chapter Three. The Turkish state is sufficiently consolidated to prevent the EU's human rights policy from having a free hand, which, in turn, is likely to obstruct human rights support from being optimally effective. Fourthly, the selection of Turkey is justified by temporal reasons. At the time of writing, Turkey is a key member of the next group in line for EU membership, alongside Serbia and the Former Yugoslav Republic of Macedonia (FYROM). These specific features make Turkey a particularly good choice for the purposes of the present study.

3. Research design

As the research problem and aim of the thesis have now been presented, this section will specify the research design and the application of the methodological tools. This section concentrates on those research methods which interpret the

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[1] Neumann, I.B. and Welsh, J. 'The Other in European Self-Definition: an Addendum to the Literature on International Society'. *Review of International Studies*, vol.17 no: 4 (1991) p.327-348; Neumann, I.B. *Uses of the Other: the 'East' in European Identity Formation* (Manchester: Manchester University Press, 1999); Muftuler-Bac, M. 'Through the Looking Glass: Turkey in Europe'. *Turkish Studies*, vol.1 no: 1 (2000) p.21-35; Mayer, F.C. and Palmowski, J. 'European Identities and the EU – The Ties that Bind the Peoples of Europe'. *Journal of Common Market Studies*, vol.42 no: 3 (2004) p.573-598; Diez, T. 'Constructing the Self and Changing Others'. *Millennium- Journal of International Studies*, vol.33 no: 3 (2005) p.613-636; Casanova, J. 'The Long, Difficult, and Tortuous Journey of Turkey into Europe and the Dilemmas of European Civilisation'. *Constellations*, vol.13 no: 2 (2006) p.234-247; Tekin, B.C. *Representations and Othering in Discourse: the Construction of Turkey in the EU Context* (Amsterdam: John Benjamins Publishing, 2010); Oner, S. *Turkey and the European Union: the Question of European Identity* (Plymouth: Lexington Books, 2011)

[2] European Commission, '1999 Regular Report on Turkey's Progress towards Accession' (Brussels: 13 October 1999) p.8.

underlying meanings, causes, and implications of legitimacy in EU human rights promotion, and which discern and justify the selection of the three EU instruments in the empirical part of the thesis. Additionally, it outlines and explains the methodologies of the individual chapters, both conceptual and empirical. These are outlined below so as to provide greater clarity and comprehensibility to the data and arguments.

Research design for the EU's human rights promotion as a distinct field of enquiry has frequently emerged in the context of the study of how the EU acts in activities directed towards non-EU members and third countries. In discussing a research design for European policy processes towards target states, Smith suggested a framework for scholarly enquiry that does not focus exclusively on *either* European *or* national policy processes, but treats these domains as two clearly linked variable processes.[3] According to this idea, research design for EU human rights promotion can be organised around studying EU activity as a combination of *dependent* and *independent variables*.

Specifically, the analyst might be interested in the various procedural aspects of EU policies that are derived from a range of key actors and institutional developments, i.e. human rights promotion as a dependent variable. A study of EU human rights promotion as a dependent variable is premised on the idea that EU human rights activities do not simply serve a desire to influence power politics. They also serve important value-based functions, such as preventing key problematic issues in new EU member states from adversely affecting European human rights achievements, and also socialising these states and their officials into 'European' methods of human rights protection – both key characteristics of 'normative power Europe'. As an independent variable, one could examine how the perceptions of EU human rights promotion by political actors in the target country influence the process of EU-induced human rights reform. In this thesis, a combination of both approaches will involve a single analysis, treating each aspect

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[3]Smith, M.E. 'Researching European Foreign Policy: Some Fundamentals'. *Politics*, vol.28 no: 3 (2008) p.181 (177-187)

separately but in sequence: EU human rights promotion will first be studied empirically as a dependent variable through the analysis of specific policy instruments (Chapter Four), and then as an independent variable through the analysis of political attitudes in Turkey (Chapter Five). A major research strategy of this thesis is to elucidate, compare, and contrast the normative foundation of EU human rights promotion with its policy practice and the attitudes held by Turkish policymakers, thus significantly affecting how human rights are applied and reacted to.

In the process of fulfilling the overall aim of the thesis, the legitimacy analysis will be conducted through a 'normative power Europe' framework. Normative power Europe entered the debate on research design for EU external action by bringing ideas of 'transformative', 'civilian', 'ethical', and 'soft power' centre-stage in the analysis of EU international behaviour. In a carefully designed case study on 'normative power Europe', Manners was amongst the first scholars who attempted to show how the EU shapes conceptions of 'normal' in international politics in line with its unique normative basis. This basis, he argued, is rooted in its Enlightenment history and its character as a political order that contributes to freedom and democracy in world politics.[4] In other words, Europe as a normative power plays a unique role in globalising norms such as peace, democracy, the rule of law, and human rights.[5] In other notions, EU normative power refers to its pursuit of external policies geared towards world openness, global awareness, loyalty to humankind, self-reflection and self-problematisation, and recognition of the 'other'.[6]

Nevertheless, there seems to be lack of clarity in the literature over how normative power exerts influence on target states (by rational choice or socialisation), how it relates to harder aspects of EU external action (such as economic interests), and how one can measure normative power empirically. It is

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[4] Manners. I. 'Assessing the Decennial, Reassessing the Global: Understanding European Union Normative Power in Global Politics'. *Cooperation and Conflict*, vol.48 no: 2 (2013) p.304-329.

[5] Merlingen, M. 'Everything is Dangerous: a Critique of Normative Power Europe'. *Security Dialogue*, vol.38 no: 4 (2007) p.435 (435-453)

[6] Pichler, F. 'Cosmopolitan Europe'. *European Societies*, vol.11 no: 1 (2009) p.6 (3-24)

for this reason that the puzzle of legitimacy will be considered for questioning and interpreting EU human rights promotion to Turkey. A central analytical aim of this thesis is to integrate arguments on the EU's normative role in the world into the analytical language of legitimacy. The notion of legitimacy includes a normative component that is not tied exclusively to traditional notions of power but can be applied in all political situations and to all types of policies. Thus, the proposal to analyse EU human rights policy to Turkey in terms of legitimacy does not lower the normative standard of the analysis, it makes it more inclusive.

The scholarly discussion of research design for external EU action has occurred in connection with a much wider discussion between scholars on how to study the complex arena of EU foreign policy as a novel empirical domain. If we accept EU external action as a system of governance that 'borrows' mechanisms, processes, and procedures from supranational and national level, this provides a productive arena for testing out its legitimacy as a leading 'normative power' of human rights promotion worldwide. This aspect of EU external action provides for a research design that pays close attention to EU norms, strategy, and impact. At the same time, it focuses on recognition by the target state, and on how the EU human rights policy and the domestic policy environment complement or undermine each other.

The study of the legitimacy of human rights promotion to Turkey will begin with an analysis of the broader historical context in which the policy is embedded, through a discussion of the practice of human rights in EU integration and why this is a question of legitimacy. The thesis will begin with framing human rights promotion within the wider literature on European integration, in order to create a link between the development of an EU human rights narrative and how this led it to frame what is acceptable (or not) political behaviour on the international scene. For this purpose, the discussion will begin by outlining the historical development of the EU's legal competences in the area of human rights, both internally and externally. This will be followed by a discussion of how conditionality has been framed within the wider policy of human rights promotion in EU external relations

and enlargement in particular. The linkage of internal and external human rights narrative will highlight the issue of consistency (e.g. the EU's maximalist approach to human rights externally when it is more permissive internally) and the subsequent questions of legitimacy raised by this divergence. The above discussion will further the aims of the thesis by spelling out the EU's 'standard of legitimacy', as this stemmed from its so-called normative difference: historical context, hybrid polity, and political-legal constitution.[7] It will also help to draw conclusions about the nature of the EU's involvement in Turkey's human rights situation and about the specific human rights instruments selected for empirical discussion in Chapter Four.

By considering legitimacy as located in the relationship between the EU and Turkey, the discussion of human rights promotion must include a background of human rights issues in Turkey and the EU's involvement therein. In recent years, the EU has been the primary frame of reference for domestic policy decisions on human rights reform, and it is for this reason that any discussion of reform must focus primarily, though not exclusively, on EU involvement. Human rights violations in Turkey owe to certain characteristics found within Turkish politics itself. These include historical experiences, the salient role of what can be termed 'Kemalist orthodoxy', the unitary state and division of state and religion, and the guardian role of the military as determined in the Constitution of 1960. For a long time, human rights protection was only regarded as legitimate by Turkish political actors if it did not infringe the Kemalist principles regarding the form of the Turkish state.[8] This general propensity for human rights violations has potentially undermined the ability of EU policy to meet its stated aims. Therefore, human rights reform in Turkey requires clarifications regarding the foundations of human rights problems, their current state of protection, and the involvement of the European Union.

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[7] Manners, 'Normative Power Europe', p.240.
[8] Baudner, L. 'The Politics of Norm Diffusion and Turkish European Union Accession Negotiations'. *Journal of Common Market Studies*, vol.50 no: 6 (2012) p.927 (922-938)

The EU policy mechanisms identified for analysis are a) financial assistance through the Instrument of Pre-Accession Assistance (IPA) and its projects, b) civil society development through the European Instrument of Democracy and Human Rights (EIDHR), and c) human rights consultations. These instruments were selected according to three main criteria. The first selection criterion was whether the policy tool in question had been present from early on in EU enlargement and human rights, in other words, whether it had been applied over a period of successive enlargements. The temporal domain of the thesis' background discussion of human rights conditionality is extensive in so far as the first applications for membership occurred in the 1960s. In order to be considered for inclusion, EU policy tools needed to be instruments that had been stable and long-run, allowing for their procedural mechanisms to develop in parallel with the development of the EU's human rights narrative within enlargement. The second criterion concerned their ability to effect a degree of direct policy transformation in the target country. This ruled out for instance instruments of annual human rights monitoring, as they exclusively entail the collection and verification of information on human rights problems, yet does not demand concrete policy action. Thirdly, the EIDHR was specially selected by an impetus to open up an under-researched dimension of normative power Europe, that of civil society development. The EIDHR is hailed as a relatively recent tool within enlargement (previously pertaining only to external relations) that encourages human rights reform from 'bottom-up' without government involvement. In this sense, EIDHR funding is promoted as a tool that respects social and cultural sensitivities, gives local 'ownership' to human rights reform, and develops from below an 'active' and 'free' civil society movement that previously might have been disadvantaged. Just how effective this logic is in shaping human rights change and encouraging reform will be addressed in the empirical part of the thesis. Finally, European Commission officials interviewed for this thesis singled out the above instruments as the EU's main human rights-promoting mechanisms to Turkey.

The discussion so far has delimited the research design of the thesis and clarified the selection criteria for the empirical cases. The next section will discuss

the data collection methods that will be employed in the individual chapters of the thesis.

4. Data collection and analysis

The method applied to the investigation of the historical development of EU human rights promotion in Chapter One is literature review and documentary analysis. In order to investigate the development of an internal and external EU human rights narrative, it is necessary to conduct a longitudinal historical analysis. This will initially identify the emergence of European human rights norms and institutional mechanisms, and then the elements of an emerging human rights policy that each of them affected. This background analysis serves as a useful starting point for a discussion of the policy processes in question, because it emphasises the EU's legal competences in the area of human rights, the interaction between internal and external EU systems of human rights protection, and the different kinds of action taken by the European Commission and the European Parliament. It therefore shows how substantive European human rights norms, when incorporated into EU legislation, subsequently changed external action goals and introduced international co-operation, democracy, the rule of law, human rights and fundamental freedoms, rights of minorities and good governance as foreign policy issues that could shape conceptions of 'normal' in international life.

Tracing the evolution of EU human rights policy was assisted by a documentary analysis of EU legal texts and documents. As Bell states, 'documentary analysis to trace the evolution of a policy... and its related arguments is a critical aspect of the reviewing task'.[9] The main categories of official documents studied were EEC/EU treaties, accession treaties of individual member states, European Commission opinions, Council declarations, European Parliament resolutions, and case-law by the European Court of Justice. In total, forty-eight enlargement-related documents were drawn on, serving as a source of data on the

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[9]Bell, E. *Research for Health Policy* (Oxford: Oxford University Press, 2010) p.91.

contextual factors, institutional settings, and decision-making orientations of the developers of EU human rights promotion. The timeframe of the document analysis ranged from the establishment of the European Economic Community in 1957 until the present day. The data ranging from 1950-1980 was collected from the European Documentation Centre of Aberystwyth University, an information centre functioning as a repository of official publications and documents of EU institutions. Data ranging from 1980 to 2013 was retrieved from the European Union legislation website (Eur-Lex). The Eur-Lex website provides online access to European Union official journals, treaties, legislation under preparation and in force, and case-law.[10]

Having identified EU human rights promotion as the main unit of analysis for this study, the next step is to outline the methods necessary for developing the conceptual basis of the thesis. Chapter Two conducts a literature review into the theoretical debates on normative power Europe, legitimacy, and human rights, and considers their implications for the study of human rights promotion to Turkey. The aim of the review is to synthesise key ideas and findings in a systematic fashion, in order to identify gaps in the literature and to elucidate how the present study fits into the current literature on EU normative power and human rights promotion.

The literature review discusses theoretical and empirical scholarly works on normative power Europe and legitimacy. It provides an overview of the variety of ways in which normative power Europe has been defined, interpreted, and critiqued. It also discusses the distinct 'prescriptive' and 'descriptive' methods employed in legitimacy assessments in the literature, in order to highlight their main contributions and deficiencies and to stress the advantage for this study to adopt a combined prescriptive-descriptive approach. Moreover, it compares and contrasts the key research on legitimacy for EU normative power, with the aim of identifying possible sources of legitimacy that are external to the concept of normative power Europe itself. It further specifies the analysis by focusing on

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[10]Eur-Lex: Access to European Union Law. <http://eur-lex.europa.eu/en/index.htm>

variants of legitimacy that provide direction to the specific research question and help make sense of the thesis' cases: procedural legitimacy and legitimacy as recognition by the 'other' (substantive legitimacy). Finally, the literature review outlines the empirical criteria that will allow establishing whether the empirical evidence conforms to the proposed framework. The discussion of scholarly works develops, through gradual refinement, a clear research problem: the EU human rights promotion within enlargement lacks a solid basis for legitimacy, and the ensuing question is how this is manifested in Turkey's case, and to what extent it might obstruct the progress of human rights reform in Turkey.

The literature search involved two strategies. Firstly, a comprehensive list was generated of monographs, book chapters, and articles on normative power Europe and legitimacy, which have witnessed a remarkable growth since 1999, reflecting the 'deepening' of European integration and the study of EU foreign policy through normative debates within IR.[11] The purpose was to show how academic knowledge has progressed over time, and how perspectives have changed in relation to the application of the terms 'normative power' and 'legitimacy', their methodological assumptions, and their operationalisation in empirical cases. The scholarly works referenced within the above materials, especially those that provided summaries of arguments provided in key texts, were traced to identify additional references. Overall, the literature review builds on existing works on normative power Europe and the legitimacy of human rights promotion in order to construct a basis for application to EU-Turkey relations within enlargement.

To grasp in a more focused manner the conditions at work for EU human rights promotion, it seemed advisable to offer an analysis of human rights protection in Turkey over time. Chapter Three performs a closer look at human rights issues at the intersection of domestic politics and EU accession. On the basis of secondary literature and with the help of analysis of EU documents on Turkey's

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[11] Moumoutzis, K. 'Still Fashionable yet Useless? Addressing Problems with Research on the Europeanisation of EU Foreign Policy'. *Journal of Common Market Studies*, vol.49 no: 3 (2011) p.607 (607-629)

pre-accession process, the chapter specifies crucial human rights developments in Turkey on its path to membership (with a more short-term focus on particularly interesting events), identifies stalemates as well as breakthroughs, and delineates EU involvement in the adoption of recent human rights reforms (post-2002). Chapter Three also offers an in-depth analysis of the present-day state of human rights protection across many domestic policies on the basis of a categorisation followed in the annual EU progress reports (freedom of expression, minority rights, freedom of religion, freedom of association, and women's rights). This helps elucidate Turkey's formal commitment to human rights protection and its official response to EU requirements.

The analysis in Chapter Three draws on primary and secondary sources on Turkey's human rights situation found in a variety of libraries in the United Kingdom and Turkey. Legal documents such as Turkey's national constitutions were utilised to clarify its official commitment to human rights protection. Other sources of primary data were reports and official documents by NGOs in Turkey and abroad (e.g. Human Rights Foundation of Turkey and Amnesty International), by international institutions (Council of Europe, European Court of Human Rights), and by the European Commission and European Parliament. Other public documents, such as pronouncements by the Human Rights Commission of the Turkish Parliament, were also used. Furthermore, interpreting human rights issues in Turkey and EU involvement therein necessitated engagement with secondary literature produced by scholars from Turkey. This was to ensure that the discussion took sufficiently into account the perspective and expert knowledge of domestic authors. Such an inclusive approach is useful in a theoretically informed empirical analysis that explores the human rights situation in Turkey where EU policy operates.

Chapter Four examines empirically the most significant policies of EU human rights support in the areas of financial and technical assistance, namely IPA, EIDHR, and human rights consultations. The methodologies employed are a) qualitative content analysis of EU documents, guided by the thesis' research

questions; and b) semi-structured interviews with expert European Commission bureaucrats discussing their policies' procedural intricacies and political dimensions. Documents and interviews are complemented by the use of the secondary literature which engages with the selected policy instruments and the core ideas that underpin EU human rights action.

Content analysis refers to the process through which an official document's underlying themes are discerned, extracted, and interpreted. [12] In general, documents have been viewed as pervasive for the study of public institutions because they represent contextual factors and institutional settings associated with the document's production. [13] European documentation analysed in Chapter Four came in many forms: EIDHR mission statements and calls for proposals; policies of IPA funding allocation and project fichés published by the European Commission; annual progress reports on Turkey; European Parliament resolutions and press releases; minutes of the EU-Turkey Joint Parliamentary Committee (JPC) meetings; and Council decisions. The variety of functions which these different documents play constitutes a rich source of insight into the processes and developments of EU human rights policy. They define the understandings of policy problems by the EU and the purpose of the instruments in relation to human rights issues in Turkey. As the case studies in Chapter Four show, the relevant documents prescribe the appropriate actions and ways of 'getting things done' within the remit of each instrument. In addition, as shown by the JPC meeting minutes, some documents offer insight into the interaction and communication between different policymaking actors and sub-groups of actors on both sides, including their different interpretations of the progress of the negotiations and the standards applied.

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[12]Bryman, A. *Social Research Methods* (Oxford: Oxford University Press, 2004) p.392.
[13]Miller, G. 'Contextualising Texts: Studying Organisational Texts'. In *Context and Method in Qualitative Research*, ed, by G. Miller and R. Dingwall (London: Sage Publications, 1997) p.77 (77-91)

How does the empirical information on specific human rights instruments help to draw general conclusions about the procedural legitimacy of EU human rights promotion to Turkey? The documents, by offering a description of the policy areas and projects conducted by different government agencies and civil society organisations, impinge directly upon the procedural abilities of each instrument. The IPA-funded project fichés, for example, highlight many deficiencies and pitfalls in the conduction of human rights projects, namely lack of sufficient resources, lack of contextual research on the extent of the human rights problem in Turkey, lack of inclusiveness of all groups who stand to benefit, and reactive rather than proactive government responses to specified problems. As a valuable supplement to documentary analysis, semi-structured interviews with European Commission officials were particularly suited to the purpose of unveiling the detailed policy processes of the EU human rights instruments. The purpose of the interviews was to obtain expert knowledge on the principles, priorities, and methods of their application.[14] This information is publicly available only to a very limited degree. Specifically, the interviews offered knowledge about how the priorities of pre-accession assistance are established, and how the instruments function on a day-to-day basis. They also discussed perceived shortcomings of the instruments and the role of Turkish political dynamics and conflicts for their effectiveness. Quite importantly, the interviewees offered direction towards specific documents that had not been previously considered. Overall, procedural politics were clarified, and the understanding of the thesis on how the policies work in practice was improved.

Interviews were held in November-December 2009 at the headquarters of the European Union in Brussels, Belgium. Officials were interviewed from two separate directorates-general (DGs). These were the DG of Enlargement, where five officials were interviewed, and the DG of External Relations, where one was interviewed. Within the DG Enlargement, interviewees held the following positions: International Relations Officer- Turkey unit, Policy Officer- Western

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[14] King, N. 'The Qualitative Research Interview'. In *Qualitative Methods in Organisational Research*, ed, by C. Cassell and G. Symon (London: Sage Publications, 1994) p.14 (14-36)

Balkans, Policy Coordinator- Enlargement Strategy, Public Relations Officer-Information and Communication, and Adviser on Inter-Institutional Relations. Within the DG External Relations, the interviewee held the position of Policy Officer in the Human Rights unit, and had previously held a position in the Turkey unit of DG Enlargement. The interviews lasted between thirty minutes and an hour, and were recorded and transcribed in full. Interviewees were informed in advance about the aim and the character of the thesis. The interviews themselves were semi-structured, leaving room to delve more deeply into the subject matter or into sidelines that threw additional light onto the subject (see Appendices 1 and 2).

Chapter Five examines the politics of EU human rights diffusion to Turkey. Methodologically, the chapter considers the goals and strategies employed by the political actors and civil society representatives involved in the EU-Turkey relationship. A number of official policy texts which emerged from the political parties' programmatic declarations were consulted, in addition to wider texts regarding more general Turkish government policies and the initiatives of the opposition parties. The analysis of Chapter Five covered a time period of eleven years (2002-2013). 2002 marked the year when the ruling Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) assumed office. The discussion of the perceived legitimacy of EU also drew on semi-structured interviews with independent human rights activists. Ten interviews were conducted in Ankara, Turkey with representatives from the Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Vakfı*), the Human Rights Association (*İnsan Hakları Derneği*), Mazlumder, and the Association for Liberal Thinking (*Liberal Düşünce Derneği*). A phone interview was conducted with the Europe and Central Asia unit of the Association for the Prevention of Torture, based in Zurich, Switzerland. An additional interview was conducted with a scholar specialising on EU-Turkey relations at Bilkent University, Ankara. The interviews were conducted in Ankara between October-December 2010. All interviews were conducted in confidentiality, and the names of interviewees have been withheld with mutual agreement.

The methodology discussed above concerns the main objective of the thesis: to conduct an in-depth evaluation of the legitimacy of EU human rights promotion within enlargement with Turkey as an explorative case-study. It is important to note here that the thesis is neither primarily about internal Turkish politics, nor about the general institutional arrangements made by the EU to give effect to human rights action. It does not aim to engage with a systematic study of political struggle in Turkey, and it does not explore the detailed decision-shaping and decision-making character of the EU for external human rights promotion. This takes us to the potential limitations of the research.

5. Limitations

Although the analysis aspires to be comprehensive and consistent, this research also has limitations. The first relates to the subject of this study: human rights promotion. EU promotion of human rights is a complex phenomenon which integrates political, economic and social factors and advances a particular vision of politics. As Turner observes, 'the analysis of human rights presents a problem... in which cultural relativism and the fact-value distinction have largely destroyed the classical tradition of the natural-law basis for rights discourse'. [15] Therefore, generalisations about human rights and their normative validity inevitably involve some level of black-boxing, a fact acknowledged by this study. [16] In order to minimise the effect of this limitation, the analysis draws on perspectives by scholars from Turkey, and engages with the perceptions of Turkey's policymakers on EU human rights promotion. Furthermore, it incorporates similar perspectives held by representatives of human rights organisations in Turkey.

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[15] Turner, B.S. 'Outline of a Theory of Human Rights'. *Sociology*, vol.27 no: 3 (1993) p.489 (489-512)

[16] The metaphor of 'black-boxing' in social science implies that treatment of the subject of research as a consolidated, unitary whole, whose entities resist being seen through or pulled apart. See, for example, Hudson, V.M. *Foreign Policy Analysis: Classic and Contemporary Theory* (Lanham: Rowman and Littlefield Publishers, 2007) p.3.

A second limitation concerns the use of the general term 'EU policy' to refer to human rights promotion to Turkey. The EU is an example of multi-level governance in which sub-state, state, and supra-state level actors interact in decision-shaping and policy-making processes.[17] As a result, it becomes a challenge for analysts to describe any policy as simply 'an EU policy'. This challenge is particularly relevant to this thesis. In order to make a coherent analysis, the term 'EU' in this project will refer to the European Commission, the Council of Ministers and the European Council, which are the main decision-making bodies in the area of enlargement. Certainly, this does not mean that member state politics are marginal. For example, in Chapter Five it will be highlighted that member states have affected the progress of negotiations with Turkey through blocking individual chapters of the *acquis communautaire*. Nevertheless, given that the European Commission principally engages in policy design and application of human rights support, and the Council decides by qualified majority on the priorities and conditions contained, it becomes possible to talk about an EU approach and practice.

The third limitation concerns that it is difficult to formulate prescriptions that will capture more than a few aspects of the process of human rights promotion as a whole. The objective of the thesis is, therefore, limited to an analysis of the major functions of what has become the 'general model' of human rights support to candidate states: financial assistance, human rights consultations and civil society development. This thesis discusses EU human rights promotion via these instruments in order to reveal the principles underlying EU practice. It is assumed that the principles discussed in the empirical part of the thesis can be generalised across the EU human rights policy.

The last limitation is that the concept of legitimacy constitutes an all-encompassing concept in political thought. The range of the terms' coverage is

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[17] Hooghe, L. and Marks, G. 'Multi-level Governance in the European Union'. In *The European Union: Readings on the Theory and Practice of European Integration*, ed. by B. F. Nelsen and A. Stubb (Hampshire: Palgrave Macmillan, 2003) p.281-311.

broad, making it difficult to operationalise it in a way that includes most manifestations associated with it. To situate the inquiry and analysis, Chapter Two will discuss when and how legitimacy observations about EU human rights promotion to Turkey can be conducted in practice and why they matter. As a result, it will become possible to refer to a standard of legitimacy with reference to the concrete requirements that Chapter Two develops. Here, a question arises with regard to measurement of legitimacy: given that legitimacy itself has no material form, how is it possible to develop a valid measure of achievement? The thesis endorses the idea that the presence of legitimacy is a matter of degree, while assuming that there is no concrete point that tips the scale in favour of legitimacy or illegitimacy. Instead, it divides the concept into component parts (procedural performance, participation, policy relevance, domestic perceptions of legitimacy) and makes qualitative assessments in the empirical part of the thesis.

6. Chapter outline

This thesis is a contribution to EU-Turkey relations in the area of human rights, concerning the question of legitimacy for human rights promotion in the context of enlargement. It aims to provide a perspective about how human rights promote should be pursued in relation to Turkey. As indicated earlier, the main argument of the thesis is that the development of an EU human rights policy that conforms to requirements of legitimacy can improve its performance and justifiability and lead to sustainable human rights protection in Turkey. The argument will be elaborated over five chapters.

Chapter One traces the evolution of EU human rights promotion from the inception of the European Communities in the 1950s until the present day. It focuses on the major treaties of European integration and successive EEC/EU enlargement rounds, including Turkey's early attempts to achieve EEC membership. The analysis is inspired by the need to clarify human rights as the EU's 'standard of legitimacy', which Turkey has to contend with, and the contextual factors that generated it. Chapter One introduces a number of leading

ideas that re-appear throughout the thesis: human rights as an 'essential element' of EU external relations, the need for consistency in human rights promotion, and the constant evolution of human rights conditionality.

Chapter Two constructs the conceptual basis of the thesis in the form of a literature review, which enables the discussion of EU human rights promotion according to ideas of 'normative power Europe' and requirements of legitimacy. By synthesising the main elements of these concepts, an analytical framework is developed and presented. This framework illustrates how legitimacy is conceptualised in terms of the alignment of EU norms and their promotion through external policy. Thereby, the theoretical aim of the thesis is reached. Chapter Three switches attention to the multiple sources of human rights problems in Turkey. It discusses human rights as an overall political issue in Turkey, outlines historical eras and turning points in human rights protection, and examines key human rights issues and policies. In recent years, the EU has been the primary frame of reference for policy decisions on human rights reform, and it is for this reason that the discussion of national reform focuses primarily, though not exclusively, on EU involvement.

Chapter Four examines most significant policies of human rights promotion to Turkey in the area of financial and technical assistance. Specifically, it elaborates on the Instrument of Pre-Accession Assistance (IPA), the European Instrument of Democracy and Human Rights supporting civil society activity (EIDHR), and the system of human rights consultations. It highlights the strengths of the above instruments, yet argues that they are replete with policy implications. The EU necessitates a clearer policy strategy that would specify the link between its policy instruments and the desired outcome of increased human rights protection. A thorough image of Turkey's historical and developing human rights situations is also necessary, along with a stronger perspective on behalf of local stakeholders.

The final chapter, Chapter Five, amounts to an application of the framework on substantive legitimacy to Turkey's internal dynamics of human rights

implementation. It offers a detailed examination of their understandings of the EU as both a supporter *and* obstacle to human rights reform. It concludes by arguing that it is on the national level of policymaking where the overarching human rights goals are settled and specified and where the efforts for achieving them are determined. The foundations of legitimacy are found to be first and foremost at the national level of policymaking and the aspirations and goals of non-governmental human rights organisations.

Chapter One

Human rights as the EU's 'standard of legitimacy'

Introduction

This chapter will address one of the primary questions that arise in relation to EU normative power: how did the EU develop as an actor that promotes human rights in world politics, and what main referents of legitimacy can be distinguished for its human rights action? An analysis of the development of the EU as normative power which is 'predisposed' to shaping what is 'normal' in international life will be related theoretically to EU-Turkey relations in the field of human rights. This chapter argues that the historical development of the EU's human rights narrative constructed the EU as an actor whose core characteristics led it to become a promoter of norms and values on the international scene (freedom, democracy, respect for human rights, and rule of law). For this purpose, the chapter will discuss what it is about the historical development and main features of the EU that 'predispose' it to act in a normative way. To begin with, what internal features constructed the EU as a normative power in external action? A related question is whether EU human rights promotion is essentially rightful, or whether it necessitates its own sources of legitimacy. Finally, how are these concerns relevant to the case of Turkey?

A useful starting point for examining the historical development of human rights as the EU's international 'standard of legitimacy' is the literature in the field of internal EU law and policy. The analysis in this chapter will focus on the integration of human rights protection in EU law and policy, and its subsequent 'spillover' to enlargement policy and EU external action. Specifically, the analysis will focus on how internal human rights policy affected and contributed to the development of the goals and mechanisms of human rights conditionality in enlargement and external relations. Moreover, the analysis will introduce the main sources of legitimacy that construct the EU as a normative power (or otherwise) in the above areas, which will be further developed in Chapter Two.

1.   The EU and human rights promotion: early development through European law

One of the key tenets of normative power Europe is that the EU is 'predisposed' to acting in a normative way in world politics due to its historical context, hybrid polity, and legal constitution. Here, it is argued that one of the central components that served to develop human rights promotion is EU constitutionalism: the development of European law, the integration of human rights protection in the internal EU legal system, and the conduction of EU external action according to it. The legal development of internal EU human rights protection, and subsequent EU attempts to conduct foreign policy consistent with existing human rights commitments, have arguably rendered the EU 'different' to pre-existing political organisations. The crucial point of this difference is that human rights have become the EU's 'standard of legitimacy': the centre of its relations with member states and partners, and the crucial principle underpinning its policy-making. The EU binds itself, and not only its partners, to protecting human rights. Based on this reading of EU normative power – one which leads by example – external action that implements human rights duties enshrined in European law serves to justify human rights promotion as part of a coherent internal-external policy action. Therefore, a strong indicator of the EU as a normative power can be linked to the universal legal principles that its internal and external policy are based on. This section will analyse the dynamics involved in the construction of a European normative power by focusing on the internal development of EU human rights protection and how this factored into external action.

What we can observe in EU human rights policy in recent decades is what Alston and Weiler referred to as increasing bridging between internal and external protection 'as two sides of one coin'.[1] External human rights protection has been facilitated from home through the initial creation of an EU human rights narrative

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[1]   Alston, P. and Weiler, J. 'An Ever-Closer Union in Need of a Human Rights Policy: The European Union and Human Rights'. In *The EU and Human Rights*, ed. by P. Alston (Oxford: Oxford University Press, 1999) p.8 (3-66)

by the European Court of Justice (ECJ), the EU integration treaties, the mandate of the European Parliament, and the European Charter of Fundamental Rights. Internal protection of human rights within the EU has also been sought outside its borders in human rights conditionality towards candidate states, potential accession to the European Convention on Human Rights, and the objectives of the Area of Freedom, Security, and Justice.

Approaching the question of what makes the EU a normative power should take as a starting point that EU external human rights policy developed as a result of a strong element of constitutionalism and law underpinning European integration.[2] While it is commonplace to attribute the bridging of EU internal and external human rights protection to international developments 'out there', such as globalisation,[3] or free trade,[4] there were also processes 'in here'. EU actors sought to develop a human rights narrative in order to fulfil their mandates and secure the effectiveness of their activities. In opposition to broad global trends, Williams suggested examining the bridging of the internal/external distinction mentioned above through the role played by the EU's internal legal order and institutional structure.[5] This approach considers that EU external human rights policy developed as a consequence and by-product of internal rights protection, tying together the EU's domestic human rights system with its international policy goals. The EU developed its basic global values – human rights, democracy, and the rule of law – through the overarching internal goal of appropriate institutional arrangements for an effective human rights system. The main institutional instruments for this aim were primarily the European Commission, the European Parliament, and the European Court of Justice.

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[2] Walter, C. 'History and Development of European Fundamental Rights and Fundamental Freedoms'. In *European Fundamental Rights and Fundamental Freedoms*, ed. by D. Ehlers (Berlin: De Gruyter, 2007) p.23 (1-24)

[3] Pikalo, J. 'Economic Globalisation, Globalist Stories of the State, and Human Rights'. In *Economic Globalisation and Human Rights*, ed. by W. Benedek, K. Feyter, and F. Marella (Cambridge: Cambridge University Press, 2007) p.33 (17-37)

[4] Majone, G. 'The European Community between Social Policy and Social Regulation'. *Journal of Common Market Studies*, 31:2 (1993), p. 156-157(153-170).

[5] Williams, A. 'Mapping Human Rights, Reading the European Union'. *European Law Journal*, vol.9 no: 5 (2003) p.663 (659-676)

1.1.   The European Court of Justice: steps forward in human rights protection

The relationship between the ECJ and the European Union's human rights protection is of key importance to understanding the early development of EU as a prospective normative power. The ECJ case-law gradually widened the scope and context of human rights scrutiny by the European Union in the absence of an EEC/EU bill of rights and a firm mention of human rights in the Treaty of Rome (1957). Considerable judicial activity took place which developed over the years a 'human rights role' for the EU, incorporated in the treaties as a basic principle of the EU's internal and external affairs. In internal EU affairs, the ECJ endorsed the already existing moral and legal obligation of member states to protect the rights of their citizens. More importantly, it constructed the obligation of EU institutions to respect market freedoms and non-discrimination principles.[6] In external affairs, ECJ emphasis on the importance of human rights as an important driving force of an 'area of freedom, security, and justice' contributed to the development of political conditionality in the EU's international trade, development, and enlargement policies. The European Commission confirmed that 'the ECJ has, over many years, fleshed out... the general principles [of fundamental rights] into an invaluable reservoir of case-law'.[7]

The key case that introduced human rights into the EEC order was the *Internationale Handelsgesellschaft* judgement of 1970.[8] The ECJ ruled that respect for rights constituted an integral part of the general principles of law protected by the ECJ. 'The protection of rights, whilst inspired by the constitutional traditions common to the member states, must be ensured within the framework of the structure and objectives of the Community'.[9] In the *Nold* case (1974) the Court reaffirmed that fundamental rights were an integral part of the legality of Community acts. It also asserted that international human rights treaties to which

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[6]   Barnard, C. *The Substantive Law of the EU: the Four Freedoms* (Oxford: Oxford University Press, 2007)

[7]   'Respecting Fundamental Rights while Ensuring Security and Justice in the European Union'. Available at http://ec.europa.eu/justice_home/fsj/rights/fsj_rights_intro_en.htm (accessed 31 March 2009).

[8]   Craig, P. and De Burca, G. *EU Law: Texts, Cases, and Materials* (Oxford: Oxford University Press, 2003) p.320.

[9]   Case 11/70.

the member states are signatories 'supply guidelines' that should be followed within Community law.[10] The *Rutili* case (1975) referred explicitly to the European Convention of Human Rights (ECHR).[11] The next important moves took place in the 1990s, when the ECJ asserted in the *Wachauf* and *Elliniki Radiophonia (ERT)* cases that its fundamental rights jurisdiction encompassed member states' acts, but only to the extent that these acts fell into the sphere of Community law.[12] These cases paint a picture of the EU developing as a law-based polity that attempts to fuse fundamental rights with an emerging institutional capacity to protect those rights.

Several reasons account for the ECJ's development of human rights into a general principle of EU law. These reasons are both political and legal in nature. The most common reason cited is that the ECJ, constituting the judicial branch of a system of economic and political integration, ought to guarantee human rights internally and externally as a contribution to a social and sustainable market economy and to democratic citizenship.[13] In relation to enlargement, Dogan maintained that the accession process of states with shorter experiences of democracy, such as Greece, Spain, and Turkey, required the ECJ to assume an active role in harmonising fundamental rights law in the EU, in order to bring the degree of protection in those countries in line with that provided in member states with longer democratic traditions.[14] From a legal perspective, lack of judicial human rights protection was seen as incompatible with the principle of supremacy of Community law.[15] As De Witte rightly argued, if Community acts were to prevail over national law, including national constitutional law, then judicial review of those acts could only be based on Community law itself.[16] In a similar line, Torres Perez argued that the principle of supremacy of EU law effectively meant that the

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[10]   Case 4/73.

[11]   Case 36/75.

[12]   De Witte, B. 'The Role of the ECJ in Human Rights', in *The EU and Human Rights*, ed. by P. Alston (Oxford: Oxford University Press, 1999) p. 867 (859-897).

[13]   Weiler, J. 'Fundamental Rights and Fundamental Boundaries: on Standards and Values in the Protection of Human Rights'. In *The European Union and Human Rights*, ed. by N. Neuwahl and A. Rosas (The Hague: Martinus Nijhoff, 1995) p.59 (51-76)

[14]   Dogan, 'Fundamental Rights Jurisprudence', p.56.

[15]   See Dehousse, R. *The European Court of Justice: the Politics of Judicial Integration* (Basingstoke: Palgrave Macmillan, 1998); De Burca, G. and Weiler, J. *The European Court of Justice* (Oxford: Oxford University Press, 2001); Case, C. 'The Relative Autonomy of the EU Human Rights Standard'. *European Constitutional Law Review*, vol.4 no: 1 (2008) p.199 (199-204)

[16]   De Witte, 'The ECJ', p.863.

Union's legal order had the form of constitutional law embracing both states and individuals alike. Consequently, if the coherence of the EU as a legal order common with that of the member states were to be preserved, fundamental rights had to be handled at European level.[17]

As with internal human rights protection, the EEC/EU originally lacked an explicit legal basis for the development of an external human rights policy. The principle source of law for human rights in the EU legal order were the general principles of Community law and the legal traditions of the member states. The ECJ jurisprudence did not extend to external actions, but came to serve as a source of inspiration for treaty provisions that introduced external objectives into the EU's general mandate, such as to 'develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'.[18] The combined effect of Treaty provisions and case-law of the ECJ on human rights as general principles of EU law progressively elevated human rights to an external objective. From the 1990s onwards, with further combination of Treaty amendments and ECJ jurisdiction, EU human rights competence expanded into external fields such as enlargement, asylum, immigration, judicial cooperation, the environment, trade, and development.[19] At present, a considerable part of EU external human rights activities and policies are situated within enlargement.[20]

Overall, the leadership of the ECJ has, over time, been instrumental in setting forth the EU as an organisation that embodies universal human rights in its legal system, a characteristic considered to partly constitute the 'nature' of the EU's normative power. Through the fifty-year jurisdiction of the European Court of Justice, human rights have been increasingly situated at the forefront of the agenda of the European Union. The jurisprudence of the Court has had a substantive impact on the development of an internal human rights agenda, and has simultaneously

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[17] Torres Perez, A. *Conflicts of Rights in the European Union: a Theory of Supranational Adjudication* (Oxford: Oxford University Press, 2009) p.5.

[18] Maastricht Treaty, Article 130 (1992)

[19] For example, the ECJ has extended the application of fundamental rights to the actions of EU institutions and member states in the area of Freedom, Security, and Justice. *Advocaten voor de Wereld VZW vs. Leden van de Ministerraad*, Case 303/05.

[20] Dogan, Y. 'The Fundamental Rights Jurisprudence of the European Court of Justice'. *Ankara Law Review*, vol.6 no: 1 (2009) p.56 (53-81)

helped shape an external human rights policy through the legal extension of the human rights competence of the EEC/EU. The ECJ effectively shaped treaty provisions on external human rights activity and extended the *acquis communautaire* through inclusion of the Charter of Fundamental Rights.

1.2.   The Charter of Fundamental Rights (2000): internal-external consistency?

The Charter of Fundamental Rights has been considered vital in legally binding the EU and its institutions to human rights in internal and external relations. The European Council at Nice in December 2000 officially proclaimed the Charter as an indispensable factor for EU human rights protection.[21] After an initial lack of legal status, the Charter became binding through Article 6 of the Lisbon Treaty (2009).

The Charter has been considered to break new ground in the protection of human rights in the EU. Several authors agree that its aspirational purpose was to bring human rights to the forefront of EU policy.[22] It articulated the 'shared values' of the European Union that are common to all member states and any country wishing to become a member of the EU.[23] Walter wrote: 'it would mean underestimating the indirect legal effects of the Charter if one were to qualify it as... irrelevant to EU human rights protection because of its lacking binding character'.[24] According to Walter, the Charter contained the most up-to-date systematisation of human rights in Europe. Because of the principle of consensus which was largely followed in the drafting deliberations, it constituted an authoritative representation of EU human rights standards. Similarly, Ward argued that the sources on which the EU relies upon to determine human rights are not limited to legally binding instruments. The ECJ, for example, is concerned with international instruments with respect to which the member states have *collaborated,* such as the Charter,

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[21]   European Council, Conclusions of the Presidency (Nice: 7-10 December 2000) <http://www.europarl.europa.eu/summits/nice1_en.htm> (accessed 1 October 2012)

[22]   Wetzel, J.R. 'Improving Fundamental Rights Protection in the European Union'. *Fordham Law Review*, vol.71 no: 6 (2003) p.2840 (2823-2862)

[23]   De Burca, G. and Aschenbrenner, A. 'European Constitutionalism and the Charter'' In *The EU Charter of Fundamental Rights*, ed, by S. Peers and A.Ward (Portland: Hart Publishing, 2004) p.17 (3-34)

[24]   Walter, 'European Fundamental Rights', p.16.

even if they are not legally binding.[25]

The scholarly discussion of the Charter locates its utility in reducing some of the 'disturbing' aspects of human rights promotion in external policy and enlargement in particular. Specifically, it addresses the internal/external divide between the scope of human rights protected in the EU and the extent of the reforms required by the accession states, along with the lack of clarity and specificity in the human rights requirements.[26] According to Williams, prior to the Charter, the EU policy of human rights entailed that 'applicant states are subjected to a process of human rights scrutiny and intervention... which possesses no imitation within the European Union and... extends some way beyond that which falls within the European Union's internal concerns'.[27] In turn, Sasse criticised the 'ad hocery and... different external standards that have given rise to ambiguity and... inconsistencies'.[28]

How has the Charter of Fundamental Rights addressed the above weaknesses in EU human rights policy? The Charter has been viewed as a partial solution to the previously described 'double standard' issue in internal/external human rights protection. Turkey's European integration has involved this apparent contradiction, as will be discussed further on. In her analysis, Ficchi put forward such an interpretation. Her starting point was that the Charter has a significant impact on the ECJ's internal scrutiny of human rights protection when assessing the gravity of a violation committed by a member state (Article 7 TEU). In this regard,

[25] Ward, A. 'Access to Justice'. In *The EU Charter of Fundamental Rights*, ed. by S. Peers and A. Ward (Portland: Hart Publishing, 2004) p.127 (123-140)

[26] Eeckhout, P. 'The EU Charter of Fundamental Rights and the Federal Question'. *Common Market Law Review*, vol. 39 no: 4 (2002) p.945-994; Menendez, A.J. 'Chartering Europe: Legal Status and Policy Implications of the Charter of Fundamental Rights of the European Union'. *Journal of Common Market Studies*, vol.40 no: 3 (2002) p.471-490; Menendez, A.G. 'Human Rights: the European Charter of Fundamental Rights'. In *Contemporary European Foreign Policy*, ed. by W.Carlsnaes, H. Sjursen and B. White (London: Sage Publications, 2004) p.239-251; Sadurski, W. 'The Role of the EU Charter of Rights in the Process of Enlargement'. In *Law and Governance in an Enlarged European Union*, ed. by G.A. Bermann and K. Pistor (Portland: Hart Publishing, 2004) p.61-96; Ficchi, L. 'Candidate Countries Facing a Binding Charter of Fundamental Rights: What's New?'. In *The EU Charter of Fundamental Rights: from Declaration to Binding Instrument,* ed. by G. Di Federico (London: Springer, 2011) p.109-124.

[27] Williams, A. 'Enlargement of the European Union and Human Rights Conditionality: a Policy of Distinction?'. *European Law Review*, vol.25 no: 3 (2000) p.601.

[28] Sasse, G. 'EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy'. European University Institute Working Paper 2005/16 (2005) p.9.

the 'far more severe scrutiny' applied to accession countries is balanced with a more equal procedure against member states.[29] Overcoming the internal/external bifurcation enhances the EU's legitimacy towards its accession states in so far as they receive an equal and fair procedure for implementing human rights. According to Sadurski, the closure of the gap between external requirements and internal human rights problems implies that accession states will not feel the discrimination generated by the existence of a double standard.[30] For Eeckhout, a binding Charter would contribute to the development of a 'meaningful' EU human rights policy: a proactive, horizontal policy permeating all other EU policies, which would make it easier for the EU to justify its actions and involvement abroad.[31] Consequently, the EU's credibility on the international scene would be enhanced by a more coherent policy towards member states and accession states, feasible through the Charter.

The main motive for the launch of the Charter of Fundamental Rights was to strengthen fundamental rights protection in areas of EU legal competence with a comprehensive rights catalogue. As part of the EU treaties framework, the Charter has developed into a significant instrument for human rights policy within enlargement. The value of the Charter for EU normative power lies in reducing the problem of double standards by creating internal/external convergence, and thus accelerating the process of bringing uniformity between domestic and external human rights policies. The granting of official legal status to the Charter by the Lisbon Treaty in 2009 was a significant step forward in rendering the procedures of accession to the EU more transparent, and the assessment of candidate performance more open and predictable.[32] This can add legitimacy to normative power Europe both in terms of its performance and its ability to transform the legal status of human rights inside the EU to ensure consistency between internal/external human rights promotion. The latter is important for overcoming perceptions that the standard of protection is higher for candidate states that for the EU.

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[29] Ficchi, 'Charter of Fundamental Rights', p.120-121.
[30] Sadurski, 'The Role of the EU Charter', p.64.
[31] Eeckhout, 'The Federal Question', p.990.
[32] Sadurski, 'The Role of the EU Charter', p.71.

1.3.   The European Parliament as a promoter of human rights

The European Parliament as the only institution of the EU elected by direct universal suffrage is perceived as playing quite an assertive role in the development of a human rights agenda for the European Union.[33] There have been claims about the EP as the EU's 'norm entrepreneur' in the field of human rights, in other words as an institution that sets out to change the behaviour of others by convincing them to embrace new norms.[34] In terms of normative power, the 'norm entrepreneur' argument appears to be that the EP might be directing the EU towards promoting norms in the world irrespective of its own strategic interests. The following paragraphs will discuss the role of the European Parliament across three areas of human rights activity: internal protection, enlargement, and external relations.

In internal human rights protection, Rack and Lausseger underline that 'it has been one of the outstanding achievements of the European Parliament that human rights are nowadays taken into account in many different spheres of activity'.[35] The European Parliament was the primary institution that advocated the inclusion of human rights in the major treaties of European integration.[36] The EP engages in a wide range of monitoring and consultation activities for upholding human rights internally, draws attention to areas or member states where it perceives human rights to be compromised, and makes policy recommendations. For example, the EP was fully involved in the drafting of the Charter, and its members pressed for the inclusion of the Charter into primary EU law with the Lisbon Treaty (2009). In enlargement, the European Parliament has to give assent to accession treaties enlarging the EU to include new members, thus exercising parliamentary control over enlargement policy. In practice, parliamentary assent requires an oversized majority of approval of the human rights and democracy

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[33] Smith, K.E. 'The European Parliament and Human Rights: Norm Enterpreneur or Ineffective Talking Shop?' Dossier El Parlamento Europeo en la Politica Exterior, no: 11 (2004) p.1.

[34] Sedelmeier, U. 'The EU's Role as a Promoter of Human Rights and Democracy'. In T*he European Union's Roles in International Politics: Concepts and Analysis*, ed. by O. Elstrom and M. Smith (Abingdon: Routledge, 2006) p.118 (118-135)

[35] Rack, R. and Lausseger, S. 'The Role of the European Parliament: Past and Future'. In *The EU and Human Rights*, ed. by P. Alston (Oxford: Oxford University Press, 1999) p.802 (801-838)

[36] Bradley, K.S. 'Human Rights and the European Parliament'. In *The EU and Human Rights*, ed. by P. Alston (Oxford: Oxford University Press, 1999) p.846 (839-858)

record of the states under accession.[37] The EP has the right to exercise its veto power in the event of serious human rights violations during accession negotiations. For example, in 1994 it suspended parliamentary cooperation with Turkey for two years due to the widespread human rights violations related to the Kurdish issue. In addition to approving new accessions, the EP plays an active role in association agreements, and establishes Joint Parliamentary Committees with candidate states (JPCs). The EU-Turkey JPC deals with specific cases of alleged human rights violations, and exchanges information and expertise on specific human rights cases.[38] Furthermore, the EP drafts annual reports on accession states assessing their human rights record. These are designed to encourage the Commission and the Council to adjust the relevant enlargement strategies in the event of human rights concerns. Overall, the European Parliament's contribution to enlargement appears to be strongly inspired by its responsibility as an elected body to show the rest of the world that it actively upholds human rights in a constructive way.

In external relations, the European Parliament has accommodated the Subcommittee on Human Rights since 2004, a European platform for the debate and defence of human rights in the world. It is primarily responsible for debating and monitoring civil and political rights, the rights of minorities, and EU democracy promotion.[39] This gives it the opportunity to publish reports and resolutions on the human rights situation worldwide and on the quality of the relevant EU mechanisms, on which it makes policy recommendations.[40] According to Camporesi, the EP played an important role in the construction of the human rights clause in development and trade cooperation with non-EU countries through persistent requests to the European Commission.[41] In 1978, for example, it pushed

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[37] Lord, C. 'Accountable and Legitimate? The EU's International Role'. In *International Relations and the European Union*, ed, by C. Hill and M. Smith (Oxford: Oxford University Press, 2005) p.121 (113-133)

[38] See, for example, European Parliament, 'Delegation to the EU-Turkey Joint Parliamentary Committee'(Brussels: June 2004) p.2.

[39] European Parliament Committees – Human Rights <http://www.europarl.europa.eu/committees/en/droi/home.html#menuzone> (accessed 24 October 2012)

[40] See, for example, Subcommittee on Human Rights, 'Annual Report on Human Rights and Democracy in the World 2011 and the European Union's Policy on the Matter' (Brussels: 4 September 2012)

[41] Camporesi, F. 'The European Parliament and the EU Charter of Fundamental Rights'. In *The EU Charter of Fundamental Rights: From Declaration to Binding Instrument,* ed. by G. Federico (London: Springer, 2011) p.80 (77-94)

for the inclusion of a human rights clause in agreements with African, Caribbean, and Pacific States. In 1995 it pressed for the generalisation of the human rights clause by successfully requesting that the Council of Ministers include a compulsory clause in all EU international agreements. Furthermore, the EP was the architect of the European Instrument of Democracy and Human Rights (EIDHR), a financing instrument for democracy and human rights worldwide that is also utilised within enlargement to Turkey. Whether used to exert parliamentary control over the EU's human rights promotion or to express collective condemnation of abuses worldwide, the European Parliament is generally deemed to be a credible actor in human rights promotion, strengthening the legal-institutional underpinnings of EU normative power.[42]

1.4 Treaties of European integration (1953-2009): formulation of political criteria for membership

The legal-institutional underpinnings of EU normative power are strengthened by the treaties of European integration and their progressive incorporation of human rights as a condition of EU membership. The specification of political criteria for membership can be seen to contribute to the construction of the EU as a normative power, as they nurture a collective policy-making environment that is conducive to the development and effective implementation of 'normative' policies. To some extent the development of political criteria for membership ensure, as Walker argues, the adoption of both a common legal dimension for normative action – through binding human rights obligations – and a sense of common identification with the polity amongst its members.[43] In this respect, political conditionality is crucial to nurturing a legal community and a sense of common identity on which the legitimacy of normative power Europe rests. In other words, the EU's identification of common political ideals for its members can be linked to a potential for solid commitment to the norms in

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[42] Pace, M. 'The Construction of EU Normative Power'. *Journal of Common Market Studies*, vol.45 no: 5 (2007) p.1050 (1041-1064)

[43] Walker, N. 'Constitutionalising Enlargement, Enlarging Constitutionalism'. *European Law Journal*, vol.9 no: 3 (2003) p.379 (365-385)

question, action which is seen to take these norms seriously, and coherent performance in terms of formulation and delivery of policies.

The roots of the appearance of human rights conditionality in EU enlargement can be traced back to 1953, when the Draft Treaty establishing the European Political Community (EPC) subjected membership to the fulfilment of human rights criteria.[44] The ambitious EPC Treaty never entered into force, but the political condition remained in the Community's legal and political order, setting the beginning of a long practice regarding the admissibility of candidate states.[45] Article 116 of the EPC declared that 'accession to the Community shall be open to the member states of the Council of Europe and to any other European State which guarantees the *protection of human rights and fundamental freedoms*' (emphasis added). The EPC Treaty was never ratified, and the momentum of European integration was resumed by the Treaty of Rome (1957) that established the European Economic Community (EEC). It was not until the Amsterdam Treaty on European Union (TEU) in 1999 that human rights and fundamental freedoms were mentioned again as ccriteria for accession.[46]

In relation to human rights criteria, the Treaty of Rome (1958) stated that applicant states had to be democratic in nature, and prepared to enter into a closer political arrangement in the future.[47] Unlike the EPC Treaty, Rome did not include a direct reference to human rights as political criteria for accession. Article 237 determined that 'the conditions of admission... shall be the subject of an agreement between the member states and the applicant state'.[48] In 1978, several years after the first enlargement of 1973, the ECJ was requested to give a ruling on the interpretation of Article 237. The Court ruled that 'the legal conditions for such

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[44]   Draft Treaty establishing the European Political Community (1953). Article 116. <http://aei.pitt.edu/991/01/political_union_draft_treaty_1.pdf> (accessed November 1 2008)

[45]   Hillion, C. 'The Copenhagen Criteria and their Progeny'. In *EU Enlargement: a Legal Approach*, ed. by C. Hillion (Portland: Hart Publishing, 2004) p.4 (1-22)

[46]   Treaty establishing the European Union and the European Community (consolidated text). (2006). Article 49. OJ C 321 E/1. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:pdf> (accessed 1 November 2008).

[47]   Curtis, *Integration*, p.215-218.

[48]   Treaty establishing the EEC, Articles 237-238.

accession remain to be defined in the context of that procedure without it being possible to determine the content judicially in advance'.[49] Effectively, the ECJ ruled that the conditions of accession were subject to the negotiations and the discretion of the member states and would be specified in the individual accession treaties. Therefore, the Treaty of Rome did not have a set standpoint on human rights criteria for accession, but served more as a framework of integration open to further development. Given that the treaty maintained importance and relevance for the EEC for a period spanning nearly four decades (1957-1993), the subsequent formulation and specification of the political criteria occurred to a large extent through the various enlargement rounds (1973, 1981 and 1985), rather than through primary Community law. The analysis of the enlargement rounds will be conducted in the latter part of the chapter. The following paragraphs will examine the treaties of Maastricht (1993), Amsterdam (1997), Nice (2000), and Lisbon (2009).

The Maastricht Treaty (1993) explicitly introduced the concept of human rights protection into the body of the treaties and linked it to existing legal instruments of international human rights protection. Article F(2), for example, stated that:

> The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

Maastricht referred to political criteria for accession in Article O(2) in a rather abstract manner which simply reaffirmed the provision of 237 EEC: 'the conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails, shall be the subject of an agreement between the member states and the applicant state'.[50] It was only with the Amsterdam Treaty, signed in 1997 and entering into force in 1999, that human rights as an accession

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[49] European Court of Justice, *Lothar Mattheus v Doego Fruchtimport und Tiefkühlkost*, case 93/78 (22 November 1978) <http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61978J0093> (accessed 14 May 2011)

[50] Treaty establishing the European Union, Article O(2). <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001> (accessed 30 November 2008)

criterion were explicitly addressed.

The political and economic criteria for EU membership were regulated in Article 49 of the Treaty of Amsterdam. According to 49 TEU, any European state which respected the principles set out in Article 6(1) TEU could apply to become a member of the EU. Article 6(1) stated that these principles were 'liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states'. Article 6(2) reiterated the Maastricht statement that 'the Union shall respect fundamental rights... as general principles of Community law'.[51] Article 7(1) added that any 'persistent breach' of rights after accession would lead to sanctions being imposed by the Council.[52]

There were both internal and external reasons that prompted the development of human rights membership criteria in the period between Maastricht (1993) and Amsterdam (1999). Internally, the changing relationship between the EU and its citizens, and heterogeneity as a result of enlargement, are central to understanding the enhancement of the political criteria. In the 1990s, the expansion of the EU agenda to take on political – and not only economic – matters triggered a crisis of democratic legitimacy.[53] The necessity and utility of supranational governance was questioned by EU governments and citizens alike. Attempts to improve the democratic credentials of the EU were viewed as pushing the political boundaries of national governance at the expense of the citizen.[54] This was demonstrated by the rejection of the Treaty by referendum in Denmark and its tentative acceptance in France.[55] Enlargement, on the other hand, was seen to aggravate the problem by limiting the capacity of EU institutions, budget, and goods and service markets to absorb new member states.[56] Following the

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[51] Treaty of Amsterdam amending the Treaty on European Union, Article 6(1) and 6(2). <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0001010001> (accessed 1 December 2010)

[52] Treaty of Amsterdam, Article 7(1).

[53] Hansen, L. and Williams, M.C. 'The Myths of Europe: Legitimacy, Community and the Crisis of the EU'. *Journal of Common Market Studies*, vol.37 no: 2 (1999) p.233-249; McCormick, J. *European Union Politics* (Basingstoke: Palgrave Macmillan, 2011) p.108.

[54] Friis and Murphy, 'EU Quest', p.234.

[55] On 2 June 1992, the Danes rejected the Maastricht treaty in a referendum with 83 per cent voting against the treaty. On 20 September 1992, the French electorate approved the Maastricht treaty with 51 per cent.

[56] Emerson, E., Aydin, S., Sachsse, J. and Noutcheva, G. 'Just what is this Absorption Capacity of the

establishment of democracy and liberal economy in post-war Europe, ideas about the future of the EU became unclear. What purpose did EU integration now serve for citizens of both member and accession states alike? As Shaw argued, 'Amsterdam, following Maastricht, was the culmination of a growing legitimacy crisis in which all aspects of integration – processes, procedures, institutions, leadership, goals and *raison d'être* – were thrown into a serious question for the first time in forty years'.[57]

The pressures of integration and the challenges of enlargement prompted the drafters of the Amsterdam Treaty to endorse a supranational conception of human rights for the EU as a set of constitutive and unifying values of the European political community. Explicit reference was made to human rights and to the principles of freedom, democracy, and the rule of law, as characteristics of a supranational 'ever closer union'. This achievement should also be viewed in the light of the unification of the EU's organisational structure by Amsterdam.[58] According to the general principle of consistency in Article 3, human rights now found explicit application to all acts of the EU institutions. Since human rights and democracy were conceived as embedded in EU structures and functions, the reformulation of political conditionality became consistent with the need to reshape candidate states according to 'EU norms' and in conformity with internal considerations. Consequently, political conditionality in the Amsterdam Treaty was reformulated according to the EU's notion of human rights and democracy as norms rooted in its institutions and social structures.

The Treaty of Amsterdam was amended by the Treaty of Nice (2000). In the wake of the challenge of the 'big bang' enlargement of 2004, Nice did not amend or reformulate the political criteria for membership. Instead, its major breakthrough in the human rights area was the proclamation of the Charter of Fundamental Rights, which was added to the Treaty as an appendix. As discussed earlier, Nice did not

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European Union?' CEPS Policy Brief no: 133 (September 2006) p.9.

[57] Shaw, J. 'The Treaty of Amsterdam: Challenges of Flexibility and Legitimacy'. *European Law Journal*, vol.4 no: 1 (1998) p.82 (63-86)

[58] Von Bogdandy, A. 'The EU as a Supranational Federation: a Conceptual Attempt in the Light of the Amsterdam Treaty'. *Columbia Journal of European Law*, vol.6 no: 1 (2000) p.39 (27-54)

award the Charter official binding status, but paved the way for its enshrinement in EU law. The inclusion of the Charter into the Treaty of Nice has been touted as evidence of the EU's increasing commitment to establishing itself as a polity grounded in human rights principles.[59] In the external sphere, Nice extended the objective of promoting human rights from development cooperation to all forms of cooperation with third countries (Article 181).

The Lisbon Treaty, amending the former Treaty on European Union, was signed in December 2007 and entered into force in December 2009. Lisbon did not amend the political criteria for accession as these were reformulated by the Amsterdam Treaty. Article 1(A), however, referred explicitly to minority rights for the first time in an EU treaty, thus enhancing the body of supported rights and aligning it with the Copenhagen Criteria (1993). In Article 6, the Treaty increased the Union's commitment to human rights support by conferring upon the Charter of Fundamental Rights legally binding status (with some derogations for the United Kingdom and Poland), and by envisaging EU accession to the European Convention on Human Rights. It also established a new fundamental rights Commissioner. The new portfolio on Justice, Fundamental Rights, and Citizenship was intended to address criticisms that the EU lacked a tangible human rights 'policy', with its own directorate-general and its own budget.[60] Furthermore, Lisbon established the new European External Action Service, which firmly embeds human rights in development and trade cooperation.[61] Overall, the Lisbon Treaty coordinated a common approach for all EU human rights programmes and improved their impact and overall efficiency.

By enhancing the system of human rights protection through the above provisions, the Lisbon Treaty paved the way to transcending the bifurcation between internal and external human rights protection. As discussed earlier, this

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[59] Williams, A. 'The (Im)possibility of the European Union as a Global Human Rights Regime'. In *Global Governance and the Quest for Justice: Human Rights*, ed. by R. Brownsword (Portland: Hart Publishing, 2004) p.73 (69-88)

[60] Interview with European Commission official (Brussels: 5 December 2009)

[61] Wolff, S. 'The New EU Internal Security Architecture Implementation Challenges'. In *The EU's Lisbon Treaty: Institutional Choices and Implementation*, ed. by F. Laurssen (Farnham: Ashgate, 2012) p.76 (63-80)

distinction had previously invited criticism about inconsistency and double standards in EU enlargement policy.[62] Lisbon's focus on human rights and democratic citizenship as the foundation stone of the EU, along with making human rights an essential aspect of its external relations, provided impetus for a human rights policy that would be coordinated across all internal and external action.[63] The Lisbon Treaty thus lays special focus on the link between internal and external human rights protection. As stated in Article 2(5) of the Treaty, EU international action 'shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law...and human rights'.[64]

The major treaties of European integration progressively embedded the human rights criteria for membership in EU primary law, and framed them rhetorically in EU political processes and community identity. However, in order to ensure a comprehensive understanding of the relationship between the EU's human rights narrative and its characterisation as normative power, it is important to discuss the development of the human rights criteria through enlargement and EU interaction with specific candidate states. The following section will discuss the development of EU human rights conditionality through an analysis of the enlargement rounds.

2. EEC/EU enlargements and the development of human rights conditionality

The aim of this section is, firstly, to examine how elements of normative power Europe developed within enlargement through distinct processes of EU-

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[62] Smith, K.E. 'The EU, Human Rights and Relations with Third Countries' in *Ethics and Foreign Policy*, ed. by Smith, K.E. and Light, M. (Cambridge: Cambridge University Press, 2001) p.193 (185-203); Lendvai, N. 'The Weakest Link? EU Accession and Enlargement: Dialoguing EU and Post-Communist Social Policy' *Journal of European Social Policy,* vol.14 no: 3 (2004) p.323 (319-333)

[63] Cardwell, P.J. 'EU External Relations and Policy in the Post-Lisbon Era'. In *EU External Relations Law and Policy in the Post-Lisbon Era*, ed. by P.J. Cardwell (The Hague: Asser Press, 2012) p.9 (1-16)

[64] Treaty of Lisbon (2007) Article 2(5)

candidate state interaction, and secondly, to distinguish the main referents of legitimacy in the development of the EU's human rights policy. The following processes led to the emergence of a human rights policy: intergovernmental negotiations regarding the utility of establishing a general framework of accession criteria (1973 enlargement); deliberative processes, both intergovernmental and country-based, providing arguments in favour of establishing human rights criteria (1981 and 1986 enlargements); candidate state pressure on the EU to increase human rights protection in areas where the applicants held superior standards (1993 enlargement); the emergence of an institutionalised human rights strategy rooted in common European values, and a conception of human rights protection as identity-driven (2004 and 2007 enlargements).

The legitimacy of the emerging human rights policy will be located in several sources, in accordance with each enlargement round. The first enlargement of 1973 paints a picture of legitimacy through performance. This enlargement did not establish human rights criteria for accession, but specified a framework for application of general membership conditions, applicable to human rights. Thus, it created a policy framework for the future application of human rights criteria. The Mediterranean enlargements (1981 and 1986) instigated a process of discussion whereby different actors argued pragmatically, politically, and morally in favour of the inclusion of human rights criteria in the accession conditions. Thus, EU human rights initiatives were legitimised with reference to principles considered just by all parties. The Nordic enlargement (1993) served to highlight discrepancies between human rights protection in the applicant countries and that of the EU, as in some areas the Nordic countries offered a higher degree of protection. In this case, the legitimacy of EU policy was challenged through erosion of performance; EU policy entailed a 'race to the bottom' for the Nordic countries and put forward requirements that were not contextually relevant. The 2004 enlargement to Central and Eastern Europe (CEE) raised new dimensions in the development of EU normative power: an institutionalised human rights strategy (with concrete policies and contextually relevant methods), conceptions of universal values as constitutive of European identity, and self/other differentiation. Conflicting sources of legitimacy can be identified for this new type of EU policy. On the one hand, the official approach to enlargement is now fully in line with the logic of human rights

for the European polity. This means that human rights policy is legitimised through what is considered appropriate given the EU's conception of self and what it represents. On the other hand, the policy's promotion of universal rights through the establishment of a European/non-European differentiation raised issues of ambiguity and self/other distinction (e.g. CEE as 'one of us', Turkey as an outsider). Finally, the 2007 enlargement to Romania and Bulgaria served to mitigate accusations of internal/external bifurcation by introducing an element of ex-post conditionality in human rights protection.

The analysis reveals several issues in the practice of the EU's human rights policy. Each enlargement round developed a core of principles which continues to underpin the EU's application of human rights to the present day. Human rights criteria initially emerged in a reactive way to protect the cohesion of the EEC/EU institutions and its democratic structures from the pressures posed by accession states. On the basis of the particularities of each candidate state, the EEC/EU reformulated a core of human rights criteria on an *ad hoc* basis.[65] In the first four enlargements (1973, 1981, 1985, and 1994), when the EU lacked a consistent approach to internal human rights protection, there was insufficient engagement with human rights issues even in the face of severe violations . For example, the human rights violations in Turkey in the aftermath of the 1980 coup did not meet with meaningful opposition by Europe. The lack of a consistent standard and the uncertainty about further steps resulted in an element of arbitrariness in the assessment of applicant preparedness. In view of the accession of ten new member states in 2004, the EU developed a much more standardised human rights approach based on 'pre-accession strategies' and 'pre-accession instruments' that currently play a much more predominant role than in previous enlargements (where they were virtually lacking).

Three enlargement rounds occurred before the EEC was substituted by the European Union. The first group comprised Britain, Ireland and Denmark, and acceded in 1973. Greece became a member in 1981 and Spain and Portugal in

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[65] Maniokas, K. 'Methodology of the EU Enlargement: a Critical Appraisal' <http://www.lfpr.lt/uploads/File/2000-5/Maniokas.pdf> (accessed 12 November 2008)

1986. During the same period, Turkey pursued its quest for membership, and human rights gained increasing prominence in EEC-Turkey relations. The analysis that follows will discuss the gradual evolution of the EU's human rights approach, aims, and priorities through the early enlargement rounds.

2.1. The first enlargement: the case of the United Kingdom (1973)

In 1973 the matter of human rights did not rise on the enlargement agenda. This was due to the generally successful records of Britain, Ireland, and Denmark, and the absence of a human rights standard in the *acquis communautaire*. Most of the interest of the first enlargement lies in the developments sparked by the British application. Despite political violence in Northern Ireland, human rights considerations were conspicuously absent from EEC demands. Nevertheless, Britain's accession process certainly provided the basis of what constitutes the overall mode of application of EU conditionality - the 'classical Community method' - which also strongly underlines the human rights policy. Accession negotiations with the UK, and also Denmark and Ireland, made it clear that the conditions of membership and their full implementation were inalienable. Membership criteria had to be accepted and were not open to negotiations. Full acceptance of the EU legal and political order with no derogations became and remains a core accession principle to this day, and is fully applicable to the human rights criteria. At present, any economically viable state that does not meet 'common European standards' of human rights and democracy cannot apply to or be associated with the EU. The EU's self-representation as a normative power within enlargement is one that prioritises rights over economic interests.

The case of Northern Ireland as an example of ethnic conflict within accession is relevant to the EEC approach to human rights in the first enlargement. In the 1960s and early 1970s, the EEC played a virtually non-existent role in demanding human rights improvement in Northern Ireland. Similarly, the Irish and British governments did not view the EEC as a possible 'third party' in the

conflict.[66]

The EEC's lack of human rights demands vis-à-vis the British and Irish governments is epitomised in the limited human rights dimension of its internal and external policy agenda, as explained earlier in the chapter. As such, there was no strategic approach or vision for human rights within enlargement. Even on an *ad hoc* basis, however, the European Commission did not show any interest in playing an active role in the British/Northern Irish relationship. According to Tannam, the Commission's role as a normative actor in the domestic political matters of accession states had not yet matured; Commission officials viewed their role as subordinate and constrained by the intergovernmental activity of British and Irish policy-makers.[67] At the same time, lack of direct elections to the European Parliament meant that the latter did not serve as a forum for debate on human rights concerns. Another reason, argued by Boyle, was that both the UK and the Republic of Ireland demonstrated at least some commitment to legality and human rights within the conflict.[68] This appearance of human rights legality possibly diminished the necessity of strong human rights conditionality towards the two states.

The challenge against human rights, limited as it was, sparked the need to elaborate on the political conditions of accession for the very first time.[69] In this respect, the 1962 Birkelbach Report on the political and institutional aspects of EEC membership constituted a significant step beyond the Treaty of Rome and an important landmark in the development of human rights criteria.[70] It confirmed, amongst other things, that liberal democracy was a condition for accession.[71] Only

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[66] Hayward, K. and Wiener, A. ' The Influence of the EU towards Conflict Transformation on the Island of Ireland'. In *The European Union and Border Conflicts: the Power of Integration and Association*, ed. by T. Diez, M. Albert and S. Stetter (Cambridge: Cambridge University Press, 2008) p.41 (33-63)

[67] Tannam, E. 'The European Commission's Evolving Role in Conflict Resolution: the Case of Northern Ireland 1989-2005'. *Cooperation and Conflict*, vol.42 no: 3 (2007) p.345 (337-356)

[68] Boyle, K. 'Human Rights and Political Resolution in Northern Ireland'. *Yale Journal of World Public Order,* vol.9 no: 1 (1982) p.158 (156-177)

[69] Treaty between the member states of the EC and Denmark, Ireland, Norway and the United Kingdom. OJ L 73/4 (27 March 1972). The Norwegian electorate rejected the treaty in a referendum on 24 September 1972 and Norway did not accede.

[70] Thomas, D.C. 'Constitutionalisation through Enlargement: the Contested Origins of the EU's Democratic Identity'. *Journal of European Public Policy*, vol.13 no: 8 (2007) p.1198 (1190-1210)

[71] Report by Willi Birkelbach on the Political and Institutional Aspects of Accession to or Association

those states that guaranteed democratic practices and respect for human rights and fundamental freedoms could be admitted into the EEC. The report added that it was not possible to establish firm political criteria, but each case would be assessed at a level of generality. In the absence of concrete political conditionality, the Birkelbach Report was used as a reference document during the Council's deliberations on the response to be given to aspirant EEC members.

Apart from the Birkelbach Report, early elements of political conditionality were reaffirmed in June 1970 at a Luxembourg conference between the EEC and the applicant countries. Aiming at clarifying the nature of the EEC's inclusiveness, Pierre Harmel, President-in-Office of the Council, gave explicit attention to two points. First, Harmel reasserted the Community's political goal of an ever closer union of peoples based on democracy and freedoms. He stated that 'we must preserve and fortify a type of civilisation that we do not think of imposing on any state, but which in our eyes guarantees liberty and progress for the people'.[72] Second, he insisted on the future member states accepting the Treaties, their political finality and 'every nature' of decision without attempts of alteration. Overall, Harmel delineated commitment to so-called European values of democracy and freedoms, *ex ante* adaptation to EEC rules, and inalienability and non-negotiability of the *acquis communautaire*.

In analysing Britain's accession process, we can clearly observe that from the very first enlargement the non-negotiability of EEC conditions was strongly asserted. The main ways in which Britain challenged the overall *acquis* was through its desire to retain lasting Commonwealth preference in trade and an open external trade regime with its former EFTA partners.[73] As a result of these exigencies, Britain was considered as reluctant to accept the Community's legal

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with the Community (19 December 1961) <http://www.ena.lu/report_willi_birkelbach_political_institutional_aspects_accession_association_with_community_december_1961-020006013.html> (accessed 1 December 2008)

[72] Harmel, P. Speech on the Accession of Denmark, Ireland, Norway and the United Kingdom to the EEC (Luxembourg: 30 June 1970) <http://www.ena.lu/report_pierre_harmel_luxembourg_30_june_1970-020002689.html> (French version only. Accessed 13 November 2008)

[73] See Preston, C. 'Obstacles to EU Enlargement: the Classical Community Method and the Prospects for a Wider Europe'. *Journal of Common Market Studies*, vol.33 no: 3 (1995) p.452 (451-463)

order, especially by France. Britain's requirements were considered incompatible with the emerging core commitments of EC membership: the non-negotiability of the *acquis,* and the avoidance of activities that were contrary to the interests of the Community.[74] France asserted that the UK could only join if it accepted the conditions of the EEC Treaty unreservedly.[75] Meeting in the Hague in December 1969, the heads of state of the EEC confirmed that aspirant members should expect to adapt to Community rules and standards rather than vice versa: 'In so far as the applicant states accept the Treaties, their political finality and the decisions taken since the entry into force of the Treaties … [there will be] agreement to the opening of negotiations'.

Although it did not serve to stimulate a clear human rights standard, the importance of the first enlargement for the construction of the EU as a normative power in enlargement lay in the development of the 'classical Community method' of conditionality, which underlines most of its dimensions, including human rights, to the present day. The classical Community method relates to the general framework that the EU uses in pursuing its policy objectives and applying human rights. It has been elaborated by Preston as 'a constant pattern both to the formal accession procedures adopted'.[76] We can identify five focal points in Preston's classical method, which constructed a policy environment for the future application of human rights: a) membership conditions must be accepted in full and without permanent derogations, b) accession negotiations focus on the practicalities of acceptance of the membership criteria, c) if existing instruments are inadequate, they are addressed by the creation of new ones, d) new members are integrated into the EEC's institutional structures through limited adaptation, and e) the EEC prefers to negotiate with groups of states that have a similar level of political development.

In summation, the first enlargement depicts the EU as an effective actor that nurtured a policy environment conducive to the future development of a policy framework for human rights promotion. In this way, the EU's human rights norms

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[74]   *Ibid.*
[75]   Dinan, *Europe Recast*, p.99.
[76]   Preston, C. *Enlargement and Integration into the European Union* (London: Routledge, 1997) p.11.

would not be free-floating, but would be grounded in a set of concrete principles guaranteeing their effective implementation. The five aforementioned principles remain in current EU practice and determine that the human rights criteria, like all dimensions of the *acquis*, are obligatory for candidate states, should be fulfilled before accession, and cannot be renegotiated. This is to suggest a process of human rights implementation where candidate states are expected to accept the totality of the obligations and responsibilities of the existing members; they cannot renegotiate or challenge the content of the human rights requirements; they cannot object on the grounds that they were not the ones who adopted them in the first place; nor can they argue that they are 'different' or that their administrative structures cannot support the effective implementation of the reforms.[77] These principles, which justify EU human rights policy with reference to its performance, were established through the first enlargement and set 'ground rules which have been adhered to ever since'.[78]

The second and third enlargements of the European Community, described below as the 'Mediterranean' enlargements, saw the accession of Greece in 1981 and Spain and Portugal in 1985. Turkey also pursued accession as part of the Mediterranean group, but its applications in 1959 and 1987 resulted in rejection for human rights and economic reasons.

2.2. *The Mediterranean enlargements: Greece (1981), Spain and Portugal (1985), and Turkey*

The Mediterranean enlargement brought to the fore issues of democracy and human rights that had previously been implicit in the membership conditions. The main characteristic of EU normative power that emerged clearly from this enlargement was the primacy of a developing set of political requirements, including democracy, the protection of human rights, and the rule of law, over

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[77] Gialdino, C. 'Some Reflections on the *Acquis Communautaire*'. *Common Market Law Review*, vol.32 no: 5 (1995) p.1098 (1089-1121)
[78] Preston, 'Obstacles', p.452.

economic considerations. The cases of Greece, Turkey, Spain and Portugal are generally understood as having a political dimension that was essentially distinct from the first enlargement. All Mediterranean applicants had emerged from authoritarian rule and were seeking the opportunity to be placed within an institutional framework that would facilitate the development of their democratic institutions. The Mediterranean enlargements revealed several tendencies in the practice of political conditionality in the 1970s and 1980s. The first clear formulation of human rights conditionality was encountered. Apart from the economic dimension, the political profile of an applicant state appeared important in determining the success of the membership application, and respect for democracy, human rights, and rule of law emerged as areas of key significance. The Mediterranean enlargements revealed that in practice only states with democratic institutions were offered association agreements or membership. This was made evident in Greece and Turkey's association agreements being suspended and Spain's remaining a dead letter. The following analysis will discuss the focal points in the development of human rights requirements through the Mediterranean enlargements and Turkey's early applications for EEC membership.

In 1975, Greece and Turkey did not appear to be promising candidates for membership. Their political and economic level of development was a cause of concern and created a dilemma for both the European governments and the Community authorities. On the one hand, they could not neglect the opportunity of supporting the political and economic development that they had been demanding from the two countries. On the other, they could not overlook the fact that offering membership would imply that the political dimension was of secondary importance in EEC accession criteria. The European Commission expressed these concerns in its Opinions on membership, where it made clear that fulfilling democratic requirements was necessary both for the individual countries and for the future of the political union.[79]

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[79] European Commission Opinion on Greek Application for Membership. EC Bulletin Suppl. 2/76.
1.   on Portuguese Application for Membership. EC Bulletin Suppl. 5/78.
2.   on Spanish Application for Membership. EC Bulletin Suppl. 9/78.

The European Commission and Parliament were generally firm and consistent players in response to Greece's authoritarianism and human rights violations. In 1967, the Commission froze vital portions of the EEC-Greece Association Agreement (1961) and only its day-to-day management was maintained. The European Parliament, in a resolution in May 1967 stated that the Association Agreement, which also functioned as a form of pre-accession agreement for Greece, could not be applied unless democratic institutions and human rights were re-instated.[80] It also underlined the need that Greece respects the European Convention of Human Rights, and demanded that civil and political rights of political prisoners be restored. Furthermore, it requested that the EEC institutions follow all developments in Greek political life and inform the EP.[81] In response to the initiatives of the EP, the European Commission also suspended financial aid.[82] Greece applied for full membership on 12 June 1975 after the collapse of the military dictatorship. Negotiations commenced in 1976 and Greece gained full entry in 1981.

In parallel with Greece's efforts to accede to the EEC, Turkey also sought full membership. Its first application was lodged on 31 July 1959. Instead of membership, the model of cooperation that the EEC agreed upon was an association establishing a customs union. The Association Agreement, also known as Ankara Agreement, was signed on 12 September 1963. The Ankara Agreement did not contain any human rights and democracy requirements, despite the fact that the Birkelbach criteria had been adopted a year earlier and Turkey's human rights situation was volatile. According to Faucompret and Könings, the aim of the EEC was to establish 'a simple commercial agreement', given that Turkey's political and economic problems were so major that that the transformation they required exceeded the Agreement's scope.[83] In fact, the chaos and instability that Turkey lapsed into in the late 1960s, resulting in widespread human rights violations

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[80] Buergenthal, T. 'Proceedings against Greece under the European Convention of Human Rights'. *American Journal of International Law*, vol. 62 no: 2 (1968) p.448 (441-450); Coufoudakis, V. 'The EEC and the Freezing of the Greek Association, 1967-1974', *Journal of Common Market Studies*, vol.16 no: 2 (1977) p.118 (114-131)

[81] OJL 596/67, Annex II.

[82] Coufoudakis, V. 'The EEC and the Freezing of the Greek Association, 1967-1974', *Journal of Common Market Studies*, vol.16 no: 2 (1977) p.118 (114-131)

[83] Faucompret, E. and Könings, J. *Turkish Accession to the EU: Satisfying the Copenhagen Criteria* (Abingdon: Routledge, 2008) p.25.

between citizens and, subsequently, the military memorandum of 1971, did not visibly affect EEC-Turkey relations.

The 1980 military coup severed EEC-Turkey relations and brought human rights to the fore of their relationship. Both EEC institutions and member states determined that the military regime conducted widespread and systematic human rights violations of Turkish citizens.[84] By implication, accession of Turkey to the EEC could not be considered. However, the Council of Ministers decided to maintain the Ankara Agreement with the expectation that the dictatorship would soon return power to a civilian government, as had occurred with previous coups in 1960 and in 1971. The European Parliament, however, called on the European Commission in April 1981 to freeze the Agreement, and passed a resolution in January 1982 suspending the Joint EC-Turkey Parliamentary Committee.[85] EEC-Turkey relations deteriorated to such an extent that the European Commission did not recommend the fourth Financial Protocol to the European Council, and financial aid towards Turkey was suspended for six years.[86] Some member states with a normative orientation in their foreign policy, such as the Netherlands and Denmark, insisted on expelling Turkey from the Council of Europe, a step which did not eventually materialise.[87] The EEC continued to be dissatisfied after the restoration of democracy in 1983. The 1983 elections were deemed undemocratic, given that the pre-1980 parties and politicians had been banned from participation. Overall, the human rights record continued to be dismal, despite Turkey assuming the presidency of the CoE in 1986.[88]

On 14 April 1987, Turkey re-applied for EEC membership. At that time, however, the EEC's rationale behind enlargement had taken a different turn from that of the 1960s and 1970s. The transformation of the EEC in this period can be described as an evolution from an economic community to a political union.[89]

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[84]   Zurcher, E.J. *Turkey: a Modern History* (London: I.B. Tauris, 2007) p.323.

[85]   Arikan, *Turkey and the EU*, p.126.

[86]   EC Bulletin 12/1981, p.67.

[87]   Denton, J. 'Negotiating Turkey Accession: a Summary of Papers submitted to the Study Group'. In Evin and Denton, *Turkey and the EEC*, p.80 (79-84)

[88]   Celik, *Turkish Foreign Policy*, p.105.

[89]   De Burca, G. 'How Enlargement has Enlarged the Human Rights Policy of the European Union'.

Human rights and democracy had gained significant prominence in determining further expansion. Nevertheless, Turkey's ruling elite failed to notice the changing importance of human rights and democracy. According to Kahraman, they believed that the liberalising economic reforms they had been implementing since 1980 would be adequate to ensure the acceptance of Turkey's application.[90] Contrary to expectations, on 20 December 1989 the European Commission recommended not entering into negotiations with Turkey.[91] The Commission's Opinion put forward democratic and human rights reasons as important grounds on which the application should be rejected, amongst other considerations. It stated that 'the human rights situation and respect for the identity of minorities, these have not yet reached the level required in a democracy'.[92] As an alternative, the Commission proposed to enter into negotiations concerning a Customs Union (concluded in 1996).

Spain and Portugal prompted a similar firm EEC approach on human rights as the one that immediately preceded them in relation to Greece and Turkey. During the 1950s and 1960s, both countries had suffered from autocratic regimes and backward economic structures, which rendered membership to the EEC unattainable.[93] Only in 1959 did Spain embark on a process of limited economic liberalisation, which subsequently led to an application for an Association Agreement in February 1962. The application was eventually accepted and the Association Agreement was concluded in 1970. However, in 1975, the renegotiation of the Agreement in the light of the first enlargement was suspended because of human rights violations and lack of advancement of democratic principles.[94] The newly democratic government of Spain applied for membership on 28 July 1977. The European Commission submitted a reticent but favourable

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Fordham International Law Journal, vol.27 no: 2 (2003) p.687 (679-714)

[90] Kahraman, S.E. 'Rethinking Turkey-European Union Relations in the Light of Enlargement'. *Turkish Studies*, vol.1 no: 1 (2000) p.1-20.

[91] European Commission, 'Opinion on Turkey's Request for Accession to the Community' (20 December 1989) <www.ena.lu/commission_opinion_turkey_request_accession_community_20_december_1989-020005676.html> (accessed 1 January 2011)

[92] *Ibid.*

[93] Royo, S. and Manuel, P.C. *Spain and Portugal in the European Union: the First Fifteen Years* (Abingdon: Routledge, 2003) p.3.

[94] Bartels, L. *Human Rights Conditionality in the EU's International Agreements* (Oxford: Oxford University Press, 2005) p.51. The trigger-event for the suspension was the execution of Basque prisoners by Franco.

opinion on Spanish accession.[95] The negotiations began on 5 February 1979 and culminated in the signing of Spain's treaty of accession to the EEC on 12 June 1985.

Portugal was also isolated from European economic and political developments due to its dictatorial regime, but by virtue of its trade dependence on Britain it became one of the founding members of EFTA.[96] In 1970 it requested an Association Agreement with the EEC, which was concluded in 1973. After the collapse of the Caetano government in 1974 and the loss of its colonies in Africa, Portugal entered a period of instability and turned its vision towards the EEC, desiring a renegotiation of the Association Agreement.[97] The European Council in Brussels in July 1975 asserted that it was 'prepared to initiate discussions on close economic and financial co-operation with Portugal', however, '...*in accordance with its historical and political traditions*, the EEC can only give support to a democracy of pluralist nature' (emphasis added).[98] Portugal applied for membership in March 1977 and the signing of the treaty for accession occurred on 12 June 1985.

The construction of normative power Europe in the Mediterranean enlargements evolved around a central focal point. For the first time in enlargement, there was institutional and public discourse that emphasised the integration of values and norms in the European project. Self-representation of the EU as a 'force for good' remains strongly present in EU normative power today, as will be shown in Chapter Two. At the time of the Mediterranean enlargements, the issue of the protection of human rights was firmly linked to the argumentation of the ECHR and the emerging rights doctrine of the ECJ. In April 1977 the European Commission, Parliament, and Council issued a joint declaration on the protection of human rights.[99] This declaration appeared to serve as a powerful reinforcement within enlargement of the task of internal protection that the ECJ had embarked on. Furthermore, at the April 1978 European Council, referring to the problems arising

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[95]   European Commission Opinion on Spanish Application for Membership. EC Bulletin Suppl. 9/78.
[96]   Preston, C. *Enlargement and Integration in the European Union* (London: Routledge, 1997) p.64.
[97]   Birmingham, D. *A Concise History of Portugal* (Cambridge: Cambridge University Press, 1993) p.191.
[98]   EC Bulletin 7-8/75, point 2343.
[99]   EC Bull. Supp. 5/76.

from the politically sensitive accession of Greece, Spain and Portugal to the EEC, it was declared that 'respect for and maintenance of representative democracy and human rights in each member state are *essential elements* of membership of the European Communities' (emphasis added). In parallel, the Commission proposed Community accession to the ECHR in a memorandum in April 1979. According to Brown and McBride, this proposal of accession was 'not unconnected' with the potential entry of Greece, Spain, and Portugal into the Community; accession to the ECHR was expected to provide a measure of guarantee against the risk of revived authoritarianism.[100] Furthermore, as Thomas highlights, the development of human rights criteria for the Mediterranean enlargement was also linked to the emergence of a vigorous public deliberation, both within the European Parliament and within societal forces, voicing strong concerns on the human rights record of the countries concerned.[101] Overall, the EEC's attempt to introduce human rights criteria into enlargement was linked to arguments and reasons, provided by institutional and societal actors, to strengthen the liberal democratic tradition of the EEC and constitutionalise democratic and human rights principles.

As explained above, the human rights approach of the EEC in the Mediterranean enlargements consisted of producing a general policy framework around which a wide consensus could be articulated. Nevertheless, in the absence of the later Copenhagen Criteria and comprehensive pre-accession instruments for human rights, the EEC's discussion of human rights and democracy was broad-brush. It did not target any particular situations, nor did it involve specific policy instruments. The EEC certainly invested political and financial capital in its candidate states, but at this stage lacked a clearly defined strategy on the practice of human rights conditionality. Instead, the practice of conditionality developed in a reactive way, by default rather than design, in response to the particular context of each enlargement round and the character of the applicants concerned. An implication of this reactionary approach was the impromptu 'extension' of the political criteria for Turkey, whose Association Agreement had a much weaker accession perspective than those of Greece, Spain and Portugal (although there is

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[100] Brown, N. and McBride, J. 'Observations on the Proposed Accession by the European Community to the European Convention of Human Rights'. *American Journal of Comparative Law*, vol.29 no: 4 (1981) p.692 (691-705)

[101] Thomas, 'Constitutionalisation', p.1203.

little doubt that its human rights record was indeed poor).[102]

The negotiations for the accession of Greece, Spain and Portugal and the developments in EEC-Turkey relations revealed the emergence of human rights as an autonomous policy area in the context of enlargement. Processes of argumentation, where reasons were provided in favour of human rights criteria, had a significant effect on the development of human rights criteria: they defined, involved, and committed human rights as a distinct area within enlargement. In approaching the question of legitimacy, it can be argued that the policy was legitimised with reference to ethical-political norms considered just by all parties. Ethical-political arguments were made that justified human rights criteria on the basis of the responsibilities of the EEC that stemmed from the universal values it 'should' represent. In the absence of a perception of common European identity in the 1980s, legitimacy lay in actors' rational assessments of what areas should be rightly and fairly prioritised in EEC enlargement. The next section will analyse the development of the EU's human rights policy through the Nordic enlargement (1995).

2.3. *The Nordic enlargement and 'impact conditionality': Finland, Sweden, and Austria (1995)*

In terms of the practice of human rights criteria, the 1995 enlargement to include Finland, Sweden and Austria was relatively uncontroversial. Although the Copenhagen Criteria, introduced in 1993, required a much more stringent approach to political conditionality and detailed adherence to the *acquis communautaire,* the candidate states in question undoubtedly fulfilled both the political and the economic criteria for accession. The wider implications of the fourth enlargement for the practice of conditionality is that it introduced the element of 'impact conditionality' into the European Union's experience of application of the human rights criteria. The idea of impact conditionality points to a rather negative impact

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[102] Amnesty International, *Turkey: Brutal and Systematic Abuse of Human Rights* (New York: Amnesty International, 1989)

of the EU on some aspects of individual rights protection in the Nordic countries. This occurred especially in the area of social rights, for example the right to social security, to work, or gender equality within employment. Simply put, the EU was viewed to be causing a 'race to the bottom' whereby the new member states faced a downward pressure to comply with lower continental standards.[103]

'Impact conditionality' refers to conditionality whose overall effect is deemed to be negative, in other words causing more harm than good through unwelcome side effects.[104] For this analysis, the term can be used where EU standards in a particular policy area are lower than the domestic standards of a candidate state. This entails a differentiation where the candidate states are 'leaders' and the EU is a 'laggard'. Candidate states might have to adapt as part of their membership to the EU, not only due to pressures by the European Commission and the ECJ, but also due to adjustment pressures.[105] Alternatively, the candidate state might be permitted to maintain these standards for a certain period after accession and not adopt EU standards straight away. This can be accompanied by a commitment on behalf of the European Union to review its policy and raise its standards in this policy area.

When Austria, Sweden and Finland applied to accede to the EU in 1989, 1991, and 1992 respectively, they were already prosperous, members of EFTA, and signatories of the European Economic Area Agreement. The EU's response to their applications was positive. All candidates were modern market economies, with long-standing democratic traditions and positive human rights records, and with GDP per capita above the EU average.[106] In addition, the countries' membership in the EEA had resulted in their accepting a substantial part of the EU *acquis* before applying for membership. These characteristics, along with their reputation for

[103] Kvist, J. 'Does EU Enlargement Start a Race to the Bottom? Strategic Interaction among EU Member States in Social Policy'. *Journal of European Social Policy*, vol.14 no: 3 (2004) p.301-318.

[104] Barfod, M. 'Humanitarian Aid and Conditionality'. In 'Terms of Engagement: Conditions and Conditionality in Humanitarian Action'. Overseas Development Institute and Centre for Humanitarian Dialogue Humanitarian Policy Group Report 6 (Geneva, May 2000) p.37.

[105] Buller, J. and Gamble, A. 'Conceptualising Europeanisation', *Public Policy and Administration,* vol.17 no: 2 (2002) p.4-24.

[106] Miles, L. 'The Nordic countries and the Fourth EU Enlargement'. In *The European Union and the Nordic Countries*, ed. by L. Miles (London: Routledge, 1996) p. 66 (63-80)

being exemplary countries in terms of socio-economic structures, facilitated their road towards integration.[107]

Nevertheless, social policy was an area in which the applicants, excluding Austria, maintained higher standards than the EU. Sweden, in particular, held a level of protection of socio-economic rights that was viewed domestically as much higher than that of the EU. In the referendum campaign advocating against Swedish membership, for example, the domestic-EU divide in social protection was used as a campaigning card by the 'No' camp.[108] Austria, on the other hand, had a higher level of environmental protection in its legislation.[109] Each candidate state was permitted to uphold its higher level of protection for a period of four years after the date of accession (i.e. until 31 December 1998). At the same time, the Accession Treaties included a commitment by the EU to review existing EU standards with the aim of raising them to the level of the applicant member states.[110]

The EU encountered a rather unexpected paradox as a result of the 1994 accession to the European Union, which highlighted the issue of internal/external divergence in human rights protection and the need to address it. The paradox was that the level of protection of human rights in these countries (specifically gender equality, the right to environmental protection, and other socio-economic rights) came rather close to having to be downgraded after accession, due to the principle of supremacy of EU law and other adjustment pressures. In the above areas where the EU had vague or no competence, the overall effect of human right conditionality was the potential deterioration of the existing human rights record; a 'race to the bottom' where the new member states would face pressure to comply with lesser EU standards. According to Albi, this paradox was closely linked to the internal/external divide elaborated earlier in this chapter. If monitoring mechanisms

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[107] Preston, C. *Enlargement and Integration in the European Union* (London: Routledge, 1997) p.150.

[108] Gould, A. 'The Erosion of the Welfare State: Swedish Social Policy and the EU'. *Journal of European Social Policy*, vol.9 no: 1 (1999) p.165 (165-174)

[109] Grannel, F. 'The European Union's Enlargement Negotiations with Austria, Finland, Norway, and Sweden'. *Journal of Common Market Studies*, vol.33 no: 1 (1995) p.129 (117-141)

[110] Treaty between the Member States of the European Union and the Kingdom of Norway, the Republic of Austria, the Republic of Finland the Kingdom of Sweden, concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union. OJC 241, 29.08.1994, p.9.

are not available vis-à-vis member states, potential deterioration of the record of new members is more likely.[111] Albi's observation underlines the fact that the internal/external bifurcation has served not only to advance the EU's system of human rights protection, but also to render it less vigorous. Nevertheless, the criticisms that 'impact conditionality' prompted in the 1994 enlargement led the EU to review its human rights policy and raise its standards in the area of socio-economic rights. This progress was made visible in the Charter of Fundamental Rights.

2.4.   The Eastern enlargements (2004-2007): the 'return to Europe'

The Eastern enlargements of the EU to include former communist countries from Central and Eastern Europe, Bulgaria and Romania are perceived as a milestone in the development of a human rights policy within enlargement. Firstly, they introduced the design of concrete policy mechanisms, whose aim was to achieve the EU's goal of human rights protection through norm-diffusing instruments. Institutionalised procedures triggered the ability of the EU to shape and manage the practice of human rights protection in the candidate states according to its own perspectives. The inclusion of normative elements in financial assistance programmes, conditionality, and targeted technical measures was highlighted as a powerful tool to promote reform and ensure stability. The acceptance of human rights norms was also tied to possible sanctions; a recent example was the temporary suspension of accession negotiations with Turkey due to police brutality during the Gezi protests of 2013.

Secondly, the EU employed a human rights discourse establishing a self-identity for the EU by turning countries that are not historical partners into 'others'. The Eastern enlargements tied human rights promotion to an element of EU duty to return CEE countries to the 'European family' after the end of the Cold War. The idea of 'return to Europe' was strong in arguments relating to human rights

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[111] Albi, A. 'Ironies in Human Rights Protection in the EU: Pre-Accession Conditionality and Post-Accession Conundrums'. *European Law Journal*, vol.15 no: 1 (2009) p.49 (46-69)

promotion towards CEE. In contrast, when human rights promotion to Turkey was discussed, it was explicitly linked to utility defined in terms of peace and stability in the near region.[112] Based on this reading of the EU's normative power, the EU mobilises instruments for norm convergence, peace, and stability that rely on a logic of European identity. This section will analyse the new direction in the EU's human rights policy regarding its aims, approach, and priorities, and their implications for the legitimacy of normative power Europe.

The formulation of the Copenhagen Criteria (1993) constituted a defining moment in the further development of EU human rights policy within enlargement. For the first time in the history of the EU, a list of explicit, albeit general, political criteria for accession were formulated. The Copenhagen Criteria broadened the scope of EU conditionality beyond the formal criteria of a limited notion of democracy (fair and free elections) and into areas of substantive democracy (active civil society, social equality and freedom).[113] The political conditions covered the stability of democratic institutions, the rule of law, and human rights and fundamental freedoms, including minority rights. The Copenhagen Criteria were subsequently incorporated into primary EU law through Article 6(1) of the Treaty of Amsterdam (1999). The presidency conclusions of the June 1993 European Council summarised the Criteria as follows:

> The European Council ... agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union... Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.[114]

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[112] Sjursen, H. 'Why Expand? The Question of Legitimacy and Justification in the EU's Enlargement Policy'. Journal of Common Market Studies, vol.40 no: 3 (2002) p.504 (491-513)

[113] Dimitrova, A. and Pridham, G. 'International Actors and Democracy promotion in Central and Eastern Europe: the Integration Model and its Limits'. *Democratization*, vol.11 no: 5 (2004) p.97 (91-112)

[114] European Council, Conclusions of the Presidency (Copenhagen: June 21-22 1993).

The Copenhagen Criteria were accompanied by the development of a comprehensive human rights policy, since they did not constitute a straightforward 'strategy' of conditionality in themselves. The aims, approach, and priorities of conditionality expanded significantly with the Eastern enlargements. As Kochenov emphasised, the Eastern enlargements divided 'old' and 'new' EU approaches.[115] The accession criteria (structured around the *acquis communautaire*) increased to an unprecedented volume. The timeframe for negotiations became visibly tighter, and progress monitoring more rigid and objective. For the first time candidates had to show that they possessed capacity for full-scale compliance.[116] Conditionality no longer concerned whether a country satisfied the minimum requirements for membership. To ensure high alignment with European standards, the Eastern enlargements were the first to transpose the whole body of the *acquis* into national law without opt-outs and prior to signing the accession treaty. This occurred in the absence of reciprocal commitments from Europe, a situation often referred to as power asymmetry.[117] In the words of Papadimitriou and Gateva, 'profound power asymmetries between the negotiating parties unleashed massive pressure for domestic adaptation across Central and Eastern Europe'.[118] Therefore, the flexibility that characterised the adaptation process of past candidate states was now absent.[119] According to Balfour, this 'new' system was perceived by the EU as a valid route towards democratic consolidation and domestic implementation of human rights standards.[120]

Overall, three developments in the scope and shape of EU human rights

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<http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf> (accessed 21 November 2008)

[115] Kochenov, D. *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law* (Hague: Kluwer Law International, 2008)

[116] Nicolaides, P. 'Preparing for Accession to the EU: How to Establish Capacity for Effective and Credible Application of EU Rules'. In *The Enlargement of the European Union*, ed. by Cremona M. (Oxford: Oxford University Press, 2003) p.47 (43-78).

[117] Grabbe, H. *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe* (Basingstoke: Palgrave Macmillan, 2006) p.34.

[118] Papadimitriou, D. and Gateva, E. 'Between Enlargement-led Europeanisation and Balkan Exceptionalism'. *Perspectives on European Politics and Society*, vol.10 no: 2 (2009) p.154 (152-166)

[119] Bogdani, M. and Loughlin, J. *Albania and the European Union* (London: IB Tauris, 2007) p.102.

[120] Balfour, S. 'Principles of Democracy and Human Rights'. In *Values and Principles in EU Foreign Policy*, ed. by S. Lucarelli (London: Routledge, 2006) p.119 (114-129).

policy opened the way for a more comprehensive assessment of current and forthcoming accessions through the adoption of norm-diffusing procedures. The first of these developments was the shaping of a more principled and sophisticated policy procedure which utilised a wide range of instruments to shape and manage human rights reform in candidate states. In her analysis of conditionality to Central and Eastern Europe, Grabbe differentiated those instruments according to intergovernmental and transnational policy processes. On the one hand, the EU began to apply human rights through intergovernmental policies, such as technical and financial assistance packages for various thematic issues, keeping a direct role in determining when each candidate could progress to the next stage of accession. On the other hand, it exercised policies of transnational socialisation, such as civil society cooperation, which attempted to exert indirect influence and pressure on human rights protection.[121] NGO transnational cooperation and activism became a crucial element in the Union's 'new' approach to enlargement.[122] Nevertheless, serious criticisms have been raised of shortcomings on transparency and bureaucratisation within the new policy procedures. Petrov argued, for example, that some projects have been deemed ineffective, since they have not been adapted to local needs, and consultation participants have not been sufficiently qualified or informed.[123] The contextual relevance and appropriateness of EU instruments for the case of Turkey will be evaluated empirically in Chapter Four.

The second development was an unprecedented degree of scrutiny of the human rights performance of the candidate states ('monitoring'), which has served to highlight the familiar double standard critique in relation to the EU's internal and external human rights policies.[124] The system of annual monitoring of the candidate state's progress involves the compilation of progress reports on the country's implementation of the *acquis,* with human rights featuring prominently. The reports are concerned not only with adoption of laws in major areas of human rights, but also with realities on the ground. They also assess the administrative capacity and

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[121] Grabbe, H. 'European Union Conditionality and the Acquis Communautaire'. *International Political Science Review* vol.23 no: 3 (2002) p.257 (249-268)

[122] See, for example, European Commission, 'Civil Society Dialogue between the EU and Candidate Countries'. COM(2005) 290 final (Brussels: 29 June 2005)

[123] Petrov, R. 'Exporting the *Acquis Communautaire* into the Legal Systems of Third Countries'. *European Foreign Affairs Review*, vol.13 no: 1 (2008) p.51 (33-52)

[124] De Burca, G. 'Beyond the Charter: How Enlargement has Enlarged the Human Rights Policy of the European Union'. *Fordham International Law Journal,* vol.27 no: 2 (2003) p.680 (679-714)

institutional ability of the candidate states to implement the human rights criteria and to distribute and receive funds. These reports are meant to provide a direct lever on policy-making in the candidate countries by indicating a collection of priorities that have to be implemented within the short and medium term.[125] Notwithstanding its effort to guide fundamental and solution-based reform, the monitoring process has been criticised for a lack of clear EU benchmarks, lack of clear foundation in EU law, reliance on external bodies (such as local NGOs) to perform the monitoring functions, promotion of vague international standards, and a double standard that arises from lack of monitoring of the human rights record of member states.[126]

The third development in the renewed scale and ambition in EU human rights policy included the adoption of civil society development. Civil society development was constructed as an instrument of transnational socialisation within EU enlargement. Based on the definition by Schimmelfennig *et al*., socialisation constitutes a process in which candidate states are induced to adopt the constitutive rules and norms of the European Union 'from below'.[127] With the Eastern enlargements, civil society development was intended to induce reform through the ability of citizens and non-governmental organisations to affect the preferences of CEE governments, according to the norms that defined the collective ethos of a 'rights-based' European community.[128] To this end, the EU approach was directed towards strengthening the capacity of civil society to induce reform in the candidate state by 'enriching the political agenda and public debate'.[129] Civil society organisations were understood by the EU as actors that would contribute to the implementation of human rights norms by pressing governments to change policies

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[125] Grabbe, H. 'How does Europeanization affect CEE governance? Conditionality, diffusion and diversity'. *Journal of European Public Policy*, vol.8 no: 6 (2001) p.1022 (1013-1031).

[126] Hughues, J. and Sasse, G. 'Monitoring the monitors: EU Enlargement Conditionality and Minority Protection in the CEECs'. *Journal on Ethnopolitics and Minority Issues in Europe*, vol.4 no: 1 (2003) p.12-13 (1-36)

[127] Schimmelfennig F., Engert S. and Knobel H. *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change* (Basingstoke: Palgrave Macmillan, 2006) p.2.

[128] Risse, T. and Sikkink, R. 'The Socialisation of International Human Rights Norms into Practices: Introduction'. In *The Power of Human Rights: International Norms and Domestic Change*, ed. by T.Risse, S. Ropp and K. Sikkink (Cambridge: Cambridge University Press, 1999) p.11 (1-38)

[129] Delegation of European Union to Turkey, 'Civil Society Development' <http://www.avrupa.info.tr/eu-and-civil-society/civil-society-development.html> (accessed 9 December 2011)

and altering public perceptions of what human rights protection entails.[130]

This renewed approach to the application of human rights conditionality, although effective in its leverage for change in candidate states, can be criticised, both in principle and in practice. A primary criticism refers to the contested character of the process of human rights promotion, which links ideas of human rights, democracy, and rule of law to official technical and financial assistance, without a clear definition of their relationship, and without a comprehensive view of liberal democracy.[131] Although the instruments allow the EU to reward those states that are effectively and successfully meeting the targets set, the definition of the fundamental elements has proved a sticking point. The EU appears to suggest that any kind of support to human rights as a constitutive norm of the EU will contribute to a more democratic system and vice versa, without a clear conceptual strategy of how this would occur.[132] The role of non-state actors and civil society organisations also proves to be contentious. Wider inclusion in the process of non-state actors serves to enhance local ownership and transformation from below, but is ambiguous as to who is regarded as important within civil society and why their cause is included in financial assistance.[133] The definition of the role of civil society 'cooperation' with respect to reform is crucial, yet is not elaborated in sufficient detail in the enlargement texts.

A further point of controversy relates to inconsistencies in the application of conditionality in human rights policy. Such uncertainties are understood in terms of the EU's specific policy agenda, the linkage between tasks and benefits, and reluctance to engage with sensitive human rights issues.[134] Inconsistency can undermine the credibility and effectiveness of the European Union's human rights conditionality. An important example of inconsistency is the re-emergence of 'impact conditionality' in the 2004 accessions. Albi argued that the post-communist

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[130] Nye, J. *Soft Power* (Cambridge MA: Public Affairs Press, 2004) p.90.

[131] Pridham, G. 'The Scope and Limitations of Political Conditionality: Romania's Accession to the European Union'. *Comparative European Politics*, vol.5 no: 2 (2007) p.351 (347-376)

[132] Mercer, C. 'NGOs, Civil Society, and Democratization: a Critical Review of the Literature'. *Progress in Development Studies*, vol.2 no: 5 (2002) p.7 (5-22)

[133] Mahoney, C. and Beckstrand, M.J. 'Following the Money: European Union Funding of Civil Society Organisations'. *Journal of Common Market Studies*, vol.49 no: 6 (2011) p.1339-1361.

[134] Pridham, 'Scope and Limitations of Political Conditionality', p.354.

constitutional courts, which upheld human rights vigorously after the fall of the communist regimes, came close to having to downgrade human rights protection after accession, due to the constraints of the supremacy of EU law. According to Albi, the courts 'confronted difficulties in maintaining the pre-accession level of fundamental rights... with regard to measures that implement EU law'. These limitations facing EU human rights conditionality were made visible in the Eastern enlargements despite the emergence of specific and professionalised policy instruments. Nogueras and Martinez argued that if the normative values of reference are not established strictly and clearly, 'there is a risk of drowning the Union's actions in discretion or even arbitrariness'.[135] Vincent added that consistency is an absolute necessity to conditionality, 'because... it is on the substance and appearance of even-handedness that a successful human rights policy depends'.[136]

Another question arising from the renewed EU policy is the question of ambiguity on the issue of universal human rights promotion versus a particular duty towards those considered 'one of us'. The Copenhagen Criteria claim to rely on universally accepted principles that increase the objectivity and credibility of EU policy.[137] However, when looking more closely, European human rights action towards CEE appeared determined by the standard of legitimacy and appropriateness of EU normative power based on the constitutive norms of the EU and its self-understanding as a 'force for good'.[138] Consequently, the CEE states that are perceived to share in the EU's collectively identity (as evidenced by the 'return to Europe' rhetoric), and thus adhere to its values, were entitled to join the organisation. By contrast, the aim of human rights policy towards Turkey appears linked to utility defined in terms of security.[139] There is no suggestion of common values as a positive incentive for Turkey's accession, but rather suggestions that

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[135] Nogueras and Martinez, 'Human Rights Conditionality', p.333.

[136] Vincent, R.J. 'Human Rights and Foreign Policy'. In *Human Rights and Foreign Policy: Principles and Practice*, edited by Hill, D. (London: Macmillan, 1989) p.58.

[137] Füle, S. 'Speech on 'Copenhagen Accession Criteria: 20 Years that Changed Europe' (14 May 2013) <http://europa.eu/rapid/press-release_SPEECH-13-409_en.htm> (accessed 17 November 2013)

[138] Schimmelfennig, F. 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union'. *International Organisation*, vol.55 no: 1 (2001) p.58 (47-80)

[139] Sjursen, H. 'Why Expand? The Question of Legitimacy and Justification in the EU's Enlargement Policy'. *Journal of Common Market Studies*, vol.40 no: 3 (2002) p.504 (491-513)

Turkey is strategically important.[140] The EU, by exercising its normative power through a European-focused view, has been criticised for inconsistency between its past rhetoric and treatment of CEE and its policy towards Turkey, and for building dividing lines between Europe and Eastern neighbours. Inconsistency harms EU credibility, and the EU's ability to be credible is critical to the legitimacy of the normative power Europe enterprise, as will be shown in Chapter Two.

Enhanced conditionality and stronger mechanisms of monitoring were visible in the European Union's enlargement to Bulgaria and Romania in 2007. The human rights criteria that the candidate countries had to respect were extended to include the provisions of the Charter of Fundamental Rights, which was utilised as a further set of benchmarks against which to assess candidate performance. As Phinnemore observed, the European Commission's monitoring process was significantly tightened in comparison to the accessions in 2004.[141] Additionally, for the first time the EU determined 'post-accession conditionality'. This entailed that the Commission would continue to monitor the countries' compliance with the overall *acquis* even after they had formally acceded to the EU. Failure to comply entailed sanctions such as the withdrawal of EU funding and suspension of cooperation on judicial matters. The imposition of enhanced conditionality against the 2007 entrants has been viewed as a political device for discrimination in the hands of member states.[142] Nevertheless, the application of post-enlargement conditionality might be attributed to more complex dynamics than discrimination. According to Papadimitriou and Gateva, Bulgaria and Romania regularly appealed to their traumatic communist experience and the large size of their populations to account for their slow pace of reform and promote fast-track accession to the EU.[143] Their self-promotion as exceptional candidates led the EU to allow their accession despite their imperfect record of compliance, in order to avoid the unpredictable costs of their exclusion.[144]

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[140] Sjursen, 'Why Expand', p.504.

[141] Phinnemore, D. 'Beyond 25 – the Changing Face of EU Enlargement: Commitment, Conditionality, and the Constitutional Treaty'. *Journal of Southern Europe and the Balkans*, vol.8 no: 1 (2006) p.17 (7-26)

[142] Lazowski, A. 'And Then There Were Twenty-Seven... a Legal Appraisal of the Sixth Accession Treaty'. *Common Market Law Review*, vol.44 no: 2 (2007) p.414 (401-430)

[143] Padimitriou and Gateva, 'Balkan Exceptionalism', p.160.

[144] Phinnemore, D. 'From Negotiations to Accession: Lessons from the 2007 Enlargement'. *Perspectives on European Politics and Society*, vol.10 no: 2 (2009) p.244 (240-252)

This section analysed the accession of Britain, the Mediterranean enlargements, the Nordic enlargements, the Eastern enlargements of 2004, and the enlargement to Bulgaria and Romania (2007). The Eastern enlargements marked a turning point in the evolution of EU human rights policy and institutionalised human rights promotion in enlargement. In the light of the CEE accession in 2004, the EU developed a much more intensified, consolidated strategy to human rights protection within enlargement, which brought the official approach to enlargement in line with human rights. Pridham found that, contrary to pre-2004 policy, 'political conditionality has become broader in its scope, much tighter in its procedures, and within a less enlargement-friendly environment in the EU'.[145] The development of succinct policy instruments for human rights promotion has been considered a key feature of normative power Europe and one that enhances its legitimacy through the practice of value-based policies, rooted in universal standards of human rights protection. The EEC/EU experience with CEE served to substantially modify and specify the pre-existing rules and practice of human right promotion which had been generated from the earlier rounds, and paved the way for delineable policy instruments in the context of human rights promotion.

However, the new strategy has been at odds with the EU's more permissive stance towards its member states. The EU continues not to have explicit means for judging whether its own states effectively implement their human rights obligations, nor does it subject them to the same kind of scrutiny. This is accompanied by a lack of clear benchmarks on the acceptable standards that have to be achieved by candidate states, potentially demanding more concessions, commitments, and longer periods of preparation. Moreover, inconsistency resulting from the EU's universal human rights norms versus a particular duty towards those considered 'one of us' damages the credibility of the EU as a normative power within enlargement. Issues of performance and European/non-European differentiation have resulted in concerns about a credible EU commitment to promote human rights norms, which potentially obstructs effective implementation

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[145] Pridham, G. 'Change and Continuity in the European Union's Political Conditionality: Aims, Approach, and Priorities'. *Democratization*, vol.14 no: 3 (2007) p.468 (446-471)

by candidate states, as will be examined in Turkey's case in Chapter Five. In an overall perspective, therefore, the promotion of human rights norms does not automatically signify that EU policies are rightful and universally acceptable, as will be discussed in Chapter Two.

3.   External EU action and human rights promotion in trade and development

This section will discuss human rights promotion as a feature of normative power Europe through the European Union's external policy agenda. The EU's practice as a 'normative power' in external relations is assumed to be intrinsically linked to its attempt to act according to its legal principles, visible in both internal human rights protection and enlargement policy. As European Union integration has become more political and ambitious in its goals, its external human rights policy has achieved substantial growth and importance as a cross-cutting dimension of EU external policies. At the same time, however, it is beset by similar legitimacy problems associated with enlargement policy, primarily regarding to matters of inconsistency, failure to show real leadership to address human rights violations internationally,[146] lack of effectiveness, and motivation by strategic rather than normative considerations.[147] These shortcomings might undermine the European Union's credibility as a normative actor and constrain its ability to deliver meaningful improvement.

Similarly to enlargement, the idea of human rights promotion is not new in EU external policy. As the protection of human rights evolved internally and gained momentum in enlargement, the EU began to place more significance on their promotion to third countries. EU efforts at external human rights promotion have been inextricably linked to the projection and affirmation of its own identity as a 'community of values' (and not simply a technical collaboration), formed by

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[146] De Burca, G. 'The Road Not Taken: the European Union as a Global Human Rights Actor'. *American Journal of International Law*, vol.105 no: 2 (2011) p.685 (649-693)

[147] Duquette, E.S. 'Human Rights in the European Union: Internal vs. External Objectives'. *Cornell International Law Journal*, vol.34 no: 2 (2001) p.378

principles common to all member states and applied by the ECJ as the 'legal heritage' of the EU. Changes at the end of the Cold War also explain the EU's turn towards further realisation of external human rights policies.[148] Since the early 1990s human rights have become 'the name of the game' in international relations, where it is believed that a peaceful and prosperous continent of Europe and international system can only be achieved through realisation of protection of human rights and fundamental freedoms. Fulfilling the conditions of liberal economy, democracy, and human rights is assumed to pave the way for international development. As a result, the EU attempts to influence the conduct of third states on human rights protection in accordance with its constitutive values and norms.

Human rights concerns feature centrally in EU development policy and external trade, and nearly all agreements with third countries that are in force today contain human rights clauses which allow the EU to suspend the relevant agreement in the event of violations by the trading partners. At present, with the Lisbon Treaty, the EU is attempting to streamline human rights throughout its entire external action, so that they are reflected fully both in its structure and in the resources available within it. According to the European Parliament, this is essential if the EU is to play a significant, constructive role in promoting human rights to third countries affiliated to the EU through common policies.[149]

EU external human rights promotion commenced from the area of development cooperation in the 1970s. It subsequently broadened to include trade, and today encompasses foreign and security policy and all types of international cooperation agreements with third countries. Yet, the efforts of the EU have not been entirely successful in achieving a great degree of human rights protection through these agreements. While an EU membership perspective offers sufficient evidence of achieving implementation of human rights, the same does not apply to

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[148] European Commission, 'Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and Third Countries'. COM 216 (95) final (Brussels: 23 May 1995)

[149] European Parliament, 'Resolution on Human Rights in the World in 2009 and EU Policy on the Matter'. OJ C 169 E/81 (16 December 2010) p.5.

the EU's broader external relations.[150] The following analysis will discuss the most commonly used instruments of EU human rights policy abroad and the major debates surrounding their legitimacy. It will argue that the value of the EU priorities and approach is obscured by the attempt to secure European interests and achieve greater integration of third countries into the global economy at the risk of neglecting human rights concerns.

3.1. Development and trade cooperation

Early efforts to include human rights in EU external relations were visible in the Lomé Conventions on EU (then EEC) cooperation with the African, Caribbean, and Pacific group of states (ACP). The main objective of the Lomé Conventions was to construct a trade and aid partnership with forty-six ACP countries as a framework for free trade and investment, but without a human rights priority.[151] The first two Lomé conventions (1975 and 1979) did not include human rights provisions. Lomé III, however, signed in 1984, introduced respect for human rights into the Convention. This development was reportedly influenced by the accession of the Organisation of African Unity to the African Charter on Human Rights in 1981, and the ACP's search for an EEC response to the human rights violations in South Africa during the apartheid. The EEC was reportedly hesitant to include human rights in Lomé III, in case it be considered a 'condition of aid'.[152] The outcome of the negotiations was the inclusion of a general reference to human rights in the Preamble and Annexes. Therefore, Lomé III became the first attempt for a development agreement to set a human rights clause. The absence of conditionality, however, rendered the human rights clause a rather ineffective political statement of intent, instead of a binding clause, similar to the early treaties of European integration vis-à-vis enlargement.

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[150] Maier, A. 'Human Rights, Democracy, and Good Governance: Learning from Experience?'. In D. Mahncke and S. Gstohl (eds.) *Europe's Near Abroad: Promises and Prospects of the EU's Neighbourhood Policy* (Brussels: Peter Lang, 2008) p.70 (69-93)

[151] European Commission, 'From Lomé I to IV' <http://ec.europa.eu/europeaid/where/acp/overview/lome-convention/lomeitoiv_en.htm> (accessed 2 July 2012)

[152] Arts, K. *Integrating Human Rights into Development Cooperation: the Case of the Lome Convention* (The Hague: Kluwer Law International, 1998) p.176.

Lomé IV (1991) became the first development agreement to incorporate a binding human rights clause as an 'essential element' of EEC-ACP cooperation. Yet, the European Parliament criticised Lomé IV, because it did not include an enforcement mechanism, nor did it make reference to upholding democracy and the rule of law.[153] The amended version of Lomé IV (1995) sought to address the EP's concerns. Article 5 of the Convention claimed that 'development policy... shall be closely linked to respect for and enjoyment of fundamental human rights and to...democratic principles, the consolidation of the rule of law and good governance'.[154] Two main tools enforced these provisions. Article 366a provided for a mechanism of suspension of aid, stating that any violation of the human rights clause could lead to partial or total suspension of development assistance on behalf of the EEC.[155] At the same time, the Convention included a series of instruments for institutional support of democratisation, including financial assistance and an APC-EU Joint Parliamentary Committee. Lomé IV increased the prospects for human rights promotion to third countries, and improved coherence between the EU's internal and external relations goals as regards human rights policy.

In addition to development policy, human rights and democracy promotion are explicit goals of the EU trade policy.[156] In May 2001 the European Commission emphasised the promotion of human rights and democracy through a Communication on 'the European Union's Role in promoting Human Rights and Democratisation in Third Countries'.[157] This policy document obliged the EU to uphold human rights in trade policy, ensuring the maintenance of a coherent external policy with respect to human rights.[158] These obligations were codified into primary EU legislation with Articles 3 and 207 of the Treaty of Lisbon (2009). Similarly, the European Parliament has continued to actively call for respect for human rights in EU trade. In 2009, an EP Resolution on trade highlighted that the

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[153] Duquette, E. 'Human Rights in The European Union: Internal vs. External Objectives'. *Cornell International Law Journal*, vol.34 no: 1 (2001) p.379 (364-396)

[154] European Commission-ACP, 'Agreement Amending the Fourth ACP-EC Convention of Lomé'. Article 5 (Brussels, 27 October 1999)

[155] European Commission-ACP, 'Agreement Amending the Fourth ACP-EC Convention of Lomé'. Article 366a (Brussels, 27 October 1999)

[156] House of Commons, 'The Human Rights Clause in the EU's External Agreements'. Research Paper 04/33 (16 April 2004) p.23.

[157] European Commission, 'Communication on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries'. COM (2001) 252 final (Brussels: 8 May 2001)

[158] Commission, 'Promoting Human Rights', p.6-7.

EU should not envisage trade as an end in itself, but 'as a tool for the promotion of European values and commercial interests' in accordance with 'the principles and objectives of the Union's external action'.[159] Consequently, the EU has a clear obligation under EU law to promote human rights in its external trade policy, thus linking its normative power to the legal status of human rights in EU and its responsibility to act according to these principles in the international arena.

The EU has developed a systematic strategy and sophisticated array of instruments to promote human rights within trade. Its strategy has two main elements: human rights clauses in bilateral trade agreements, and human rights conditionality in the Generalised System of Preferences (GSP). Bilateral trade agreements, as with the Lomé Conventions, include human rights clauses as 'essential elements'. The 'essential element' clause stipulates that respect for human rights and democratic principles are a critical aspect of the relationship between the parties.[160] Sanctions dealing with the non-execution of the agreement can be found in the 'suspension clause'. In cases of widespread violations, the clause provides for immediate suspension of the agreement. In cases of lesser violations, measures are less drastic and provide for various stages of escalation, such as suspension of high-level contacts or postponement of new projects.[161] In fact, the suspension clause has been employed by the European Union on repeated occasions. In 2011, for example, trade and investment cooperation was withdrawn from Burma/Myanmar for a year as a result of internal repression. The suspension measures were reversed in April 2012 as a result of 'positive changes', but an embargo on arms equipment remains in force at the time of writing.[162] The suspension clause has also been employed against the Palestinian Authority, Belarus, and Russia.[163] Nevertheless, calls by the European Parliament for sanctions against Israel, Algeria and Vietnam were rejected by the European Commission, leading to strong EP accusations of

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[159] European Parliament, 'Resolution on Human Rights and Social and Environmental Standards in International Trade Agreements'. 2009/2219 INI (Brussels: 25 November 2010) p.6.

[160] Commission, 'Promoting Human Rights', p.9.

[161] *Ibid.*

[162] Council of Ministers, 'Council Decision amending Decision 2010/232/CFSP Renewing Restrictive Measures against Burma/Myanmar'. OJ L 115/25 (Brussels: 27 April 2012); European Union @ United Nations, 'Burma/Myanmar: EU Actions Suspended'. <http://www.eu-un.europa.eu/articles/fr/article_12180_fr.htm > (accessed 5 July 2012)

[163] Paasch, A. 'Human Rights in EU Trade Policy: Between Ambition and Reality'. Ecofair Trade Dialogue Discussion Paper (Berlin: December 2011) p.14.

'double standards'.[164]

The second instrument in which the EU seeks to promote human rights as part of its trade policy is the Generalised System of Preferences (GSP). Under the GSP scheme the EU offers exporters from developing countries lower tariff rates on some or all of the products they sell to the EU. This gives them access to EU markets with the aim of contributing to the growth of their economies.[165] The GSP has been operational in this form since 1971. Since the early 2000s the scheme has been further expanded to include negative human rights conditionality with the creation of the GSP+ system, to which any state can gain access if it has ratified and effectively implemented a total of 27 international agreements on human rights, labour standards, sustainable development, and good governance. GSP+ is defined by the European Commission as a 'special incentive arrangement' that offers further opportunities for sustainable development to those countries that commit to embracing core universal values on human, labour rights, environment, and governance.[166] This essentially involves an upgrading of the human rights and democracy clause, which is evident in the stricter scrutiny of the eligibility of participant states by the EU, and the closer monitoring of human rights implementation. This effectively constitutes a conditionality mechanism, enabling the suspension of the agreement in the event of perceived human rights violations and internal threats against democracy.

3.2.   Legitimacy implications of EU human rights promotion practices

The above mechanisms of human rights promotion raise particular issues for the practice of normative power Europe in external policies. Generalisations are hazardous; nevertheless, a number of points can be made. The first problematic area

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[164] European Parliament, 'Resolution on the Evaluation of EU Sanctions as a Part of the EU's Actions and Policies in the Area of Human Rights'. OJ C 295 E/15 (Brussels: 4 September 2008) p.8.
[165] European Commission, 'Proposal for a Regulation Applying a Scheme of Generalised Tariff Preferences'. COM (2011) 241 final (Brussels: 10 May 2011) p.2.
[166] Ibid.

is the peril of inconsistency and 'double standards' that result from disparities in the implementation of the EU's suspension clause in development and trade policy. The EU has been repeatedly criticised that its scrutiny in trade and development policy is considerably more severe towards weaker partners than agreements with powerful partners.[167] It would be politically credulous to argue that a 'one-size-fits-all' approach could ever be justified or effective. Yet the problem of treating third countries differently even though their human rights and democratic records are similar, by involving different decision-making, implementation, and supervision levels in the suspension clause, or by favouring cases that serve the political and economic interests of EU member states, has been are frequently stressed both in academic and policy-making circles. In the words of Maier, 'the EU is most successful when it has a lot to offer and little to lose'.[168]

Meuner and Nicolaidis have argued that the consistency in which the EU applies its development and trade policy towards non-EU partners depends on the distribution of gains from cooperation between the EU and the partner country.[169] Whilst the EU has taken action in a number of cases where human rights violations were relatively low (e.g. Kenya and Malawi), the reluctance of EU member states to antagonise major partners led the EU to adopt 'informal' or no sanctions (such as Turkey, Russia, China, or Saudi Arabia).[170] The EU has also been reluctant to engage effectively with democracy and human rights in Northern Africa, which serves as its 'buffer zone' for irregular immigration, despite the dismal record of the countries concerned. On the other hand, adopting sanctions against underdeveloped

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[167] Smith, K.E. 'The EU, Human Rights, and Relations with Third Countries: Foreign Policy with an Ethical Dimension?' In *Ethics and Foreign Policy*, ed. by K.E. Smith and M. Light (Cambridge: Cambridge University Press, 2001); Balfour, R. 'Principles of Democracy and Human Rights'. *In Values and Principles in European Union Foreign Policy*, ed. by S. Lucarelli and I. Manners (Abingdon: Routledge, 2006) p.115 (114-129); Aggestam, L. 'Ethical Power Europe?' *International Affairs*, vol.84 no: 1 (2008) p.10 (1-11); Kiatpongsan, C. EU *Thailand Relations: Tracing the Patterns of New Bilateralism* (Amsterdam: Amsterdam University Press, 2011) p.189; Fioramonti, L. 'Promoting Human Rights and Democracy: a New Paradigm for the European Union'. In *The European Union and the Arab Spring*, ed. by J. Peters (Plymouth: Lexington Books, 2012) p.17 (17-32)

[168] Maier, A. 'Human Rights, Democracy, and Good Governance: Learning from Experience?'. In *Europe's Near Abroad: Promises and Prospects of the EU's Neighbourhood Policy*, ed.by D. Mahncke and S. Gstohl (Brussels: Peter Langs Publications, 2008) p.75 (69-94)

[169] Meunier, S. and Nicolaidis, K. 'The European Union as a Conflicted Trade Power'. *Journal of European Public Policy*, vol.13 no: 6 (2006) p.921 (906-925)

[170] Hurrell, A. 'Power, Principles, and Prudence: Protecting Human Rights in a Deeply Divided World'. In *Human Rights in Global Politics*, ed. by K. Booth and T. Dunne (Cambridge: Cambridge University Press, 1999) p.284 (277-302)

African countries entails significantly less financial and trade loss for the EU. The above discrepancy can undermine the effectiveness of the human rights promotion and damage the EU's credibility as a human rights actor. As Duquette underlined, not only does such unequal treatment appear hypocritical, it also reinforces the idea that EU responsibility to protect human rights lacks a strong moral foundation and commitment to an apparently ethical policy.[171]

Secondly, a problem similar to 'impact conditionality' can be encountered in the EU's agenda within trade, cooperation, and development. Given its duty of protection, the EU must not ratify agreements that would themselves lead to a violation of human rights. In other words, the policies applied must not have adverse implications for the very values that they set out to protect – implications for individuals' fundamental human rights and socioeconomic welfare. Nevertheless, the irony of adverse implications can be considered here with respect to an important example, the control of irregular immigration through the Euro-Mediterranean Partnership (EMP) with North African states. The EMP was launched in 1995 to create an area of 'peace, security, and stability' between the EU and 16 neighbours to the EU's south in North Africa and the Middle East.[172] The security policy of the EMP is primarily focused on cooperation on immigration control and effective repatriation of immigrants who would potentially seek asylum in the EU. However, it has been considered complicit with the infringement of human rights of asylum seekers. As Bilgic argues, far from protecting the rights of immigrants, EU policy forces detentions and repatriations at the EU border that expose them to severe violations of their fundamental rights by the North African regimes.[173] EU member states have also been criticised for using Turkey as a buffer zone to prevent access to their territory for fleeing Syrians, when part of the EU's conditionality to Turkey requires the improvement of its refugee regime.[174] This greatly restricts the universal legal right of any individual to seek asylum, and also

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[171]   Duquette, 'Human Rights', p.378.
[172]   European Union External Action Service, 'Euro-Mediterranean Partnership'. <http://www.eeas.europa.eu/euromed/index_en.htm> (accessed 10 July 2012)
[173]   Bilgic, A. 'Security through Trust-Building in the Euro-Mediterranean Cooperation: Two Perspectives for Partnership'. *Southeast European and Black Sea Studies*, vol.10 no: 4 (2010) p.464 (457-473)
[174]   International Crisis Group, 'Blurring the Borders: Syrian Spillover Risks for Turkey'. Europe Report no: 225 (30 April 2013) p.2.

occurs without sufficient legal scrutiny by the European Court of Justice, despite the legal obligation of the EU member states – and the EU itself – to uphold the rights contained in international human rights in their foreign policy. This practice reveals a clear tension between Europe's duty to protect human rights as a 'community of values' and the implications of those very agreements designed to protect and promote these values.

Thirdly, one of the most well-known criticisms against EU human rights promotion is that it is an attempt to shape the rest of the world according to 'European' norms of economic and political cooperation.[175] In this regard, the EU is viewed as socialising the world around a set of historically-philosophically contingent principles, including human rights and economic liberalisation, to an extent that it has been negatively described as a normative power with a civilisational role.[176] Two specific concerns have been raised: first, the need to *promote* human rights 'from outside' and the role of the EU in this process, and, second, the particular *conception* of human rights that is being promoted.[177] The idea of promotion of rights has been linked to the EU presumption that human rights are absent in the relevant countries, an idea portrayed as potentially unrealistic and politically insensitive. What conception of rights the EU promotes is a second key question. Its central claim, reflected effectively by Evans, is that the EU advances a historically-specific Western conception of human rights – with emphasis on norms of individualism, in contrast to a notion of community solidarity.[178] The risk this entails, according to Smismans, is a self-representation of the EU as 'a lighthouse of fundamental rights in the dark world of less civilised regimes', thus hardening the boundaries between the EU and the rest of the

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[175] Linklater, A. 'A European Civilising Process?' In *International Relations and the European Union*, ed. by C. Hill and M. Smith (Oxford: Oxford University Press, 2005) p.367-387.

[176] Manners, I. 'Normative Power Europe: a Contradiction in Terms?'*Journal of Common Market Studies*, vol.40 no: 2 (2002) p.235-258; Rumelili, B. 'Constructing Identity and Relating to Difference: Understanding the EU's Mode of Differentiation', *Review of International Studies* vol.30, no: 1 (2004) p. 27-47; Bilgin, P. 'A Return to 'Civilisational Geopolitics' in the Mediterranean? Changing Geopolitical Images of the EU and Turkey in the Post-Cold War Era', *Geopolitics* vol.9 no: 2 (2004) p.269-91.

[177] Ypi, L. 'Sovereignty, Cosmopolitanism, and the Ethics of EU Foreign Policy'. *European Journal of Political Theory*, vol.7 no: 3 (2008) p.352 (349-364)

[178] Evans, T. *The Politics of Human Rights: a Global Perspective* (London: Pluto Press, 2005)

world.[179]

Finally, a major concern about the scope of the policies, reflected in a recent edited volume on the EU's strategies of engagement with Northern Africa and the Middle East, is that they reduce human rights promotion to concern with human rights legislation and procedures, neglecting their deeply political character in the process.[180] At their core, human rights consist of an ethos of questioning official behaviour, as they are political norms dealing mainly with how people should be treated by their governments and institutions.[181] Treating human rights merely as a matter of formal rules and procedures has been viewed to result in inconsistency in their application and lack of proper impact.[182] Whereas the human rights clause serves the purpose of allowing the EU to prevent its funds from flowing to authoritarian regimes violating their population's rights, it is questionable to what extent it actually improves human rights on the ground.[183] Especially in the light of the shortcomings touched upon (proceduralism, economic and strategic motives, 'impact conditionality'), it is important to ask whether the EU should take a more principled and systematic approach that does not have adverse implications for the very values it sets out to protect (human rights, rule of law, democracy, social welfare).

The progressively increasing profile of human rights in EU external relations has been attributed to the economic weight of the EU and the greater opportunities it brought for the exercise of international political influence.[184] The promotion and protection of its economic and legal interests has long been a cornerstone of the EU's human rights policy in external relations.[185] In addition, the

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[179] Smismans, S. 'The European Union's Fundamental Rights Myth'. *Journal of Common Market Studies*, vol.48 no: 1 (2010) p.54 (45-66)

[180] Pace, M. (ed.) *Europe, the USA and Political Islam: Strategies for Engagement* (Basingstoke: Palgrave Macmillan, 2011)

[181] Nickel, J. 'Human Rights', *The Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu/archives/fall2010/entries/rights-human/> (accessed 23 October 2012)

[182] European Parliament, 'Human Rights Conditionality in Development Policy' (Brussels: 11 October 2011) p.2.

[183] *Ibid.*

[184] Keukeleire, S. 'The European Union as a Diplomatic Actor: Internal, Traditional, and Structural Diplomacy'. *Diplomacy and Statecraft*, vol. 14 no: 3 (2003) p.31 (31-56)

[185] Edwards, G. 'The Pattern of the EU's Global Activity'. In C. Hill and M. Smith (eds), *International*

widening and deepening of European integration and the growth of EU policy areas led to the accommodation of human rights in a more comprehensive development policy.[186] These changes encouraged a stronger EU role in trade, security, and development affairs, and facilitated the recognition of the importance of human rights in the above areas.[187] The EU represents itself as a stabilising effect in world politics, deriving from its historically-developed and formed values and principles, and its 'ethics of responsibility' towards others.[188] In the European Council's document on 'European Security Strategy', we read that:

> 'Europe should be ready to share in the responsibility for... the development of a stronger international society... A rule-based international order is our objective... Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order'.[189]

Conclusion

The aim of this chapter was to explore the foundation of the European Union's policy of human rights promotion by shedding light on its relevance for EU normative power. The chapter followed the trajectory of the policy from its internal legal construction to the external EU activities that shaped its application. It argued that in order for this thesis to interpret the policy process and legitimacy of human rights promotion to Turkey, it needs to begin by understanding the EU's internal dynamics and international action. The understanding of the EU as a normative power in human rights promotion is better captured by bringing the 'inside' and 'outside' dimension into a relationship with each other. Such an integrated focus captures some of the ways in which the development of a human rights narrative within the EU has affected human rights promotion externally. It also highlights how conditionality is framed within the wider human right policy in external

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Relations and the European Union (Oxford: Oxford University Press, 2005) p.41 (39-64)

[186] Babarinde, O. 'The European Union's Relations with the South: a Commitment to Development?'. In *The European Union in the World Community*, ed. by C. Rhodes (London: Lynne Rienner, 2008) p.140 (127-146)

[187] Rhodes, C. 'The Identity of the European Union in International Affairs'. In *The European Union in the World Community*, ed. by C. Rhodes (London: Lynne Rienner, 2008) p.3 (1-18)

[188] Lucarelli, S. 'Introduction'. In S. Lucarelli and I. Manners (eds.), *Values and Principles in European Union Foreign Policy* (Abingdon: Routledge, 2006) p.3 (1-18)

[189] European Council, 'A Secure Europe in a Better World' (Brussels: 12 December 2003) <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf> (accessed 19 October 2012)

relations. Whilst the chapter does not claim to have exhaustively analysed all aspects of EU human rights activity, the attempt to discuss the major dynamics in the evolution of human rights promotion through the academic literature pertaining to it was central to its focus.

The first part of Chapter One focused on the legal-institutional underpinnings of EU normative power through the jurisdiction of the European Court of Justice and the activities of the European Parliament as key institutional actors driving EU human rights action. It also dealt with the Charter of Fundamental Rights and with the major treaties of European integration. Successive treaties have lead to the progressive refinement of human rights conditionality as the EU changed scope, direction, and the capacity to formulate and implement a European 'human rights policy'. The second part of the chapter discussed the external dimension of human rights promotion through its application during consecutive enlargement rounds: Britain (1973), the Mediterranean enlargement (1981, 1985), the Nordic enlargement (1995) and the enlargements to Central and Eastern Europe (2004 and 2007). The second part argued that on the basis of the particularities of each candidate state under consideration, the EEC/EU reformulated a core of human rights requirements that today underpin the EU's application of human rights to Turkey. The third part discussed the EU's human rights promotion towards the rest of the world through an analysis of the trade and development agreements with third countries. It argued that despite its importance, external human rights promotion is replete with legitimacy implications, primarily associated with matters of consistency, instrumentalism, and lack of effectiveness. Chapter Two will discuss the legitimacy of EU normative power from a theoretical perspective.

Chapter Two

Legitimacy and Normative Power Europe

Introduction

EU human rights promotion has acquired increasing significance through internal legal developments, successive enlargements, and external relations. This chapter analyses human rights promotion from the theoretical perspective of normative power Europe. Normative power Europe, conceptualised by Manners, has so far provided insightful analyses of contemporary practices of the EU that interpret its international role in 'normative', 'ethical', or 'soft power' terms. However, a central foundation of these analyses prevents them from taking further steps: the idea that normative power Europe is essentially a 'good' concept, that its standard of legitimacy is 'normal', and should be adopted by the rest of the world. By contrast, this thesis ascribes to the idea that the EU's normative power actions are not neutral; they put forward a particular vision of politics which requires its own sources of legitimacy. Thus, human rights promotion within enlargement will be discussed in relation to possible sources of legitimacy, ones that are external to the normative power concept itself. The chapter discusses the value and applicability of two such sources: legitimacy as procedural propriety (procedural legitimacy), and legitimacy as recognition by the non-European other (substantive legitimacy). It will be argued that a process of EU human rights promotion that draws its legitimacy from these sources has the potential to contribute to sustainable human rights change in Turkey.

As mentioned in the introductory chapter, a legitimacy analysis seeks to highlight the contradictions with actual EU human rights promotion (what it is doing) and its better potential (what it could do). Legitimacy in this sense is adopted as the analytical framework for the normative power analysis of EU human rights promotion to Turkey. It

helps to assess the EU's capacity to exercise effective and justifiable human rights promotion, one which encourages political development and social improvement in the target country while remaining 'in dialogue' with the Turkey's local context. The usage of legitimacy transforms the analysis of human rights promotion from a situation describing an intergovernmental bargaining exercise between EU-Turkey elites to an analytical framework in which human rights actions on the ground and local socio-political dynamics (including civil society organisations) can be studied jointly. This fits into the agenda of EU normative power analyses which argues that the EU cannot be a normative power without an external recognition of its legitimacy.

The chapter will start with a review of the prescriptive and descriptive methods for legitimacy analyses. In this section, it will discuss the key methods adopted in the literature on EU legitimacy in key policy areas (including enlargement), and will explain the importance for this thesis to adopt a combined prescriptive-descriptive approach. This discussion will be followed by an analysis of normative power Europe theorising, whose central works generally focus on the EU as a 'force for good' that 'shapes conceptions of normal' in international political behaviour. It will be argued that early NPE theorising almost uncritically adopted the idea that the EU's external action is a 'force for good'. The final section will explore how legitimacy can be operationalised for the purposes of normative power analysis of human rights promotion to Turkey. Two dimensions of legitimacy, procedural and substantive, will be explored based on different normative power conceptualisations that emerge from the literature. The chapter will conclude by arguing that a rethinking of EU human rights promotion within enlargement in relation to legitimacy could contribute to improved human rights promotion to Turkey.

1.   A definition of legitimacy

International legitimacy has constituted an all-encompassing idea in political

thought.[1] Its precise meaning has always puzzled theorists of international relations. At bottom, it is seen as a normative belief that a rule or a demand of an institution should be obeyed, not due to coercion or self-interest, but due to its inherent normative strength.[2] According to Hurd, legitimacy contributes to compliance by providing an internal reason for an actor to follow a rule. When the rule is perceived by that actor as legitimate, compliance is no longer motivated by a fear of sanctions or a by a rational cost-benefit calculation, but by an internal sense of moral obligation.[3] A similar understanding of legitimacy is specified by international law theorists, who conceptualise legitimacy on the basis of the fairness of rules which make sure that all peoples and nations derive benefit from them.[4]

Despite its ambiguity, legitimacy constitutes an important dimension in the practice of international institutional activity. Its frequent mention in EU policy reports testifies to its significance. The European Parliament resolution on the White Paper on European Governance (2002) showed twelve instances of the word 'legitimacy' in ten pages, indicating that it is an issue of relevance to EU governance.[5] This attitude is accurately explained by Beetham, who argued that all power structures seek legitimacy.[6] In order to form a thorough understanding of the meaning of legitimacy for this study, the discussion must be carefully situated within its specific context and conducted on the basis of precise criteria. What is important to be made clear is a) the conceptual stance of the author as emerging from the academic literature, b) the nature and the range of the criteria upon which the concept is employed, and c) the empirical cases from which the

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[1] Several examples include Franck, T.M. 'Legitimacy in the International System'. *American Journal of International Law*, vol.82 no: 4 (1988) p.705-759; Clark, I. 'Legitimacy in a Global Order'. *Review of International Studies*, vol.29 no: 1 (2003) p. 75-95; Mulligan, S. 'Questioning the Question of Legitimacy in IR'. *European Journal of International Relations*, vol.10 no: 3 (2004) p.475-484; Clark, I. *Legitimacy in International Society* (Oxford: Oxford University Press, 2005)

[2] Buchanan, A. 'Reciprocal Legitimation: Reframing the Problem of International Legitimacy'. *Politics, Philosophy & Economics* vol.10 no: 1 (2011) p.8 (5-19)

[3] Hurd, I. *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton: Princeton University Press, 2007)

[4] Koller, P. 'International Law and Global Justice'. In *Legitimacy, Justice, and Public International Law,* ed. by L.H. Meyer (Cambridge: Cambridge University Press, 2009) p.192 (186-206)

[5] European Commission, *European Governance: Preparatory Work for the White Paper* (Luxembourg: Office for Official Publications of the European Communities, 2002) p.337-353.

[6] Beetham, D. *The Legitimation of Power* (London: Macmillan, 1991) p.3.

analysis draws. According to Caron, without a comprehensive framework it is difficult to understand whether and when legitimacy warrants attention in a practical sense.[7]

The task here is to review how the EU can attain legitimacy for human rights promotion within enlargement. The idea that the European Union is a normative power that promotes human rights as a 'force for good' needs an assessment that makes it possible to substantiate this claim. This chapter addresses the above theme through the prism of Turkey's EU accession process. The section that follows will provide a detailed review of the prescriptive and descriptive methods for the discussion of EU legitimacy, followed by a discussion of their analytical usefulness for this study. It will then stress the benefits for the study to adopt a combined prescriptive-descriptive approach.

2. Descriptive and prescriptive methods for the study of legitimacy for EU human rights promotion to Turkey

Notwithstanding the intellectual diversity of work on legitimacy, most theorists are able to categorise the main methods for its assessment as one of two types: the so-called 'descriptive' and 'prescriptive' techniques. This distinction coincides with a putative boundary between individual beliefs and normative benchmarks of acceptability and justification. In his work on the legitimacy of international institutions, Hurd highlighted the two distinct conceptions from which evaluations of legitimacy arise: individual assumptions, and contextual standards of appropriateness.[8] While these two conceptions are a useful departure point for conducting legitimacy analyses, they still leave the observer wondering what they mean in the practice of empirical research. It is

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[7]Caron, D.D. 'The Legitimacy and Collective Authority of the Security Council'. *American Journal of International Law*, vol.87 no: 4 (1993) p.557 (552-588)
[8]Hurd, I. 'Legitimacy and Authority in International Politics'. *International Organization*, vol.53 no: 2 (1999) p.389 (379-408)

therefore necessary to discuss these two methods and spell out the framework they offer for the analysis of EU human rights promotion to Turkey. This will be accomplished by reviewing their usage in the legitimacy literature, and describing how the adoption of either a descriptive or prescriptive methodology is not entirely appropriate for the present study. Instead, a combined approach will be selected.

A descriptive technique for the study of legitimacy involves analysing people's *beliefs* about a political order. This explicitly refers to why they accept and support it in reality. The object of analysis is the perceptions held by elites and citizens about a government, organisation, or policy.[9] The result is empirical assessments of the kind that 'this is more or less accepted'. This approach draws primarily from the perspective of Max Weber. Weber argued that as long as political rule is considered legitimate by its recipients, no decision arrived at will be considered unlawful.[10] In turn, Stillman and Rothchild argued about compatibility with societal values to show that the performance of public actions should evoke consent, trust and identification by their recipients.[11] Similarly, Simmons argued that a policy which is coherent and procedurally sound could still lack legitimacy if not perceived it as 'lawful, exemplary, morally acceptable or appropriate' by society.[12] Or, as put simply by Hurd, legitimacy is the normative belief by an actor that a rule of institution ought to be obeyed.[13] Overall, the descriptive method has been summarised as 'motivational', because it is interested in the reasons that motivate individuals to voluntarily consent to authority.[14] Broadly speaking, a descriptive study of legitimacy might ask: 'to what extent is the political authority rightful in the eyes of its recipients?'

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[9] Friedrich, C. *Man and his Government: an Empirical Theory of Politics* (New York: MacGraw-Hill, 1963)

[10] Mommsen, J.W. *The Political and Social Theory of Max Weber: Collected Essays* (Chicago: University of Chicago Press, 1989) p.47. Perhaps Weber went too far in arguing that under modern conditions legitimacy depends solely on the belief of those governed, but his observation that people will regard a properly justified process as a source of the legitimacy remains valid all the same.

[11] Stillman, P.G. 'The Concept of Legitimacy'. *Polity*, vol.7 no: 1 (1974) p.39 (32-56); Rothschild, J. 'Observations on Political Legitimacy in Contemporary Europe'. *Political Science Quarterly*, vol.92 no: 3 (1977) p.487-501.

[12] Simmons, J. 'Justification and Legitimacy'. *Ethics*, Vol.109 No: 4 (1999) p.749 (739-771)

[13] Hurd, 'Legitimacy', p.381.

[14] Habermas, J. *Legitimation Crisis* (London: Heinemann, 1976) p.97-8.

Why do descriptive techniques to studying legitimacy matter? As mentioned earlier, a classical argument of theorists employing the descriptive method is that for authorities to perform effectively, those consenting to the obligations should be convinced that the authority has the 'right' to make decisions and impose obligations. This attitudinal quality is important for the study of EU human rights promotion, because it leads political actors to feeling internally obligated to implement the EU's rules, decisions, and social arrangements.[15] While some theorists argued that it is possible to rule using only power, it is widely agreed that authorities benefit from having legitimacy, and governance is more effective when a belief of appropriateness and rightfulness is widely held by the recipients. Legitimate rules have been claimed to exert a 'compliance pull' on target governments, not because of fear or instrumental calculations, but because those addressed 'believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process'.[16] Demands for legitimacy become greater for an institution like the EU as its scope increases and it expands into areas that were formerly considered domestic preserves, such as human rights protection.[17]

The prescriptive method for the study of legitimacy involves discussing under which conditions the political order and its policies deserve the predicate 'legitimate'.[18] In this case, the criteria for assessing legitimacy result from the analyst's views about when policies should be recognised as acceptable and justified. The analyst derives the grounds for legitimacy from 'contextual standards of appropriateness', as mentioned earlier. These involve general criteria of justifiability for formal rules and actions of policy. In contemporary institutional political orders these criteria frequently relate to

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[15] Menon, A. and Weatherill, S. 'Transnational Legitimacy in a Globalised World'. *West European Politics*, vol.31 no: 3 (2008) p.401 (397-416)

[16] Franck, T. *The Power of Legitimacy among Nations* (Oxford: Oxford University Press, 1990) p.24.

[17] Berstein, S. 'The Elusive Basis of Legitimacy in Global Governance: Three Conceptions'. Institute of Globalisation and the Human Condition Working Paper 04/2 (2004) p.3 (1-30)

[18] Heywood, A. *Key Concepts in Politics* (Basingstoke: Palgrave Macmillan, 2000) p.29.

procedural and distributional issues rooted in democratic theory. Breitmeier, for example, emphasised equality, participation, competence, effectiveness, and accountability.[19] On this view, if such conditions for legitimacy are met, political institutions exercise authority justifiably. A well-known example of a legitimacy study adopting a prescriptive method is Beetham and Lord's *Legitimacy and the European Union.*[20] In this work, the authors developed three criteria for the evaluation of the prescriptive qualities of the EU political system: democracy, identity, and performance. These criteria highlighted what the EU *should* do, in the opinion of the authors, in order to claim the grounds for legitimacy. In general, a prescriptive study of legitimacy might ponder: 'to what extent are the acts and practices of political authority morally acceptable, rational, or both?'

Prescriptive techniques to studying legitimacy are important because they are rooted in the idea of appropriateness of procedures. When studying institutions and their activities, the prescriptive category best describes the scholarly work that concentrates on proposing improvement to institutional frameworks through more commitment to certain overriding principles in policy, such as transparency, due process, efficiency, participation, and respect for fundamental rights. This position is less concerned with the attitudes of the recipient community and more concerned with the quality of the policy process more generally. It is heavily reliant on principled technocratic attributes to provide legitimacy, which becomes especially important if the attitudinal aspects of legitimacy are deficient in certain respects.[21] Thus, it is a process-oriented conceptualisation of legitimacy that studies the function of policies and proposes procedural improvement.

The EU legitimacy literature usually describes and analyses particular forms of

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[19] Breitmeier, H. *The Legitimacy of International Regimes* (Farnham: Ashgate, 2008) p.37.

[20] Beetham, D. and Lord, C. *Legitimacy and the European Union* (London: Longman, 1998)

[21] See Banchoff, T. and Smith, M.P. (eds) *Legitimacy and the European Union: the Contested Polity* (London: Routledge, 1999); Kohler-Koch, B. and Bittberger, B. *Debating the Democratic Legitimacy of the European Union* (Plymouth: Rowman and Littlefield Publishers, 2007); Neyer, J. 'Justice, not Democracy: Legitimacy in the European Union'. *Journal of Common Market Studies*, vol.48 no: 4 (2010) p.903-921.

EU policy-making both within the EU and in its external relations. In domestic EU processes, legitimacy has been approached as central to the relationship between the EU political system and its recipient citizens. These have examined the degree of citizen acceptance of, and support for, specific EU policies in relation to the normative values that should underpin the promotion of public goods.[22] Studies discussing legitimacy have examined either domestic support for specific policies in EU governance,[23] or diffuse support by Europeans to the political system of the EU and European integration *per se*.[24] The legitimacy of EU policies has been examined through normative conditions of rightful governance, in other words whether the process of policy implementation conforms to ideals of equality, participation, coherence, effectiveness, and accountability. If the instruments deliver on the expected conditions, then they are viewed as legitimate. Moreover, it is worth noting that in studies of EU legitimacy, the interaction between the local and European context is not absent. In an asymmetric relationship where the EU enforces its norms upon a target government and society, legitimate authority is also that which is recognised as such by others in the context of their interaction.[25]

Studies of the EU's international legitimacy vis-à-vis third countries emerged from what one might call a theoretical framework of legitimacy for the international system. This was concerned with the creation of international legitimacy through a process of development and global acceptance of international norms, such as human rights.[26] Contemporary literature on the EU's international legitimacy has tended to

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[22] Den Boer, M., Hillebrand, C., and Nolke, A. 'Legitimacy under Pressure: the European Web of Counter-Terrorism Networks'. *Journal of Common Market Studies*, vol.46 no: 1 (2008) p.101-124; Klintman, M. and Kronsell, A. 'Challenges to Legitimacy in Food safety Governance? The Case of the European Food Safety Authority'. *Journal of European Integration*, vol.32 no: 3 (2010) p.309-327.

[23] For example, Deroose, S., Hodson, D., and Kuhlmann, J. 'The Legitimation of the EMU: Lessons of the Early Days of the Euro'. *Review of International Political Economy*, vol.14 no: 5 (2007) p.800-819.

[24] Scheuer, A. *How Europeans See Europe: Structure and Dynamics of European Legitimacy Beliefs* (Amsterdam: University of Amsterdam, 2005); Maas, W. *Creating European Citizens* (Plymouth: Rowman and Littlefield Publishers, 2007)

[25] Schwarz, N.L. 'Communitarian Citizenship: Marx and Weber on the City'. In *Karl Marx's Social and Political Thought*, ed. by B. Jessop and R. Wheatley (London: Routledge, 1999) p.286 (276-292); Susen, S. 'Bourdieu and Adorno on the Transformation of Culture in Modern Society'. In *The Legacy of Pierre Bourdieu: Critical Essays*, ed. by S. Susen and B.S. Turner (London: Anthem Press, 2011) p.173-202.

[26] The study carried out by Ian Clark on legitimacy in international society provides analysis on the processes by which norms are accepted internationally and confer legitimacy on the states that adopt them.

examine the extent to which EU external policies, introduced in various policy domains (e.g. human rights and democracy promotion, enlargement, trade, development) contribute to the EU as a 'normative power'. The attainment of legitimacy for normative power Europe, and policies of human rights promotion in particular, will be discussed in detail in the following section.

Against the division between descriptive and prescriptive methods, it is argued here that it is useful to conceive the two approaches as closely related in the study of the legitimacy of EU human rights promotion to Turkey.[27] Arguably, it is not possible to understand the beliefs of domestic actors about the conditions under which human rights promotion *should be* legitimate, unless a combined approach is employed.[28] As was made visible in the EU literature discussed above, even if we rely on the judgements of the recipients as a legitimacy criterion, we still need to decide for which aspects of the political order these judgements are relevant. On the other hand, substantive legitimacy perceptions affect the prescriptive qualities of the EU's activity, namely its ability to make decisions, the strength of these decisions, and the ability of states to build domestic support to carry them out.[29] This evokes the idea that the recipients' *actual* assessment of the legitimacy of EU human rights promotion can influence the domestic adoption of EU norms and thus the ability of the EU to effectively transfer its norms to the domestic context.

Moreover, a combined approach is quite useful for studying domestic political dynamics, social cleavages, and political interests in Turkey and their impact on the development of legitimacy beliefs for EU norms. This would reveal how legitimacy is constructed, debated, agreed upon or rejected within the context of processes of change in

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Clark, I. *Legitimacy in International Society* (Oxford: Oxford University Press, 2005)

[27] See for example Brighouse, H. 'Civil Education and Liberal Legitimacy'. *Ethics*, vol.108 no: 4 (1998) p.720-721 (719-745)

[28] Beetham, *Legitimation,* p.11.

[29] Schmitt,H. and Thomassen, J. 'Introduction'. In *Political Representation and Legitimacy in the European Union*, ed. by H.Schmitt and J. Thomassen (Oxford: Oxford University Press, 1999) p.11 (3-23)

Turkey.[30] As Steffek argued, political actors develop reasons for or against supporting a system of governance and its binding rules. They evaluate the policy and if they find the 'pros' convincing they will develop a sense of obligation towards the respective political system. If they do not find them convincing, they are likely to oppose the system in words and actions. The reasons actors have to support or oppose a new system of governance are not developed in isolation, but emerge through a process of debate, change, and occasionally through political conflict. As Baudner rightly pointed out, EU accession negotiations in Turkey have been strongly politicised, have met a well-entrenched state doctrine, and the Turkish case can be regarded as one of the most salient examples of change related to the prospect of EU membership in the past decade.[31] Stemming from the above, the two methods to making legitimacy judgments can be evaluated as less independent than they might appear.

In short, what does this discussion of description and prescription in legitimacy reveal in terms of the analysis of EU human rights promotion to Turkey? The analysis of the legitimacy of EU policy in this study will follow a combined prescriptive and descriptive method. Insights into what EU human rights promotion ought to do, or how to support human rights effectively, are grounded within a prescriptive approach. Prescriptive approaches prescribe what ought to be done or how to do something better. As argued earlier, this approach does not aim to simply explain what the EU is promoting. It also provides the answer to the question of *how* – 'how should EU promote human rights to Turkey' and, by extension, 'why should it be done this way'. While the description of the known features of the current policy forms a useful knowledge base, it is nevertheless important to suggest improvements to the policy's quality, and to argue

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[30] Risse, T. and Sikkink, A. 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction'. In *The Power of Human Rights: International Norms and Domestic Change*, ed. by T. Risse, S.C. Ropp, and K. Sikkink (Cambridge: Cambridge University Press, 1999) p.11 (1-38); Steffek, J. 'The Legitimation of International Governance: a Discourse Approach'. *European Journal of International Relations*, vol.9 no: 2 (2003) p.249-275; Erman, E. *Human Rights and Democracy: Discourse Theory and Global Rights Institutions* (Aldershot: Ashgate, 2005); Suddaby, R. and Greenwood, R. 'Rhetorical Strategies of Legitimacy'. *Administrative Science Quarterly*, vol.50 no: 1 (2005) p. 37 (35-67)
[31] Baudner, J. 'The Politics of Norm Diffusion in Turkish European Union Accession Negotiations'. *Journal of Common Market Studies*, vol.50 no: 6 (2012) p.923.

how it can achieve the desirable outcomes in an environment where these outcomes have not been previously observed or in existence.[32] For this purpose, a prescriptive method will help specify how to best apply the EU human rights policy, what outcomes should be expected, and how EU performance should be evaluated. As such, it involves value judgements of what 'ought' to be. These value judgements are most evident in the selection of the specific criteria for evaluating legitimacy, analysed later on: policy relevance, participation, and effectiveness. These criteria reflect democratic values as the normative foundation of legitimacy.

Yet, a prescriptive analysis of human rights promotion cannot be conducted successfully without a detailed discussion of the relevant human rights instruments. The position adopted here is that any arguments about legitimate policies and their effectiveness combine not only prescriptive but empirical elements. Let us look at the following example of a prescriptive proposition that suggests this clearly: 'If the EU wishes to further ensure progress in Turkey's fulfilment of the human rights criteria, it should raise the amount of funding for governmental human rights projects'. This is a prescriptive statement, because it argues that the EU ought to raise funding for projects if it wants to ensure better domestic human rights implementation. It is also (at least implicitly) an empirical statement, because it proposes that funding is correlated with implementation progress. This means that the prescriptive analysis necessitates prior knowledge, which is based on information and facts about the policy process and its context. These facts are then described and explained in order to construct prescriptive claims. Therefore, a successful prescriptive approach is based on solid explanation of the function of the policy instruments. For this purpose, the empirical section of the thesis will include description of the relevant EU policy processes and the function of different types of human rights instruments (financial and technical assistance, human rights consultations, and civil society development).

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[32] Dompere, K.K. and Ejaz, M. *Epistemics of Development Economics* (Westport, CT: Greenwood Press, 1995) p.148.

On the other hand, a prescriptive analysis of EU policy to Turkey cannot sensibly be conducted independently from a domestic analysis of the political attitudes and legitimacy beliefs of implementing actors. Even if the EU's human rights policies possess a considerable degree of independent procedural validity, this is made operational by domestic socio-political affirmation.[33] Thus, the focus here is on how human rights norms are accepted in Turkey. The literature focusing on the impact of EU norms on state practices is an integral part of the debate concerning the interaction and influence of normative power Europe on partner countries, as will be shown further on. Analysis of this dimension is increasingly useful in contemporary EU human rights promotion, where we are more aware of instruments of civil society development and the role played by non-state actors. How does the EU diffuse human rights norms and practices to candidate states?

The process of acceptance of externally-induced norms by domestic actors has been studied in the literature on conditionality, which is applied to describe and analyse the adoption of human rights rules by candidate states. We can distinguish two different aspects of the conditionality approach to human rights promotion. The first is a 'top-down approach', which focuses on the EU as a transformative power that provides the Turkish government with external incentives to comply with its human rights requirements. This approach can be identified with the interaction of individuals at elite level with their EU counterparts in a process of bargaining and persuasion. The second is the 'bottom-up approach', which focuses on processes of acceptance of EU norms in the wider political and societal sphere, beyond the interaction at the elite level. This approach is concerned with the effect that domestic power positions, social cleavages and political party interests have on the EU's ability to shape human rights protection in Turkey.

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[33] Clark, *International Legitimacy*, p.14; Schneider S.,Nullmeier F. and Hurrelmann A. 'Exploring the Communicative Dimension of Legitimacy: Text Analytical Approaches'. In *Legitimacy in the Age of Global Politics*, ed. by Hurrelmann A., Schneider S. and Steffek, J. (Basingstoke: Palgrave Macmillan, 2008) p.133 (126-155).

According to the 'top-down approach',[34] the impact of the EU's conditionality and material rewards on human rights implementation is particularly pervasive.[35] Studies in this area show that the EU influences the implementation behaviour of the target government through processes of rational choice and social learning. Rational choice shows that the main condition for the success of EU human rights promotion is reinforcement by reward, which works through intergovernmental material bargaining.[36] Its efficacy depends on whether it offers Turkey a credible membership perspective, which will reward rule adoption and influence the cost-benefit calculations of the target government.[37] The importance of influencing cost-benefit calculations resonates sharply with the assumption that domestic actors are strategic utility-maximisers who adopt human rights in order to increase their power and welfare.[38] Thus, the analytical basis of rational choice ideas assumes a logic of consequences; conditionality affects the power position of the target government, either by increasing its bargaining power vis-à-vis other domestic actors, or by empowering domestic socio-political actors who might oppose the government (e.g. opposition parties or civil society organisations). Another factor that influences implementation behaviour is the salience that the EU attaches to human rights in its enlargement policy, which in turn increases the credibility of EU human rights promotion in the eyes of the domestic implementing actors.

However, how can we explain the (albeit limited) alignment of Turkey to EU

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[34] Pridham, G. 'Change and Continuity in the European Union's Political Conditionality: Aims, Approach, and Priorities'. *Democratization*, vol.14 no: 3 (2007) p.462 (446-471)

[35] Grabbe, H. 'How Does Europeanisation Affect CEE Governance? Conditionality, Diffusion and Diversity', *Journal of European Public Policy,* vol.8 no: 6 (2001) p.1013–31; Kelley, J. 'International Actors on the Domestic Scene: Membership Conditionality and Socialisation by International Institutions'. *International Organisation*, vol.58 no: 3(2004) p.428 (425-457)

[36] Schimmelfennig, F., Engert, S., and Knobel, H. 'Costs, Commitment, and Compliance: the Impact of EU Conditionality on Latvia, Slovakia, and Turkey'. *Journal of Common Market Studies*, vol.41 no: 3 (2003) p.495 (495-518)

[37] Schimmelfennig, F. and Sedelmeier, U. 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe'. *Journal of European Public Policy*, vol.11 no: 4 (2004) p.663 (661-679)

[38] Schimmelfennig, F. 'Strategic Calculation and International Socialisation'. *International Organisation*, vol.59 no: 4 (2005) p.830 (827-860)

human rights requirements that occurred since 2007 in the absence of a credible EU commitment? In this case, the top-down conditionality approach would assert that compliance was precipitated through social learning, which forms the 'alternative' model of EU external incentives.[39] Social learning presupposes that the EU holds specific understandings of what is appropriate international behaviour in the area of human rights ('norm-maker'), and that its candidate states accept these collective understandings if they want to partake in EU benefits ('norm-takers').[40] The social learning model assumes a logic of appropriateness.[41] According to this logic, domestic actors are motivated by the internalisation of the values and norms promoted by the EU.[42] The process of rule transfer and rule adoption is characterised by political debate about the legitimacy of human rights norms and the appropriateness of EU behaviour, rather than bargaining about conditions and rewards. [43] The perspective of social learning would argue that Turkey would internalise and view human rights norms as legitimate under the following conditions: a) when rules are formal and applied through concrete policies; b) when the processes of human rights promotion are fair (e.g. EU internal-external consistency);[44] and c) when EU rules are resonant with existing or traditional domestic standards of legitimacy, which 'makes subjects willing to substitute the regime's decisions for their own'.[45] Legitimacy then generates voluntary compliance irrespective of either sanctioning mechanisms or the utility of the rule for those who have to comply.[46]

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[39]Checkel, J.T. 'Why Comply? Social Learning and European Identity Change'. *International Organization,* vol.55, no: 3 (2001) p.553-588.

[40] Risse, T. 'International Norms and Domestic Change: Arguing and Communicating Behaviour in the Human Rights Area'. *Politics and Society*, vol.27 no: 4 (1999) p.529 (529-559)

[41] Checkel, J.T. 'Social Construction and Integration'. *Journal of European Public Policy*, vol.6 no: 4 (1999) p.548 (545-560)

[42] Beetham, *Legitimation*, 2003.

[43] Risse, T. 'Let's Argue! Communicative Action in World Politics'. *International Organisation*, vol.54 no: 1 (2000) p.7 (1-33)

[44] Wilson, R. *Compliance Ideologies: Rethinking Political Culture* (Cambridge: Cambridge University Press, 1992) p.20; Gibson, J.L. 'Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance'. *Law and Society Review,* vol.23 no: 3 (1989) p.469-496; Franck, T.M. *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1998); Smith, M. 'Developing Administrative Principles in the EU: a Foundational Model of Legitimacy', *European Law Review*, vol.18 no: 2 (2012) p.269-288.

[45]Bodansky, D. 'Legitimacy of International Governance: a Coming Challenge for International Environmental Law'. *American Journal Of International Law*, vol.93 no: 2 (1999) p.602 (596-624)

[46] Risse and Sikkink, 'Socialisation', p.7; Hurd, 'Legitimacy and Authority', p.381.

In examining EU human rights promotion to Turkey, this thesis suggests a 'normative power Europe' analysis to assessing the impact and the legitimacy of EU policies. A normative power Europe analysis conveys a different narrative of the EU's transformative capacity as being much more indirect than the elite-level analysis suggests, and more subject to socio-political dynamics and conflicts within the candidate state. The usage of 'normative power Europe' can contribute to an analysis of the politics of norm diffusion through the development of a bottom-up approach, which examines a) how specific EU policies work within the reality of Turkey's human rights problems, and b) how the acceptance of the standard of legitimacy offered by EU normative power is motivated by domestic power positions, social cleavages, and political party interests. In light of the above, the method of legitimacy evaluation adopted in the discussion of EU human rights promotion to Turkey follows a combined prescriptive and descriptive approach. It is accurate to suggest that it is impossible to divorce the two, as in order to make value judgements about legitimacy we need to describe and understand the real-life empirical phenomena we are making judgements about. As Steffek rightly pointed out, 'in the international legitimacy debate, normative political and legal theory encounter empirical social science'.[47]

3.   Normative power Europe in theory and practice

A focus on normative theory within the discipline of international relations has been a significant area of research since the end of the Cold War.[48] Yet, the idea of normative power Europe also has roots in existing theories of European integration and the EU's role in the world. Most notably, it builds upon the work of Duchêne in his notion of 'civilian power'[49] and Galtung's 'ideological power' and 'power of ideas'.[50] The

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[47] Steffek, 'Discourse Approach', p.252.
[48] See for example Cochran, M. *Normative Theory in International Relations: a Pragmatic Approach* (Cambridge: Cambridge University Press, 1999)
[49] Duchêne, F. 'Europe's Role in World Peace'. *In Europe Tomorrow: Sixteen Europeans Look Ahead* (London: Fontana, 1972) p.32-47.
[50] Galtung, J. *The European Community: a Superpower in the Making* (London: Allen and Unwin, 1973)

concept of 'normative power Europe' was developed by Manners, who attempted to bridge an emergent debate on EU foreign policy with normative debates within IR. Manners himself attributed the reason behind the concept of normative power Europe to the need to frame post-Cold War EU politics into a more principle-oriented analysis, since the EU had come to the forefront with an emphasis on the principles of democracy, human rights and rule of law.[51] The research aim was to facilitate an alternative conceptualisation of Europe and Europe's international role through questioning the EU institutions and policies in terms of essence, actions and impacts rather than taking them for granted.[52] Thus, Manners argued that not only is the EU constructed on a normative basis, but importantly this 'predisposes' it to act in a normative way in world politics.[53]

Since the publication on Manners' original article in 2002, scholars have used the concept to inform empirical work and to stimulate critical theoretical interrogation of the normative basis of European foreign policy and the EU's role in the world, as will be discussed further on. The following section will discuss how normative power Europe scholarship has debated and refined the concept in EU international action and its role in the world. We can distinguish two different aspects of EU normative power: what it *is* (the substance of EU governance as a new type of political entity), and what it *does* (how it diffuses its norms through external policies).

To begin with, a crucial point to be considered is that being normative and acting in a normative way is not coterminous. Thereby, Manners proposed a distinction between two aspects of EU normative power: EU norms and rules of governance (what the EU 'is'), and actual support of principles through policy action (what the EU 'does'). The former is a result of the nature of the EU embracing intergovernmental and transnational governance, whereas the latter involves acting in an ethico-politically good manner.

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[51] Manners, I. 'Normative Power Europe: a Contradiction in Terms?'. *Journal of Common Market Studies*, vol.40 no: 2 (2002) p.252 (235-258)

[52] Manners, I. 'Normative Power Europe Reconsidered: Beyond the Crossroads'. *Journal of European Public Policy,* vol.13 no: 2 (2006) p.182-199.

[53] *Ibid.*

3.1.   'Being': The European Union's normative difference

Although there is no commonly accepted definition of normative power Europe, it is commonly accepted as the ability to project externally the norms and values it holds internally (democracy, human rights, rule of law) and hence to define what passes as 'normal' in international affairs.[54] What makes the EU different in its claim to represent a normative power, when other international actors (United States, China) also label their international behaviour as normative?[55] Manners claimed that 'the EU has been, is and always will be a normative power in world politics'.[56] In particular, he observed that the EU's normative difference comes from its historical context, hybrid polity, and political-legal constitution. The combination of the above characteristics accelerated a commitment to placing human rights norms in an important position in its relations with its member states and external partners, as discussed in Chapter One. They key question is how normative power happens, in other words what form it takes in the EU's behavioural action. Manners described the policy objectives of EU external action as predominantly founded on the promotion of democracy, the rule of law, and human rights. A normative power promotes universal principles (peace, democracy, rule of law, human rights). Its actions rely on formal instruments, such as dialogue and debate, and informal actions, such as 'living by example' and internal-external consistency. Moreover, it influences partner countries through socialisation, partnership and local ownership, rather than through coercion.[57] EU normative power mainly acts to change norms in the international system and define appropriate practices and objectives of behaviour.

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[54] Niemann, A. and Bretherton, C. 'EU External Policy at the Crossroads: the Challenge of Actorness and Effectiveness'. *International Relations*, vol.27 no: 3 (2013) p.265 (261-275)

[55] Lucarelli, S. 'EU Foreign Policy between Telos and Identity'. Paper presented at the Second Pan-European Conference on EU Politics, 'Implications of a Wider Europe: Politics, Institutions and Diversity'(Bologna: 24–26 June 2004)

[56] Manners, I. 'The Normative Ethics of the European Union'. *International Affairs*, vol.84 no: 1 (2008) p.45 (45-60)

[57] Smith, M. 'Between 'Soft Power' and a Hard Place: European Union Foreign and Security Policy between the Islamic World and the United States'. *International Politics* vol.46 no: 5 (2009) p.598 (596-615)

If we are to conceptualise systematically the legitimacy of normative power and its actions, it is first necessary to define its identifying features. What does normative power Europe look like? The scholarly debate that addresses the question of 'what makes the EU a normative power' has focused systematically on characteristics stemming from EU declarations, treaties, policies, and external actions. Firstly, normative power is found to be rooted in the *historical context* of the EU and the nature of its international identity.[58] As Scheipers and Sicurelli stated, 'processes of identity construction are involved in the emergence of the EU as a normative power'.[59] Here, the source of normative power is Europe's legal, political, and institutional context, as discussed in Chapter One. In this regard, the EU's emergence from the massive human rights violations of World War Two, the growth of supranationalism, and the development of European law predispose the EU to acting in a normative way. This line of argument integrates the insight that EU normative power is rooted in the rejection of 'non-normative' principles, or of those principles that are presently not acceptable according to international legal standards (conflict, oppression, human rights violations, political and economic illiberalism, theocratic governance). Normative power thus emerges from the *sui generis* characteristics of the organisation, which embody the principles of human rights, democracy, the rule of law, and social justice.

As mentioned previously, it has been argued that 'shaping conceptions of normal' involves EU promotion of norms 'even if they are against its own interests'. As important as this observation might be for putting the interest dimension of normative power on the research agenda, it nevertheless has problems. Diez argued that the so-called materialist/idealist bipolarity fails to consider the idea that there might not be a clear-cut distinction between norms and interests in EU policy action. In his words, 'norms and interests cannot so easily be separated, and both are infused by each other'.[60] For

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[58] Lerch. M. and Schwellnus, G. 'Normative by Nature? The Role of Coherence in Justifying the EU's External Human Rights Policy'. *Journal of European Public Policy*, vol.13 no: 2 (2006) p.305 (304-321).

[59] Scheipers, S. and Sicurelli, D. 'Normative Power Europe: A Credible Utopia?' *Journal of Common Market Studies,* vol. 45, no: 2 (2007) p.436 (435-457)

[60] Diez, T. 'Normative Power as Hegemony'. *Cooperation and Conflict*, vol.48 no: 2 (2013) p.201 (194-210)

example, can the EU inclusion of minority rights in the 1993 Copenhagen Criteria, when there was no EU law in favour of minority protection, be considered unjustifiable? And is it possible that the inclusion of minority rights in the Copenhagen Criteria might have led the EU to officially integrate them in the Charter and the Lisbon Treaty? In order to answer these questions, it is necessary to consider the possibility that norms shape interests and interests shape norms. The point is not that normative power is not strategic, but that strategic interests and norms are mutually constitutive, and that norms might produce implications for EU interests. Moreover, as Sjursen argued, strategic considerations do not topple the normative power argument, as the norms diffused might be considered valid and legitimate even if the EU's motivation for promoting them are instrumental.[61] Consequently, the contention here is that 'interest' in normative power Europe relations is organically linked to norms, whereas in 'non-normative' relations, norms might be subordinate to the premises of power politics.

Secondly, normative power has been assumed to emerge from the EU's propensity to act as a *'force for good'* in international politics, which shapes conceptions of 'normal' and the common standard of behaviour concerning international human rights protection. Pace, for example, discussed the construction of the EU as a 'norm entrepreneur' vis-à-vis its partners the Southern Mediterranean and whether this construction could influence and modify their behaviour.[62] 'Force for good' has been treated by other authors as the propensity of the EU's external policies to be derived not only from self-interest, but from the EU's understanding of what 'ought' to be done.[63] Nevertheless, as explained in Chapter One, doubts hang over the idea that the EU promotes norms at the expense of its interests, given that emphasis on values and norms is also associated with strategic purposes, hidden interests, and double standards.[64] Human rights promotion is not always

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[61] Sjursen. H. 'The EU as a Normative Power: How can this Be?' *Journal of European Public Policy*. vol.13 no: 2 (2006) p.239 (235-251)

[62] Pace, M. 'Norm Shifting from EMP to ENP: The EU as a Norm Entrepreneur in the South?' *Cambridge Review of International Affairs,* vol.20 no: 4 (2007) p.659-675.

[63] Rosecrance, R. 'The European Union: a New Type of International Actor'. In *Paradoxes of European Foreign Policy,* ed. by J. Zielonka (The Hague: Kluwer Law International, 1998) p. 15–23; Whitman, R. *From Civilian Power to Superpower? The International Identity of the European Union* (Basingstoke: Macmillan, 1998); Manners, 'EU Normative Power', 2002.

[64] King, T. 'Human Rights in European Foreign Policy'. *European Journal of International Law*, vol.10 no:

a benign activity and can be normatively biased.

Thirdly, *lack of military instruments* is considered an important feature of EU normative power. This argument has its roots in Duchêne's notion of 'civilian power Europe', which argued that the EU was a distinctive international actor because it utilised 'soft' civilian means, rather than coercive military measures, to manage and solve international conflict. Contemporary scholars also consider this characteristic to be the core feature of the EU's external action today, underpinning its political and economic capabilities to manage differences peacefully.[65] Cases in point are the usage of the Copenhagen Criteria within enlargement, the European Neighbourhood Policy, human rights consultations, civil society development, the EU-Africa Strategic Partnership, and many others.[66] Yet, the EU has been known as developing military capabilities that are particularly controversial in terms of human rights protection - such as the EU border agency Frontex - as an appropriate course of action against threats to European security. At the same time, the use of economic instruments such as aid or conditionality can be coercive and cause harm to vulnerable groups, such as farmers, women, and children.[67] Overall, what is important here is that the methods and instruments employed by the EU in order to promote its norms draw on influence and socialisation and can be considered sources of normative power, particularly when compared to other global actors.

The EU's material mechanisms to diffuse norms and practices create the need to reflect on their policy implications for normative power. As Birchfield suggests, accepting the normative basis of EU action does not mean that EU mechanisms always

2 (1999) p.313-337; Whitman, R. 'Normative Dynamics and Strategic Interests in the EU's External Identity'. *Journal of Common Market Studies*, vol.42 no: 2 (2004) p.415-435; Ypi, L. 'Sovereignty, Cosmopolitanism and the Ethics of EU Foreign Policy'. *European Journal of Political Theory*, vol.7 no: 3 (2008) p.349-364.

[65]Smith, K.E. *European Union Foreign Policy in a Changing World* (Cambridge: Polity Press, 2003) p.111.

[66] European Commission, 'Furthering Human Rights and Democracy across the Globe' (Luxembourg: Office for Official Publications of the European Communities, 2007) p.13.

[67] Langan, M. 'Normative Power Europe and the Moral Economy of Africa-EU Ties'. *New Political Economy*, vol.17 no: 3 (2012) p.248 (243-270)

act in a normative way, nor that the norms they seek to promote are necessarily or always consistent with the EU's own internal principles.[68] According to Eriksen, 'a policy based on good intentions may very well neglect others' interests or values'.[69] Empirical evidence against the EU as a power that can 'shape conceptions of normal' relies mainly on inconsistencies in EU behaviour. Langan found that the EU has used moral narratives and norm-laden policy frameworks for commercial gain that had negative material outcomes for its partners, especially in the global south.[70] Similarly, Powel, in his discussion of EU-Tunisia ties, argued that the EU suppressed those political actors that advocated different values to the government. Competing and contested norms, he claimed, have a negative effect on both the effectiveness of external support to human rights and democracy, and on the EU's claims to be a normative power.[71] As will be discussed in Chapter Five, perceptions of inconsistency and 'unfairness' are prominent in the implementation of human rights reform by Turkey. These judgements on EU policy demonstrate that consistency between internal and external EU values, or between EU rhetoric and policy action, has been considered an important dimension of the EU's ability to 'shape conceptions of normal'.

While the academic discussion of the meaning of 'normative power Europe' continues, the concept itself as the EU's ability to 'shape conceptions of normal' in international behaviour has spurred much criticism in realist and constructivist circles. From a realist perspective, normative power Europe has been criticised, particularly by Kagan and Hyde-Price, who argued that the EU does not possess the power capabilities to be effective and can thus degenerate into a civilising crusade.[72] The constructivist

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[68] Birchfield, V. 'A Normative Power Europe Framework for Transnational Policy Formation'. *Journal of European Public Policy*, vol.20 no: 6 (2013) p.911 (907-922)

[69] Eriksen, E. 'The EU as a Cosmopolitan Polity?' *Journal of European Public Policy*, vol.13 no: 2 (2006) p.252 (252-269)

[70] Langan, 'Africa–EU Ties', p.245.

[71] Powel, B.T. 'A Clash of Norms: Normative Power and EU Democracy Promotion in Tunisia'. *Democratization*, vol.16 no: 1 (2009) p.193 (193-214)

[72] Kagan, R. *Of Paradise and Power. America and Europe in the New World Order* (New York: Knopf, 2003); Hyde-Price, A. (2006) 'Normative Power Europe: a Realist Critique'. *Journal of European Public Policy*, vol.13 no: 2 (2006) p. 217–234.; Pardo, R.P. 'Normal Power Europe: Non-Proliferation and the Normalisation of EU Foreign Policy'. *European Integration*, vol.34 no: 1 (2012) p.1-18.

literature on the EU's external relations has also voiced criticisms concerning the EU's lack of genuinely normative intentions and commitment,[73] the contested legitimacy of its normative action,[74] the problematic nature of normative processes in terms of inclusiveness,[75] and the lack of impact or effectiveness.[76] Kavalski asserted, for example, that the concept is essentially Eurocentric and overlooks the fact that third countries might not view the EU as a normative power, particularly in the global south.[77] The premise of this criticism is that the EU should be defined as a normative power *in context*, through its interaction with partner states, rather than standing alone. Moreover, there has been general concern that the literature on NPE is empirically underexplored, and necessitates a more systematic empirical focus in order to reach conclusions on how normative power operates in the 'real' world.[78]

3.2. *'Doing': the promotion and diffusion of EU human rights norms*

Having established a conceptual basis for claiming that the EU is a normative power, we face the fundamental question: how should it act? This requires a consideration of the wider policies and resources that the EU employs to 'shape

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[73] De Zuter, E. 'Normative Power Spotting: an Ontological and Methodological Appraisal'. *Journal of European Public Policy*, vol.17 no: 8 (2010) p.1106-1127; Erickson, J.L. 'Market Imperative Meets Normative Power: Human Rights and European Arms Transfer Policy'. *European Journal of International Relations*, vol.19 no: 2 (2011) p.209-234.

[74] Harpaz, G. 'Normative Power Europe and the Problem of a Legitimacy Deficit: an Israeli Perspective'. *European Foreign Affairs Review,* vol.12 no: 1 (2007) p.89-109.

[75] Bicchi, F. 'Our Size Fits All: Normative Power Europe and the Mediterranean'. *Journal of European Public Policy*, vol.13 no: 2 (2006) p.286-303; Keene, E. 'Social Status, Social Closure, and the Idea of Europe as a Normative Power'. *European Journal of International Relations*, vol.19 no: 4 (2012) p.939-956.

[76] Falkner, R. 'The Political Economy of Normative Power Europe: EU Environmental Leadership in International Biotechnology Regulation'. *Journal of European Public Policy,* vol.14 no: 4 (2007) p.507-526; Noutcheva, G. 'Fake, Partial and Imposed Compliance: the Limits of the EU's Normative Power in the Western Balkans'. *Journal of European Public Policy,* vol.16 no: 7 (2009) p.1065-1084; Balducci, G. 'The Limits of Normative Power Europe in Asia: The Case of Human Rights in China'. *East Asia,* vol.27 no.:1 (2010) p.35-55.

[77] Kavalski, E. 'The Struggle for Recognition of Normative Powers: Normative Power Europe and Normative Power China in Context'. *Cooperation and Conflict*, vol.48 no: 2 (2013) p.247-267.

[78] Merlingen, M. 'Everything Is Dangerous: a Critique of Normative Power Europe'. *Security Dialogue*, vol.38 no: 4 (2007) p.435-453.

conceptions of normal' in partner countries. In this context, normative power focuses on the EU's ability to shape the political, economic, and social institutions and practices of societies in accordance with its own norms. According to Manners, one of the most important features of normative power is the EU 'ability to shape conceptions of the normal' and to influence international behavioural action through the power of norms. An important implication of these statements is that normative power strongly relates to the *ability* of the EU to project material and ideational influence and diffuse its norms through policy instruments that require formal adaptation by others. In order to conceptualise systematically how the EU should act if it is to be considered a normative power, this section will examine the main characteristics of EU human rights promotion, and under which conditions it is most effective for instigating human rights change in target countries.

The EU spreads human rights norms and practices through material and ideational instruments.[79] These include financial and technical means such as the building and shaping of institutions, the transfer of principles through conditionality, financial assistance, human rights consultations, and civil society development.[80] The diffusion of human rights norms is underpinned by reinforcement through reward, in other words, the provision of positive and negative incentives to target countries to comply. Thus, the EU's application of human rights instruments within enlargement diffuses norms and practices through the promise of EU membership. In a similar vein, the EU might offer individual gains to a country in return for stabilising a political situation. Concerning EU mechanisms of external diffusion, Telò wrote that the EU aims at altering the economic and social structures of third parties 'through pacific and original means (diplomatic means, agreements, sanctions, and so on)' in the middle and long run.[81] Therefore, as Whitman argues, normative power Europe has not only ideational implications, but

[79] Lenz, T. 'EU Normative Power and Regionalism: Ideational Diffusion and its Limits'. *Cooperation and Conflict*, vol.48 no: 2 (2013) p.215 (211-228)
[80] Duchêne, 'Europe's Role, 1972.
[81]Telò M. (ed.) *The European Union and New Regionalism: Regional Actors and Global Governance* (London: Ashgate, 2001) p.264.

concrete practical implications.[82]

In order, then, to locate the precise nature of the 'normative' element in the EU's policy instruments, it is necessary to discuss the ability of these materially-based mechanisms to promote the establishment of democratic forms of governance, sustainable human rights protection, and strong civil society. These objectives are the very reason why the EU is referred to as a normative power. The EU attempts to promote a process in the partner country towards an ideal form of political and social governance based on universal values (human rights, democracy, and rule of law). This raises issues that relate to the performative quality of the EU's policies of human rights promotion. We could point to a special issue of *International Affairs* (2008) and *Cooperation and Conflict* (2013) as recent examples of normative power Europe theorising in cases where the EU employs materially-based mechanisms to promote change in partner countries.

In *International Affairs* (2008), the idea of 'ethical power' was put on the research agenda as a concept that feeds into the wider normative power Europe debate. It evaluates whether the EU behaves as a responsible international actor in terms of abilities, means, and resources. The use of ethical power resulted from a conceptual shift in the study of the EU's normative role from what it 'is' to what it 'does', in order to interpret the exercise of normative power Europe through materially-based mechanisms. It emerged from a scholarly necessity to infuse EU capability with responsibility and invoke dilemmas as to what kind of EU external action is appropriate; as such, it did not aim to replace the concept of normative power. Analytically, the empirical cases examined in the special issue offered a series of criteria for assessing the performative qualities of EU normative power and its capacity to promote governance appropriately. Hyde-Price formulated an ethic of ultimate ends, namely prudence, scepticism, and reciprocity.[83]

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[82] Whitman, R. 'The Neo-Normative Turn in Theorising the EU's International Presence'. *Cooperation and Conflict*, vol.48 no: 2 (2013) p.176 (171-193)

[83] Hyde-Price, A. 'A Tragic Actor? A Realist Perspective on Ethical Power Europe'. *International Affairs*, vol.84 no: 1 (2008) p.29-44.

Manners presented 'procedural normative ethics' of 'living by example', 'being reasonable', and 'doing least harm'.[84] Mayer emphasised principles of EU responsibility, such as contribution, capacity, legitimate expectation, and consent.[85] Barbé and Johansson-Nogués developed utility, rights, values, and fairness to analyse the appropriateness of EU policies,[86] and Matlary applied the narrative of human security as an important legitimising tool for the EU as a non-state actor.[87] Consequently, the most crucial contribution of the 'ethical power' empirical analyses is the establishment of a conceptual link between normative power Europe and criteria of procedural legitimacy (e.g. fairness, consistency, and procedural capacity).

A second central trend has been the use of normative analysis to understand or explain European power in an era marked by a decrease in the EU's international role. The scholarly contributions in the special issue of *Cooperation and Conflict* (2013) showed particular interest in how the EU can exercise normative power at a time when 'its own new normal (euro crisis, together with rise of emerging economic powers from global south) often seems unfit for purpose'.[88] The lack of perceived capacity to exercise an effective international role provided the rationale for a scholarly reappraisal of the premises and implications of normative power Europe. In this issue, the concept of normative power was re-assessed through studying its intersection with international relations theory (hegemony, cosmopolitanism, and postcolonialism, to name a few). Of particular relevance to this study are the contributions of Kavalski and Nicolaidis/Fisher-Onar respectively. A key preoccupation of Kavalski was how normative powers are constituted in a contextual manner through interaction with 'outsiders'.[89] He argued that normative powers are those actors that are recognised as such by others. This is because

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[84] Manners, 'Normative Ethics', 2008.
[85] Mayer, H. 'Is it still Called Chinese Whispers? The EU's Rhetoric and Action as a Responsible Global Institution'. *International Affairs*, vol. 84 no: 1 (2008) p.62-79.
[86] Barbé, E. and Johansson-Nogués, E. 'The EU as a Modest Force for Good: the European Neighbourhood Policy'. *International Affairs*, vol.84 no: 1 (2008) p.81-96.
[87] Matlary, J.H. 'Much Ado about Little: the EU and Human Security'. *International Affairs*, vol.84 no: 1 (2008) p.131-143.
[88] Nicolaidis, K. and Whitman, R.G. 'Preface'. *Cooperation and Conflict*, vol.48 no: 2 (2013) p.167 (167-170)
[89] Kavalski, 'Normative Power China', p.247-267.

the definitions of 'normal' are not undertaken merely by the normative power, but they emerge in the context of its specific interactions with states that have their own normative character and standard of legitimacy. Recognition-in-context is based partly on the performative qualities of normative power, because EU policy mechanisms and the dynamic processes of politics they engage with are those that frame the responses of the recipient actors. He detailed this proposition through a parallel assessment of normative power Europe and 'normative power China'. The construction of normative power through its recognition by 'others' is reiterated in the work of Nicolaidis and Fisher-Onar.[90] In a different vein, their work sought to strip talk of normative power Europe of its Eurocentric connotations. Nicolaidis and Fisher-Onar were sceptical of rooting the EU's normative appropriateness in a particular brand of European universal values. The quality and appropriateness of the EU's normative power, they argued, should be rooted in the judgement of the non-European other. Like Kavalski, the authors located the sources of EU normative power outside European society, in the recognition of the recipient country. In practical terms, the EU's political, economic, and social policies should be contextualised and 'in dialogue' with local preferences in order to genuinely transfer across countries and regions.

The examples above illustrate how conceptions of normative power can be utilised to define and justify the promotion of EU norms; to evaluate particular policies, practices, and mechanisms; and to prescribe political interaction between Europe and the partner country. We might also consider that they have important impact on how EU and local actors perceive and receive each other. A research agenda that incorporates analysis of EU normative power is one that allows us to probe and explore how the prescriptive or 'normative' qualities of the EU construct a permissive context for human rights promotion abroad; and how the procedural qualities of human rights promotion frame the responses of local actors who are required to implement human rights reform.

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[90] Nicolaidis, K. and Fisher-Onar, N. 'The Decentering Agenda: Europe as a Postcolonial Power'. *Cooperation and Conflict*, vol.48 no: 2 (2013) p.283-303.

Normative power is not, or should not, be property only of relations between states. The role of civil society has so far been hardly addressed in the body of literature on normative power Europe, despite civil society development being an important external EU policy. The works that have examined the topic of civil society development in EU external action have done so in the context of EU democracy promotion. Empirical case-studies in the above area focus primarily on the processes by which local organisations fulfill the EU's democratisation mission by acting as local agents and diffusers of EU norms.[91] They mostly argue that NGOs are resourceful targets for socialisation initiatives.[92] Yet, discussions of civil society as part of the EU's normative power are largely absent, despite the fact that the inclusion of NGOs appears to reflect the essence of normative power much more appropriately than accounts that focus solely on the EU and state-level actors. While existing democratisation accounts illustrate certain aspects of the EU's normative agenda towards partner countries, they have an important blind spot. Support for NGOs as an agent of democratisation is often framed by a liberal democratic view in which the strengthening of NGOs is beneficial for bolstering civil society and enhancing EU legitimacy. This is problematic because it legitimises a western worldview on how democratic consolidation 'should' de done.[93] According to Pace, such ideas fail to address the question of how and why liberal democracy and civil society development achieved a normative status and a 'taken-for-granted' state of affairs: 'In the case of the EU, while much of the literature on democracy promotion has looked at the EU's normative foundations for exporting democracy, little has been done by way of analysing what is 'normative' about the EU's democratisation policy'.[94] The literature on normative power Europe could usefully lend itself to addressing this research vacuum by discussing why NGOs should be part of the EU's normative mission to promote reform

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[91] Seeberg, Peter. 'The EU as a Realist Actor in Normative Clothes: EU Democracy Promotion in Lebanon and the European Neighbourhood Policy'. *Democratization,* vol.16: no. 1 (2009) p.81-99; Bicchi, F. 'Dilemmas of Implementation: EU Democracy Assistance in the Mediterranean'. *Democratization,* vol.17 no: 5 (2010) p.976-996.

[92] Çelenk, A. 'Promoting Democracy in Algeria: the EU Factor and the Preferences of the Political Elite'. *Democratization,* vol.16 no: 1 (2009) p.176-192.

[93] Mercer, C. 'NGOs, Civil Society, and Democratisation: a Critical Review of the Literature'. *Progress in Development Studies*, vol.2 no: 5 (2002) p.20 (5-22)

[94] Pace. M. 'Paradoxes and Contradictions in EU Democracy Promotion in the Mediterranean: the Limits of EU Normative Power'. *Democratization*, vol.16 no: 1 (2009) p.40 (39-58)

within existing institutions.

Although it is not the intention of this thesis to theorise civil society, the empirical analysis of Turkey's human rights reform will discuss the EU policy of civil society development to enrich the understanding of normative power at non-state level. The benefit of this approach is twofold. It will bring the interaction of the candidate state with the EU more strongly into the picture, rather than focusing exclusively on the EU's normative agenda; and it will widen our gaze to Turkey's social fabric as a whole and its preferred norms in the area of human rights. The focus of the discussion will precisely be on the role of human rights NGOs in the implementation of the norms emanating from the EU. This requires taking into consideration the importance of legitimacy perceptions, and whether human rights NGOs recognise the EU's normative agenda or the obligation to comply with it despite its specific content. It is worth recalling that NGOs play an increasingly important role in the EU's enlargement policy, whereby money is being channelled through the civil society development programme and the EIDHR for the conduction of a variety of projects in the area of human rights.

4.   Legitimacy and EU normative power

EU normative power is considered to rest, to a certain degree, on legitimacy. Legitimacy and normative power can be considered to have a close, mutually defining relationship because EU normative power is normally understood as power that enjoys legitimacy. Normative power Europe, as discussed earlier, is not just any power. More specifically, it is the power to 'shape conceptions of the normal' in international behaviour through peaceful means, and to have these demands obeyed because of the validity of the demands themselves. It implies a communicative relationship, however broadly defined, between the EU and the partner country. Contained in the EU's definition of its international role are words that point to the question of legitimacy:

'strong and effective human rights policy',[95] 'credibility of enlargement policy',[96] and 'legitimacy of human rights norms'.[97] These terms imply some wider endorsement of the EU's power. Normative power cannot be self-constituting, but requires policies that partake in general qualities of legitimacy, and are perceived as legitimate by their recipients. Simply put, normative power necessitates legitimacy.

In parallel with the conceptual construction of normative power Europe, questions about the EU's innate 'normativity' triggered a discussion about the legitimacy of EU external action. How can we be sure that the EU's pursuit of norms in external action is legitimate? Since the normative power argument corresponds very closely to the EU's own description of its international role, it needs to be further specified with criteria and assessment standards that make it possible to substantiate the claim that the EU is a 'force for good'. Some European scholarship assumed a theoretical link between EU normative power and legitimacy, by subscribing to the argument that core European norms of universal value may serve as a legitimating basis for the EU policies.[98] In an attempt to alter this state of affairs, several authors questioned this 'natural' link between normative power and legitimacy. Sjursen, for instance, asserted that just because the EU 'acts in a normative way', this does not naturally entail that it is a good thing.[99] With regard to the link between normative power and legitimacy, Leino also adopted a skeptical stance: 'while the EU is today both capable and willing to do good, many of its actions appear

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[95] European Parliament, 'Human Rights in the World in 2009 and EU Policy on the Matter'. OJC 169 E/81 (16 December 2010) p.4.

[96] European Commission, 'Enlargement Strategy and Main Challenges 2013-2014'. COM (2013) 700 final (Brussels: 16 October 2013) p.3.

[97] European Parliament, 'Interparliamentary Committee Meeting with National Parliaments' (25 September 2013) p.2.

[98] Eriksen. E.O. and Fossum. J.E. 'Europe in Search of Legitimacy: Strategies of Legitimation Assessed'. *International Political Science Review*, vol.25 no: 4 (2004) p.441 (435-459); Follesdal, A. 'EU Legitimacy and Normative Political Theory'. In *Palgrave Advances in European Studies*. ed. by M. Cini and A. Bourne (London: Palgrave, 2006) p.151-173); Hilson, C. 'Legitimacy and Rights in the EU: Questions of Identity'. *Journal of European Public Policy*, vol.14 no: 4 (2007) p.527-543; Bolleyer, N. and Reh, C. 'EU Legitimacy revisited; the Normative Foundations of a Multi-level Polity'. *Journal of European Public Policy*, vol.19 no: 4 (2012) p.473 (472-490)

[99] Sjursen, H. 'What Kind of Power?' *Journal of European Public Policy* vol.13 no: 2 (2006) p.169-181; Sjursen, 'The EU as a Normative Power', p.242.

ineffective, badly justified or simply arrogant and ought to be re-evaluated'.[100] Empirical case-studies regarding issues such as EU democracy promotion, human rights clauses in trade agreements, and regional cooperation also examined processes by which these policies fulfilled (or not) standards of legitimacy.[101] The quest for legitimacy for normative power has been aptly summarised by Bickerton: 'from being a *source* of legitimacy, normative power Europe is today in *search* of legitimacy' (emphasis in original).[102]

Views that claim that normative power Europe is not necessarily 'good' by virtue of diffusing norms enable us to address questions regarding its legitimacy. As mentioned above, part of the scholarly debate has asserted that acting in a normative way is not considered automatically to be a 'good thing', and does not naturally entail that EU external policy should be considered rightful. Consequently, the idea of normative power Europe necessitates its own sources of legitimacy. In the words of Clark, 'there is no such thing as legitimate principles per se... Norms... depend for their power on the specific circumstances in which they are applied. This lends a high degree of indeterminacy to the achievement of legitimacy'.[103]   The identifying features of EU normative power discussed earlier in the chapter are considered inadequate as a source of legitimacy, because their moral value is not self-evident. It is crucial, then, to draw on sources that are external to the concept of normative power itself.

Three main conceptions of legitimacy, external to the concept of normative power

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[100] Leino, P. 'The Journey towards All that is Good and Beautiful: Human Rights and Common Values as Guiding Principles of EU Foreign Relations Law'. *In EU Foreign Relations Law: Constitutional Fundamentals*, ed. by M. Cremona and B. de Witte (Oxford: Hart Publishing, 2008) p.288.

[101] Bicchi, F. 'Our size fits all': Normative Power Europe and the Mediterranean.' *Journal of European Public Policy* vol.13 no: 2 (2006) p.286-303; Meunier, S. and Nicolaidis, K. 'The European Union as a Conflicted Trade Power' *Journal of European Public Policy* vol.13 no: 6 (2006) p.906-925; Johansson-Nogués, E. 'The (Non-) Normative Power EU and the European Neighbourhood Policy'. *European Political Economy Review* no: 7 (2007) p.181-194; Harpaz, G. and Harmis, A. 'Normative Power Europe and the State of Israel: an Illegitimate EUtopia' *Journal of Common Market Studies*, vol.48 no: 3 (2010) p.579-616.

[102] Bickerton, C. 'Legitimacy through Norms: The Political Limits to Europe's Normative Power'. In *Normative Power Europe: Empirical and Theoretical Perspectives*, ed. by R.G. Whitman (Basingstoke: Palgrave Macmillan, 2001) p.25 (25-45)

[103] Clark, *International Legitimacy,* p.16.

Europe, have been developed in the literature: EU adherence to international legal principles in its external action (legality);[104] EU legitimacy as perceived by the non-European 'other', i.e. the non-European recipient of its external policies (recognition by the 'other');[105] and procedural appropriateness of EU policies, i.e. linking normative power to performance, contextual relevance, consistency, and other principles that underpin the EU's own governance system (procedural propriety).[106] A detailed discussion of the understandings of legitimacy held by each conception, and which ones will be selected for the empirical part of the thesis regarding the nature and limitations of EU human rights promotion to Turkey, will follow.

4.1. Legitimacy as legality

Sjursen put forward an interpretation of legitimacy for normative power that is based on the legality of international human rights norms. Her analytical starting point was that the EU as a promoter of human rights norms ought to be differentiated from other so-called 'normative' actors in the international system. For example, emphasis on values, norms, and human rights and democracy promotion can also be found in US foreign policy. Her analysis of the EU's enlargement policy raised a similar concern: 'the arguments and reasons provided in favour of enlargement have to be of a type that others can support; they must be considered legitimate'. What is needed is an understanding of human rights norms that have universal content. The most appropriate way in which this could occur in practice would be whether or not the EU adheres to and promotes a set of norms that are common to all. Human rights would be regarded as fair and legitimate

[104] Sjursen. H. 'Why Expand? The Question of Legitimacy and Justification in the EU's Enlargement Policy'. *Journal of Common Market Studies*, vol.40 no: 3 (2002) p. 491-513; Eriksen, 'Cosmopolitan Polity?' p.252-269; Sjursen. 'The EU as a Normative Power' p.247.

[105] Nicolaidis K. and Nicolaidis D. 'The EuroMed beyond Civilisational Paradigms'. In *The Convergence of Civilisations*, ed. By E. Adler, B. Crawford, F. Bicchi and R.D. Sarto (Toronto: University of Toronto Press, 2006); Elgström, O. 'Outsiders' Perceptions of the European Union in International Trade Negotiations.' *Journal of Common Market Studies* vol.4, no: 4 (2007) p.949-967; Fisher-Onar and Nicolaidis, 'The Decentring Agenda' (2013)

[106] Lerch, M, and Guido S. 'Normative by Nature? The Role of Coherence in Justifying the EU's External Human Rights Policy.' *Journal of European Public Policy* vol.13 no: 2 (2006) p.304-321; Scheipers, S. and Sicurelli, D. 'Empowering Africa: Normative Power in EU–Africa Relations'. *Journal of European Public Policy* vol.15 no: 4 (2008) p.607-623.

when formed dialogically in course of time by several different kinds of political actors.[107] Therefore, according to Sjursen, 'to act in a normative way' would entail 'to promote universally accepted legal principles of human rights'.

According to the logic of legality, EU human rights promotion to Turkey would be justified by a strong element of constitutionalism and legality underpinning the EU human rights norms, as discussed in Chapter One. The development of European law, the integration of human rights protection in the internal EU legal system, and most importantly the advancement of universal legal principles that emphasise human rights, would serve as a source of legitimacy to EU human rights promotion. Similarly to Sjursen, Dunne argued that the EU's fusion of cosmopolitan ideas of universal rights with a developing institutional capacity to promote those rights abroad is likely to serve as a source of legitimacy.[108] Hence, a strong indicator of the EU as a legitimate normative power would be linked to the overarching legitimacy of international human rights law, promoted through the European Union's external human rights instruments. This argument paints a picture of EU human rights promotion legitimated by the universal legal standards that bind humanity as a whole. To 'act in a normative way' would mean 'to act according to legal principles'.

The universal character of international law and the rational-empirical character of law-making have been aptly conceptualised as a source of legitimacy for EU human rights promotion, because they conceive of a normative power that acts according to normative convictions rather than with reference to strategic calculations. Thus, it differentiates normative power Europe from other 'normative powers' (e.g. United States) who may advocate a principled foreign policy as a guise for the promotion of strategic interests. Nevertheless, the focus on legality also presents problems. A well-known problem with grounding legitimacy in legality is that international law, and the instruments of human rights promotion that it underpins, can easily be derived from

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[107] Erman, *Discourse Theory,* p.12.
[108] Dunne, T. 'Good Citizen Europe'. *International Affairs,* vol.84 no: 1 (2008) p.14 (13-28)

interests as from norms. To address this limitation, Sjursen eschewed the idea that EU human rights promotion should not be judged solely in terms of its ability to inscribe itself in the international legal system. Instead, it should also be assessed according to whether it promotes a transformation of power politics towards a more 'cosmopolitan' order in the EU's partner countries.[109] Furthermore, an additional problem in grounding legitimacy in legality is that it offers the false impression that human rights promotion can be rightful and effective provided we exercise diligence and reason when drafting and enforcing human rights law, although there is little evidence for this suggestion.[110] Galtung, for instance, contented that most human rights violations owe more to current political and economic structures in the country perpetrating the violations. Consequently, expectations of legality might be inadequate on their own to serve as a source of legitimacy for EU human rights promotion to Turkey.[111]

4.2.   *Legitimacy as recognition by the non-European 'other'*

The legitimacy of EU normative power in this study, particularly for human rights promotion, has been rooted in another area of key importance: the recognition of EU normative power by the non-European 'other'. EU normative power has been treated as constructed through the relationship between the European 'self' and the non-European 'other'.[112] It has been generally described as configuring boundaries between self and other by constructing an identity of the EU against an image of the 'outside world'. Accordingly, the construction of the EU as a normative power has important implications for the way human rights promotion treats 'others', and whether it results in the formulation of a boundary between EU and non-EU recipient states. As argued by Flockhart, the EU's expression of what is 'normal' invokes certain agendas and entails

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[109] Sjursen. 'The EU as a Normative Power' p.248.

[110] Evans, T. *The Politics of Human Rights: a Global Perspective* (London: Pluto Press, 2005) p.8.

[111] Galtung, J. *Human Rights in Another Key* (Cambridge: Polity Press, 1994)

[112] Diez, T. 'Constructing the Self and Changing Others: Reconsidering Normative Power Europe'. *Millennium: Journal of International Studies*, vol.33 no: 3 (2005) p.615 (613-636)

power relations.[113] The normative power role pushes the EU beyond being merely a passive presence in the international system to being an active norm-diffuser, whereby it 'attempts to change others through the spread of particular norms' and to reshape the other into another self.[114]

Nevertheless, because identity is relational, the self-image of EU normative power is (or should be) dependent on the perceptions that recipient actors have of its agenda and practice. Although 'European' values are all-encompassing, actors outside EU boundaries might not share in the EU's conception of 'the normal'. The impact of normative power can only exist where non-EU countries perceive the power's norms as acceptable for adoption and conforming to their own standard of legitimacy. The conception of legitimacy for normative power should therefore be based on an external evaluative perspective regarding both the EU's particular set of values and norms, and its concordance with socio-political standards of legitimacy within the recipient country. This requires that non-EU states implementing EU human rights policies should perceive the EU as embodying the norms it espouses, perceive these norms as attractive for emulation, and perceive EU action to be norm-driven (rather than interest-driven). At the same time, policies flowing from the EU will be legitimated when they are perceived as a powerful resource fostering desired change at elite level and wider society. For that reason, rather than inquiring whether the EU acts as a normative power, the empirical analysis of Chapter Five will ask whether political and societal actors in Turkey perceive EU human rights promotion as that of a normative power.

Based on the reading of legitimacy as recognition of normative power Europe by 'others', what aspects of Turkey-EU interaction will the empirical analysis draw on? One aspect of Turkey-EU interaction is that the former has frequently been constructed as Europe's 'other' in the academic and policy-making debate. In this regard, Turkey has

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[113] Flockhart, T. 'Europeanisation or EU-isation? The Transfer of European Norms across Time and Space'. *Journal of Common Market Studies*, vol.48 no: 4 (2010) p.793 (787-810)

[114] Diez, T. and Manners, I. 'Reflecting on Normative Power Europe'. In *Power in World Politics*, ed. by Berenskoetter, F. and Williams, M.J. (Abingdon: Routledge, 2007) p.174 (173-188)

been viewed as possessing a homegrown 'standard of legitimacy' that is incompatible with that of the EU.[115] Following Turkey's potential candidacy (1999), controversy was sparked inside the EU about Turkey's limited compatibility with so-called European values of secularism, democracy, human rights, and the rule of law. Uncertainty was expressed in several ways. Supporters of Turkey's membership emphasised the prospect of its 'otherness' serving as a bridge between Europe and the Middle East,[116] whereas opponents viewed the country's poor democratic credentials and predominantly Muslim society as an obstacle to integration.[117] A key difference between the EU and Turkey's standard of legitimacy can be suggested to be the following: while the former concerned primarily the EU's *advancement* of its historically-developed human rights norms through peaceful means, the latter was exclusively about the *maintenance* of Turkey's deeply entrenched state doctrines through repressive means. Notwithstanding the essentialism of this idea, its presence in EU-Turkey interaction makes it necessary to evaluate the legitimacy of EU human rights promotion from a recipient perspective. If Turkey has traditionally not shared in the EU's standard of legitimacy, as claimed in pro-EU circles, then an analysis linking the potential success of EU human rights promotion to wider processes in Turkish politics and society is necessary. Such an analysis points to political parties and civil society organisations (to a lesser degree) as key actors of 'norm diffusion' or 'norm rejection' in Turkey. The empirical analysis will examine the extent to which domestic actors embrace the EU's human rights norms as offering gains to the political struggle, or reject them as entailing a loss in domestic power resources (in the dimensions of standards of legitimacy and political power positions). To achieve this purpose, the 'standards of legitimacy' in Turkish politics will be discussed in Chapter Three, and a comparison of Turkish political dynamics with the equivalent EU standards will be conducted in Chapter Five.

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[115] Baykal, S. 'Unity in Diversity? The Challenge of Diversity for the European Political Identity, Legitimacy and Democratic Governance: Turkey's EU Membership as the Ultimate Test Case'. Jean Monnet Working Paper 09/05 (New York: University School of Law, 2005) p.11.

[116] Glyptis, L. 'Which Side of the Fence? Turkey's Uncertain Place in the European Union', *Alternatives*, vol.4 no: 3 (2005) p.108-136.

[117] McLaren, L. 'Explaining Opposition to Turkish Membership of the EU'. *European Union Politics*, vol.8 no: 2 (2007) p.251-278.

There is another important aspect in Turkey-EU interaction that makes necessary an analysis of EU normative power as viewed by the non-EU 'other'. Several notable studies on Turkey as Europe's 'other' have been published, including the work of Rumelili, Diez, and Bilgin.[118] Rumelili's work is most relevant to the present study, because she highlighted Turkey's critical role in the shaping of Europe's normative power within enlargement. Turkey occupies a critical position in the extended political, economic, legal, and security orders that have developed around the EU. By virtue of being part of the ECHR and having accepted the compulsory jurisdiction of the ECtHR, Turkey also actively shapes the EU's human rights order with the high number of cases brought by Turkish citizens. In addition, Turkey as an 'other' has been historically constitutive of European identity.[119] Thus, an analysis of Turkey-EU interaction should recognise that Turkey is a strong regional actor which does not necessarily perceive the EU as a magnet (in contrast to other countries of recent enlargement rounds). This is a new condition for the EU, because its ability to enforce human rights reform in Turkey depends not only on its procedural abilities, but on its construction of an asymmetric power relationship which leads Turkey to comply. Yet, Turkey's power position and its strong domestic institutions mean that EU human rights promotion is applied to a novel locale: that of a country that is a leading regional actor and has itself historically and progressively shaped the conceptions of 'normal' inside Europe. In this setting of mutual identity-shaping, it is not accurate to assume that normative power manifests as an intrinsic property of the EU, nor that the recipient country will accept it at face value. Quite importantly, it needs to be recognised by Turkey and perceived as legitimate, in order to successfully frame human rights reform in the country.

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[118] Diez, T. 'Europe's Others and the Return of Geopolitics'. *Cambridge Review of International Affairs*, vol.17 no:2 (2004) p.319-335; Rumelili, B. 'Constructing Identity and Relating to Difference: Understanding the EU's Mode of Differentiation'. *Review of International Studies*, vol.30 no: 1 (2004) p. 27-47; Bilgin, P. 'A Return to 'Civilisational Geopolitics' in the Mediterranean? Changing Geopolitical Images of the European Union and Turkey in the Post-Cold War Era'. *Geopolitics* vol.9 no: 2 (2004) p.269-291; Rumelili, B. 'Turkey: Identity, Foreign Policy, and Socialisation in a Post-Enlargement Europe'. *Journal of European Integration*, vol.33 no: 2 (2011) p.238 (235-249)

[119] Kushner, D. 'Turkey and Europe: a Relationship of Passion and Pain'. *History of European Ideas*, vol.18 no: 5 (1994) p.683-695; Rich, P. 'European Identity and the Myth of Islam: a Reassessment'. *Review of International Studies*, vol.25 no: 3 (1999) p.435-451; Zielonka, J. 'How New Enlarged Borders will Reshape the European Union'. *Journal of Common Market Studies*, vol.39 no: 3 (2001) p.507-536; Shakman-Hurd, E. 'Negotiating Europe: the Politics of Religion and the Prospects for Turkish Accession'. *Review of International Studies*, vol.32 no: 3 (2006) p.401-418.

Therefore, an empirical aim of this study is to address the question of whether we can indeed speak of a legitimate normative power Europe in the case of Turkey or not. This question will be analysed from two perspectives. The first is to examine the degree to which major political parties in Turkey perceive an ideational affinity between the human rights norms emanating from the EU and their domestic power positions and political interests. Legitimacy will also derive from their perceptions of fairness regarding the consistency of the EU's human rights promotion. EU attempts to promote human rights may lack legitimacy with the Turkish audience insofar as the EU does not have a coherent human rights policy itself which binds member states, or if it is perceived to apply 'double standards' to Turkey. Here, it is assumed that suspicion and prejudice might play into political interests and reduce Turkey's receptivity to the arguments of the EU as a norm-promoter. As Lord rightly highlighted, 'EU policy is more likely to be seen as legitimate when underpinned by a we-feeling; it is we who are agreeing to act together, rather than they who are imposing some unwanted policy on us'.[120]

4.3.   *Procedural legitimacy*

In the discussion of the EU's normative power so far, the sources of legitimacy for human rights promotion (legality and recognition by the 'other') have been located outside EU policymaking. Nevertheless, one of the main legitimacy arguments of this study is that the spread of EU norms needs to be properly grounded in a set of procedural qualities, as explained earlier in the chapter. In this way, EU human rights promotion is not free-floating, but serves the more concrete purpose of assisting and managing human rights reform in recipient countries.[121] In grounding the legitimacy of EU human rights promotion in the methods and instruments of normative power Europe, the empirical analysis of this study will focus on whether EU policy is capable of 'delivering the goods'

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[120] Lord, C. 'Accountable and Legitimate? The EU's International Role'. In *International Relations and the European Union*, ed. by C.Hill and M. Smith (Oxford: Oxford University Press, 2005) p.119 (113-133)
[121] Bickerton, 'Legitimacy through Norms', p.11.

and ensuring beneficial outcomes regarding human rights change in Turkey.[122]

As the EU gained greater authority in human rights promotion and was conceptualised as a normative power, the procedural underpinnings of the legitimacy of human rights policy began to require further explication. The level of scrutiny of the EU candidates' human rights policies from the 2004 enlargement onwards raised concerns about a far higher level of interventionism than ever was the case with previous enlargements.[123] The bureaucratisation of EU human rights policy and the development of concrete human rights instruments based on material rewards gave rise to another requirement for legitimacy – the imperative of delivering public goods.[124] Consequently, the research agenda on legitimacy and normative power started to focus more precisely on empirical cases that examined the procedural legitimacy of EU policy and instruments.[125] In the procedural view, legitimate institutional activity should be grounded in the performance quality of the policy process. In this regard, the conception of legitimacy is essentially a procedural one: the legitimacy of human rights promotion depends not only on legal or relational grounds, but on what the development of effective solutions practically requires.

Procedural legitimacy has been discussed in the literature on the methods and priorities of EU human rights promotion within enlargement.[126] These analyse formal EU procedures and their implementation in national political systems from the conditionality perspective discussed earlier. The assumptions underlying legitimacy recur in several

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[122] Landman, T. 'The Political Science of Human Rights'. *British Journal of Political Science*, vol.35 no: 3 (2005) p.549-572.

[123] De Burca, 'Beyond the Charter', p.700.

[124] Coicaud J-M. 'Reflections on International Organisations and International Legitimacy: Constraints, Pathologies, and Possibilities'. *International Social Science Journal*, vol.53 no: 4 (2001) p.524 (523-536)

[125] McKay, D. 'Policy Legitimacy and Institutional Design: Comparative Lessons from the European Union'. *Journal of Common Market Studies*, vol.38 no: 1 (2000) p. 25-44; Radaelli, C.M. 'Policy Transfer in the European Union: Institutional Isomorphism as a Source of Legitimacy'. *Governance*, vol.13 no: 1 (2000) p.25-43; Sadeh, T. Jones, E. Verdun, A. 'Legitimacy and Efficiency: Revitalising EMU ahead of Enlargement'. *Review of International Political Economy*, vol.14 no: 5 (2007) p.739-745; Montpetit, E. 'Policy Design for Legitimacy'. *Public Administration*, vol.86 no: 1 (2008) p.259-277.

[126] See, for example, the special issue of the *Journal of European Public Policy* on EU conditionality: vol.15 no: 6 (2008)

analyses within the rich body of literature on EU human rights policy towards Central and Eastern Europe and Turkey. The focus of the discussion has been on the EU's achievement of domestic human rights implementation through procedural means. Here, the legitimacy criteria observed are standards of appropriate institutional activity, derived from democratic values underlying policymaking (coherence, participation, accountability). In several empirical works on EU conditionality, legitimacy flows from a credible EU membership perspective that facilitates compliance.[127] Many accounts of the policy process have emphasised procedural shortcomings, such as inconsistencies between internal and external EU human rights promotion, the generality and ambiguity of the criteria, lack of consultation with affected parties, and limited EU parliamentary involvement in the policy's application (parliamentary oversight).[128] In discussing the procedural legitimacy of EU human rights support to Turkey, a range of empirical criteria are used for assessment and evaluation purposes. Stemming from the earlier discussion of the prescriptive method of legitimacy analysis, the criteria selected for the evaluation of EU human rights promotion to Turkey are policy relevance, participation, and effectiveness, and are examined empirically in Chapter Four.

Most important is policy relevance, which relates to policy being pertinent in a specific way to a particular problem or situation.[129] The key issue here is that instruments of EU human rights promotion be timely and topical, demonstrating understanding of specific conditions and circumstances in Turkey and the likely impact of EU policies. In

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[127] Mostly encountered in the work of Frank Schimmelfennig: Schimmelfennig, F. and Sedelmeier, U. (eds), *The Politics of European Union Enlargement: Theoretical Approaches* (London: Routledge, 2005); Schimmelfennig, F. and Sedelmeier, U. (eds), *The Europeanization of Central and Eastern Europe* (Ithaca: Cornell University Press, 2005); Schimmelfennig, F. 'EU Political Accession Conditionality after the 2004 Enlargement: Consistency and Effectiveness'. *Journal of European Public Policy*, vol.15 no: 6 (2008) p.918-937.

[128] Ivanov, K. 'Legitimate Conditionality? The European Union and Nuclear Power Safety in Central and Eastern Europe'. *International Politics*, vol.45 no: 1 (2008) p. 146-167; Petrov, R. 'Exporting the Acquis Communautaire into the Legal Systems of Third Countries'. *European Foreign Affairs Review*, vol.13 no: 1 (2008) p. 33-52; Sasse, G. 'The Politics of EU Conditionality: the Norm of Minority Protection during and beyond EU Accession'. *Journal of European Public Policy*, vol.15 no: 6 (2008) p.842-860; Agne, H. 'European Union Conditionality: Coercion or Voluntary Adaptation?' *Alternatives*, vol.8 no: 1 (2009) p.1-18.

[129] Sullivan, M.P. 'The Question of Policy Relevance in Foreign Policy Studies'. *Western Political Quarterly*, vol.26 no: 2 (1973) p.316 (314-324)

order to fulfil this legitimacy requirement, the EU should be oriented towards making a contribution in those human rights areas that are particularly contentious for Turkey. For EU-Turkey relations, four possible mechanisms for such an approach can be identified: thorough background information of the human rights situation in Turkey, clear incorporation of insights and knowledge in document analysis of EU policy, inclusion of citizens and civil society groups in consultation and debate, and auditing exercises on the effectiveness and impact of instruments. What is implicit in the relationship between policy relevance and legitimacy is that the former covers all stages through which EU conditionality is applied, and is actively wielded in the broader politics of human rights promotion.[130]

Secondly, the analysis supports a participatory orientation for the evaluation of procedural legitimacy. A participatory conception of legitimacy refers to the quality of EU policies that encourage or require participation in the process of human rights implementation by beneficiary groups. Participation involves formal and informal ways in which civil society organisations, local leaders and minority groups cooperate with government officials and make their values, interests and policy preferences known in a variety of forms.[131] These forms consist primarily of information-sharing, dialogue and negotiation, and confidence-building measures. Ideally, the EU should apply information strategies that include publicity and education on human rights activities that reaches all relevant groups. It should also involve dialogue and negotiation, such as the commissioning of public involvement exercises on human rights issues (citizen juries, conferences, opinion polls, electronic interactive meetings). Moreover, the EU may also have to build capacity and mutual confidence. This would involve community development and support for relevant groups. Participation ties into discussions of legitimacy because it is assumed that normative power ought to be viewed as such by its recipients, according to the earlier legitimacy discussion.

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[130] Shove, E. and Redclift, M. 'Steering Research towards Policy'. In *Knowledge, Power, and Participation in Environmental Policy Analysis*, ed. by M. Hisschemoller, R. Hoppe, W.N. Dunn and J.R. Ravetz (New Brunswick: Transaction Publishers, 2001) p.338 (371-390)

[131] Béné, C. and Neiland, A. *From Participation to Governance: a Critical Review of the Concepts of Governance, Co-management and Participation* (Penang: Penang Publications, 2006) p.26.

Moreover, participation relates to the European Parliament and the parliamentary scrutiny of methods, effectiveness, and performance. According to Beetham, the most systematic method of oversight is by parliamentary committees, which by virtue of their specialist expertise track the work of individual departments, investigate aspects of their policy, and conduct budgetary scrutiny.[132] For EU human rights promotion to Turkey, the actor under consideration is the EU-Turkey Joint Parliamentary Committee. Possible mechanisms for oversight are parliamentary enquiries and regular reports that require justification of policy and any shortcomings. Parliamentary oversight enhances procedural legitimacy from an input point of view, through EU responsibility to account for performance of duties to those required to implement human rights rules. As such, it ensures satisfaction of minimal moral acceptability and comparative benefit conditions.[133]

Thirdly, it is necessary to locate legitimacy for EU human rights promotion in assessments of outcomes. According to Andreassen and Sano, the chief purpose of outcome assessment in the area of human rights is to examine how a policy influences the overall human rights situation in a local or national community.[134] The assumption is that human rights promotion and the relevant policies will deliver in terms of substantive outcomes (reduction of human rights infringements). This creates the need for verifying positive impact, or documenting failures to achieve expected impact, at various points and dimensions of the policy cycle. The empirical part of the thesis will identify indicators for the relevant policy. In general terms, the main indicators are the following: increase in level of empowerment that citizens should possess in order to make human rights claims; change in conduct of state policies; improvement of institutional capacity,

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[132] Beetham, D. *Parliament and Democracy in the Twenty-First Century: a Guide to Good Practice* (Geneva: Inter-Parliamentary Union, 2006) p.141.
[133] Buchanan, A. and Keohane, R.O. 'The Legitimacy of Global Governance Institutions'. In *Legitimacy in International Law*, ed. by Wolfrum, R. and Roben, V. (Berlin: Springer Publications, 2008) p. 52 (25-62)
[134] Andreassen, B.A. and Sano, H. 'What's the Goal? What's the Purpose? Observations on Human Rights Impact Assessment'. *International Journal of Human Rights*, vol.11 no: 3 (2007) p.277 (275-292)

such as strengthening of civil society organisations; and social change conducive to human rights norms, such as non-discrimination. The conception of legitimacy is necessarily also one of effectiveness: the legitimacy of human rights promotion depends on whether the relevant instruments demonstrate the capacity to 'deliver the goods' in terms of human rights change.

The indicators of procedural legitimacy – as identified for this study - are rather diverse, but central to its definition is the notion of sufficient EU ability to address structural injustices and imperfections. It is worth noting, however, that the evidence stemming from the analysis will not provide answers that are strictly compelling, documenting a specific causal pathway by which the legitimacy of EU policy affects the implementation of human rights in Turkey. As will be indicated in Chapters Three and Five, a weak implementation record by Turkey is consistent with a number of possible causal routes beyond the procedural capacity of the instruments: implementation can be obstructed strong administrative centralisation, reform fatigue, lack of sufficient information and communication, deficient understanding at societal level, national security concerns of political elites, or domestic beliefs that the fulfillment of a human rights-respecting system, with all that it entails, may not ultimately lead to EU membership. Irrespective, however, of the specific causal pathway, the thesis maintains that legitimacy assists human rights reform, even though its implications may not be independent of other auxiliary factors. It contributes to the implementation of human rights by promoting a more stable structure for solving human rights problems, creating perceptions of good practice in Turkey-EU relations, and developing shared norms on how to discuss human rights problems. Legitimacy would not simply give human rights norms the function of a social ideal; rather, it would support them as values having actual directive utility.

Overall, EU human rights promotion needs to be defended not simply on broad moral or legal grounds, but on the grounds that there is something unique about the

enforcement applied by the EU and about the specific policy processes of its particular instruments. For this purpose, the analysis of procedural legitimacy will grow out of the features of EU policy.

Constructing the analysis along an extended domain that covers the development of EU normative power, its procedural features, contextual factors influencing human rights protection in Turkey, and domestic political dilemmas of implementation, this study aims to provide a compelling account of the legitimacy of EU policy to Turkey in both its procedural and substantive strands. The analytical stance adopted in this study is that the legitimacy of EU human rights promotion can positively influence Turkey's capacity to implement human rights conditionality. Accordingly, the thesis provides a twofold account of legitimacy that grows out of EU *application* of human rights promotion and Turkey's *implementation* of human rights reform. Procedural legitimacy, studied empirically in Chapter Four, concerns the EU's ability to shape human rights implementation in accordance with democratic principles of legitimate policymaking: policy relevance, participation, and effectiveness. Legitimacy as recognition by the 'other' (substantive legitimacy), studied in Chapter Five, concerns the domestic processes of acceptance or rejection of the norms and policy processes of EU human rights support. It takes as a criterion the support and credibility that the implementing actors in Turkey give to EU policies and the transferred human rights norms − whether they are recognised as 'lawful, exemplary, morally acceptable and appropriate'.[135]

Conclusion

This chapter has explored the question of the EU's normative power within enlargement through the concept of legitimacy for human rights promotion. It argued that

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[135] Simmons, 'Justification and Legitimacy', p.749.

human rights promotion to Turkey has difficulty justifying itself on its own terms, with several scholars emphasising that what the EU promotes as 'normal' in international political behaviour might not be normal for everybody else. As a result, this chapter searched for alternative sources of legitimacy that could justify EU human rights policy to Turkey as an allegedly non-European 'other' with important human rights problems on the ground. The chapter rethought EU human rights promotion in relation to the legitimacy of normative power, and explored how this rethinking could contribute to improved human rights protection in Turkey. It suggested improved procedural capacity for EU policies, along with a redefinition of Europe's 'other' along more inclusive and equal lines. The former credits policy relevance, participation, and effectiveness for enabling the assessment of legitimacy. The latter will use as a basis for evaluation the degree of recipient agreement with the features of the policy process and their responsiveness in terms of human rights reform. Each source of legitimacy draws upon a different understanding of human rights promotion, which signals the underlying lack of clarity regarding the definition and priorities of the EU's vision of governance through norms. Chapter Three will continue with a detailed discussion of human rights in Turkey and the European Union's involvement therein.

Chapter Three

Human rights reform in Turkey and the role of the European Union

Having suggested an approach for the study of legitimacy for human rights promotion, this chapter analyses the dynamics of human rights protection in Turkey and the involvement of the EU. It is organised to answer the primary question asked for the purposes of any policy of human rights promotion: what are the main human rights challenges facing Turkey during its pre-accession process, and what are the sources of these challenges? Through mapping the post-1960 political dynamics and relations with the EU, it argues that human rights have been and remain an important area of contestation in Turkey. The conclusions reached through this discussion deepen our understanding of the character of those legitimacy issues facing EU human rights promotion to Turkey. It thereby provides us with insights into how the degree of legitimacy, and thereby sustainable human rights change, can be furthered and improved.

The first section provides an analysis of Turkey-EU relations and human rights vis-à-vis each other, and focuses on the effect that EU concerns had on the award of a concrete membership perspective. The second section analyses Turkey's recent progress on human rights reform across six key areas: freedom of expression, minority rights, freedom of religion, freedom of association, women's rights (gender equality), and prevention of torture. These are emphasised as areas of primary concern in EU progress reports and thus reflect the notion of EU normative power shaping partner countries according to its standard of legitimacy. It argues that recent human rights initiatives in Turkey show signs of adaptation to the EU's requirements, but at the same time domestic politics and the weakening of Turkey's EU membership prospects are likely slowing down the diffusion of European norms to Turkey.

1. Human rights in Turkey and EU involvement

Human rights have occupied the agenda of EU-Turkey relations since 1959. Since the articulation of the Copenhagen Criteria (1993), human rights as the EU's standard of legitimacy have shaped government decisions and have had significant running impact in Turkey's domestic political arena. As a modern and Western republic, Turkey became an equal member in the major international human rights instruments of the twentieth century, and pledged to promote human rights both at home and in the world. It was a founding member of the United Nations and the Council of Europe and a signatory of the Universal Declaration of Human Rights (1949). In 1954 it became a signatory of the European Convention of Human Rights and in 1990 recognised the compulsory jurisdiction of the European Court of Human Rights. Since 2005, Turkey has officially been a candidate state conducting accession negotiations with the EU. Yet, modern Turkish history is replete with human rights violations, which have been criticised for their tenacity by the EU, the Council of Europe, and international human rights NGOs (Amnesty International, Human Rights Watch) as will be shown in this chapter. This section will examine the challenging processes of human rights progress in Turkey vis-à-vis the involvement of the European Union in promoting human rights reform.

The standard of legitimacy in Turkish politics has been determined by what can be termed Kemalist ideology or 'Kemalist orthodoxy'. Kemalist orthodoxy has been developed by military and state elites on the basis of six inalienable tenets included in Turkey's first constitution (1924), known as the 'six arrows'. The constitutional principles of the Turkish republic are *statism* (state-controlled development), *populism* (achievement of social justice), *revolutionism* (radical and continuous reconstruction of the political and socio-economic system), *secularism* (subordination of religion to the state), *nationalism* (rejection of ethnic, cultural and religious diversity; full integration into the West), and *republicanism* (democratic system of government). These principles direct the so-called process of modernisation and Westernisation, which from an early stage encompassed every aspect of society and politics. Accordingly, public policy could only be regarded as

legitimate if it did not infringe the Kemalist principles regarding the form of the Turkish state and nation.

Turkey-EU relations commenced in 1959 with Turkey's first application for EEC membership by the Democratic Party (*Demokrasi Partisi*, DP) led by Adnan Menderes (1950-1960). The DP governments relaxed some of the stringent 'modernisation' initiatives led by the single-party regime that had preceded them. For example, they promised to reduce some of the cultural restrictions against the Kurds and followed more liberal economic policies.[1] However, domestic power positions and, in particular, the interests of the bureaucratic-military elite resisted the change processes induced by the DP. These changes were met with reaction by the elite, which had bestowed upon itself the role of safeguarding the Kemalist framework of legitimacy and the primacy of the state. In this sense, the DP had abused the power of the state and locked the country into 'crisis'.[2] These perceptions were sufficient to create a pretext for a military intervention, launched on 27 May 1960. The military coup did not draw significant EEC reaction, due to the limited importance attached to political factors in enlargement at the time. Still in its very early stages, the project of European integration had not yet matured into the direction of external human rights promotion.

When military rule ended in October 1961, civilian power was restored. The civilian government led by İsmet İnönü developed a new constitution, adopted by referendum, which increased the protection of human rights and democratic freedoms. The political order set by the 1961 Constitution was an order which, under the circumstances of the time, largely conformed to the common standard of democracy encountered in Europe.[3] Indeed, several scholars have referred to this constitution as the most liberal in the history of the republic.[4] The Constitution of

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[1] Göktepe, C. 'The Menderes Period'. *Journal of Turkish Weekly*
<http://www.turkishweekly.net.print.asp?type=2&id=60> (accessed 5 December 2012)
[2] Karpat, K.H. *Studies on Turkish Politics and Society* (Leiden: Brill Publications, 2004) p.287.
[3] Euractiv, 'La Démocratisation de la Turquie et l'Union Européenne' (17 June 2003)
<http://www.euractiv.com/fr/elargissement/dmocratisation-turquie-union-europenne/article-126456>
(accessed 29 September 2011)
[4] Özbudun, E. and Gençkaya, Ö.F. *Democratization and the Politics of Constitution-Making in Turkey* (Budapest: Central European University Press, 2009) p.114; İnçe, B. *Citizenship and Identity in Turkey: from Atatürk's Republic to the Present Day* (London: I.B. Tauris, 2012) p.119; Verney, S.

1961 defined the republic as a state based on human rights and democratic freedoms, and attributed to the state the responsibility to uphold these rights and provide social welfare.[5] Nevertheless, domestic power positions and the well-entrenched Turkish state doctrine remained prevalent. In a less liberal direction, the military established the National Security Council (NSC). The NSC, which comprised the Chief of Staff, select members of the Cabinet, and the President of the Republic, institutionalised the political role of the Turkish army as the custodian of the state. This development grounded human rights protection in the shadow of national security-related concerns, and made them amenable to periodic suspensions by military interventions in politics over several decades.[6] More broadly, the diffusion of human rights norms emerged as closely related to domestic power and interests.

The swift return to multi-party politics and the 'liberal' character of the new constitution were welcomed by the EEC.[7] However, the Community did not grant accession status to Turkey at the time, partly due to the objections of several member states that Turkey's unstable political situation did not satisfy the Birkelbach Criteria (1962).[8] This is to say that human rights issues had begun to emerge as a standard of legitimacy within enlargement, but they had not yet been officially accepted as 'strings attached' to EU accession (as discussed in Chapter One). Instead, an agreement for the progressive establishment of a Customs Union, known as the Ankara Agreement, was signed between the two parties in September 1963. The Ankara Agreement was more than a mere trade agreement as it foresaw eventual Turkish membership to the EEC in a long-term perspective.[9] Article 28 of the Agreement acknowledged Turkey's eligibility for membership, but deferred such a possibility to future examination by the contracting parties, certainly after the

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'National Identity and Political Change on Turkey's Road to EU Membership'. In *Turkey's Road to European Union Membership: National Identity and Political Change*, ed. by S. Verney and K.Ifantis (Abingdon: Routledge, 2009) p.10 (1-22)

[5] Constitution of the Turkish Republic, Article 2 (1961) <http://www.anayasa.gen.tr/1961constitution-text.pdf> (accessed 31 December 2010)

[6] Falk, R. 'Foreword'. In *Human Rights in Turkey*, ed. by Z.F. Kabakasal Arat (Philadelphia: University of Pennsylvania Press, 2007) p.xv (xi-xviii)

[7] Tachau, F. and Heper, M. 'The State, Politics, and the Military in Turkey'. *Comparative Politics*, vol.16 no: 1 (1983) p.23 (17-33)

[8] Faucompret, E. *Turkish Accession to the EU: Satisfying the Copenhagen Criteria* (Abingdon: Routledge, 2008) p.25.

[9] Harıkan, A. *Turkey and the EU: an Awkward Candidate for EU Membership?* (Aldershot: Ashgate, 2006) p.62.

completion of the Customs Union.[10] The preamble of the Agreement declared that the possibility of Turkey's accession at a 'later date' was dependant on efforts of Turkish people to improve their standard of living, and on support given by the EEC in that direction.[11] Although the Agreement foresaw taking appropriate steps to promote and strengthen political cooperation, no reference to political criteria was made. The motivational force behind the Agreement was obtaining resources and advantages in competition.

The reforms of the 1961 Constitution, coupled with Turkey's industrialisation and the subsequent growth and politicisation of the working class turned the 1960s and 1970s into a period characterised by a proliferation of civic organisations, social mobilisation, and political polarisation.[12] Industrialisation and subsequent civic activism proved to have serious political and social implications. The creation of an unprecedented level of labour, student, and other civic organisations challenged official state policies as well as the ideological positions of rival groups. These political/social developments reached a violent peak with frequent protests, physical clashes, and terrorist incidents across major urban centres. The prevailing political party at the time, the Justice Party (*Adalet Partisi*, AP), which governed for most of this period either independently or in coalition, blamed the 'luxuries' of the 1961 Constitution for the civil unrest in the country. According to Bal and Laainer, the 1961 Constitution was blamed for liberalising political and civic life and creating legal grounds for the socialist movement to adopt revolutionary approaches.[13] The perceived incompatibility of the 1961 Constitution with entrenched norms invoked the resistance of the military establishment, which acted to overcome the resistance of opposing interests. The 1971 military intervention ousted the elected government and replaced it with a handpicked civilian government ('coup by memorandum'). The military-backed government removed those constitutional 'luxuries' by introducing extensive amendments, which reversed human rights safeguards and demonstrated the lack of durability of human rights adoption in Turkey's domestic context.

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[10] Ankara Agreement, Article 28.
[11] Ankara Agreement, preamble.
[12] Bal, I. *Turkey's Foreign Policy in Post-Cold War Era* (Brussels: Peter Lang, 2004) p.184.
[13] Bal, I, and Laainer, S. 'The Rise of Ideological-Revolutionary Terrorism: the Turkish Experience, 1960-1980'. *Journal of Turkish Weekly* <http://www.turkishweekly.net/print.asp?type=2&id=226> (accessed 5 December 2012)

The constitution of Turkey was amended without public discussion in a less democratic direction in 1971 and 1973. In the words of Hershlag, the 1971 Constitution turned Turkey into a 'guided democracy'.[14] The amendments removed the rights and freedoms of the previous constitution and prioritised security and order over democratic reform. The architects of the new constitution increased military control over Turkey's political life by subjugating civilian power to the authority of the armed forces.[15] Citizen duties towards the state began to be emphasised more than individual rights.[16] The Turkish military attempted to legitimate the government's systematic programme of repression to the EEC. They claimed that it was safeguarding Turkey's Westernisation project for the future and that the aforementioned constitutional amendments already existed in the constitutions of France, West Germany, and Italy.[17] Nevertheless, the 1971 military intervention and the subsequent picture of Turkish politics attracted certain criticism from the EEC. Bilateral economic assistance was suspended by several member states, and calls for return to democracy echoed across Europe, but hardly in an official, consistent manner.[18] Yet, in January 1973 the Additional Protocol of the EEC-Turkey Ankara Agreement entered into force, comprehensively setting out how the Customs Union would be established. As a result, military rule and suppression of human rights in Turkey did not have great political or economic costs for Turkey-EEC relations.[19]

The return of the country to electoral politics and full civilian rule in 1973 was not sufficient to ensure the political and administrative changes that the circumstances of the time needed. Political violence again became common amongst ideologically opposing groups and incidents of political violence continued to be widespread, perpetuating further state repression. The involvement of the extreme-right Nationalist Action Party in the coalition governments of the 1970s did nothing

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[14] Hershlag, Z.Y. *Contemporary Turkish Economy* (Abingdon: Routledge, 1988)

[15] Çizre-Sakallioğlu, Ü. 'The Anatomy of the Turkish Military's Political Autonomy'. *Comparative Politics*, vol.29 no: 2 (1997) p.157 (151-166)

[16] İnce, *Citizenship and Identity in Turkey*, p.120.

[17] Döşemeci, M. *Debating Turkish Modernity* (Cambridge: Cambridge University Press, 2013) p.159.

[18] Bal, I. *Turkish Foreign Policy in Post Cold War Era* (Florida: Universal Publishers, 2004) p.184.

[19] Pevehouse, J.C. *Democracy from Above: Regional Organizations and Democratization* (Cambridge: Cambridge University Press, 2005) p.142.

to ease radicalisation, primarily in the labour movement and in higher education.[20] The Turkish Parliament was stalemated. In parallel, the country's economic situation deteriorated, party as the result of an embargo by the United States. The chaos of the 1970s ended with a decisive military intervention on 12 September 1980, which established a new political era and long-term challenges to the protection of human rights in Turkey.

The 1980 coup firmly established its own framework for what it considered legitimate behaviour and legitimate demands in the Turkish political sphere. It did this by institutionalising a 'de-politicisation' of society and by regulating state repression against political and civic programmes that were not considered desirable or permissible. In this regard, the 1980 military coup launched a systematic programme of repression that exceeded that of 1960 and 1971.[21] According to Barkey, the 1980 military intervention was different than previous ones 'in that it was an attempt by the military to shore up the defenses of what it perceived to be a weakened state under assault by Leftists, Islamists, and Kurds by returning to the ideological precepts of the Kemalist era'.[22] With the politicisation of society presented as a national security threat, serious violations of human rights followed.[23] The military government initiated a 'democracy without freedoms' involving a widespread, coercive and effective de-politicisation for society. In the aftermath of the coup, political parties were banned, political organisations and labour unions were closed, and their leaders were either imprisoned or forced into exile. In 1982, a new constitution was devised which listed human rights and fundamental freedoms while simultaneously outlining the conditions under which these could be curbed. Strict limits to individual rights were codified into law, the role of the NSC was enhanced, and Kemalist orthodoxy was reinvigorated and allocated strong legitimacy.

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[20] Bal, I. and Laçiner, S. 'The Challenge of Revolutionary Terrorism to Turkish Democracy 1960-1980'. *Terrorism and Political Violence*, vol. 13 no: 4 (2010) p.102 (90-115)

[21] Dağı, I. 'Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy'. *Middle Eastern Studies*, vol.32 no: 2 (1996) p.125 (124-141)

[22] Barkey, H. J. 'The Struggles of a 'Strong' State'. *Journal of International Affairs,* vol.54, no. 1 (2000) p.88 (87-100)

[23] Drorian, S. 'Turkey: Security, State and Society in Troubled Times'. *European Security*, vol.14 no: 2 (2005) p.268 (255-275)

The 1982 Constitution severely restricted the scope of human rights protection in Turkey, and provided a strong reference framework for evaluating the legitimacy of domestic human rights aims. It forbade political associations of youth, women, religious and linguistic groups, where 'association' was defined as a group of two or more people gathering under a common aim. This measure reduced the relevance and freedom of citizen action in Turkey. In a similar vein, restrictions to freedom of expression were stringent, primarily directed at publications causing 'offences against the state', a vaguely defined offence that included any type of political expression. A large number of codes regarding political life were declared to be exempt from judicial review by the Constitutional Court. The military's already predominant position in Turkish politics was strengthened to influencing or dictating government policy in order to protect the state from internal subversions. Accordingly, the Constitution, which has been argued to have created a 'censored democracy', strengthened the powers of the centralised state and military while stifling democratic freedoms.[24] The 1982 Constitution has since been considered a liability for the protection of democracy and human rights in Turkey, with its constraining effects continuing to the present time.[25] Transition to civilian rule occurred in 1983. However, continuation of military control was secured through a 'two-party system' established by the regime, and by the appointment of the leader of the coup, Kenan Evren, as the new President of the republic.

The EEC initially did not effectively oppose the regression of the democratic regime in Turkey, and its reaction has been described as 'mild'.[26] After the 1980 military coup, neither the European Commission nor the European Council made any substantial step to ensure the protection of the constitution (as amended in 1973) and the supremacy of the rule of law. After the military coup, the Council of Ministers declared on 15 September 1980 that the EEC would continue its cooperation with Turkey.[27] The European Parliament, however, took a firmer position against

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[24] Elver, H. 'Gender Equality from a Constitutional Perspective: the Case of Turkey'. In *The Gender of Constitutional Jurisprudence*, ed, by B. Baines and R. Rubio-Marin (Cambridge: Cambridge University Press, 2005) p.301 (278-305).

[25] Gönenc, L. 'The 2001 Amendments to the 1982 Constitution of Turkey'. *Ankara Law Review*, vol.1 no: 1 (2004) p.108 (89-109); Özbudun, E. 'Democratization Reforms in Turkey, 1993–2004'. *Turkish Studies*, vol.8 no: 2 (2007) p.192 (179-196)

[26] Pevehouse, *Democratization*, p.143.

[27] Council of Ministers. 'Joint Stament on the Situation in Turkey' (15 September 1980) <http://aei.pitt.edu/5582/1/002280_1.pdf> (accessed 29 September 2011)

violations of human rights, and strongly asserted the need for their protection. Following a request made by the EP to the Council and the Commission to suspend the Ankara Agreement, relations became formally frozen for six years on 22 January 1982. The European Parliament proceeded to suspend the duties of the EU-Turkey Joint Parliamentary Committee until general elections were held in Turkey and a parliament was formed in 1983. Throughout the 1980s, the EP published numerous critical resolutions on the human rights situation in Turkey, despite Turkey's return to electoral politics in 1982.[28] According to Hale, the EEC progressively became the most vociferous international objector to Turkey's situation, surpassing the milder objections voiced by the United States.[29] That said, it can be suggested that the EP-Turkey interaction in the aftermath of the 1980 coup clearly revealed the opposing standard of legitimacy between the two actors. The EP projected a standard based on the constitutive norms and values of Europe's emerging normative power, whereas Turkey provided a different and competing reference framework based on a stringent and exclusionary interpretation of Kemalist orthodoxy.

Turkey reapplied for EEC membership on 14 April 1987. According to Usul, this was a historical point for human rights in Turkey: domestic actors now moved into the sphere of European norms and strategic influence, and became susceptible to European external constraints on their political programme.[30] In this vein, Turkey's application for EU membership subjected national policy-making to the EEC's judgment on the country's commitment to democratic governance and the protection of human rights. The EU accession negotiations would now determine which political programmes would be desirable and permissible, and what type of behaviour and demands could be considered legitimate in the political sphere. In turn, EU negotiations, norms and constraints could play into domestic conflicts and be utilised by political actors to support or contest the obstacles imposed on human

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[28] European Parliament, 'Resolution on the Events in Turkey'. OJ C 265 (13 October 1980) p.55; European Parliament, 'Resolution on the Military Junta in Turkey' OJ C 101 (4 May 1981) p.101; European Parliament, 'Resolution on the Political Situation in Turkey'. OJ C 238 (13 September 1982) p.55; European Parliament, 'Resolution on Respect for Human Rights in Turkey' OJ C 172 (2 July 1984) p.128; European Parliament, 'Resolution on the Ruthless Violation of Human Rights and the Bloody Reign of Terror in Turkey' OJ C 122 (20 May 1985) p.120; European Parliament, 'Resolution on Relations between the EEC and Turkey' OJ C 7 (12 January 1987) p.109.
[29] Hale, W. *Turkish Foreign Policy, 1774-2000* (Abingdon: Routledge, 2000) p.130.
[30] Usul, A.R. *Democracy in Turkey: the Impact of EU Political Conditionality* (Abingdon: Routledge, 2011) p.75.

rights protection by the Kemalist framework of legitimacy. For instance, EU negotiations offered new opportunities to disadvantaged actors with limited domestic power to exercise their agenda (e.g. pro-Islamic parties, human rights NGOs), as will be shown in Chapter Five. Conversely, the negotiations were met with some resistance by the military and political elites that defended Kemalist orthodoxy and their power position against the 'alternative legitimacy framework' imposed by the EU. Therefore, Turkey's application for membership would introduce processes of change within state and society, and the norm diffusion process induced by the EU would interact strongly with domestic power positions and political cleavages.

In the light of securing EU membership, the Turkish governments in the 1980s made some effort to engage with concerns about human rights in an organised way.[31] In an attempt to persuade European counterparts that Turkey was committed to aligning its human rights protection to international standards, Prime Minister Turgut Özal (*Anavatan Partisi*, Motherland Party) recognised the compulsory jurisdiction of the European Court of Human Rights in 1987. Moreover, he conducted official visits to Brussels, the United Kingdom, and Germany, and announced a series of legal reforms, including the establishment of a Human Rights Commission within the Turkish Parliament.[32] Contrary to expectations, on 20 December 1989 the European Commission recommended not entering into negotiations with Turkey, and declined to tie itself to any accession timeframe. The reasons for rejection put forward by the Commission were economic, democratic and human rights reasons.[33] Regarding Turkey's human rights situation, the Commission's Opinion stated that 'although there have been developments in recent years in the human rights situation and in respect for the identity of minorities, these have not yet reached the level required in a democracy'.[34] According to the EEC perspective, candidate status was now conditional on democracy, human rights and peaceful conflict management, and Turkey had to conform to these political norms in full, rather than conduct a limited number of prior reforms.

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[31] Arıkan, H. 'A Lost Opportunity? A Critique of the European Union's Human Rights Policy towards Turkey'. *Mediterranean Politics*, vol.7 no: 1 (2002) p.29 (19-50)

[32] *Ibid.*

[33] European Commission, 'Opinion on Turkey's Request for Accession to the Community' (20 December 1989) <www.ena.lu/commission_opinion_turkey_request_accession_community_20_december_1989-020005676.html> (accessed 1 January 2011)

[34] *Ibid.*

The 1990s were a period of political transformation for EU-Turkey relations, which largely determined the framework for how EU norm diffusion would heretofore interact with domestic interests and power positions. As discussed in Chapter One, in the 1990s the EU became a stringent promoter of human rights in enlargement. This development was precipitated by the end of the Cold War, the advancements in EU law, the establishment of the European Union (1992), the articulation of the Copenhagen Criteria (1993), and human rights as an essential element in external relations. The formulation of the Copenhagen Criteria was a defining moment for the development of Turkey-EU relations, as it transformed the 'classical Community method' of EU enlargement to a professionalised human rights strategy. The EU's rationale behind enlargement had taken a different turn from that of the seventies and eighties, with primacy of political considerations over economic ones in determining further expansion.[35] Thus, the Copenhagen Criteria began to function as a critical transmitter of the EU's standard of legitimacy by promoting democracy and human rights through material instruments (conditionality) and socialisation efforts.[36] In this new environment, the Turkish state's rigid attitude towards human rights reform was challenged by direct contact with more flexible and pluralistic European norms, as these were incorporated in the Copenhagen Criteria.[37]

An analysis which links EU accession negotiations to processes in Turkey should consider the wider challenges in Turkish politics and society in the 1990s, and their implications for the diffusion of human rights norms by political actors. During the 1990s, the Kemalist orthodoxy was subjected to a set of severe challenges with the rise of Kurdish nationalism and political Islam.[38] The exacerbation of these

[35] Kahraman, S.E. 'Rethinking Turkey-European Union Relations in the Light of Enlargement'. *Turkish Studies*, vol.1 no: 1 (2000) p. 1-20.

[36] Keyman, E.F. and Düzgit, S.A. 'Europeanization, Democratization and Human Rights in Turkey'. In *Turkey and the European Union: Prospects for a Difficult Encounter*, ed. by E. LaGro and K.E. Jorgensen (Basingstoke: Palgrave Macmillan, 2007) p.83 (69-89)

[37] Tekin, A. 'Modernist Responses to Post-Modern Demands? Differential Treatment in Europeanising Turkey'. In *Diversity in Europe*, ed. by G. Calder and E. Ceva (Abingdon: Routledge, 2011) p.103 (99-110)

[38] Öniş, Z. 'Diverse but Converging Paths to European Union Membership: Poland and Turkey in Comparative Perspective'. *East European Politics and Societies*, vol.18 no: 3 (2004) p.491 (481-512)

political phenomena meant that governments and military became key actors for 'norm rejection', rather than norm diffusion. Turkish politics witnessed threats to the principles of secularism and national homogeneity on which the Turkish state was founded, and employed national security as a justification for repressive methods that undermined human rights. The ensuing human rights violations were conducted under the rubric of protection of national security, in accordance with the 1982 Constitution that pledged the suspension of human rights protection when state security was threatened.

Various authors concur that Kurdish nationalism in the form of the armed struggle of the Kurdistan Workers' Party (*Partiya Karkeren Kurdistan*, PKK) played a crucial role in the implementation of public security policies that suppressed human rights.[39] The reaction of the state to even the mildest displays of Kurdish support amongst Turkish society was oppressive and authoritarian. Brutal punitive security operations, marked by allegations of torture, extrajudicial execution, and the burning of villages, were carried out in the name of state security. Death in police detention persisted because the governments failed to take the key steps to combat torture.[40] Journalists, writers, parliamentarians, trade unionists, human rights defenders and political parties were prosecuted, convicted and imprisoned because of their public statements or writings.[41] Weak commitment to human rights norms at state level was also demonstrated by lack of compliance with international obligations and the disregard of legal provisions that had been in place for decades. National security was left at the discretion of the security forces, which treated international human rights law and domestic Turkish law with equal disdain, despite strong condemnation by the EU and the EP in particular.[42]

Human rights infringements in the 1990s were also justified through claims in political discourse about Turkey's 'uniqueness', which prevented it from fully

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[39]Drorian, S. 'Turkey: Security, State and Society in Troubled Times'. *European Security*, vol.14 no: 2 (2005) p.268 (255-275)

[40] Human Rights Watch, 'World Report 2000 – Turkey' <http://www.hrw.org/wr2k/Eca-20.htm> (accessed 25 June 2010)

[41] Human Rights Foundation of Turkey, '1995 Human Rights Report' (Ankara: 1996) p.306.

[42] O'Neil, M.L. 'Linguistic Human Rights and the Rights of the Kurds'. In *Human Rights in Turkey*, ed. by Z.F. Kabakasal Arat (Philadelphia: University of Pennsylvania Press, 2007) p.77 (72-86)

endorsing the validity of EU-induced human rights norms. According to Bilgin, the perception of 'uniqueness' was formulated in terms of Turkey's so-called 'geographical determinism' and 'fear of loss of territory', both of which implied that Turkey had unique political and security-related interests and needs that did not allow for substantial democratisation and human rights protection.[43] 'Fear of loss of territory' arguments maintained that respect for human rights would obstruct the effort to combat armed Kurdish opposition, and that no priority should be given to human rights in an alleged period of war and disorder. 'Geographical determinism' claims suggested that Turkey's geographical location in a region of uncertainty and instability (neighbouring Iraq is also home to Kurdish population) forced Turkey to be cautious, not to invite political processes that would result in reshaping its security policies. Bülent Ecevit, Prime Minister of Turkey from 1998 to 2002, declared that 'Turkey's special geopolitical conditions require a special type of democracy'.[44] Thus, invoking norms of national security was utilised to resist the opposing framework of legitimacy emanating from EU-level and the political institutionalisation of its normative framework (human rights, democracy, and rule of law).

Moreover, lack of human rights reform in the 1990s was justified through arguments that externally-induced human rights protection violated Turkey's national sovereignty.[45] Generally, there was a certain degree of suspicion towards human rights promotion by international organisations active in Turkey. The idea of an international NGO, such as Amnesty International or Human Rights Watch, campaigning in Turkey and trying to persuade government and public of the urgent need for human rights protection for all people, was perceived by various governments as intervention in domestic affairs. Framing international concern as interference in domestic affairs also occurred directly in relation to the European Union, despite Turkey's ongoing process of integration into the EU. For instance, in December 1998 the European Parliament published a detailed resolution identifying the Kurdish issue as a significant impediment to human rights protection in the

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[43] Bilgin, P. 'Turkey's Changing Security Discourses: the Challenge of Globalisation'. *European Journal of Political Research*, vol.44 no: 1 (2005) p.183 (175-201).
[44] *Ibid*, p.187.
[45] See, for example Rumford, C. 'Failing the EU Test? Turkey's National Programme, EU Candidature and the Complexities of Democratic Reform'. *Mediterranean Politics*, vo.7 no: 1 (2002) p.51-68.

country, and called for multi-party dialogue, respect for freedom of expression, cultural rights, and respect of the right to life.[46] The resolution was met with harsh criticism in Turkey. The NSC and other authorities strongly opposed it. Concerning the proposal, President Süleyman Demirel declared, 'Turkey cannot accept any intervention to its sovereignty, its indivisible integrity, and any decision on its domestic affairs... Let the EU be theirs. This is a direct interference in the domestic affairs of Turkey.'[47] The Ministry of Foreign Affairs described the EP's attitude as 'irresponsible'.[48] This occurrence is indicative of Turkey having its own (more or less dominant) normative framework for what was considered legitimate behaviour in the area of human rights promotion and protection. Accordingly, domestic political actors confronted EU requirements as interference with their domestic standard of legitimate political behaviour, despite there being no strictly 'domestic' affair in a country that is a potential EU candidate state.

Despite external constraints, throughout the 1990s Turkey continued to pursue EU membership, and the political reform process began to acquire its own domestic dynamic.[49] As Kalaycıoğlu highlighted, the process of Turkey's EU integration forced human rights into a more visible position on the country's political agenda.[50] Some institutional adjustments occurred that were favourable to human rights, such as a Parliamentary Commission on Human Rights (1990) and a state ministry responsible for human rights issues (1991). Following these policy measures, in June 1990 the EU Commission presented a package of political, economic and trade measures – the so-called Matutes package – designed to revitalise EU-Turkey relations and strengthen political ties.[51] From 1993 onwards Turkish governments made various depositions of commitment to adapt the political regime of the country to the Copenhagen Criteria before starting accession negotiations. The Customs Union Agreement (1995) provided a new incentive for the

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[46] European Parliament, 'Resolution on EU-Turkey Relations' (3 December 1998) p.56.
[47] Human Rights Foundation of Turkey, '1998 Human Rights Report' (Ankara: 1999) p.93.
[48] *Ibid.*
[49] Derviş, K., Emerson, M., Gros, D. and Ulgen, S. *The European Transformation of Modern Turkey* (Istanbul: Centre for European Policy Studies, 2004) p.13.
[50] Kalaycıoğlu, E. 'The Turkish-EU Odyssey and Political Regime Change in Turkey'. *South European Society and Politics*, vol.16 no: 2 (2011) p.270 (265-278)
[51] Faucompret, E. and Könings,J. *Turkish Accession to the EU: Satisfying the Copenhagen Criteria* (Abingdon: Routledge, 2008) p.31. The Matutes Package remained a dead letter following a veto by Greece.

Turkish government to undertake new political and economic reforms, and a series of constitutional amendments were motioned and successfully carried through in 1995. The coalition government of Tansu Çiller (*Doğru Yol Partisi*, True Path Party) put forward constitutional reform in 1995 by adopting amendments to fourteen articles of the 1982 Constitution. The most important change in the area of human rights was the amendment of the Anti-Terror Law. Previously, the Anti-Terror Law forbade any expression that sought to 'change the character of the state' and was practised widely in the persecution of Kurdish nationalism. The government also declared its readiness to collaborate with the EU and international human rights bodies.[52] However, at the same time it did not provide a detailed basis for freedom and autonomy upon which all levels of society could determine their life free from state domination.[53]

Such progress on the implementation of reforms did not satisfy EU expectations. The award of new powers to the European Parliament by the Maastricht Treaty (1993) made EU membership candidacy dependent on an EP vote, and human rights thus became an even more thorny issue in Turkey-EU relations. An EP resolution of 9 September 1996 called on the Commission 'to block, with immediate effect, all appropriations set aside under the MEDA programme for projects in Turkey, except those concerning the promotion of democracy, human rights and civil society'.[54] This suspension of financial aid was primarily motivated by the human rights situation in Turkey. Furthermore, in its first progress report on Turkey in 1998, the European Commission pronounced that reforms were only partly reflected in Turkey's secondary legislation, and criticised the lack of political will for implementation.[55] The report acknowledged the Turkish government's 'commitment' to combating human rights violations, but stressed that there had been no significant

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[52] Council of Europe, 'Interim report of the Turkish Government in response to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Turkey form 5 to 17 October 1997' (Ankara: 3 February 1999) <http://www.cpt.coe.int/documents/tur/1999-03-inf-eng.htm> (accessed 8 July 2010)

[53] Karaman M. L. and Araş, B. 'The Crisis of Civil Society in Turkey'. *Journal of Economic and Social Research*, vol.2 no: 2 (2000) p. 46 (39-58)

[54] European Parliament, 'Legislative resolution embodying Parliament's opinion on the proposal for a Council Decision laying down the procedure for adopting the Community's position in the Customs Union Joint Committee set up by Decision No 1/95 of the EC-Turkey Association Council on the implementation of the final phase of the Customs Union'. OJ C 261 (9 September 1996)

[55] European Commission, 'Regular Report on Turkey's Progress towards Accession' (Brussels: October 1998) p.17.

effect in practice.[56] The report highlighted many continuing violations in Turkey, such as torture and forced disappearances, lack of freedom of expression, association, and assembly, the status of women, and the death penalty.

With these problems, human rights remained repressed since the 1980 military coup and constituted a major problem for Turkey's EU integration process.[57] The Luxembourg European Council on 12-13 December 1997 (which launched the accession process of the CEE countries) decided not to award official candidate status to Turkey but only eligibility for candidacy. According to the Conclusions of the Presidency, 'the political and economic conditions allowing accession negotiations to be envisaged are not satisfied'.[58] This decision was a bitter pill to swallow for Turkey's policymakers and public. After the summit, Turkish Prime Minister Mesut Yilmaz announced the interruption of political dialogue with the European Union and rejection of all political conditions, although the meetings of the EU-Turkey Joint Parliamentary Committee remained uninterrupted. The daily Hürriyet revealed that the right wing of the government coalition would harden the position of Ankara against the EU.[59] An uncommon voice of self-criticism came from a well-known journalist of the left, Ali Sirmen, who wrote that 'we accuse the Europeans... without asking ourselves: what have we done to deserve Europe in terms of human rights and economic stabilisation?'[60]

The relations between the EU and Turkey re-gained their momentum with the decision of the Helsinki European Council (10-11 December 1999) to award Turkey official candidacy. The Presidency Conclusions stated that 'Turkey is a candidate state destined to join the Union on the basis of the same criteria as applied to the other candidate states', with the financial advantages that the pre-accession period

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[56] Commission, '1998 Regular Report', p. 21.

[57] Mousseau, D.Y. 'Is Turkey Democratising with EU Reforms?' *South European and Black Sea Studies*, vol.12 no: 1 (2012) p.65 (63-80)

[58] European Council, 'Presidency Conclusions' (Luxembourg: 12-13 December 1997). <http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm> (accessed 16 February 2009).

[59] Available at <http://www.ena.lu/turkey_antieuropean_anger_liberation_17_december_1997-020204180.html> (accessed 17 February 2009).

[60] *Ibid.*

involves, but without a fixed date for the opening of negotiations.[61] The award of candidacy occurred despite the EU Progress Report of October 1999 where the Commission used strong language, stating that the violent abuse of human rights occurring in Turkey was 'inadmissible and under no circumstances tolerable'.[62] The 1999 report concluded that although the basic features of a democratic system existed in Turkey, it still did not meet the Copenhagen Criteria. Nevertheless, the 1999 decision of the European Council at Helsinki to award official EU candidacy to Turkey was significant. It firmly established the possibility of the country becoming a member of the European Union, thus rendering democratisation a focal point in Turkish politics and providing a stronger incentive for human rights reform. As Öniş observed, a firm membership perspective after years of uncertainty generated 'a new wave of optimism concerning the future course of democratisation and economic reforms in Turkey'.[63] According to Human Rights Watch, EU candidacy 'proved an unparalleled opportunity for domestic and international pressure for positive change'.[64] The broadening from 1999 onwards of Turkey's agenda for human rights took place against the backdrop of an increasing EU membership prospect and strong public support for reform.

Overall, in the 1990s there was little progress in implementing and internalising the human rights norms emanating from the European level. This situation was characterised by instrumental adoption of legal reforms to satisfy the immediate demands of the EU and a domestic political perception that European demands were incongruent with Turkish realities. On the positive side, the initial steps of simply 'accommodating' human rights created a precedent for the present-day human rights awakening in Turkey, both by segments of the political establishment and by societal actors. Currently there appears to be acceptance of practices that would probably have been regarded as intolerable in the 1990s, such as citizens questioning the genuineness of the military's commitment to modernisation

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[61] European Council, 'Presidency Conclusions' (Helsinki: 10-11 December 1999) <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/ACFA4C.htm> (accessed 16 February 2009)

[62] European Commission, '1999 Regular Report on Turkey's Progress towards Accession' (Brussels: 13 October 1999) p.8.

[63] Öniş, Z. 'Luxembourg, Helsinki and Beyond: Towards an Interpretation of Recent Turkey–EU Relations'. *Government and Opposition*, vol.35 no: 4 (2003) p.464 (463-483)

[64] Human Rights Watch, 'World Report 2001: the Events of 2000' (London: Human Rights Watch, 2001) p.329.

in the national media (among many other examples).[65] The current development of an independent base of legitimacy for human rights is largely a legacy of intense human rights struggles between 1980-1999 on how to incorporate human rights into Turkey's political agenda. The EU's concrete membership perspective offered Turkey political, economic, and social incentives for human rights reform. The 2002 Copenhagen decision granted October 2004 as a conditional date for the beginning of negotiations.

In 2002 a pro-Islamic and pro-EU party, the Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) won the parliamentary majority in a wave of popular support. The AKP pronounced a pro-EU stance and declared its commitment to human rights and democratisation reforms in compliance with EU requirements. Accordingly, the new government framed its programme of human rights reform within the legitimacy framework of the EU. Despite being founded on Islamist roots, the AKP made no attempt to construct its own standard of legitimacy based on pro-Islamic values. Instead, it interpreted the EU-induced human rights norms as compatible with and even fostering religious freedom, as will be discussed in Chapter Five. The endorsement of the EU's standard of legitimacy would make it possible for the AKP to pursue some of its core policy aims, such as reconciliation of Islam and democracy, subordination of the role of the military in political life to civilian control, and sustained economic development. Given the gains that EU policies would bring to the domestic arena, the AKP appeared determined to promote reforms even in the absence of tangible rewards from the EU. This was indicated in the Prime Minister's statement that the Copenhagen Criteria would be interpreted and adopted in the Turkish context as 'Ankara criteria'.[66]

In 2002-2005, following the granting of official candidacy status and strong public support for EU membership, the AKP launched an unprecedented reform process. The reform packages of 2002-2005 covered a wide range of human rights

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[65] See, for example, *Hürriyet Daily News*, 'Mother objects to male dominance in military' (15 February 2010) http://www.hurriyetdailynews.com/n.php?n=objection-to-the-male-dominancy-of-military-2010-02-15 (accessed 16 February 2010)

[66] Turkish Weekly, 'Erdoğan: Copenhagen criteria would become Ankara criteria' (1 July 2005) <http://www.turkishweekly.net/news/14088/erdogan-copenhagen-criteria-would-become-ankara-criteria.html> (accessed 29 June 2010)

issues. The Turkish Parliament adopted a new Civil Code and amended several constitutional provisions relating to freedom of expression, freedom of association, gender equality, prevention of torture, and children's rights. With a constitutional change, the State Security Courts that had military members were abolished in 2004 and all criminal cases, including those related with the security of the republic and terrorism, were transferred to the Criminal Court. The death penalty was also abolished. The position of minorities was improved through a guarantee of the right to property for non-Muslim community foundations, and the right for public media to broadcast in Kurdish (with several restrictions). Emergency rule in South-East regions, where the majority of the population was Kurdish-speaking, was put to an end. In its October 2004 Progress Report, the European Commission gave the green light for the opening of accession negotiations with Turkey.[67] These human rights reforms, along with other political and economic reforms, led to the decision of the Council of Ministers to open accession negotiations with Turkey on 3 October 2005.[68]

This section has offered an overview of Turkey's human rights situation since the 1950s with reference to the European Union's involvement therein. EU leverage served to accelerate the reform process in Turkey, and generated an enabling environment which permitted previously peripheral social groups to reformulate their demands from a human rights perspective. At the same time, the reform process became seriously challenged by an impasse in Turkey-EU relations that followed a period of substantial reforms (2002-2005), which will be discussed in further detail in Chapter Five. This impasse has been punctuated by growing alienation between Turkey's political elites and core EU members as a result of a number of stumbling blocks, including human rights issues. The following section will analyse human rights issues across six key dimensions that are regularly emphasised in EU progress reports: freedom of expression, linguistic human rights, freedom of religion, freedom of association, women's rights (gender equality), and prevention of torture.

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[67] European Commission, '2004 Regular Report on Turkey's Progress towards Accession'. SEC (2004) 1201 (Brussels: 6 October 2004)

[68] European Council, 'Presidency Conclusions' (Brussels: 16-17 December 2004) <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf> (accessed 16 February 2009)

2. Human rights reforms and the EU 'standard of legitimacy'

Since the establishment of the Turkish Republic in 1923, Europe has constantly been a point of reference for Turkey's process of Westernisation. Norms regarding the organisation of political, social, economic, and cultural life in Turkey have been largely directed and articulated according to common European standardsö as mentioned earlier. Following the declaration of Turkey's candidacy status in 1999, the process of Europeanisation acquired new momentum with the EU promotion of an impressive raft of human rights and democratisation reforms. According to Rumelili, the EU accession process, particularly through its societal enabling impacts, functions as a critical transmitter of a European standard of legitimacy.[69] By accepting the EU's standard of legitimacy in the area of human rights, Turkey has been induced to pursue reform in sensitive areas such as minority rights and freedom of expression. At the same time, there is common agreement amongst scholars and policymakers alike that Turkey's momentum of human rights reform has decelerated considerably since 2005, as will be discussed in Chapter Five. Nevertheless, the EU continues to apply its human rights instruments to Turkey consistently, and adoption of European norms as a precondition for entering the club retains its importance.

When consideration is given to Turkey's human rights progress, one can note considerable advances compared to the troubled 1980-1999 era. The EU's annual progress reports, which are based on information provided by local and international human rights NGOs, confirm slow but steady progress on sensitive issues of human and minority rights. Yet, several of the biggest barriers that are thought to exist in the contentious fields of freedom of expression, minority rights, freedom of religion, freedom of association, prevention of torture and women's rights, remain to be addressed. This section details the steps in Turkey's process of human rights reform with the aim to provide examples of norm diffusion to Turkey. These rights constitute an important part of the European normative framework, and Turkey is expected to share in these values by adopting EU-induced political reform. At the same time, it is these aspects of human rights requirements that meet with strong domestic dynamics

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[69] Rumelili, 'Turkey: Identity', p.238.

of adaptation and contestation in Turkey, as they invoke both enabling and debilitating impact to society, the maintenance of Kemalist orthodoxy, and the historical identity of the state. The main sources utilised for the outline of Turkey's human rights reforms are the EU's annual progress reports, especially the most recent reports of 2012 and 2013.

2.1.   Freedom of expression

According to EU progress reports, the discussion of freedom of expression for Turkey centres on three main areas: freedom of the media, the legal framework on terrorism, and citizens' right of access to information. Another issue repeatedly stressed by the European Commission has been the wording of Article 301 of the Penal Code, which rules that the denigration of Turkish identity and state institutions is a punishable offence. The European Union has repeatedly stressed freedom of expression as an area of serious concern, and both the European Commission and European Parliament have emphasised the need for revision of the Penal Code, Anti-Terror Law, and Law on the Internet to permit significant improvement in the above area.[70]

As regards freedom of the media, the news media in Turkey has been subjected to frequent and numerous restraints and repression. Although freedom of the press is not completely absent, it is restricted in practice and constitutes one of the longest-standing human rights issues in the country.[71] The tendency to imprison journalists, media workers, and distributors with long pre-trial detention periods for debating topics perceived as sensitive continues at the time of writing. Contentious topics primarily relate to the Kurdish issue and discussion of terrorism, and more

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[70] European Commission, '2002 Regular Report on Turkey's Progress towards Accession'. COM(2002) 700 final (Brussels: 9 November 2002); European Commission, 'Turkey 2005 Progress Report' COM(2005) 561 final (Brussels: 9 November 2005); European Parliament. 'Turkey: Human Rights' (Brussels, 2006) p.5; European Parliament, 'Motion for a Resolution on the Human Rights Situation in Turkey' (10 December 2009) <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2009-0245&format=XML&language=EN> (accessed 15 January 2010); European Parliament, 'Motion for a Resolution on Breaking off the Accession Negotiations with Turkey' (10 December 2009) <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2009-0244&format=XML&language=EN> (accessed 1 August 2010)

[71] Gönenç, L. 'Recent Developments in the Field of Freedom of Expression in Turkey'. *European Public Law,* vol.11 no: 2 (2005) p.241-259.

limitedly to the Armenian genocide and the role of the military in Turkish political life. Such constraints frequently lead to a common phenomenon of self-censorship in the Turkish media. In 2013, for example, important domestic events such as bombings on Turkish-Syrian border and police brutality during the Gezi park protests were met with silence by many national media outlets. Lack of press freedom is inextricably linked to the legal framework on terrorism and organised crime. This legal framework is imprecise and open to conflicting interpretations by the courts, prosecutors, and security officers, leading to abuses. As regards Article 301 of the Penal Code, this was amended in 2008 after repeated pressure by the EU, by requiring permission from the Ministry of Justice to launch a prosecution. This measure resulted in a reduction of the number of prosecutions. However, the article remains in the Penal Code, prompting the EU to demand its complete removal.

In terms of citizens' right of access to information, frequent website bans according to the Law on the Internet have restricted the right to receive and impart information and ideas without interference by public authorities. In 2013, the aforementioned Turkish media blackout on the Gezi Park protests rendered the usage of social networking site Twitter the primary source of public information. In response, the government criticised social networking for being a danger for society at large, authorised police detentions of protesters sending Twitter messages ('tweets'), and set in motion Parliament proposals on how to monitor the legality of 'tweets'.[72] Furthermore, the Supreme Board of Radio and Television (RTÜK) issued warnings to a number of television stations which eventually transmitted live coverage of the Gezi Park protests on the basis that they were violating the principle of objective broadcasting and fined them for inciting violence. According to the 2013 Progress Report, this measure limited freedom of expression unduly and restricted citizens' right of access to information.[73]

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[72] Fishman, L. 'The Twitterisation of the Gezi Park Protests'. *Today's Zaman* (4 July 2013) <http://www.todayszaman.com/news-319990-the-twitterization-of-the-gezi-park-protests-by-louis-fishman-.html> (accessed 4 July 2013)

[73] European Commission, 'Turkey 2013 Progress Report'. COM(2013) 700 final (Brussels: 16 October 2013) p.32.

2.2. *Minority rights*

The EU's internal legal framework does not provide an established norm of protection in the area of minority rights. References to minority rights in the Charter of Fundamental Rights and the Lisbon Treaty stem from a strong principle of non-discrimination, which is based on the key objectives of economic integration and freedom of movement. As Cengiz and Hoffmann highlighted, the obligation of EU members to respect minority rights is negative (refraining from discrimination on the basis of nationality) rather than positive (promoting minority and cultural rights).[74] Regardless of the negative character of the EU standard, accession states are required to actively promote and protect the cultural and linguistic rights of their minorities. According to the European Commission's Directorate-General on Employment, 'minority' is defined as a group having stable ethnic, linguistic or religious characteristics that are different from the rest of the population, as well as a numerical minority position and the wish to preserve its own separate identity.[75]

Minority rights for Turkey refer to the freedom of members of ethnic and religious minorities to be educated in their own language, publicly use their language, and practice their religion without restrictions by the state. It is worth noting that apart from the non-Muslim minorities recognised under the Treaty of Lausanne (1923), the Turkish authorities consider Turkish citizens as individuals with equal rights rather than belonging to the majority or a minority. The EU, however, emphasises that this approach should not prevent Turkey from granting specific rights to certain citizens in line with European standards, on the basis of ethnic origin, religion or language, so that their identity can be preserved. To this effect, Turkey is a signatory to international conventions such as the UN International Covenant on Civil and Political Rights regarding the Rights of Minorities, and to the UN Covenant on Economic, Social, and Cultural Rights regarding the Right to Education. Nevertheless, it has not signed the CoE Framework Convention for the Protection of National Minorities nor the Charter for Regional

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[74] Cengiz, F. and Hoffmann, L. 'Rethinking Conditionality: Turkey's European Union Accession and the Kurdish Question'. *Journal of Common Market Studies*, vol.51 no: 3 (2013) p.419 (416-432)

[75] European Commission, 'Equal Rights vs. Special Rights? Minority Protection and the Prohibition of Discrimination' (Luxembourg: Office for Official Publications of the European Communities, 2007) p.12.

and Minority Languages. The issue of minority rights in Turkey is related both to minorities recognised by Turkey under the Treaty of Lausanne (non-Muslim minorities such as Greeks, Armenians, and Jews) and to minorities not legally recognised as such, such as the Kurdish-speaking population.

The rights of recognised (non-Muslim) minorities have traditionally been limited in Turkey, a state which did not encourage social diversity due to the uniform vision of the republican establishment.[76] Perceived as 'domestic foreigners', their situation has been frequently linked to Turkey's foreign relations.[77] Since 1999, Turkey's EU membership prospect has paved the way to promoting non-Muslim minority rights in three types of legislation, namely freedom of expression, freedom of religion, and the status of minority foundations. Non-Muslim minorities are currently allowed to be educated in minority schools and receive official graduation certificates if they are Turkish citizens. Minority newspapers are enabled to run and publish official announcements, and the Law on Radio and Television Channels has been amended through various harmonisation packages to allow broadcasting in minority languages and dialects. Furthermore, the Law on Foundations has been amended to permit non-Muslim foundations to acquire property, and some seized properties have been returned under conditions. In preparation for the new constitution in 2012, recognised minorities were allowed to be present in Parliament to present their views for the first time. Some limitations are encountered by the Greek minority in terms of access to education, especially concerning the closure of the Halki Theological School. Moreover, there is no legal framework that addresses discrimination issues, and non-Muslim communities continue to lack legal personality. Rhetoric against minorities is present in several compulsory schoolbooks and in the mainstream media. Despite shortcomings, Turkey's EU membership process has improved dialogue on the rights of recognised minorities in an unprecedented way, and the implementation of legislative changes, though slow, is uninterrupted.[78]

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[76] Soner, A. B. 'The Justice and Development Party's Policies towards non-Muslim Minorities in Turkey.' *Journal of Balkan and Near Eastern Studies* vol.12 no: 1 (2010) p.24 (23-40)

[77] Ulusoy, K. 'The European Impact on State–Religion Relations in Turkey: Political Islam, Alevis and Non-Muslim Minorities.' *Australian Journal of Political Science* vol.46 no: 3 (2011) p.418 (407-423)

[78] Türkmen, F. and Öktem, E. 'Foreign Policy as a Determinant in the Fate of Turkey's Non-Muslim Minorities: A Dialectical Analysis.' *Turkish Studies,* vol.14 no: 3 (2013) p.472 (463-482)

The issue of minority rights for non-recognised minorities primarily relates to the discord over the Kurdish language, which is strongly affected by the long-standing Kurdish political issue in Turkey. From a legal perspective, the fundamental issue is that following the emergence of the republic, Turkey's constitutional regime created a unified nation on the basis of Turkish identity. The purpose was to reject other cultural identities that could cause foreign interference in the affairs of the state and lead to its subsequent disintegration. According to this approach, there was no 'Kurdish issue' in Turkey, only a problem of terror.[79] In addition to this legal rejection, the armed conflict between the Turkish military forces and the Kurdistan Workers' Party (PKK) in the predominantly Kurdish-populated south-east Turkey rendered the Kurdish issue multidimensional: on the one hand, there is a strong human rights dimension due to the disproportionate use of force by the state particularly under the emergency rule and the Anti-Terror Act; and on the other hand, there are significant socio-economical implications caused by state-induced internal displacement.[80] In addition, the existence of a Kurdish ethnic group was denied for a long time and the Kurdish language was prohibited in education, publication, and public (official) use.

It is against this background that EU-induced reforms in the area of minority rights ought to be discussed. EU human rights promotion to Turkey has frequently placed the Kurdish issue at the core of Turkey's obligation for political reform. The European Commission's very first progress report on Turkey (1998), for instance, placed the Kurdish issue at the centre of the entire assessment of compliance with the Copenhagen political criteria. The report considered the state's military approach to be keeping the status of human rights in Turkey hostage to national security considerations, and attributed the country's general non-compliance with the human rights criteria to the effects of the Kurdish issue.[81] In addition, the EU pushed for the advancement of Kurdish 'cultural rights' through the prism of equality and non-discrimination, which had the positive effect of de-securitising the issue. This

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[79] Cengiz and Hoffmann, 'The Kurdish Question', p.420.
[80] *Ibid.*
[81] European Commission, 'Regular Report on Turkey's Progress towards Accession' (Brussels: 1998) p.9.

prevented the EU's demands from playing into the hands of those accusing the organisation of only wanting to weaken Turkey's territorial integrity.[82] Since 1999, there has been progress of reforms in favour of Kurdish rights in Turkey,[83] which will be outlined below.

Since Turkey became a candidate state for EU membership, the usage of Kurdish language has been re-framed as a human right for the natural expression of a national identity. Politically, reforms in areas of direct impact on the Kurdish issue changed the context in which Kurdish cultural/linguistic rights were viewed by key actors. Some of the reforms that had bearing on the Kurdish issue included freedom of expression and association, the abolishment of state security courts, and the reduction of the role of the military in Turkish politics. As Larrabee and Töl argued, 'the strengthening of civilian control over the military in Turkey in recent years has made it easier for Ankara to change its approach to the Kurdish issue'.[84] Consequently, several noticeable reforms have been implemented as part of Turkey's accession process. The ban on broadcasting in Kurdish has been lifted, and Kurdish has been partially introduced into the national curriculum of private schools. There are currently fewer restrictions to the use of Kurdish in courts and prisons. The South-East Anatolia Project has aimed to improve socio-economic development in the primarily Kurdish-populated region. The AKP government's engagement with Kurdish issues through peace talks and democratisation packages has opened up space for political and media debate on Kurdish rights in an unprecedented way. Nevertheless, it should be noted that Turkey's general approach to Kurdish rights has been subjected to significant fluctuations in the last decade, and remains restrictive. Legislation still prohibits the public use of languages other than Turkish, including the Constitution and the Law on Political Parties. There is no provision for public services in Kurdish or for Kurdish education in public schools. Although the Kurdish-related Peace and Democracy Party (*Barış ve Demokrasi Partisi*, BDP) has demanded a definition of citizenship without ethnic references, no action has been taken in this area. More significantly, arrests of BDP-affiliated Kurdish politicians,

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[82] Kirişci, K. 'The Kurdish Issue in Turkey: Limits of European Union Reform'. *South European Society and Politics*, vol.16 no: 2 (2011) p.338 (335-349)

[83] Hale, W. 'Human Rights and Turkey's EU Accession Process: Internal and External Dynamics, 2005-2010'. *South European Society and Politics*, vol.16 no: 2 (2011) p.325 (323-333)

[84] Larrabee, F.S. and Töl, G. 'Turkey's Kurdish Challenge'. *Survival*, vol.53 no: 4 (2011) p.144 (143-152)

activists, and local mayors on suspicion of terrorism continue. Kurdish journalists continue to be detained under Article 314 of the Penal Code on membership in an armed organisation.[85] Overall, the expression of Kurdish identity has gained noticeable ground since the 1990s, but the protection of civil liberties is not currently in pace.

2.3.   Freedom of association

The development of human rights protection in Turkey has been inhibited by the constraints placed by the state on freedom of association. Civil society is still not widely considered by those traditionally involved in politics as a legitimate stakeholder in Turkish democracy.[86] The development of civil society and human rights activism in Turkey, since the quest for EEC/EU membership began, can be briefly examined within three historical periods: 1960-1980, 1980-1999, and post-1999.[87] For the purpose of this analysis, the following definition of civil society is adopted, as put forward by Diamond: 'civil society is the realm of organised social life that is voluntary, (largely) self-supporting, autonomous from the state, and bound by a legal order or a set of shared values'.[88]

The first period, 1960-1980, was characterised by strong state influence and oversight over associational freedom which hampered the functioning of civil society organisations.[89] Initially, the Constitution of 1961 provided the legal framework for the development of associational activity.[90] It widened fundamental rights and freedoms and introduced social rights, such as the right to form associations without prior permission. This transformation was disrupted by the ideological polarisation of the 1960s and 1970s, which divided organisations into opposing political camps that

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[85] Commission, '2013 Report', p.52.
[86] Barkey, H. J. 'The Struggles of a Strong State'. *Journal of International Affairs*, vol.54 no: 1 (2000) p.95 (87-105)
[87] Third Sector Foundation of Turkey (TÜSEV), 'Civil Society in Turkey: at a Turning Point' (Ankara: TÜSEV Publications, 2011) p.53.
[88] Diamond, L. 'Rethinking Civil Society: Toward Democratic Consolidation'. *Journal of Democracy*, vol.5 no: 3 (1994) p.5 (4-17)
[89] Third Sector Foundation of Turkey (TÜSEV), 'Civil Society in Turkey: An Era of Transition' (Ankara: TÜSEV Publications, 2006) p.37.
[90] Constitution of the Turkish Republic, Article 29 (Ankara: 1961) <http://www.anayasa.gen.tr/1961constitution-text.pdf > (accessed 14 March 2011)

simultaneously clashed with the state.[91] As discussed earlier, a series of military coups suspended democratic life (1960, 1971 memorandum, and 1980). The suspension of democratic life not only disrupted the multi-party parliamentary system, but also redefined the national security concept at the expense of democratic and human rights norms.[92] In practice, this meant that any internal political or associational activity could be interpreted in the language of internal security threat. Such a definition influenced the codification of laws pertaining to associational activities, freedom of expression, and the expansion of military jurisdiction over civilians.[93] This development eliminated the possibility of structured civic dialogue with the state to exchange ideas and expertise on human rights protection.

The second period, 1980-1999, began with the 1980 military coup and the ensuing military regime. The military regime and the illiberal constitution that followed the transition to party politics in 1982 had disastrous effects for civil society and human rights in Turkey. The junta announced a plan to 'depoliticise' society, so as to render any future intervention unnecessary.[94] With any political or associational activity presented as a national security threat, organisations were suspended or shut down permanently, and serious human rights violations followed.[95] The 1982 Constitution severely restricted freedom of association and weakened trade unions, professional organisations and voluntary associations. No form of cooperation was allowed between political parties and civil society.[96] However, the widespread human rights violations of the 1980s and 1990s led to the emergence of human rights non-governmental organisations that operated against state arbitrariness within a context of intensified state control over their activism. In the 1990s, there was certainly a desire for real progress in the area of human rights protection in parts of Turkish civil society. Leading Turkish NGOs, such as the Human Rights Foundation of Turkey

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[91] Ergil, D. 'Identity Crises and Political Instability in Turkey'. *Journal of International Affairs*, vol.54 no: 1 (2000) p.55 (43-62)

[92] Çizre, Ü. 'Problems of Democratic Governance in Civil-Military Relations in Turkey and the European Union Enlargement Zone'. *European Journal of Political Research*, vol.43 no: 1 (2004) p.108 (107-125)

[93] Aydın, Z. 'The State, Civil Society and Environmentalism'. In *Environmentalism in Turkey: between Democracy and Development?*, ed. by F. Adaman and M. Arsel (Burlington: Ashgate, 2005) p.57 (53-70)

[94] Ahmad, F. *Turkey: The Quest for Identity* (Oxford: OneWorld Publications, 2003) p.150.

[95] Drorian, S. 'Turkey: Security, State and Society in Troubled Times'. *European Security*, vol.14 no: 2 (2005) p.268 (255-275)

[96] Özbudun and Gençkaya, *Constitution-Making in Turkey,* p.20.

and the Human Rights Association (discussed in Chapter Five), along with the representations of international NGOs, published reports annually that highlighted the extent of human rights violations by the state.

It was not until 1999 that civil society began to show renewed importance in quantitative and qualitative terms.[97] The emergence of this growth is related to Turkey's status as a candidate state for EU membership. The condition that 'the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' promoted constitutional amendments and legal reforms that would revise the regulations limiting freedom of association.[98] In the reform period that followed (2001-2005), the Law of Associations and the Law of Foundations underwent a comprehensive revision which aligned freedom of association to broader international standards. At the same time, the EU actively supported human rights organisations as an agent for change in Turkey.[99] The EU programmes of financial support and human rights consultations, analysed in Chapter Four, are considered to have strengthened the position of human rights organisations *vis-à-vis* Turkish governments. In the period of EU accession negotiations, the quest for further consolidation of democracy has been strongly tied up with debates on civil society as 'volitional, organised collective participation in public space between individuals and the state'.[100]

Freedom of association in Turkey during the chronological period presented above was hampered by government interventions, such as legal barriers preventing NGO formation and the acquiescence of funding sources. In addition, imprisonment of activists and bureaucratic harassment constituted decisive forms of intervention.

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[97] TÜSEV, 'A Turning Point', p.55.

[98] Keyman, E. F. and İçduygu, A. 'Globalization, Civil Society and Citizenship', *Citizenship Studies*, vol.7 no: 2 (2003) p. 219–235; Ergun, A. 'Civil Society in Turkey and Local Dimensions of Europeanization'. *Journal of European Integration*, vol.32 no: 5 (2010) p.508 (507-522)

[99] Amongst the NGOs supported by the EU have been the Helsinki Citizens' Assembly, the Human Rights Foundation, the Human Rights Association, the Association for Liberal Thinking, the Human Rights in Mental Health Initiative Association, the International Hrant Dink Foundation, the Batman Association of Solidarity with the Poor and Struggle against Poverty, the Flying Broom, the Foundation for the Support of Women's Work, the Organisation of Human Rights and Solidarity for Oppressed People (Mazlumder), the Association for Freedom of Thought, and the Accessible Life Association.

[100] İbrahim S.E. 'Civil Society and Prospects for Democratization in the Arab World'. In *Civil Society in the Middle East* vol.1, ed. by A.R. Norton (Leiden: Brill Publications, 1995) p.28.

This left human rights NGOs generally uneasy in expressing opinions that challenged the state's implementation of law and policy for fear of sanctions.[101] Self-censorship of this form is in contrast with international principles protecting civil society, which conceptualise it as a realm of activity that is independent (although complementary) to the state.[102] Furthermore, the attitude of the state towards active citizenship in Turkey has constituted an impediment to public involvement in human rights activism. The citizens of Turkey were expected to put state interest before their individual rights and freedoms because the emphasis in Turkish citizenship has traditionally been on 'duty' rather than on 'right'. As Keyman and İçduygu argued, 'the citizen is only active in terms of its duties to the state, but passive with respect to its will to carry the language of rights against state power'.[103] The preamble of the 2001 Constitution stated that 'no protection shall be accorded to any activity contrary to Turkish national interests, the ... indivisibility of state and territory, Turkish historical and moral values'.[104] Under this particular notion, international human rights norms could only be considered lawful insofar as their practice did not put into question the six principles of Kemalism.[105] The above concerns challenged the legitimacy of human rights activism. [106]

Moreover, the ability of human rights activism in Turkey to act as an effective agent of reform was compromised by a considerable degree of political fragmentation within civil society itself. It is important to highlight that in the period preceding EU candidacy (1980s and 1990s), the overall sphere of civil society was characterised by acute ideological divisions. As Öniş highlighted, the social structure in the above period was characterised by polarisation between Turkish-Kurdish, secular-Islamist, right-left and urban-rural divisions.[107] This

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[101] Toprak, B. 'Civil Society in Turkey'. In *Civil Society in the Middle East,* vol.2, ed. by A.R. Norton (Leiden: Brill Publications, 1996) p.91 (87-119)

[102] Kumar, K. 'Civil Society: An Inquiry into the Usefulness of an Historical Term'. *British Journal of Sociology*, vol.44 no: 3 (1993) p.386 (375-395); Baker, G. 'The Taming of the Idea of Civil Society'. *Democratization*, vol.6 no: 3 (1997) p. 1-29.

[103] Keyman, E.F. and İçduygu, A. 'Globalization, Civil Society and Citizenship in Turkey'. *Citizenship Studies*, vol.7 no: 2 (2003) p.231 (219-234)

[104] Constitution of the Turkish Republic, Preamble (2001)

[105] Weber, M. 'Relations between the State and Civil Society in Turkey: Does the EU Make a Difference?' In *Turkey and the European Union: Internal Dynamics and External Challenges*, ed. by J. Joseph (Basingstoke: Palgrave Macmillan, 2006) p.86 (83-95)

[106] Gready, P. *Fighting for Human Rights* (Abingdon: Routledge, 2004) p.1.

[107] Öniş, Z. 'The Political Economy of Islamic Resurgence in Turkey: The Rise of the Welfare Party in Perspective'. *Third World Quarterly*, vol.18 no: 4 (1997) p. 748 (743-766)

reality included discords concerning political Islam against secularism, national sovereignty against membership of the EU, Kurdish rights against nation-state unity, and uncompromising industrial growth against environmental conservation.[108] The diverse sphere of associational activity often lacked tolerance for opposing views. Diverse organisations tended to conceptualise human rights norms in a conflicting way, and did not develop shared understandings or a common discourse in order to advance human rights claims. Despite some positive work, NGOs generally did not cooperate in developing common positions about human rights claims.[109] The director of Women Entrepreneurs Association of Turkey, Gülseren Onanç, recently claimed that:

> When society is polarised in such a way... people are almost forced to choose their ideological sides. This actually prevents us all from seeing the big picture. Some of the civil society in Turkey, instead of siding with the individual, stands behind an ideology. This approach prevents it from seeing the problem from the perspective of equal citizenship and compassion, just like some politicians. Civil society remains so clumsy in the face of humanitarian demands.[110]

Consequently, the ability of civil society organisations to develop common positions about human rights reform was limited. This situation created an important weakness for Turkey's human rights actors, and further affected their ability to influence policy-making.[111]

Concerning recent reforms in freedom of association, the EU Progress Report 2013 identified several important shortcomings. Regarding participation, there are currently no mechanisms whereby NGOs can voice demands and be involved in policymaking. Rather, the approach is *ad hoc* and often limited to specific phases of policy design as opposed to the entire policy cycle. In addition, some civil society activities are regulated by restrictive primary and secondary legislation. For example,

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[108] *Ibid.*

[109] History Foundation of Turkey, 'Contributing to the NGO movement' <http://www.tarihvakfi.org.tr/english/ngomovement.asp> (accessed 2 July 2010)

[110] Önanç, G. 'Kurdish Issue needs more Empathy from Civil Society'. Interview to *Today's Zaman* (10 October 2009) <http://www.todayszaman.com/tz-web/mobile.do?load=wapDetay&link=188923> (accessed 29 June 2010)

[111] Karaman M. L. and Araş, B. 'The Crisis of Civil Society in Turkey'. *Journal of Economic and Social Research*, vol.2 no: 2 (2000) p. 46 (39-58)

the right to publish press statements is limited and prior notice is required for demonstrations, which are often confined to a limited number of designated sites and dates. The financial environment of NGOs is characterised by insufficient incentives for private donations and sponsorship, making many of them dependent on public (often international) project grants. The collection of domestic and international funds was difficult and bureaucratic procedures cumbersome, and fundraising rules remain restrictive and discretionary. In 2013, many associations had to seek court protection to defend their rights. In Van, 10 NGOs were shut down following accusations of having helped terrorist organisations and having engaged in terrorist propaganda. Nevertheless, the court case against them was rejected for lack of evidence.[112] Additionally, international NGOs providing relief to the Syrian refugees and displaced were legally investigated. Moreover, the European Court of Human Rights found Turkey in violation of Articles 10 (freedom of expression) and 11 (freedom of assembly and association) of the ECHR concerning the closure case launched against a trade union for referring in its charter to its support for the 'right to mother tongue education'. The EU-Turkey Civil Society Dialogue programmes continue and have now involved more than 1600 CSOs.[113] As will be discussed in Chapter Four, EU financial and technical assistance contributes to civil society development and helps to increase the capacities, partnerships and visibility of individual human rights NGOs.

2.4.   *Freedom of religion*

Freedom of religion in Turkey can be seen as a function of the state's definition of national identity in a manner that impedes citizens from living and expressing their religious identity in public life. In the twentieth century, republican Turkey expressed and popularised the perception that there is an essential incompatibility between democratic values and beliefs in Islam.[114] Broadly speaking, two approaches to Turkish secularism can be identified. The long-dominant political approach can be labelled here as the 'essentialist' approach. This approach traditionally argued that religiously-based political ideologies undermined the ideals

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[112] Commission, '2013 Report', p.53.
[113] *Ibid.*
[114] Toprak, B. 'Islam and Democracy in Turkey'. In *Religion and Politics in Turkey*, ed. by A. Çarkoğlu and B. Rubin (Abingdon: Routledge, 2006) p.25 (25-44)

of modernisation and Westernisation of the republic.[115] Expression of Islam through a political front was persecuted through the banning of political parties, military ultimatums, and prosecution of politicians on suspicion of planning to destabilise the secular state. Public expression of pro-Islamic ideas was also contained by restriction on the wearing of the Muslim headscarf by females at schools, universities, and the civil service. To this day, this particular secularism shapes the world-views of many Turkish citizens and is widely proclaimed by the educated elite and the military.[116]

The second, more liberal approach to secularism in Turkey is based on the premise that the state controls religious affairs while not supporting or condemning any religion as such. Indeed, Turkish governments have done little to prohibit non-political religious activities. The consecutive constitutions have articulated the principle of freedom of religion and conscience for Turkish citizens, minorities, and foreign residents alike, and religion remains an enduring and important factor in the social life of the country, with little or no contestation by the political elite.[117] After decades-long policy of stringent secularism that subordinated religious liberties to the primacy of the state, the latter approach found its official political expression with the election of the pro-Islamic AKP in 2002. The struggle for the political expression of Islam re-emerged in a strong shape, and the AKP framed religious freedom through an EU-inspired discourse of equality and non-discrimination.

Turkey's official policies on religion normally permit the practice of any religion, and freedom of worship is generally respected. However, non-Muslim minorities and non-Sunni sects of Islam suffer from limitations to their right to religious expression. Non-Muslim communities lack legal personality and thus encounter limitations concerning the right to construct their own places of worship. Furthermore, due to absence of relevant Turkish legislation, problems are encountered in relation to education of non-Muslim religious functionaries. There is also no legislation regarding the conduct of missionary work, or exemptions from

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[115] Küçükcan, T. 'State, Islam, and Religious Liberty in Modern Turkey'. *Brigham Young University Law Review*, (2003) p.495 (475-506)

[116] Arat, Y. 'Religion, Politics, and Gender Equality in Turkey: Implications of a Democratic Paradox?' *Third World Quarterly*, vol.31 no: 6 (2010) p.871(869-884)

[117] Öktem, N. 'Religion in Turkey'. *Brigham Young University Law Review* (2002) p.404 (371-404)

Muslim religious education in school. Elements creating religious discrimination can be found in school textbooks, such as the inclusion of 'missionary activities' in the National Threats section of a Grade Eight schoolbook.[118] Non-Sunni sects of Islam also encounter restrictions, with Alevi communities facing administrative difficulties and frequent rejections to their applications for places of worship. In its annual progress reports on Turkey, the EU repeatedly emphasises the importance of aligning freedom of religion and worship to the European standards declared by the Council of Europe.

Moreover, the banning of Muslim headscarf in the civil service and educational and political institutions was also considered an infringement of enjoyment of religious liberty until its re-instatement in 2013.[119] For the women concerned, the ban on the headscarf as an expression of religious freedom had signified not only a violation of religious freedom, but also a violation of women's rights and gender equality, which in Turkey is placed as a core value of republican secularism. Some affected women argued that stringent secularism caused psychological suffering of one being legally forbidden to live a life of integrity and in harmony with one's religious conscience and convictions, resulting in disintegration of a central aspect of their lives.[120] While claims were made arguing for the full legalisation of the headscarf as a human right, the European Court of Human Rights (ECtHR) ruled in 2005 that Turkey, a 'democratic society', was entitled to ban adult women from wearing the Islamic headscarf on the basis that the ban has been prescribed by law and has a 'legitimate aim' (to protect the rights and freedoms of others).[121] Conversely, the EU viewed the so-called headscarf problem as an issue relating to equality and non-discrimination and urged Turkey to regulate a lasting solution, without proposing any concrete measures *per se*. By virtue of these conflicting understandings of religious freedom and secularism, even after its official re-instatement, the headscarf issue continues to spark debate in Turkey. In particular,

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[118] Association of Protestant Churches-Turkey, 'Report on Human Rights Violations of 2009' (Izmir: January 2010) p.3.

[119] Borovali, M. and Turan O. 'A Legitimate Restriction of Freedom? The Headscarf Issue in Turkey'. In *Remaking Turkey*, ed. by E.F. Keyman (Lanham MD: Lexington Books, 2007) p.139 (137-152)

[120] Genel, A. and Karaosmanoğlu, K. 'A New Islamic Individualism in Turkey: Headscarved Women in the City'. *Turkish Studies*, vol. 7 no: 3 (2006) p.480 (473-488)

[121] European Court of Human Rights, *Leyla Şahın vs. Turkey* (Strasbourg, 10 November 2005) http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=turkey&sessionid=72486530&skin=hudoc-en (accessed 20 June 2011)

female MPs bearing the headscarf have been challenged by their secular counterparts to act as true promoters of women's rights for all women in Turkey.[122]

2.5. *Women's rights and gender equality*

During the EU accession process, the Turkish government has fuelled legal reforms to improve gender equality and eliminate discriminatory provisions against women. The AKP government has been noticeably successful in securing gender equality based on sameness between women and men in the labour market and as independent citizens. However, while many reforms have been implemented, gender equality still remains one of the main human rights concerns in Turkey. The EU's gender equality agenda to Turkey is filtered through local political and cultural attitudes towards women's place in society. Some scholars have gone as far to argue that EU gender equality requirements have actually worked against women, because the AKP, reflecting the patriarchal structure that permeates almost all political tendencies in Turkey, promotes conservatism through liberal strategies.[123] Dedeoğlu, for instance, argued that because the implementing government consists of a conservative political party, its implementation ideology is based on securing women's place in the family while simultaneously securing women's role as independent citizens. This results in a tension between two opposing lines of action: legislation promises greater gender equality, while policy is directed towards keeping women's traditional roles intact.[124] Thus, traditional gender roles in Turkey constrain the interpretation and implementation of the EU's agenda on the policy front, even though legislation is enacted.

Turkey has legally espoused women's rights since the inception of the republic in 1923. Women's rights were considered an integral part of the

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[122] Pavey, Ş. 'Who will put you in the next Olympics ad?' Speech in Turkey's Grand National Assembly (1 November 2013) <http://www.hurriyetdailynews.com/who-will-you-put-in-the-next-olympics-ad.aspx?pageID=449&nID=57225&NewsCatID=396> (accessed 2 November 2013)

[123] Coşar, S. and Yeğenoğlu, M. 'New Grounds for Patriarchy in Turkey? Gender Policy in the Age of AKP'. *South European Society and Politics*, vol.16 no: 4 (2011) p.556 (555-573); Dedeoğlu, S. and Elveren, A.Y. *Gender and Society in Turkey: the Impact of Neoliberal Policies, Political Islam, and EU Accession* (London: I.B. Tauris, 2012)

[124] Dedeoğlu, S. 'Equality, Protection, or Discrimination: Gender Equality Policies in Turkey'. *Social Politics*, vol.19 no: 2 (2012) p.285 (269-290)

modernisation and Westernisation of Turkey. Women gained the right to vote earlier than most Western nations (1934) and various customary or religious practices that were considered gender-biased were abolished (e.g. polygamy). Since the 1980s, a new feminist movement campaigned to challenge laws and practices that had been accepted for generations, such as laws on property-sharing, adultery, and rape that favoured the male.[125] It subsequently contributed to Turkey's signing in 1985 of the UN Convention on the Elimination of all Forms of Discrimination against Women. A large number of women's organisations continue to advocate for change in the existing and 'deeply entrenched' social frameworks that discriminate against women,[126] and some reach out to EU instruments for financial and technical assistance. Nevertheless, despite pro-women legislation and an official stance in favour of gender equality, women in Turkey remain far from equal to their male counterparts. Gender bias manifests in areas such as educational access, the representation of women in decision-making posts and politics,[127] participation in labour,[128] and domestic violence.[129] In the words of Kardam: 'the translation of international norms to the national and local level remains elusive, and there are many gaps between global norms and local responses where it comes to implementation'.[130]

In its process of EU integration, Turkey has been keen on emphasising its pro-liberal stance on gender equality, and legal reforms have been enacted. At the time of writing, legislation upholding gender equality in Turkey is progressing. In 2012, a Law on the Protection of Family and Prevention of Violence against Women was adopted, and a Parliamentary Committee on Equal Opportunities between Men and Women was established. Additionally, the Ministry of Family enacted a 'National Action Plan to Combat Violence against Women' for the period 2012-2015.

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[125] Arat, Y. 'Gender and Citizenship in Turkey'. In *Gender and Citizenship in the Middle East*, ed. by S. Joseph (New York: Syracuse University Press, 2000) p.278 (275-286)

[126] Özer, S. 'Democratisation, Conflict Transformation and Women's Organisations'. In *Turkey and Human Security*, ed. by A. Özerdem and F. Özerdem (Abingdon: Routledge, 2013) p.97 (87-104)

[127] Ecevit, Y. 'Women's Rights, Women's Organisations, and the State'. In *Human Rights in Turkey*, ed. by Z. F. Kabakasal Arat (Philadelphia: University of Pennsylvania Press, 2007) p.200 (187-201)

[128] Dedeoğlu, S. *Women Workers in Turkey* (London: I.B. Tauris, 2008); İlkkaracan, İ. 'Why so few Women in the Labour Market in Turkey?' *Feminist Economics*, vol.18 no: 1 (2012) p.1-37.

[129] Human Rights Watch. 'He Loves You, He Beats You: Family Violence in Turkey and Access to Protection' (New York: Human Rights Watch, 2011)

[130] Kardam, N. *Turkey's Engagement with Global Women's Human Rights* (Aldershot: Ashgate, 2005) p.30.

In 2013, Domestic Violence Prevention Centres were established in twelve pilot cities. Nevertheless, many legal measures remain pending, and implementation of Turkey's international obligations to enforce gender equality remains incomplete.

According to the EU's 2013 Progress Report, substantial efforts are needed to turn new laws, and earlier legislation such as the Turkish Civil Code, into political, social and economic reality. Gender equality laws are not consistently applied across the country, and there is considerable inequity between women in urban/rural, western/eastern and upper/lower income divisions in terms of access to education, healthcare, labour, and public decision-making.[131] Girls' school enrolment and drop-out rates remain problematic, and need to be centrally monitored. The issue of early and forced marriages is also a concern, as is the issue of 'honour killings'. Violence against women continues to figure, both in family life, and in mainstream media and entertainment productions. Shelters for women subject to domestic violence are only established in cities holding population of 100,000 or more. The number of women in the labour force and politics remains low, and women's organisations which attempt to advocate for these issues argue that governmental dialogue with civil society organisations is limited to those close to the AKP. Overall, the report concluded that there is a need for greater involvement of and participation by women in employment, policy-making and politics. More importantly, there is need for proper enforcement of Turkey's already advanced web of gender equality legislation which will only occur with change in deeply ingrained attitudes on male-female relations.

To conclude, the AKP's adoption of EU human rights standards through legal reform has been constrained.[132] After 2005, and more perceptibly after its second electoral victory in 2007, the party has shown less dependence on the EU's human rights agenda and less willingness to stand behind achieved reforms. For example, the new penal code adopted in 2005 not only fell short of effectively protecting women's rights particularly with respect to honour killings and virginity testing, but

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[131] Gök, F. and Ilgaz, D. 'The Right to Education'. In *Human Rights in Turkey*, ed. by Z.F. Kabakasal Arat (Philadelphia: University of Pennsylvania Press, 2007) p.123 (123—136)
[132] Patton, M.J. 'AKP Reform Fatigue in Turkey: What Has Happened to the EU Process?'. *Mediterranean Politics*, vol.12 no: 3 (2007) p.339-358.

also tightened prosecution for the expression of non-violent opinions deemed to insult the nation and harm national interest. The governing party also retained the controversial anti-terror law, and there were episodes of police using unwarranted lethal violence during street disturbances.[133] In 2009, the European Parliament called to 'end the current accession negotiations with Turkey', stating that it was making 'limited or absolutely no progress' on fulfilling the human rights criteria, and that it would be beneficial to both sides to enter into negotiations about a privileged partnership.[134] Leftist and pro-Kurdish political newspapers and journals especially were subject to arbitrary closure.[135] Condemnation were raised internationally in June 2013 when lethal police violence against waves of peaceful Gezi Park protesters attracted criticism from international and local observers, leading the EU to postpone a new round of membership talks by four months.[136] Yearly EU progress reports persist in reminding Turkey that much remains to be done, and that the reform process must incorporate not only legal adoption but also practical implementation.

2.6.   Prevention of torture and ill-treatment

Prior to the enactment of EU-induced human rights reforms, torture in Turkey was so widespread that it did not simply constitute an acceptable practice in detention; it was expected. In 1988, Amnesty International reported that 'over a quarter of a million people have been arrested in Turkey on political grounds and almost all of them have been tortured'. It added that 'some were convicted for no more than expressing their opinions'.[137] Of major concern in Turkey's history of torture is the culture of impunity that protects the perpetrators of the violations.[138] According to Yıldız and McDermott, the issue of impunity remains a crucial obstacle

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[133]Human Rights Watch, 'Turkey: Events of 2005'. <http://www.hrw.org/by-issue/essential-background/218> (accessed 23 June 2013)

[134] European Parliament, 'Motion for a Resolution on Breaking off the Accession Negotiations with Turkey' (10 December 2009) <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2009-0244&format=XML&language=EN> (accessed 1 August 2010)

[135] Human Rights Watch, 'World Report 2011: Turkey'. <http://www.hrw.org/world-report-2011/turkey> (accessed 23 June 2013)

[136]Open Democracy, 'File: Turkish Dawn' <http://www.opendemocracy.net/freeform-tags/turkish-dawn-0> (accessed 10 June 2013)

[137] Amnesty International, 'Human Rights Denied' (April 1988) <http://ob.nubati.net/w/images/3/36/Camp8805.png> (accessed 20 October 2013)

[138] Human Rights Watch, 'Turkey: End Impunity for State Killings, Disappearances' (3 September 2012)

to human rights progress and hinders reform at a basic level.[139] The climate of impunity has been repeatedly criticised by the EU and remains a cause of concern. In an interview to the author, a European Commission official stated: 'an important problem in torture prevention is that the follow-up to cases of ill-treatment [in Turkey] is unsatisfactory. There is impunity for security forces who have committed such crimes… In our enlargement packages, we make the wording on impunity quite harsh'.[140]

The European Union's 2013 Progress Report criticised the lack of effort in establishing a national preventive mechanism under the Optional Protocol of the Convention against Torture. It declared that: 'more efforts are required to... promote independent and impartial investigations into allegations of torture and ill-treatment by the police and establish the truth about the numerous cases of extrajudicial killings in the 1990s'.[141] In October 2013, the Anti-Torture Committee of the CoE published a report that described 'a positive impression' regarding the prevention of torture in Turkish prisons. The report, which was compiled after the Committee conducted an ad hoc (unannounced) visit to Turkish prisons in June 2012, declared that inmates reported few incidents of ill-treatment by prison staff. The reported allegations prompted a criminal investigation on behalf of the Turkish authorities.[142] Nevertheless, the report stressed that although torture inflicted by prison staff is limited, violence amongst inmates is frequent and severe and needs to be addressed under the framework of prevention of torture. According to Freedom House, physical and sexual abuse against minors is widespread in Turkish prisons and remains unaddressed by the reforms enacted by the government.[143] The recommendations of the EU, the CoE, and other international watchdogs thus challenge the restrictive interpretation of 'torture' in Turkish law, and call for the prevention of all forms of mistreatment conducted within an official setting.

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[139] Yıldız, K. and McDermott, J. *Torture in Turkey: the Ongoing Practice of Torture and Ill-treatment* (London: Kurdish Human Rights Project, 2004) p.138.

[140] Interview with European Commission official (Brussels: 28 November 2009)

[141] Commission, '2013 Report', p.13.

[142] European Committee for the Prevention of Torture, 'Report to the Turkish Government on the Visit to Turkey Carried Out by the European Committee for the Prevention of Torture from 21 to 28 June 2012' (Strasbourg: 10 October 2013) <http://www.cpt.coe.int/documents/tur/2013-27-inf-eng.htm> (accessed 20 October 2013)

[143] Freedom House, 'Freedom in the World 2013 – Turkey'. <http://www.freedomhouse.org/report/freedom-world/2013/turkey> (accessed 20 October 2013)

Conclusion

This chapter drew out the main sources of human rights problems in Turkey and challenges that underpin the EU-induced reform process. As stated in the introduction, this exploration constitutes the first step in analysing the legitimacy of human rights promotion and the interaction of normative power Europe with Turkey's local context. It argued that European norm diffusion and political reform in Turkey demonstrate signs of both recognition and contestation of EU human rights standards. On the one hand, key political actors in Turkey continue to utilise the EU standard of legitimacy as one that presents political opportunities and empowerment possibilities to previously disadvantaged actors (pro-Islamic parties, Kurdish minority). On the other hand, domestic confrontations regarding the Kemalist orthodoxy and competing power positions in Turkish politics can undermine domestic reforms. Although the focus on only six human rights areas has compromised the depth of the analysis, it has proved useful in highlighting the tension between EU reform requirements and the standard of legitimacy that is embedded in Turkish politics.

From the perspective of legitimacy, it appears likely that EU norms and Turkey-EU relations will continue to feature as elements of Turkey's modernisation credentials. Turkey's chances of joining the EU might have receded in recent years, but in political reform, relations with the EU and discussions of democratisation continue to be situated at the intersection of Europe's universal norms and Turkey's particularistic historical and contemporary 'realities'. Turkey is still locked into a process of accession-related reforms, and the exclusivity of EU membership continues to motivate the Turkish elites, who value accession as a way of validating their country's European credentials.[144] Thus, the EU–Turkey relationship continues to be an important area of human rights development and change.

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[144] Rumelili, 'Turkey: Identity', p.235.

Chapter Four

Legitimacy in Practice: EU Financial and Technical Assistance to Turkey

This chapter examines Europe's 'normative power' in its relations with Turkey with specific reference to the procedural legitimacy of its main human rights instruments. It analyses the key procedural challenges of each instrument vis-à-vis its human rights goals, and problematises arising discrepancies between norms and material policy outcomes. It argues that there is a tension between the normative character of the human rights instruments and their implications in terms of the well-being of their beneficiaries. This tension is well-placed to furthering a reorientation of EU normative power within enlargement. Rather than align with the instruments' own visions and their norm-laid communications, the conception of EU normative power should rethink the effects of the EU external agenda for the disadvantaged communities in candidate countries outside Europe.

In order to understand and interpret the deficit in procedural legitimacy, Chapter Four will examine empirically the policies of human rights promotion to Turkey in the area of financial and technical assistance. Specifically, it will analyse the Instrument of Pre-Accession Assistance (IPA), the European Instrument of Democracy and Human Rights (EIDHR), and the system of human rights consultations. These mechanisms were chosen for analysis according to the selection criteria explained the introductory chapter: their long-standing presence in EU enlargement policy, their focus on bottom-up approaches to human rights reform, and their delineation as the EU's most important human rights instruments to Turkey by the EU officials interviewed for this chapter. Drawing upon the normative power and legitimacy literature reviewed in Chapter Two, the analysis will highlight the necessity for EU human rights policy to combine policy relevance to Turkey's current policy needs, with options for enhanced citizen participation and the ability to produce effective outcomes. These three criteria form the basis of the legitimacy evaluation.

The empirical data for this chapter draws extensively on interviews conducted by the author with European Commission officials (as noted in the introductory chapter and the appendices). In the absence of public information on the day-to-day operation of the policies applied by the Commission, these interviews were an invaluable source of data. They were conducted with Commission officials in Brussels and Ankara, and with representatives of human rights organisations in Turkey that are involved in EU-Turkey civil society cooperation. Every effort was made to verify the data on the operation of the procedures through following an identical line of questioning with different interviewees. The information was subsequently corroborated by official EU information on the Union's enlargement strategy towards Turkey – although the latter is limited in nature and scope. An exception is the analysis of the human rights activity of the EU-Turkey Joint Parliamentary Committee, which is based on the public records of its meetings.

1.   The Instrument of Pre-Accession Assistance (IPA)

The central objective of the provision of financial pre-accession assistance to Turkey is to assist its preparation for EU membership, based on the political, economic and structural priorities identified by the 2008 Accession Partnership.[1] Turkey has been receiving financial assistance under the IPA since 2007.[2] The amount of IPA funding for each reform area is designed in accordance with the overarching multi-annual programme for Turkey, the Multi-Annual Indicative Planning Document (MIPD).[3] The MIPD determines the management and implementation of the IPA. It takes the form of a strategic plan for the allocation of funds, broken down by component, on the basis of Turkey's needs, administrative

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[1] Council of the European Union, 'Council Decision 2008/157/EC on the Principles, Priorities and Conditions Contained in the Accession Partnership with the Republic of Turkey'(18 February 2008) <http://europa.eu/legislation_summaries/enlargement/ongoing_enlargement/e40111_en.htm> (accessed 15 January 2011)

[2] European Commission, 'Turkey – Financial Assistance' <http://ec.europa.eu/enlargement/candidate-countries/turkey/financial-assistance/index_en.htm> (accessed 25 September 2011)

[3] Council of the European Union, 'Council Regulation concerning Pre-Accession Financial Assistance to Turkey' OJ L 342/1 (17 December 2001) p.1.

capacity, and previous compliance with the Copenhagen Criteria.[4] To ensure targeted action and impact, the IPA consists of five components. Each component covers a specific priority area which is defined according to the needs of Turkey.[5] The component that is of special relevance to human rights is Component I 'Support for Transition and Institution-Building'.[6]

The strategic objective of IPA Component I is to speed up human rights reform in Turkey. As an EU official stated in an interview to the author, 'in this context [Component I] we are trying to help Turkey raise its standards in line with European standards on rule of law, democracy and human rights'.[7] The actors involved in its implementation are the EU Commission, Turkish government authorities, and to some extent domestic human rights-based NGOs. The reform areas are determined by the EU and reflect EU priorities, yet the EU requests Turkish authorities to identify concrete projects in order to preserve Turkish 'ownership'. As the same interviewee stated, 'it's best to have a strategic programme, and within that context [of ownership] Turkey makes proposals'.[8] According to the MIPD, public projects should reflect the following broad objectives:

- Support for the promotion of effective human rights governance in a broad sense (e.g. independence of the judiciary);

- Development of institutions and policies in line with relevant international human rights instruments;

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[4] European Commission, 'Instrument for Pre-Accession Assistance (IPA) Multi-annual Indicative Planning Document (MIPD) 2011-2013 – Turkey' <http://www.abgs.gov.tr/index.php?p=42164&l=1> (accessed 25 September 2011)

[5] Europa Summaries of EU Legislation, 'Instrument for Pre-Accession Assistance (IPA)' <http://europa.eu/legislation_summaries/agriculture/enlargement/e50020_en.htm> (accessed 17 January 2011)

[6] Components II, III, IV, and V, which are not examined in this chapter, concern cross-border cooperation, regional development, human resources development, and rural development.

[7] Interview with European Commission official (Brussels: 28 November 2009)

[8] *Ibid.*

• Enhancement of human rights knowledge amongst judges, law enforcement officials, prosecutors, educators, and other stakeholders involved in human rights issues in Turkey;

• Establishment of an independent National Human Rights Institution (NHRI) and an Ombudsman office to deal with complaints on human rights;

• Increase in the capacity of human rights NGOs; and

• Awareness on human rights of vulnerable groups, such as women and children.[9]

These objectives generally correspond to the broader human rights issues in Turkey that were highlighted in previous chapters.

Regarding the projects' beneficiaries, the bulk of the Component I budget allocated to human rights is dispensed by Turkey's Ministry of European Union Affairs. Although the project areas and their amount of funding are determined by the EU, their implementation is a matter for the relevant Turkish authority. Each authority is in charge of the strategic planning of the project in coordination with the objectives of the MIPD. Legitimacy considerations are discussed within the implementation of Component I according to the procedural criteria for normative power instruments analysed in Chapter Two: policy relevance, participation, and effectiveness.

A key IPA limitation in Turkey is lack of sufficient *policy relevance*. It addresses human rights issues selectively, often funding areas of lesser contention while overlooking more sensitive human rights demands. Component I is fundamentally selective: so far the EU has not requested projects on the most contentious issues criticised in its annual progress reports, namely freedom of

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[9] European Commission, 'Turkey: Multi-Annual Indicative Planning Document (MIPD) 2007-2009', p.13.
<http://www.ikg.gov.tr/web/Portals/0/Docs/elibrary/PALEGFRAWRK/MIPD%20(2007-2009)pdf>
(accessed 6 January 2013)

expression, freedom of religion, and minority rights. In 2007-2012, Component I did not include any projects in these areas, even though it covered other relevant issues (e.g. gender equality, children's rights, and prevention of torture).[10] Instead, EU pressure in favour of the aforementioned rights was limited to annual progress reports and human rights consultations. These are not as influential as funding, since their agendas serve as guidelines and do not deal directly with the day-to-day function of key implementing authorities in Turkey (e.g. Ministry of Justice or National Police).[11] Therefore, in the absence of projects, direct contact between EU officials and key stakeholders in the above human rights areas has been rather rare and usually ends up with the two sides engaging in general talks at the level of human rights dialogues (to be discussed further later in the chapter). Given the absence of projects, IPA is not likely to act effectively or exercise influence on the protection of freedom of expression, religion, and minority rights. Part of the question of legitimacy, however, is the extent to which the EU unproblematically accepts certain human rights problems as too ingrained for reform, thus preferring to back conventional practices rather than the process of human rights promotion. According to an EU official from DG Enlargement interviewed for this study, the reason for absence of projects on freedom of expression, religion, and minority rights reflects a lack of EU political will to engage with internal conflicts in Turkey. In his words:

> I have just come from a hearing in the European Parliament on Turkey and NGOs have criticised the EU on not doing enough on Turkey. The point is that yes, but we are not Amnesty International, and we also have to talk to the Turks about other things – I mean the environment is also important. We can't alienate any partner to the extent that they are not going to talk to us about other issues. We also have an interest, so there has to be a balance.[12]

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[10] European Commission, 'Turkey Financial Assistance' <http://ec.europa.eu/enlargement/instruments/funding-by-country/turkey/index_en.htm> (accessed 14 December 2012)

[11] Interview with European Commission official (Brussels: 2 December 2009)

[12] Interview with European Commission official (Brussels: 30 November 2009)

In the area of freedom of expression, EU credibility has recently been harmed by negative developments in the Ergenekon trial,[13] a crackdown against an alleged coup d'etat against the AKP government dating back to 2008.[14] The detention without trial of a large number of public figures, such as well-known secular activists, politicians, academics, journalists, and judges, for peaceful expression of ideas as part of an ongoing investigation into the alleged coup, is a striking example.[15] Although the EU has taken note of the case in its annual reports, it has not taken concrete action to condemn the repressive nature of the trial's procedures. The 2009 Progress Report, for example, praised the trial as a defence of democracy: 'the first case in Turkey to probe into a coup attempt and the most extensive investigation ever on an alleged criminal network at destabilising the democratic institutions'.[16] Nevertheless, it failed to acknowledge the long pre-trial detention periods, absence of concrete evidence, and public denigration of detainees by pro-government media. The procedural irregularities of the *Ergenekon* case have not found any significant echo in Brussels, and no IPA projects address limitations to freedom of expression in Turkey more generally.

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[13] The Ergenekon case rested on the argument of the governing AKP party that the Turkish military was planning a large-scale coup that would overthrow the AKP and force religion out of public life through military means. In 2013 the trial convicted 236 defendants for coup-plotting, including military personnel, members of the opposition party CHP, lawyers, academics, and journalists. Ergenekon sent a clear message to the military about the fate that would await its members if they attempted to exercise military control over civilian politics in the future. Nevertheless, both the trial and pre-trial period were replete with human rights infringements, including failure to investigate evidence comprehensively, concerns about freedom of expression, and prolonged pre-trial detention periods justified by a broad and vague notion of 'terrorism'. According to Human Rights Watch, the trial was a failure from a human rights perspective. It failed to look into allegations that a core group of defendants were responsible for serious human rights abuses in the 1980s and 1990s (torture, extra-judicial killings, forced human displacement, and political assassinations). It also highlighted that the thousands of people in Turkey who are on trial for 'terror' crimes face even less fair trials and flimsier evidence. In the words of Human Rights Watch: 'from a human rights point of view, a key disappointment of the Ergenekon trial was that it did not represent progress toward holding public officials, military, police and civil servants accountable for human rights violations in a way that will resonate with the public across the political divide, and that it did not serve to promote a more democratic culture'. Human Rights Watch, 'The Turkish Trial that Fell Far Short' (6 August 2013) <http://www.hrw.org/news/2013/08/06/turkish-trial-fell-far-short> (accessed 6 August 2013)

[14] Çizre, Ü. and Walker, J. 'Conceiving the New Turkey after Ergenekon'. *International Spectator*, vol.45 no: 1 (2010) p.94-5 (89-98).

[15] Eligür, B. *The Mobilisation of Political Islam in Turkey* (Cambridge: Cambridge University Press, 2010) p.273.

[16] European Commission, 'Turkey 2009 Progress Report'. SEC (2009) 1334 (Brussels: 14 October 2009) p.7.

The EU-funded IPA projects similarly suffer from a lack of relevance to a wide range of struggles that erupt within the realm of minority rights. The EU has long promoted minority rights in Turkey: for example, the European Parliament was a vocal actor in this area since the 1980s and 1990s, as mentioned in Chapter Three. The European Commission's annual progress reports document Turkey's progression meticulously. However, it is one thing to issue declarations, and another to push specific reforms through IPA assistance. The absence of Component I funding for minority rights projects puts official EU claim-making in support of linguistic and cultural freedoms into question.[17] The EU's isolation from minority rights becomes clearer if we compare its rhetorically supportive stance towards the Kurdish community with that towards other long-standing ethnic groups in Turkey. For instance, the rights of other communities are entirely absent from MIPD and IPA-funded projects. In an interview to the author, an official (of Assyrian descent) from Turkey's Ministry of European Union Affairs criticised the EU assistance for neglecting the presence of other ethnic groups in Turkey and the erosion of their freedoms rights as a result of centralised national homogeneity.[18] Consequently, in instances of human rights protection where decisive reform could not be politically accommodated, the EU remains reluctant and sceptical, and IPA financial assistance almost absent. The EU's self-assigned position as a promoter of minority rights in Turkey cannot then be considered a safe benchmark for legitimacy.

Further observation of IPA funding reveals lack of policy relevance within funding allocation in Component I. It appears there is gradual decrease in funding towards human rights projects in Turkey, despite the annual increase in overall IPA assistance (Components I-V). In order to examine the allocation of EU pre-accession financial assistance to Turkey, Table 1 presents information on IPA human rights funding for the period 2007-2013. The aim of the table is to highlight

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[17]As with freedom of expression, minority rights in Turkey are understandably contentious. Considerable segments of political elite and society fear that promoting Kurdish rights and regional devolution can lead to territorial disintegration.
[18]Interview with Ministry of European Union Affairs official (Ankara: 1 November 2010)

the limited amount of financial assistance the EU has directed towards human rights in relation to the total amount of IPA assistance that the EU has planned for Turkey.

Table 1: European Union IPA assistance to Turkey, 2007-2013

(In Euro, millions, unless specified as percentages)

Component	2007	2008	2009	2010	2011	2012	2013
▪ Amount allocated to human rights and democratic reform, civil society dialogue, and implementation of the *acquis* (component I: Transition Assistance and Institution-Building)	256,7	256,1	239,5	211,3	228,6	233,9	238,3
▪ Percentage of component I allocated to human rights and democratic reform	25%	25%	25%	25%	25%	25%	25%
▪ Percentage of IPA allocated to human rights and democratic reform*	13%	12%	10%	9%	7%	7%	6%
▪ Amount allocated to economic and social cohesion (components III and IV: Regional Development, Human Resources Development, and Rural Development)	217,7	226,7	238,3	301,5	371	457,7	474
TOTAL IPA ASSISTANCE	497,2	538,7	566,4	653,7	781,9	899,5	935,5

*Estimates based on average annual amounts provided to Turkey for projects in components I,III, and IV. Sources: Turkey Multi-Annual Indicative Planning Document (2007-2009); 2008 Annual Report on the Implementation of IPA; Commission Communication on IPA and MIPD for 2011-13; and *Turkey - Financial Assistance* <http://ec.europa.eu/enlargement/candidate-countries/turkey/financial-assistance/index_en.htm?id=keydoc#library>

The annual total budget for IPA and the amount of financial resources allocated to human rights reform in Turkey varies from one year to the next. As the

data demonstrates (see Table 1), the overall amount of IPA support to Turkey has increased significantly each year, reaching almost one billion euro for 2013. However, the amount of money channelled into Component I regarding the implementation of human rights decreased gradually in the period 2007-10. It began to increase again from 2011 onwards, though not reaching the original amount of 2007.

The percentage of Component I assistance allocated to human rights and democratic reforms remains stable every year (25 per cent). However, the annual increase in overall IPA funding has not been reflected in the support for human rights reform. Prior to 2011, the raise in IPA assistance, accompanied by the decrease in Component I funding (see Table 1) resulted in human rights occupying a limited part of the overall budget (13 per cent-10 per cent). The post-2011 increase in Component I correspondingly increased the amount allocated to human rights, but this was not in synchronisation with the raise in overall IPA assistance. The significant post-2011 boost in IPA was only very marginally reflected in Component I. As a result, the percentage of aid for human rights projects has been decreasing yearly, and reached the lowest point of meagre 6 per cent of IPA in 2013.

To this point, the case of IPA funding allocation illustrates that the EU has been reluctant to press Turkey for heavy engagement with the implementation of human rights reform. In an interview to the author, an official from DG Enlargement's Turkey Unit claimed that this restraint derives from lack of confidence in the European Commission that the Turkish government would accept EU human rights demands for areas considered sensitive.[19] The implication would be assumed to be that domestic political calculations might brand EU requirements as illegitimate and possibly derail the reform process. Additionally, the interviewee claimed that the EU lacks funds to engage comprehensively with Turkey's deeply

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[19] Interview with European Commission official (Ankara: 5 November 2010)

entrenched human rights problems, even though it recognises the importance of financial assistance in human rights promotion:

> We don't have enough money. The budget of the Union is now more or less 130 billion euros a year. It is a significant amount, but it is only a bit more 1% of the GDP of the Union, it is very small. This is the reason why we do not spend that much money on Turkey. But we know that it is important that they receive this money.

This response does not entirely correspond to the prediction of normative power Europe that the EU has the ability to alter the human rights practices of states even outside the cost-benefit calculation of a membership prospect. The interviewee agreed with the author's proposition of a more policy-relevant instrument of financial assistance, but insisted that this would be of use only if the EU provided a clearer membership perspective to Turkey.

The main issue of *participation* that can be raised for the general policy and strategy of Component I concerns lack of comprehensive scrutiny by the European Parliament over the decision on funding allocation.[20] The five EC services that determine IPA assistance to Turkey's national programme (DGs Enlargement, Regional Policy, Employment and Social Affairs, Agriculture and Rural Development, and EU Delegation in Turkey) do not consult with the EP, which merely enjoys a passive right to information.[21] The EP accords political endorsement to the IPA budget, but does not formally adopt its policy goals as there is no formal provision for its involvement in the management and distribution

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[20] The crucial reason why the EP does not participate in the decision-making on IPA allocation is due to the nature of IPA falling under article 188H of the Treaty of Lisbon (previously 181A of Treaty of Rome) concerning Economic, Financial and Technical Cooperation with Third Countries, where the EP role is limited to consultation. Although the EP does have co-decision role in other areas of the Union's external relations (e.g. Development Cooperation, article 188E of Lisbon, previously 179 Treaty of Rome), the aim of IPA is considered relevant to preparation for accession rather than to the implementation of a development policy. By virtually excluding the possibility of effective exercise of EP political role and responsibility, the appropriate choice of human rights instruments and the form and application of the proposed instruments is determined by the Commission and the Council.

[21] Gates, A. 'Mixed Messages and Mixed Results: The European Union's Promotion of Human Rights in Turkey'. *European Law Journal*, vol.13 no: 3 (2009) p.411 (401-411)

of funds, nor is there any publicly available document with a clearly stated mandate for the EP or a similar constituting document.

What positive effects would increased European Parliament participation in funding allocation produce? Inclusion of the EP in strategic decisions regarding allocation of IPA assistance would provide substantial added value to the human rights areas that are not supported by IPA funding. This would encourage a more differentiated approach tailored to Turkey's specific needs, thereby increasing IPA policy relevance and potential for impact. A provision for EP participation would arguably make IPA more strategic, result-oriented, flexible, and targeted to the needs of Turkey.[22] Stronger involvement could potentially increase funding to Component I. This idea is linked to the EP's frequent practice of elevating human rights problems to a central and well-publicised issue in Turkey's bid for membership. It frequently argues in press releases, resolutions, and oral/written questions to the EC that the Turkish government does not sufficiently address human rights problems. The EP's annual resolution on Turkey in 2009 claimed dissatisfaction about the 'continuous but constantly postponed' promise for solidification of human rights.[23] The Parliament's scrutiny of Turkey's record tends to focus on specific human rights situations and acts in given situations.[24] Although Commission representatives acknowledge the extent of human rights infringements in Turkey, they tend to emphasise Turkey's 'sufficient' progress and the importance of other non-political challenges within the pre-accession process. Some perspectives have seen the Commission as being 'lenient' on Ankara by overstating the level of human rights progress in Turkey.[25]

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[22] House of Commons, 'Financing EU External Action: the Instrument for Pre-Accession Assistance (IPA)' <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xlviii/42811.htm> (accessed 20 December 2012)

[23] European Parliament, 'Motion for a Resolution on the Human Rights Situation in Turkey' (10 December 2009) <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2009-0245&format=XML&language=EN> (accessed 15 January 2010)

[24] See, for example, European Parliament, 'Press Release: Turkey's Uphill Route to the EU' (Brussels: 10 February 2011); European Parliament, 'Resolution on the Situation in Turkey (Gezi Protests)' (Brussels: 11 June 2013)

[25] Europolitics , 'EU-Turkey: Union 'too lenient' on Ankara, says Conference Paper' (20 September 2005) <http://www.europolitics.info/eu-turkey-union-too-lenient-on-ankara-says-conference-paper-artr174912-44.html > (accessed 17 January 2011)

This account of limited EP participation in IPA management and distribution suggests that lack of EP oversight over the distribution and management of IPA funds might erode the alignment of projects with national priorities. Though the quality of their representative mandate is often criticised, as representatives of the citizens MEPs are able to speak on behalf of oppressed and vulnerable groups, ensure that proposed projects are informed by real priorities on the ground, and approve or amend budget allocations. The Subcommittee on Human Rights of the European Parliament, for instance, has the independence, knowledge, and resources to perform these functions.[26] Strengthening its role in the process of funding management and distribution will have positive implications for the linkage between these allocations and Turkey's national priorities. More broadly, it will contribute to strengthening the legitimacy of the EU's human rights promotion by achieving an optimal balance between norms and policy; in other words, between the role of the European Commission as the institution promoting supranational policy interests, and that of the European Parliament as a representative institution with a mandate to pursue normative concerns. In this way, EU policies to Turkey will be more appropriately described as those of a 'normative power Europe' rather than an institutionalised transferral of EU policies abroad.

The *effectiveness* of IPA as a virtue of legitimacy will be discussed at the level of IPA-funded projects targeting specific human rights problems in Turkey. It is assumed that the normative character of EU human rights promotion should not be accepted at face value, but that the EU should demonstrate that it is effective in projecting its norms to different types of recipients in Turkey. Legitimacy cannot be achieved if EU human rights promotion is high on rhetoric and low on delivery. Instead, there should be tangible consequences for the well-being of those who benefit from human rights policies and projects.

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[26] Interview with European Commission official (Brussels: 29 November 2009)

In order to carry out a broad discussion of effectiveness, it is necessary to judge the performance of Component I in terms of how actual effects measure up to the policy's objectives. This is best achieved with a discussion of the performance of specific projects. Performance criteria range from general (for example, whether a project is in compliance with the participation of minorities) to specific and quantitative (for example, a target value associated with a specific indicator on a specific time scale, such as the reduction of child abuse in schools). The assessment of legitimacy will examine a typical sample of projects by Component I that focus on the three major human rights issues, emphasised in EU progress reports: gender equality, children's rights, and the prevention of torture. These are currently the only projects of Component I that directly address the improvement of civil, political, or socio-economic human rights. The remaining projects (not selected) are more variable, focusing on transition assistance and institution-building that have a more diffuse impact on human rights protection (for example, promotion of democratic citizenship, ethics in the public sector, and improvements in mental health care). The sample selected is based on projects that address on average the most high-profile human rights issues in Turkey (with the exception of those related to territorial integrity and secular identity, as explained earlier).

Unlike other IPA components characterised by multi-annual programming and planning, Component I is managed through annual projects. The European Commission in Turkey adopts projects annually on the basis of proposed fichés submitted by the beneficiary organisations (e.g. Ministry of National Education, Police, and Gendarmerie). Financial support for specific projects is aimed towards the transferral of know-how and expertise to Turkey, implementation of reform policies, adoption of European standards, and development of administrative capacity in the specific policy areas. Under Article 65 of the IPA regulation, assistance is provided in the form of twinning with EU member state institutions, technical assistance in preparation of documentation, grants, budget support, and investments. At the time of writing, the IPA-funded human rights projects support the following priority lines: gender equality, children's rights, and prevention of

torture. In what follows, these individual projects will be discussed in terms of their capacity to influence the agenda and choices of the beneficiary institutions and effect positive change in the area of human rights they are centred on.

1.1.   Project 1: Prevention of domestic violence against women

This project, initiated in 2011, concerns gender equality and domestic violence incidents against women (including honour killings and early forced marriages). The beneficiary of the project is the Gendarmerie, whose capacity is to be strengthened in order to protect women from violence. The catalyst for action in this area is Turkey's 2008 Accession Partnership document. The Accession Partnership stated that Turkey should 'pursue measures to implement legislation relating...to all forms of violence against women... Ensure specialised training for judges and prosecutors, law enforcement agencies... and strengthen efforts to establish shelters for women at risk of violence'.[27] The project seeks an increased capacity for the Gendarmerie through special training of judges, local authorities and other relevant institutions, public campaigns against domestic violence, nation-wide research on the causes and consequences of gender-based violence, and the establishment of women's shelters.

The project has the advantage that it deals with domestic violence through direct prevention, by reducing risk factors and eliminating possible causes (mitigation). Prevention happens before domestic violence takes place and aims to address the root causes through training programmes, a national database profiling domestic violence incidents, research on prevention, and public awareness campaigns. Therefore, it attempts to create an environment where domestic violence is not likely to occur. Yet, it has several limitations in terms of indirect prevention, in other words with handling cases that have already occurred

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[27] 'Women's Shelters for Combating Domestic Violence – Turkey'. Standard Summary Project Fiché – IPA Decentralised National Programmes (2009) p.2.

(deterrence). The Gendarmerie Service is the primary agency protecting women from violence perpetrated by men, but the project does not recognise domestic violence as a serious crime, but rather as a 'social problem'. As such, it does not advocate a 'pro-arrest strategy' nor special domestic violence officers, which according to research is the most positive action against domestic abuse. In addition, the project does not encourage police officers to liaise with victim support NGOs or women's shelters. The project fiché simply includes a general statement on cooperation with NGOs regarding 'positive effects on civil society in the fields of human rights and gender protection'.[28]

Moreover, the project does not promote an equal opportunities and diversity approach on dealing with domestic violence. There is no consideration of the complex and multiple needs of women from ethnic minorities approaching authorities for help nor assurance of provision for victims of human trafficking or refugees. In response to the EU's question on how the project will reflect minority and vulnerable groups' concerns, it is simply stated that 'according to the Turkish Constitutional System, the word 'minority' encompasses only groups of persons defined and recognised as such on the basis of bilateral or multilateral instruments to which Turkey is a party'.[29] No further discussion is provided, reflecting the reality that active engagement with the priorities of women and minorities is lacking in Turkish politics, or at least that these are not engaged with from a human rights perspective.

The ability to improve women's rights on the ground is generally present in the Gender Equality project in the form of provisions of direct prevention, as explained earlier. However, provisions of indirect prevention have hitherto been underdeveloped. As a governmental project, its effectiveness would be enhanced through treating domestic violence as a serious crime instead of simply a social or family problem; through stronger inclusion of voluntary organisations; and full

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[28] 'Prevention of Domestic Violence against Women – Turkey'. Standard Summary Project Fiché – IPA Decentralised National Programmes (2010) p.5.
[29] *Ibid.*

consideration of women belonging to minorities (broadly defined). It is premature at this stage to speculate on what long-term impact this policy initiative will have, but the present analysis points to limited potential impact in relation to domestic violence.

1.2.   *Project 2: Fight against violence towards children*

The project 'Fight against violence towards children' (2011) concerns the protection of children against all forms of violence of a physical, emotional, verbal, and psychological nature. The beneficiary of the project is the Ministry of National Education of Turkey. The catalyst for action in this area is, again, Turkey's 2008 Accession Partnership document. The Partnership document states that Turkey should 'ensure the full implementation of the Law on Child Protection and promote protection of children's rights in line with EU and international standards'.[30] The translation of the protection of children's rights into action is envisaged through preventive measures, such as the establishment and promotion of Counselling Services, the development of a Safer School Model free from physical, emotional, verbal, and psychological violence, the promotion of training programmes for the awareness of parents, teaching staff, NGO members, and children themselves, and a national survey on violence against children.

On the basis of the content of the project fiché, there are reasons to be apprehensive about the ability of the project to effectively guarantee children's rights. In order to address the root causes of child abuse, a direct preventive strategy should contain an analysis of risk factors. Apart from proposing a Safe School Model, the project does not suggest a concrete risk assessment to examine the complexity and dynamics involved in family violence situations and the impact on children. Legal measures are being pursued for schools, yet family programmes

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[30] 'Fight against Violence towards Children – Turkey'. Standard Summary Project Fiché – IPA Decentralised National Programmes (2010) p.3.

are limited to 'increasing awareness'. The project does not challenge Article 232 of the Criminal Code, which foresees that parents maintain 'disciplinary power' over children, making corporal punishment lawful in the home. Neither does it include recommendations to explicitly prohibit corporal punishment against children in all settings (including the home), which is provided by the UN Convention on the Rights of the Child and the European Convention on Human Rights. Furthermore, Turkey's Ministry of Health and Ministry of Family and Social Policies are not included in the project and are not provided with training about violence against children. Moreover, studies have indicated violence in alternative care settings in Turkey (e.g. rehabilitation centres and orphanages), but no relevant training services or monitoring programmes have been proposed for these institutions.[31] The project has limitations both in terms of direct prevention (mitigation) and indirect prevention (deterrence). This decreases its ability to improve child protection in Turkey.

In terms of direct output, there are several positive indicators that training programmes for teaching staff have decreased physical and verbal abuse in secondary schools. The rate of children exposed to physical violence in secondary schools has decreased from 36.3% to 25%, but the project fiché does not provide further data in support of its effectiveness. Participation is certainly visible in the project, guaranteed through cooperation between different public institutions, and NGO training programmes at provincial level that offer ownership to local stakeholders. The project addresses equal opportunities for minorities and vulnerable groups to a stronger degree that the Gender Equality project, stating commitment to equal opportunities and non-discrimination. Overall, there is some ability for positive impact, but this remains contestable due to a mixture of limited direct and indirect preventive strategies for child abuse at home and in alternative care centres. These findings are hard to reconcile with procedural legitimacy, because the opportunities that the project offers to children as a disadvantaged or vulnerable group do not match its desired outcomes. The promotion of children's

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[31] Mental Disability Rights International, 'Behind Closed Doors: Human Rights Abuses in the Psychiatric Facilities, Orphanages, and Rehabilitation Centres of Turkey' (Istanbul: 28 September 2005) p.13-27.

rights by this project cannot serve as a de facto source of legitimacy, because the failure to secure more comprehensive engagement by the project beneficiaries compromises its ability to protect the well-being of children.

1.3.   Project 3: Prevention of torture

This project addresses the development and implementation of torture and force-prevention practices by the security forces in Turkey in accordance with the European Convention on Human Rights.[32] The beneficiary of the project is the Turkish National Police, whose capacity is to be increased according to the stated objective and with full compliance with Articles 2 and 3 of the ECHR. The catalyst for action in this policy area is Turkey's National Plan for the Adoption of the *Acquis* (NPAA, 2008). According to the NPAA, Turkey should implement the measures in the context of a 'zero tolerance policy' against torture and ill-treatment, and apply a training system to its law enforcement officials regarding the use of proportional force by police. The translation of the aforementioned problem into increased capacity of the National Police occurs through nation-wide training activities into the use of force, research on Turkey's legal framework regarding torture and ill-treatment prevention, exchange programmes between Turkish and EU member state police organisations, review of the working conditions of law enforcement personnel, and the establishment of a review system concerning incidents of use of force.

How effective is the torture prevention project in terms of rooting out the practice from the National Police? The project certainly has the potential to effectively prevent torture through striking a balance between legitimate police force according to different aspects of its mandate, and engaging in preventive

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[32] 'Implementation Capacity of Turkish Police to Prevent Disproportionate Use of Force'. Standard Summary Project Fiché – IPA Decentralised National Programmes (2009)

actions in a more strategic way. It terms of direct prevention (mitigation) it aims to eliminate the possible root causes through training programmes, an analysis of current Turkish legislation on the use of force, and exchange of expertise through twinning programmes with EU member states. This type of direct prevention is forward-looking and can have long-term positive effects through creating an environment where torture is unlikely to occur.

However, the project does not effectively combat torture and ill-treatment that has already occurred. As such, it does not deter repetition. Lack of deterrence does not address key factors within Turkey's political, legal, and institutional environment that heighten the risk for torture. Impunity for the perpetrators of torture in Turkey is an important factor to consider. The organisation of the criminal justice system and the lack of independence of the judiciary are particularly conducive to impunity. An institutional environment favourable to torture is excluded from the analysis, such as lack of accountability and transparency of public authorities and lack of official complaints mechanisms (including no reparations for victims). The main obstacle to its effectiveness within IPA is the complete absence of a dimension of indirect prevention that would challenge political, legal, and institutional root causes of torture. As long as there is no fight against impunity, no effective investigation of torture allegations, and no strengthening of the independence of the judiciary, the results of the torture prevention project are bound to be disappointing.

As cornerstones of IPA Component I for the promotion and protection of human rights, the projects on gender equality, children's rights, and prevention of torture are well-placed to actively engage and support national actors in the prevention of abuses. These projects have been designed as a practical tool to develop concrete activities of prevention, improvement, and change. They present a range of good practices and useful information for raising awareness. Nevertheless, the principle underpinning these projects is predominantly one of 'reaction' that responds to criticisms brought to national institutions by the EU, rather than

initiating preventive actions or investigations. While moving from this reactive focus can be challenging, it is important to note that the EU does have the mandate to request preventive actions, such as legal reform regarding violence against women, domestic abuse, and impunity for torture. Placing greater emphasis on preventive action would offer the EU the opportunity to engage with prevention in a more strategic way and to contribute to long-term positive effects in human rights protection. The possibility of long-term effectiveness is an important basis upon which EU human rights policy can be legitimated. The projects outlined above, although well-placed, raise questions about the legitimacy of the project allocation and their goals and outcomes.

2. The European Instrument of Democracy and Human Rights (EIDHR)

The European Instrument of Democracy and Human Rights (EIDHR) is an EU-funded civil society-focused programme. Its mandate encompasses facilitating democracy and human rights worldwide 'from below' through direct support to activities of civil society organisations. It is, as Kurki highlights, part of the EU's agenda to move towards a more locally sensitive approach to human rights promotion based on grass-roots civic engagement.[33] It is open to all countries outside the European Union, including candidate and potential candidate countries.[34] The EIDHR complements the European Union's instruments for human rights promotion within enlargement. EIDHR funding to Turkey is not considered separate from the country's candidate status.[35] What is notable about this is that EIDHR permits the funding of locally sensitive projects that deal with

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[33] Kurki, M. 'Governmentality and EU Democracy Promotion: the EIDHR and the Construction of Democratic Civil Societies'. *International Political Sociology*, vol.5 p.355 (349-366)

[34] Under the 2007-10 Strategy Paper the EIDHR even supports some activities within the EU. Activity within the EU is primarily centred on supporting centres for the rehabilitation of victims of torture. However, the aim is that rehabilitation funding will gradually phase out after 2010 so that the sustainable financing of the centres will be taken over by the member states . See European Commision, 'European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2007-2010',   p.12.   <http://ec.europa.eu/europeaid/what/human-rights/documents/eidhr_strategy_paper_2007-2010_en.pdf> (accessed 16 February 2010)

[35] European Commission Delegation to Ankara, 'EIDHR Turkey Programme'. <http://www.avrupa.info.tr/EUCSD,D.hag.html?pageindex=2> (accessed 14 February 2010).

focal human rights issues that are not politically accommodated by IPA (as explained in the previous section) and to which the Turkish government may be reluctant to consent. In the words of an EU official,

> 'What is special about the EIDHR is that it enables us to support NGOs directly. So it's a very unusual instrument. Through it we are granting money to NGOs which authoritarian governments see as of the state. They are exactly the kind of people that some governments would like to see locked up behind bars, whereas we encourage them by giving them money'.[36]

The EIDHR is independent in its budget line and works according to its own internal objectives. These overall objectives, applicable to all recipients including Turkey, are:

- Enhancing respect for human rights and fundamental freedoms in countries and regions where they are most at risk;

- Strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and in consolidating political participation and representation;

- Supporting and strengthening the international and regional framework for the protection of human rights, justice, the rule of law and the promotion of democracy.[37]

In the EIDHR framework there is direct support to non-governmental human rights and democracy projects without need for host government consent. Most of the external human rights instruments that the EU has at its disposal are programmed in cooperation with partner governments in recipient countries. In contrast, the EIDHR operates autonomously from host governments. The instrument is unique in that its main operating system is a call for proposals where

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[36] Interview with European Commission official (Brussels: 1 December 2009)
[37] European Commission – EuropeAid Development and Cooperation, 'European Instrument for Democracy and Human Rights (EIDHR)'
<http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm> (accessed 22 January 2010)

human rights NGOs submit applications for funding directly to the Commission Delegation in their country without any involvement by the Turkish government. The aim is not to coerce the state to adopt democratic processes, but rather to facilitate pressure 'from below' through enhancing civic conceptions of the good life and producing the capacity for NGOs to challenge authoritarian practices.[38] Therefore, room exists for the EIDHR-funded NGOs to see themselves as crucial human rights-defending actors, focus on sensitive political issues, and challenge governmental practices.[39] Consequently, the EIDHR is capable of offering a degree of flexibility of action, local ownership, and a participatory approach to human rights engagement that has the potential to instigate sustainable reform. Part of the question of procedural legitimacy is the extent to which EU's human rights promotion through the EIDHR Turkey programme is policy-relevant, inclusive, and able to improve the well-being of those who supposedly benefit.

Since 2002, the EIDHR has provided support to more than 100 projects in Turkey ranging from freedom of expression and religious freedom, to protection and respect of cultural and minority rights.[40] These human rights fields have been absent from the policy agenda of IPA. The inclusion of these objectives in EIDHR is envisaged to intervene in existing forms of repression and actively push for political reform. EIDHR funding for Turkey is modest in relation to the IPA (€3 million for 2007-2010, in contrast to €654 million under IPA for 2010 only, of which €221.3 was allocated to Component I – see Table 1).

According to the EIDHR's 2010 Call for Proposals for Turkey, published by the Commission Delegation in Ankara, project proposals by local civil society organisations are expected to address at least one of the two specific objectives below:

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[38] Interview with European Commission official (Brussels: 1 December 2009)

[39] Herrero, S. 'A Decade of Democracy Promotion through the European Initiative for Democracy and Human Rights'. EPD Working Paper Series on Democracy Support, 1/2009, p.8.

[40] European Commission Delegation to Turkey, 'The European Instrument of Democracy and Human Rights' (15 October 2010) <http://www.avrupa.info.tr/EUCSD,Dihag_Revised.html> (accessed 28 January 2011)

- To strengthen and/or increase civil society's involvement in the making, implementation, and monitoring of human rights policies at local and national levels

- To support human rights defenders in their efforts to promote and strive for the protection and realisation of human rights and fundamental freedoms at the local level.[41]

Both specific objectives are expected to address particular priority areas. There are seven priority areas under the first objective: freedom of expression, religion, association and press; human rights in prisons and right to fair trial; prevention of torture and fight against impunity; minority rights and cultural rights; rights of the child; elimination of violence against women; and social rights of vulnerable groups. Aside from addressing the above issues, each proposed NGO project is expected to ensure stakeholder participation in the planning and implementation of the project. The second objective relates to human rights defenders and focuses on three priority areas: protection of human rights defenders; amelioration of their technical knowledge and skills; and financial support for their activities, which involve documenting infringements, treating victims of violations, and fighting against impunity.

On the basis of the above spectrum of objectives, the EIDHR can be seen as establishing policy goals that correspond to almost all spheres of human rights infringements in Turkey, in accordance with the principles of policy relevance and participation. In terms of *policy relevance*, the objectives that are envisaged are properly selected and quite targeted to the predominant challenges in Turkey. With a total of ten areas, the EIDHR's intention is to encourage action in as many fields as possible despite modest financial resources. The projects funded in 2009-10 actively push almost all the issues raised by the European Commission's 2010

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[41] European Commission Delegation to Turkey. 'EIDHR Turkey Programme – Restricted Call for Proposals 2009', p.4. <http://www.avrupa.info.tr/Files/Guidelines_EIDHR_2009---FINAL.doc> (accessed 13 February 2010)

Progress Report.[42] Issues raised by transnational NGOs, such as Human Rights Watch, were also reflected by EIDHR priorities. For example, the recognition of pervasive issues is also reflected in the provision of support to human rights activists, referred to by the EU as 'human rights defenders'.[43] The vision of protection of human rights activists was first pursued by the 2010 EIDHR, a year when the necessity of their protection in Turkey became particularly visible. In 2010 the ECtHR had ruled that Turkey had failed to protect the life of Hrant Dink, a Turkish-Armenian journalist and human rights defender, or to conduct an effective investigation into his January 2007 murder.[44] Another event was the prosecution of the chairs of the Diyarbakır and Siirt branches of the Human Rights Association, Muharrem Erbey and Vetha Aydın, for alleged membership in an illegal organisation.[45] By inviting proposals pertaining to the issue of protection for activists, the EIDHR has shown to be in tune with the realities of human rights activism in Turkey.

In terms of *participation*, the organisations selected for funding represent with relative accuracy the need for stakeholder participation in facilitating human rights reform, and it is this participation that the EIDHR seeks to support and increase. The NGOs that are chosen as partners conform to a broad notion of civil society where the focus is on the enhancement of human rights, democracy, and pluralism. The EIDHR only funds large organisations that are deemed as capable and effective producers of change. Many of the partner NGOs emerged during the tumultuous period of the 1980s and 1990s as a result of the violations suffered not

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[42] European Commission, 'Turkey 2010 Progress Report'. SEC (2010) 1327 (Brussels: 9 November 2010)

[43] The EU defines human rights defenders as 'those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms... The definition does not include those individuals or groups who commit or propagate violence'. See Council of the European Union, *Ensuring Protection: EU Guidelines on Human Rights Defenders* (June 2004) p.2 <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> (accessed 29 January 2011)

[44] European Court of Human Rights, *Affaire Dink c. Turquie* , application no: 2668/07(14 September 2010) <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=turkey%20|%20%222668/07%20|%206102/08%20|%2030079/08%20|%207072/09%20|%207124/09%22&sessionid=65687398&skin=hudoc-en> (accessed 27 January 2011)

[45] Human Rights Watch, 'Turkey'. In 'World Report 2011' (New York: Human Rights Watch, 2011) p.481.

only by their founding members, but also by their current staff. As such, they are as independent as possible from government influence, pluralistic in the defence of freedoms, and well-positioned to engage citizens in actively pushing for human rights reform. This assumption would be questionable if the partner organisations principally focused on ingrained dividing lines of group and national solidarity. The partner organisations are generally accountable and responsive to citizens' expectations.

EIDHR funding also plays a crucial role in assisting various types of organisations to involve stakeholder participation. An example is the Human Rights Association branch in Diyarbakır, located in South-East Turkey, which in 2010 received funding to conduct a project on children's access to justice in remote areas of Turkey, thus expanding participation in geographically remote areas.[46] In addition, the EIDHR supports academic endeavours that act as a check against the state and challenge it when it impinges on freedoms. A relevant partner organisation is the Association for Liberal Thinking (ALT). The ALT is directed by a team of academics from Turkey and engages in the dissemination of information on liberal thought, EU-Turkey relations, and Turkey's fulfilment of the Copenhagen criteria.[47] Within these goals a range of participatory activities occur, such as the annual essay competition aimed at students of Turkish universities on a topic related to democratic freedoms.[48]

In terms of *effectiveness*, although it is impossible for this study to evaluate the diffuse impact of EIDHR projects on aggregate human rights protection in Turkey, it is possible to comment on the manifestation of the EIDHR strategies and its management processes. The programmes the EIDHR funds are determined following a call for proposals. Calls for proposals can be seen as potentially strengthening the effectiveness of the instrument, as they facilitate local ownership

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[46] Interview with Human Rights Association employee (Ankara: 27 October 2010)
[47] Association of Liberal Thinking, Turkey < http://www.liberal.org.tr/index.php>
[48] Association of Liberal Thinking, 'Essay Contest'
<http://www.liberal.org.tr/ldt_details.php?kategori=MTY=&id=NTE2> (accessed 2 August 2011)

and give a sense of responsibility and 'free will' to the relevant NGO which is then more likely to implement the project. As such, calls for proposals can be seen as a non-intrusive method of encouraging human rights promotion 'from below'. It is worth noting that the degree of financial structure and management experience that the calls require from NGOs effectively exclude proposals by organisations of limited size and resources, without a focused purpose, pragmatic strategy, and clear long-term perspective. Despite the possible implications of ruling out grass-roots organisations from the eligibility to apply, the managerial set-up of the calls filter out untrustworthy partners that would potentially use public money without turning in a measurable positive output. This suggests that the effectiveness of the EIDHR may be adequate when considered in relation to the nature of the instrument, which places non-ideological and effective promotion of human rights at the centre of it.

Should the EU's policy of funding bottom-up human rights reform in Turkey be seen as a manifestation of normative power? The EIDHR mandate to export civil society development to Turkey has certain aspects that might put its procedural legitimacy under pressure. Firstly, in terms of policy relevance, the EU should develop a clearer approach regarding the relationship between financial assistance and civil society. The assumption that financial assistance increases civic activism and subsequently affects governmental policy is not entirely straightforward. In order to enhance policy relevance for the EIDHR within Turkey, its developers should conceptualise and articulate the relationship between civil society, human rights protection and democracy more clearly. As argued in Chapter Two, it is important to note that it is not 'any' type of civil society support the EU aims for, but a specific kind: one in which civil society is a democratising actor with human rights, as specified in EU documents, at the heart of it. This approach reflects the idea that material and technical support for the development of civil society is important for constructing robust democracies.[49] However the spill-over potential of civil society to the political arena depends not only on the vitality and profile of individual associational or advocacy groups, but also on an

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[49] McIntosh Sundstrom, L. *Funding Civil Society: Foreign Assistance and NGO Development in Russia* (Stanford: Stanford University Press, 2006) p.6.

effective link between civil society as a whole and the political arena.[50] Crucially, the notion of civil society as an effective and relevant producer of change in Turkey's societal context is not elaborated in the specific priorities.

Secondly, in terms of participation, the civil society organisations chosen as partners within the EIDHR are expected to be profit-driven and 'entrepreneurial' in defending human rights. The EIDHR supports NGOs that are mission-driven enterprises with a market logic, which presumably increases their competition against other NGOs, and thus their productivity in human rights promotion. However, doubts arise concerning the inclusiveness of this model. In the national competition for EIDHR funding in Turkey, small grass-roots NGOs are unable to attain funding under the pressure of competition. According to the 2007-10 EIDHR Strategy Paper, local organisations without an international framework or reach are not eligible to apply for funding.[51] Although there is no official justification by the EU, small organisations might not be generally preferred by international donors because their size and limited resources entail that they generally operate with a short-term perspective. This point is challenged by Youngs who argued that that external assistance which concentrates on a relatively small number of urban and strongly westernised NGOs with little grassroots involvement is likely to set up tensions between a favoured circle of activists linked to international networks, and the broader range of civil society groups struggling to survive.[52]

Another dimension of lack of participation is found in the EIDHR's technical and depoliticised framework of assistance, which persistently concentrates funding on non-ideological and secular organisations in Turkey. As explained in Chapter Three, civil society in Turkey is characterised by misalignment of interests between ideologically diverse human rights NGOs.

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[50] Youngs, R. *The European Union and the Promotion of Democracy: Europe's Mediterranean and Asian Policies* (Oxford: Oxford University Press, 2001) p.25.
[51] Commission, 'EIDHR Strategy Paper', p.12
[52] Youngs, *Promotion of Democracy,* p.18.

Selective funding affects the variety of projects, reinforces the unevenness characterising the human rights community in Turkey, and hampers efforts to advance human rights nationally as common values. The EIDHR does not fund joint projects between organisations with seemingly opposing agendas. For example, Muslim-based human rights organisations that are positively disposed towards the EU have not so far received funds, although the EIDHR has funded projects promoting respect for different religious groups.[53]

The EIDHR should focus on enhancing dialogue and cooperation between diverse NGOs by inviting joint proposals for projects. It needs to request partner projects between diverse organisations, such as professional urban-based NGOs, local community initiatives, secular and faith-based organisations, academic-run think-tanks, and NGOs led by victims of violations, since all groups have a legitimate contribution to make. Specifically, the EIDHR should plan beyond single projects and consider a) how it can reach citizens who are not already members of NGOs nor particularly politically active, and engage them in exerting pressure on the administration; and b) how it can ensure greater understanding of the history, political characteristics and context of Turkey in order to design a more targeted policy approach. This would ensure increased stakeholder participation, thus conforming to a principle of inclusiveness for EU policy. To be sure, encouraging diverse human rights NGOs to compile joint projects is demanding. Civil society is assumed to be permeated with power relationships that may curtail its democratic activity.[54] An effort at cooperation might be challenged by an instinctive resistance to alternative approaches and lack of analytical tools regarding successful cooperation with the state. Although the promotion of joint projects by the EIDHR might not achieve the ideal answer for Turkey's human rights problems, participation and inclusiveness can only be approximated if a broader knowledge base is built from which to start.

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[53] European Commission Delegation to Turkey, 'EIDHR Turkey Programme' (January 2008) p.16 <http://ec.europa.eu/europeaid/what/human-rights/documents/turkey_eidhr_projects_en.pdf> (accessed 19 April 2009)

[54] Chandhoke, N. 'The 'Civil' and the 'Political' in Civil Society' In *Civil Society in Democratization*, ed. by P. Burnell and P. Calvert (London: Frank Cass, 2004) p.155 (143-166)

Thirdly, in terms of achieving effectiveness, the EIDHR is characterised by lack of flexibility of action, which manifests itself in the standardised structure of the requirements for the acquisition of grants and lack of transparency. The publication of the Call for Proposals and the accompanying Annexes is in English but not in Turkish. Their publication in English complicates the application process for local NGOs. The accompanying documents – specifying, for example, the indicators against which the effectiveness of the project should be measured - contain highly technical language. Even urbanised organisations that have received EIDHR funding on multiple occasions, such as the ALT, have complained that the process of submitting a successful proposal is highly complex and bureaucratic.[55] The European Commission Delegation in Ankara has attempted to remedy the language problem by organising courses to train civil society organisations to apply for funding.[56] Moreover, the projects are almost entirely unknown to the public, even in major urban centres, and are not followed by the media. The primary means of public information is the general information provided by the Commission Delegation website. As a result, most initiatives in rural Turkey are unable to access and interpret the relevant information unless they are associates of the organisations operating in major Turkish cities, due to weakness in financial or administrative capacity (e.g. lack of computers). Encouraging transparency and availability of information should clearly be an important part of the Union's application of the EIDHR to Turkey.

This section examined the quality and performance of the EIDHR for Turkey, and the implications of the methods through which its policy commitments and priorities are implemented into projects. The next step is to examine the policy instrument of human rights consultations between EU and Turkey policy-makers.

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[55] Interview with Director of Association of Liberal Thinking (Ankara: 29 November 2011)
[56] Marchetti, R. and Tocci, N. 'Redefining EU Engagement with Conflict Society'. SHUR Working Paper Series 04/09 (July 2009) p.17.

3. Human rights consultations

Direct discussion of human rights issues occurs through the system of consultations, which encompass a regular assessment of developments concerning the respect for human rights. The objectives of human rights dialogues for each candidate state are defined on a case-by-case basis. They do, however, conform to the general objectives of the European Union's Guidelines on Human Rights Dialogues. These objectives include:

• Discussion of questions of mutual interest and enhancing cooperation on human rights;

• Registration of the concern held by the EU at the human rights situation in the country concerned, information-gathering, and endeavouring to improve the human rights situation in that country.[57]

The EU has established dialogues with Turkey that follow a particular structure. The central negotiating role belongs to the Turkish government and to the EU member state holding the rotating Council Presidency. The consultation meetings occur at high (ministerial) or at low (bureaucratic) level twice a year, either in Ankara, or Brussels, or the capital of the country that holds the rotating presidency. Human rights consultations are also held bi-annually within the framework of the EU-Turkey Joint Parliamentary Committee, discussed further on.[58] The analysis that follows will first discuss the general features of the human rights dialogues, namely the ministerial and bureaucratic meetings and the meetings of the EU-Turkey Joint Parliamentary Committee.

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[57] Council of the European Union, *European Union Guidelines on Human Rights Dialogues* (13 December 2001) <http://www.consilium.europa.eu/uedocs/cmsUpload/14469EN_HR.pdf> (accessed 31 January 2011)

[58] The Technical Assistance and Information Exchange (TAIEX) instrument is managed by the DG Enlargement. TAIEX supports countries with regard to the approximation and enforcement of EU legislation. It is largely demand-driven and facilitates the delivery of appropriate expertise. <http://ec.europa.eu/enlargement/taiex/what-is-taiex/index_en.htm> (accessed 25 September 2011)

The *ministerial meetings* concern bilateral, state-level negotiations between the EU and the national elites of Turkey. They occur once during each six-month Presidency of the Council of Ministers. Ministerial meetings take place in Brussels between the EU 'troika' (the foreign minister of the country holding the Council Presidency, the foreign minister of the incoming Presidency, and the director of the European Commission's Turkey Unit in DG Enlargement) and the Turkish foreign minister and chief negotiator.

In the ministerial meetings, the Turkish team is responsible for explaining the government's activity towards fulfilling the human rights requirements raised in the annual progress reports and Turkey's action plans. In this regard, it presents official reform efforts, announces upcoming reforms, and responds to follow-up questions posed by the EU team regarding specific human rights violations. These presentations offer the opportunity to the EU to raise directly both general and specific points on each human rights priority on the agenda. Among the issues discussed in the dialogues are the ratification by Turkey of the Framework Convention for the Protection of National Minorities, reform of the justice system, and the persecution of human rights defenders.[59] Aside from information on the observance of human rights objectives, the EU team might request financial information on the usage of the IPA within the projects of Component I, given that it is Turkey's Ministry of EU Affairs that manages the funds.[60]

Meetings at *lower bureaucratic level* occur between officials from the Commission and national representatives from Turkey. The Commission representatives are experts from DG Enlargement in Brussels or from the Section of Political Affairs of the Delegation in Ankara. The Turkish team is constituted by government representatives and by local human rights NGOs, which participate in

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[59] Interview with European Commission official (Brussels: 27 November 2009)
[60] Interview with European Commission official (Brussels: 30 November 2009)

order to discuss the situation of human rights activism in Turkey and the role the EU can play in promoting and ensuring its protection.[61]

In the lower-level bureaucratic meetings, the diverse Turkish team engages in a structured debate on individual human rights cases, explaining and justifying infringements, and highlighting the relevance of the existing national legal provisions.[62] This renders the bureaucratic meetings rather more informative than the ministerial meetings. According to a Commission official interviewed in Brussels, the presentations are detailed: 'they announce a number of reforms for each and every aspect'.[63] The EU team questions the Turkish team on special, individual cases. A chance sighting of a newspaper article reporting on an alleged case of human rights violation can sometimes form the basis of a whole line of questioning.[64] This way, bureaucratic meetings operate as what is termed a 'thematic mechanism', namely a mechanism dealing with individual cases of human rights violations or threatened violations.[65]

A third type of structured human rights dialogue occurs within the framework of the *EU-Turkey Joint Parliamentary Committee (JPC)*. The EU-Turkey JPC, established in 1965, is currently the main collaboration forum for members of the Turkish Parliament and European Parliament. The main task of the JPC is to deliberate on 'all matters relating to Turkey's relations with the European Union' as an important platform of EU-Turkey relations.[66] As part of its remit, the

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[61] European Commission, 'European Union Local Strategy to Support and Defend Human Rights Defenders in Turkey' (Brussels: November 2011) p.1.

[62] Interview with European Commission official (Brussels: 30 November 2009)

[63] Interview with European Commission official (Brussels: 27 November 2009)

[64] Interview with European Commission official (Brussels: 28 November 2009)

[65] Unlike procedures dealing with general situations, thematic mechanisms (e.g. UN Working Groups) deal with individual cases of human rights violations or threatened violations, particularly in countries where a specific type of violation appears to be widespread. See Rodley N.S. and Weissbrodt D. 'UN Non-Treaty Procedures for Dealing with Human Rights Violations'. In *Guide to International Human Rights Practice*, ed. by H. Hannum (Ardsley NY: Transnational Publishers, 2004) p.75 (65-88)

[66] European Parliament, 'Information Note on the Work of the EU-Turkey Joint Parliamentary Committee' (June 2004) p.2.
.<http://www.europarl.europa.eu/intcoop/euro/jpc/turk/history2004_turkey_en.pdf > (accessed 3 February 2011)

JPC also deals with individual cases of human rights infringements. In reality, issues relating to human rights constitute the major part of the discussions conducted in the JPC meetings. The EU-Turkey JPC meetings occur at the request of the EP Subcommittee on Human Rights and in the presence of relevant Turkish ministers and authorities (e.g. Minister of Justice or EU Affairs). The JPC normally meets bi-annually, alternately in Turkey and in one of the work places of the European Parliament (Strasbourg or Brussels). The meetings are addressed by representatives of the European Parliament (including the Rapporteur on Turkey), the EU-Presidency-in-Office, the European Commission, the Turkish government and the Turkish Parliament.

JPC meetings are mostly dedicated to the discussion of human rights issues. According to the publicly available minutes of the meetings, Turkey's parliamentarians mainly inform the EU team on the country's efforts for maximum implementation of human rights criteria.[67] The EU team, on the other hand, questions its counterparts both on broader reform processes (e.g. the drafting of Turkey's new constitution) and on individual cases (e.g. the imprisonment without trial of academics in the Ergenekon case).[68] In their declarations, Turkish MPs might comment on general EU policy towards Turkey and its impact on the 'rights' of Turkish citizens, such as lack of visa exemption.[69] They also frequently defend the country's human rights progress, highlighting specific reforms and the dates of their adoption,[70] or claiming that current EU members do not possess a higher standard of protection.[71] As part of the debate they might express concerns about inconsistency in EU human rights policy, such as privileging non-Muslims over Muslims in the promotion of freedom of religion.[72] Other statements have criticised

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[67] See, for example, European Parliament, 'Minutes of the 64th Meeting of the EU-Turkey Joint Parliamentary Committee' (Istanbul: 25-26 May 2010) p.3-5.

[68] European Parliament, 'Minutes of the 68th Meeting of the EU-Turkey Joint Parliamentary Committee' (Istanbul: 23-24 February 2012) p.4.

[69] Ministry of EU Affairs of Turkey, '69th Turkey-EU Joint Parliamentary Committee Meeting Held in Strasbourg'. <http://egemenbagis.com/en/4965> (accessed 28 December 2012)

[70] Interview with European Commission Official, DG Enlargement – Relations with the European Parliament (Brussels: 30 November 2009)

[71] European Parliament, 'Minutes of the 69th Meeting of the EU-Turkey Joint Parliamentary Committee' (Strasbourg: 14-15 June 2012) p.3.

[72] European Parliament, 'Minutes of the 56th Meeting of the EU-Turkey Joint Parliamentary

the strategy of particular EU member states towards Turkey's accession, including the veto of specific *acquis* chapters by Cyprus and France.[73] The minutes of the meetings convey that Turkish officials frequently challenge their EU counterparts in JPC meetings, but at the same time recognise the JPC as a fruitful platform for the EU-Turkey cooperation process.

With regard to *policy relevance*, the main value of the system of EU-Turkey human rights consultations concerns the strong political dimension of the negotiations. All types of meetings analysed earlier incorporate in the official process directly elected political representatives from Turkey (MPs and government ministers) as agents accountable not only for human rights reform, but also for violations. Engagement of the high executive ensures visibility for the EU's human rights policies domestically, and contains a clear message of priority that increases the political weight of human rights issues and the necessity for effective policy solutions. Relevance is supported by the fact that the ministerial dialogues require from Turkey's administration reason-giving for human rights shortcomings, rather than an interest-based discussion.[74] Although interest-based discussion is not precluded, the process requires that speakers appeal to human rights principles and norms to make their points. Moreover, consultation meetings clarify EU benchmarks and enable the Turkish team to clarify its own shortcomings. Human rights conditionality being inconclusive, an important means for mutual clarification of expectations for both teams is offered in these meetings.[75]

With regard to *participation*, the consultation meetings show participation from different actors in the official process. The teams on both sides are quite

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Committee' (Ankara: 3-5 May 2006) p.4.

[73] *Ibid*, p.2.

[74] Risse, T. and Kleine, M. 'Assessing the Legitimacy of the EU's Treaty Revision Methods'. *Journal of Common Market Studies*, vol.45 no: 1 (2007) p.72 (69-80)

[75] Interview with European Commission Official (Brussels: 1 December 2009): 'The [bureaucratic] meetings are more about coordinating priorities between the two teams, and especially amongst the actors within the Turkish team [governmental and non-governmental]'.

diverse, including European Commission officials from various different units and sections in Brussels and Ankara, EU parliamentarians, the EU Presidency, Turkish parliamentarians and governmental ministers, and NGOs from Turkey specialising on diverse types of human rights. The JPC meetings enable members of the European and Turkish Parliaments, directly elected bodies of rather secondary importance in the pre-accession process, to engage in a sincere and open communicative process. This dialogue takes place publicly and every document is publicly accessible on the European Parliament website. Thus, citizens are able to follow and trace back every proposal and justification of human rights reform (or lack thereof). This publicity is a precondition for the ability of citizens to be informed and indirectly involved in the human rights dialogue. Furthermore, all consultation meetings offer a direct channel of interaction with human rights defenders. As shown earlier, local human rights NGOs are invited in writing to participate in the meetings in order to testify about the problems and progress associated with the reforms under review, through direct interaction with the delegates.

As to *effectiveness*, although it is impossible to gauge precisely the actual impact of human rights consultations, there are indications that official human rights reforms in Turkey may be considered outcomes of the structured human rights dialogues. The formal dialogue sessions generally engage high-level officials who are directly engaged in the development and delivery of policies and programmes that impact on the rights of citizens. More generally, these consultations assist in building closer relationships between the representatives of the EU and Turkey, generating goodwill and trust which benefits the human rights dialogue and the overall relationship between the two actors. This is crucial, given that 'an essential element in human rights dialogues is the government's willingness to improve their human rights situation'.[76] However, it is important to remember that, as with other instruments in the EU human rights policy, the consultations are

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[76] Leuven Centre for Global Governance Studies, 'EU Human Rights Dialogues: Current Situation, Outstanding Issues, and Resources'. Policy Brief no: 1 (July 2007) p.3-4.

an incremental process that takes time to bring about change. Measuring their impact is methodically difficult under any circumstances.

Although there is little doubt that the EU has established a sound system of human rights consultations, there are aspects of the process that merit further consideration regarding their quality and performance. The process is characterised by several weaknesses that relate to the inherent limitations of any international system of human rights consultations, discussed at large by the scholarly literature on human rights consultations.[77]

Legitimacy regarding policy relevance is compromised by issues of restricted time and resources. The EU team must make decisions as to which infringements it can address and which it should overlook, and the time spent might make it slow and inflexible. There are a large number of issues that need to be covered in the EU-Turkey meetings, especially given the size of the country concerned, the scope of its human rights problems, imbalanced regional development, and the limited number of meetings that are held. The risk in these circumstances is that not all infringements and their causes will be sufficiently addressed, and several issues will be neglected or entirely omitted. For example, it is normal practice that human rights issues that were addressed in one meeting are not addressed in the following meeting a few months later, in order to open up scope for discussing other types of human rights.[78] This may as a result remove the possibility of effective follow-up, and seal off the discussion from Turkey's national reality at the time. Therefore, an important task for the EU is to determine which issues can and ought to be addressed. This leads to a number of crucial questions: should EU policy give priority to individual cases or to general human rights concerns? Should it address larger societal issues that contribute to human

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[77] See, for example, Alston, P. and Crawford J.(eds) *The Future of the Unites Nations' Human Rights Treaty Monitoring* (Cambridge: Cambridge University Press, 2000); Alfredsson G., Grimheden,J., Ramcharom, B.G. and De Zayas, A. (eds) *International Human Rights Monitoring Mechanisms* (The Hague: Martinus Nijhoff Publishers, 2001); Symonides, J.(ed) *Human Rights: International Protection, Monitoring, Enforcement* (Aldershot: Ashgate, 2003)

[78] Interview with European Commission official (Ankara: 5 November 2010)

rights violations, or should it restrict itself to the violations, encouraging NGOs to address the former? Should it support all categories of rights equally? How can it ensure the largest possible participation of stakeholder groups? Adopting a policy that corresponds to these questions in every instance requires a highly developed and targeted policy design, one which is lacking in the EU's human rights consultations with Turkey.

Quality and performance stemming from participation is compromised by issues of involvement and composition of the delegations on both sides. On the EU side, there is lack of participation by relevant actors including EU-based academics, EU-based NGOs, and the European Parliament (which is not involved in the higher and lower bureaucratic meetings). On Turkey's side, only EIDHR-funded NGOs are invited to the meetings, raising the same participation concerns discussed earlier regarding the inclusiveness of the EIDHR. In addition, the delegation of Turkish officials is unbalanced in terms of participation. The bureaucratic meetings only engage government officials and are, as such, heavily weighted in favour of the leading AKP party without inclusion of the opposition. Regional political and public institutions are entirely omitted, and women and minorities are underrepresented in the delegations. Similarly, Turkey's representatives in the JPC stem almost exclusively from Ankara and Istanbul, represent the two major political parties (AKP and CHP), and are mostly male political figures belonging to the Turkish majority (no minority politicians currently sit on the JPC). More balanced and gender/minority-sensitive participation should be considered in order to achieve the following objectives: more information exchange, more expertise-based dialogue, and more leverage for change. Moreover, a stronger ability for participation could be ensured through more public information. Lack of access to documents concerning the bureaucratic meetings is a fundamental problem. Often, the only publicly available documents are press releases of little substance, and the earlier analysis almost entirely relies on interviews with EC officials.

Quality from the point of view of effectiveness is notoriously hard to measure, primarily because human rights consultations intervene in political processes that are hard to grasp and often impossible to control. A report by the German Human Rights Institute in 2005 emphasised that 'there is no generally accepted set of human rights indicators or benchmarks... applied to human rights dialogues'.[79] Accordingly, a 2002 study by the OECD stated that 'there is currently considerable confusion over the purpose, methodology, terminology, and typology of indicators [for human rights consultations]'.[80] The establishment of a causal link between EU-Turkey human rights consultations and visible change, while potentially possible at the level of ratifications and national constitution/legislation, is much less likely at the level of implementation and long-term guarantees for human rights. Therefore, as with the EIDHR, the assessment of procedural legitimacy will draw on the consultations' strategies. It is assumed that whether human rights consultations can yield effective policy outcomes is contingent upon another two attributes in connection with dialogues: coordination with other human rights activities, and impact assessment.

Coordination between human rights consultations and other EU policies of human rights promotion does not currently appear to pass the procedural legitimacy test. In 2007 the European Parliament published a resolution on this issue entitled 'the Functioning of the Human Rights Dialogues and Consultations with Third Countries'.[81] Here, the EP concluded that consultation activities were not sufficiently coordinated with other pre-accession human rights instruments, nor properly integrated into EU external human rights policy. In this regard, the EP declared that:

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[79] Wurth, A. and Seidensticker, F.L. 'Indices, Benchmarks, and Indicators: Planning and Evaluating Human Rights Dialogues'. German Institute for Human Rights (Berlin: November 2005) p.22.

[80] Organisation for Economic Cooperation and Development,'Guidelines for the Use of Indicators in Country Performance Assessment'. <http://www.oecd.org/dataoecd/51/36/33670318.pdf> (accessed 30 December 2012)

[81] European Parliament, 'Resolution on the Functioning of the Human Rights Dialogues and Consultations on Human Rights with Third Countries' (6 September 2007) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0381+0+DOC+XML+V0//EN> (accessed 2 February 2011)

The fact of conducting a human rights dialogue or consultations with a third country should lead to systematic mainstreaming of human rights in every sphere of EU cooperation with the country concerned, including ... economic, financial and technical cooperation with third countries, so that the existence of a human rights dialogue or consultations does not constitute an end in itself.[82]

The EP stressed that neither the EC nor the Council have devised a method for organising and systematising the human rights consultations, making the results impossible to evaluate EU-Turkey consultations are being conducted through a variety of structures, formats, and procedures, without sufficient regard for consistency and communication between different methods. Bilateral consultations between Turkey and individual EU member states are not mainstreamed into the EU human rights policy to Turkey neither are the dialogues within multilateral fora, such as the Commission on Human Rights or the General Assembly of the United Nations. Furthermore, they are not coordinated with the EIDHR and only loosely relate to the IPA. According to the EP, lack of strategic coordination endangers the effectiveness of the EU's human rights policy.

The possibility of effectiveness would be strengthened through an EU-led assessment of human rights consultations as a policy instrument. Currently, a consistent review mechanism is not in place, even though there is a clear need to assess their impact on the reform process in Turkey. The EU needs to develop an empirically-grounded impact assessment of the conditions under which the instrument is likely to succeed in its objectives. The value of impact assessment lies in developing understanding of the most effective mix of instruments, ensuring transparency, credibility, but also for the ability of the EU and Turkey teams to learn.[83] Through monitoring activities and results, evaluating 'before' and 'after', and ex-post observations, a review mechanism would help human rights consultations contribute to sustainable human rights protection in Turkey. In parallel, the Council of Ministers could invite proposals from other EU institutions

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[82]*Ibid.*

[83] Renda, A. *Impact Assessment in the EU: The State of the Art and the Art of the State* (Brussels: Centre for European Policy Studies, 2006) p.54.

or from groups of experts in both EU and Turkey on how to best achieve a policy of human rights support that will not lead to potential repercussions once Turkey accedes to the EU.

Conclusion

Chapter Four operationalised a legitimacy-based approach for evaluating the EU human rights promotion to Turkey. It examined the function of specific instruments of human rights promotion and how they fall short of being able to provoke a policy transformation that would sufficiently address the profound shortcomings of Turkey's system of human rights protection. The policy tools under consideration were the Instrument of Pre-Accession Assistance (IPA), the European Instrument of Democracy and Human Rights (EIDHR) and the human rights consultations conducted under the aegis of the European Commission and the EU-Turkey Joint Parliamentary Committee. Despite their evident strengths in terms of design and organisational principles, the procedural attributes of the instruments (funding allocation, project selection, and assessment of impact) do not adequately benefit the disadvantaged groups they are designed to protect to the highest degree possible. They are not sufficiently contextualised, inclusive or procedurally effective to unlock further progress on specific human rights issues and open up space for sustainable improvement to Turkey's human rights record. The present chapter also critiqued the EU for focusing its engagement with Turkey on key pressure points while at the same time refraining from developing ways to encourage the country to diagnose its historical and developing human rights problems more accurately and inclusively.

The conclusion that can be drawn from the empirical analysis of this chapter is that the oft-quoted proposition that normative power Europe has the ability to shape the 'normal' in partner states should emerge in the context of its procedural propriety. In this respect, the issue is not merely about being a

normative power through historical context, or about becoming one through the development of instruments of human rights promotion. Rather, it is about the ability of the EU effect change in vulnerable situations, and mitigate the structural obstacles to human rights protection, according to its norm-laden vision and moral claims. Simply put, EU normative power should ensure consistency between what it claims to do and what it does. The investigation of the EU's procedural legitimacy showed that the actions of the EU are important and not only its intrinsic properties. Drawing from the analysis of Chapter Four, Chapter Five will further develop the critique of the legitimacy of EU human rights promotion by focusing on the EU's legitimacy (or lack thereof) in the responses of political and civil society actors in Turkey.

Chapter Five

Legitimacy as Recognition by the 'Other':

Turkey and Internal Dilemmas of Implementation

Introduction

After analysing the major EU procedural instruments towards Turkey in Chapter Four, this chapter examines the diffusion of EU human rights norms through the positions adopted by Turkey's major political parties and non-governmental human rights organisations. The purpose of this chapter is to show that domestic political and societal actors in Turkey who are disadvantaged in their domestic power position embrace EU human rights norms as legitimate, whereas domestic actors who feel threatened in their domestic position reject them as a risk to Turkey's dominant standard of legitimacy. This chapter argues that the policy's efficacy is dependent upon what Chapter Two explained as recognition of EU normative-laden reform framework by the 'other'. This refers to legitimacy based on perceptions of compatibility with domestic standards from the point of view of the recipients (rather than independent criteria). To accept EU policy as legitimate, political and civil society actors have to understand their political interests or those of their community as congruent with those of the EU. The previous analysis of the procedural characteristics of the policies will thus be strengthened with an examination of the substantive views of domestic actors.

The argument is made in two main sections. The first section presents the evidence that Turkey's main political parties view the EU human rights requirements as both a supporter and an obstacle to their political interests, through challenging *and* strengthening the Kemalist standard of legitimacy simultaneously. The second section analyses the perceptions of legitimacy held by civil society organisations working on human rights and how they differ from those of political actors. The empirical analysis draws from interviews with human rights organisations and EU officials in Ankara, policymakers' speeches, media reports (Turkish and international), and the wider literature on Turkey's relations with the

EU. The chapter concludes by highlighting the significance for the EU to enhance its understanding of Turkey's contextual realities, with the aim to apply a more inclusive human rights support which captures Turkey's past, present, and outlook.

1. The AKP and human rights: 'Europe as the answer'

This section will discuss the development of the governing pro-Islamic AKP before evaluating how EU norm diffusion relates to the party's domestic power and interests. The starting point is that the AKP has its own normative framework for what it considers legitimate behaviour and legitimate demands within the sphere of national decision-making and human rights reform. The standard of legitimacy in AKP politics has emerged by what can be termed 'conservative democracy',[1] 'conservatism without tradition',[2] and a 'synthesis of liberalism with traditional values'.[3] It will be argued that the EU human rights requirements offered the AKP an external legitimacy standard that advantaged the party as a domestic actor and offered gains in its competition with other domestic parties. In particular, EU-induced human rights reform offered the governing party new opportunities for policies advancing freedom of religion and for limiting the domestic power of the military and judicial establishment. Therefore the AKP, as a pro-Islamic party whose predecessors were systematically disadvantaged by the deeply entrenched Kemalist Orthodoxy in Turkey, had strong incentives to embrace the EU's external standard of legitimacy. Yet, following a period of rapid human rights reform (2002-2005), the AKP has distanced itself from the EU and only selectively promotes human rights. It will be argued that these shifts in the party's interests have challenged the AKP's recognition of the EU as a normative power and have led the

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[1] Özbudun, E. 'From Political Islam to Conservative Democracy: the Case of the Justice and Development Party in Turkey'. *South European Society and Politics*, vol.11 no: 3 (2006) p.548 (543-557); Özbudun, E. and Hale, W. *Islamism, Democracy and Liberalism in Turkey: the Case of the AKP* (Abingdon: Routledge, 2010) p.20.

[2] Tepe, S. 'Turkey's AKP: A Model Muslim-Democratic Party?' *Journal of Democracy,* vol. 16 no: 3 (2005) p.69-82; Aydin, S. and Cakir, R. 'Political Islam in Turkey'. In *Political Islam and European Foreign Policy: Perspectives of Muslim Democrats from the Mediterranean,* ed. by M. Emerson and R. Youngs (Brussels: Centre for European Policy Studies, 2007) p.116 (113-134); Yavuz, M.H. *Secularism and Muslim Democracy in Turkey* (Cambridge: Cambridge University Press, 2009) p.82.

[3] Turunç, H. 'Islamicist or Democratic? The AKP's Search for Identity in Turkish Politics'. *Journal of Contemporary European Studies*, vol.15 no: 1 (2007) p.85 (79-91)

party to search for alternative sources of legitimacy rooted in its own domestic power structures.

The AKP was established in 2001 and has been governing the country, through successive electoral victories (2002, 2008, and 2011) since 2002. Following its electoral programmes, the cornerstones of AKP policy were presented concisely in a 2003 document entitled *Conservative Democracy (Muhafazakar Demokrasi).*[4] The AKP claimed to acknowledge and promote the principles of democracy, human rights, and the rule of law, secularism coupled with respect to religion as an important institution of humanity, modern conservatism open to innovation, and a free market economy. On the basis of its programme, the AKP's standard of legitimacy appeared to be founded not only on the free exercise of human rights, but also on bridging the gap between a strong state and weak society. Policy output would be regarded as legitimate if it did not run within narrow and divisive ideological frameworks, and if it did not infringe the freedoms of religious citizens. According to Çınar, the AKP's strategy transcended national political differences and de-emphasised competing ideologies in Turkish politics.[5] The AKP principles served to motivate a generally constructive and ameliorative relationship with the EU, whose core demands appeared easy to reconcile the AKP's normative agenda of 'common EU-Turkey values' of freedom and democracy.

The AKP was not the first political party in Turkey to embrace pro-Islamic values, but it was one of the first to abandon efforts to use Islamist tenets as a standard of legitimacy and to fully embrace European norms instead.[6] The Welfare Party (*Refah Partisi*), the AKP's predecessor, was forced out of coalition government by the military in 1997 under the accusation of espousing anti-secular activities. The Turkish Constitutional Court subsequently banned it from political participation in 1998. The Welfare Party was replaced by the Virtue Party, which

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[4] Akdoğan, Y. 'Muhafazakar Demokrasi' ('Conservative Democracy') AK Parti Yayınları (Ankara: 2003)
[5] Çınar, M. 'Turkey's Transformation under the AKP Rule', *Muslim World*, vol: 96 no. 3 (2006) p.471 (469-486)
[6] Baudner, 'Politics of Norm Diffusion', p. 927.

distanced itself from pro-Islamic politics and expressed commitment to secularism, pluralism, and EU membership for a democratic Turkey. Having framed its overall party programme in accordance with the legitimacy framework of EU norms, the leadership of the Virtue Party decided to take the case of the Welfare Party's closure to the European Court of Human Rights. The belief was that the ECtHR would reverse the decision for dissolution of the Welfare Party in accordance with European norms of equality and religious freedom. Nevertheless, the ECtHR ruled against the Welfare Party. It upheld the dissolution by the Turkish Constitutional Court on the basis that some former members of the party had voiced the possibility of establishing Sharia law in Turkey. The Virtue Party was also forced to shut down in 2001 for having violated the secular principles of the Turkish constitution. The above events led pro-Islamic politicians to the belief that in order to maintain and promote their political agenda, both European backing and self-imposed limitations on the religious ambitions of a pro-Islamic party were necessitated. Thus, when the AKP succeeded the Virtue Party in 2001, it constructed an alternative legitimacy framework for itself grounded on EU norms and 'common EU-Turkey values'. The party emphasised secular democracy and framed religious goals as demands for human rights and equality for all segments of society, irrespective of ideological differences and social cleavages.

Departing from the position held by the Welfare Party, after its first election (2002) the AKP championed Turkey's EU integration and actively promoted human rights and democratic reforms (as discussed in Chapter Three). The identification of the AKP's political agenda with EU norms was given expression in the human rights debate conducted within the realms of the AKP. AKP representatives presented the EU as an important normative project in which Turkey's national identity was rooted. They offered to submit voluntarily to the pressures for behavioural change, and their acceptance attested to the idea of the EU as a normative power. Thus, any attempt to construct a legitimacy framework based on Islamist values was abandoned from the start. Former Minister of Interior Abdulkadir Aksu stated in Parliament that integration into the EU would ensure that Turkey's political development remained tied to universal values such as

human rights, democracy, pluralism, and development of civil society.[7] According to AKP parliamentarian Ruhi Akgaröz, human rights and democratic reforms were 'political steps... towards civilisation'.[8] Prime Minister Erdoğan reflected the idea of normative congruence with the EU by declaring that even if the accession process were terminated, Ankara would still implement the Copenhagen Criteria and internalise these under the name of 'Ankara Criteria'.[9]EU requirements, according to this idea, would be accepted by the government as normal: 'Our goal is not simply acceding to the European Union. Our goal is to construct a country that is more democratic, free, and peaceful for our people'.[10] Nevertheless, these statements can more appropriately be described as instrumental in an attempt to successfully distance the AKP from the Islamist agenda of its predecessors and secure its political survival.

As discussed in Chapter Three, in the period 2002-2005 the AKP embarked on a series of rapid human rights reforms. These were conducted through a strategy of 'democratisation via Europeanisation', which de-emphasised national differences and focused on the AKP's standard of legitimacy as one that was 'above politics'.[11] However, the human rights agenda adopted by the AKP left room for an interpretation that pointed to the instrumental way in which the party was using the reform process. The AKP was viewed with mistrust by Kemalist elites and opposition parties who suspected the pro-Islamic governing party for attempting to use EU integration as a vehicle to reconfigure the official ideology.[12] Scholars have provided an explanatory framework for AKP policies by frequently labelling the party and its leadership as pragmatic,[13] and have argued that the trait

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[7] Türkiye Büyük Millet Meclisi (Turkish National Parliament) 22nd term (19 February 2006)

[8] Türkiye Büyük Millet Meclisi (Turkish National Parliament) 22nd term (18 May 2007)

[9] İdiz, S. 'Erdoğan's Ankara Criteria'. *Hurriyet Daily News* (30 October 2012) http://www.hurriyetdailynews.com/erdogans-ankara-criteria.aspx?pageID=238&nid=33492 (accessed 30 October 2012)

[10] Çarkoğlu, A. 'Who Wants Full Membership? Characteristics of Turkish Public Support for EU Membership.' *Turkish Studies*, vol.4 no: 1 (2003) p. 171 -194.

[11] Avcı, G. 'The Justice and Development Party and the EU: Political Pragmatism in a Changing Environment'. *South European Society and Politics*, vol.16 no: 3 (2011) p.410(409-421)

[12] Öniş, Z. 'Sharing Power: Turkey's Democratization Challenge in the Age of the AKP Hegemony'. *Insight Turkey*, vol. 15, no: 2 (2013) p. 109 (103-122)

[13] Danforth, N. 'Ideology and Pragmatism in Turkish Foreign Policy: From Atatürk to the AKP.'

of rationalism also underlines the AKP's attitude towards EU human rights requirements.[14] These reflections can be placed within the body of literature on rational choice and cost-benefit calculations in the adoption of the EU's normative framework by candidate states, discussed in Chapter Two. For the AKP leadership, the pursuit of EU membership not only provided a legitimacy framework for its policy goals; it was also a useful opportunity structure that would help protect it from the power of the military, stay in office and carry out its declared political programme. In this sense, human rights reform was likely the result of cost-benefit calculations towards the EU, whereby the AKP embraced EU norms because they offered the party new advantages in competition against domestic actors that embraced Kemalist orthodoxy.

In a similar vein, the 2002-2005 reform process seems to confirm a well-known position within EU enlargement studies that EU-induced norms 'institutionalise a standard of legitimacy that is based on the constitutive norms and values of the recipient community'.[15] The AKP identified EU human rights promotion as a source of legitimacy across two broad dimensions: a) the perception that the EU gave flesh to the main principles of conservative democracy upon which the AKP was founded, with religious freedom featuring prominently; and b) the perception that the human rights norms would guarantee the survival of the AKP in the domestic political arena against competing parties that constructed it as a menace to the continuation of the status quo. In this regard, EU human rights promotion offered legitimacy to AKP policies as an effective solution to domestic policy challenges.[16] After all, the AKP would not be able to extend the religious freedoms of its Muslim/conservative electoral base and curb military involvement

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Turkish Policy Quarterly vol.7 no: 3 (2008) p.85 (83-95); Göl, A. 'The Identity of Turkey: Muslim and Secular', *Third World Quarterly*, vol. 30 no: 4 (2009) p. 795–811; Jacoby, T. 'Identity Politics, Turkey, and the European Union'. *Mediterranean Politics*, vol.15 no: 1 (2010) p.113-117 (109-119)

[14] Fisher Onar, N. 'Constructing Turkey Inc: the Discursive Anatomy of a Domestic and Foreign Policy Agenda'. *Journal of Contemporary European Studies,* vol.19 no: 4 (2011) p.466 (463-473)

[15] Schimmelfennig, F. 'EU Political Accession Conditionality after the 2004 Enlargement: Consistency and Effectiveness'. *Journal of European Public Policy,* vol. 15 no: 6 (2008) p.918 (918-937)

[16] Schimmelfennig, F. and Sedelmeier, U. 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe'. *Journal of European Public Policy,* vol.11 no: 4 (2004) p.662 (661-679)

in politics without the leverage of the EU norms. This is because EU human rights promotion serves the benefit of membership in a Union where good governance overrules doctrinal attachment to state control over the individual, and where issues of freedom and equality for unpopular groups are not set aside in favour of rigid interpretations of secularism and national heterogeneity.[17] Consequently, the AKP granted legitimacy to EU human rights promotion through an approach of internal incentives, which perceived the EU as an anchor that would discard suspicions of an alleged Islamist agenda and would place AKP reforms under its surveillance and 'ownership'. This contests the previous statements by Turkish politicians who claimed to recognise the EU as a normative power. Their statements appear more in line with those of strategic actors who engage with the EU when its power of attraction helps them achieve preferred outcomes.

At the same time, the AKP constructed EU human rights requirements as aligned with domestic audiences and the preferences of the people of Turkey. Public support for EU-induced change confirms the currently prevailing argument in normative power Europe studies that the EU should be found to be legitimate in the eyes of the (non-European) people.[18] Even though the AKP core electorate was split on the question of EU membership, the party presented EU requirements as compatible with and fostering freedom of religion and the socio-economic rights of the hard-working masses. Public support for EU accession was at a high 70% in 2005.[19] In national and municipal election campaigns it often portrayed pro-secular and Eurosceptic opponents as autocratic 'elites' who only superficially adhered to western norms.[20] At the same time, the party attempted to reach out to diverse parts of the electorate and improve their position through demonstrating adherence to 'Europe'. The most visible initiative adopted by the government was the so-called Kurdish opening, in the form of a 'National Unity Project'. In fulfilment of EU

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[17] Schmitt, C. *The Crisis of Parliamentary Democracy* (Cambridge MA: MIT Press, 1985) p.9.

[18] Nicolaidis and Fisher-Onar, 'Europe as a Post-olonial Power' (2013)

[19] European Commission, 'Eurobarometer 64: Public Opinion in the European Community' (2005) Available at http://ec.europa.eu/public_opinion/archives/eb/eb64/eb64_first_en.pdf (accessed 16 July 2009)

[20] Aslan-Akman, C. 'The 2011 Parliamentary Elections in Turkey and Challenges Ahead for Democratic Reform Under a Dominant Party System'. *Mediterranean Politics*, vol.17 no: 1 (2012) p.83 (77-95)

requirements, the AKP government granted several cultural and linguistic rights to the Kurdish population, made efforts to improve the social and economic conditions of the South-East region, and initiated a process of disarmament and dissolution of the PKK without military action. The human rights requirements of the EU and the AKP's demonstration of adherence to the EU's standard of legitimacy helped these efforts and gained the endorsement of the human rights policies by the Kurdish electorate.[21]

Even more important for the recognition of the EU norms was the endorsement of the 'democratisation via Europeanisation' strategy by Turkey's major business associations. The ascent of the AKP to government has often been interpreted as the emancipation of the new middle classes of entrepreneurs in eastern Turkey, the so-called 'Islamic capital',[22] or more widely known as 'Anatolian tigers'.[23] These are characterised by strong informal, religious networks and represented by the Independent Industrialists' and Businessmen's Association (MÜSIAD). MÜSIAD, which prior to 1999 was staunchly Eurosceptic, shifted its position and embraced a moderate pro-EU attitude with the rise of the AKP.[24] It demanded the extension of human rights and fundamental freedoms from the government and a new democratic constitution. The association of secular business interests in Turkey is the highly influential Turkish Industrialist's and Business Association (TÜSIAD). TÜSIAD played a significant role in the major wave of EU-induced reforms accomplished under the first AKP government.[25] With EU

[21] Romano, D. 'The Kurds and EU Enlargement: In Search of Restraints on State Power'. In *Divided Nations and European Integration*, ed. by T.J. Mabry (Philadelphia: University of Pennsylvania Press, 2013) p.200 (190-210)

[22] Hosgör, E. 'Islamic Capital/Anatolian Tigers: Past and Present'. *Middle Eastern Studies*, vol.47 no: 2 (2011) p.343-360.

[23] Demir, Ö., Acar, M. and Toprak., M. 'Anatolian Tigers or Islamic capital: Prospects and Challenges'. *Middle Eastern Studies*, vol. 40 no: 6 (2004) p.166-188; Grigoriadis, I.N., and Kamaras, A. 'Foreign Direct Investment in Turkey: Historical Constraints and the AKP Success Story'. *Middle Eastern Studies*, vol. 44 no: 1 (2008) p.53-68; Kirişçi, K. and Kaptanoğlu, N. 'The Politics of Trade and Turkish Foreign Policy'. *Middle Eastern Studies* vol. 47 no: 5 (2011) p.705-724.

[24] Yankaya, D. 'The Europeanisation of MÜSIAD: Political Opportunism, Economic Europeanisation, and Islamic Euroscepticism'. *European Journal of Turkish Studies*, vol.9 (2009) p.12 (1-18) 'Fundamental Rights and Freedoms' <http://www.tusiad.org/issues/democratic-standards/fundamental-rights-and-freedoms/> (accessed 12 January 2013)

[25] Öniş, Z. 'The Triumph of Conservative Globalism: The Political Economy of the AKP Era'. *Turkish Studies*, vol.13 no. 2 (2012) p.139 (135-152)

membership as a reference point, it pressured for reform in controversial areas: freedom of expression, prevention of torture and ill-treatment, minority rights, independence of the judiciary, and civil-military relations.[26]

Recent analyses of the AKP, whether critical or supportive of its 'democratisation via Europeanisation' agenda, have emphasised the change the party has undergone since 2005 and the stagnation of its human rights reform programme.[27] In the course of less than a decade, the government has conducted a reversal of policy and has become visibly Eurosceptic. Moreover, Prime Minister Erdoğan has been accused of authoritarian tendencies that have created local and international doubts about whether he is genuinely committed to viable reform.[28] These include undemocratic public statements, authorisation of lethal police force against peaceful demonstrations, limitations on the advocacy and fundraising activities of NGOs not affiliated to the AKP, detention without trial, and torture in detention, among other things. Since 2012, Turkey is the world's leading country with journalists in jail, overriding China and Iran.[29] Some analysts have argued that the AKP leadership has used EU conditionality as a vehicle to replace the state's totalising Kemalist discourse with a new but equally totalising Islamist discourse which, like its predecessor, subordinates state to society in a paternalistic and illiberal fashion.[30] It would seem that in contradiction to past claims, the AKP leadership has distanced itself from the EU's 'standard of legitimacy' and no longer adheres to human rights as universal values applicable to Turkey.[31] What happened to precipitate this regression?

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[26]TÜSIAD, 'Fundamental Rights and Freedoms' <http://www.tusiad.org/issues/democratic-standards/fundamental-rights-and-freedoms/> (accessed 12 January 2013)

[27] Luigi, N. and Tocci, N. 'Running around in Circles? The Cyclical Relationship between Turkey and the European Union'. *Journal of Southern Europe and the Balkans,* vol.9 no: 3 (2007) p.233-245;Patton, 'AKP Reform Fatigue', 2007.

[28] Timur, Ş. 'Turkey Advancing towards Civilian Despotism'. *Hurriyet Daily News* (14 February 2010) <http://www.hurriyetdailynews.com/n.php?n=8216turkey-goes-towards-civil-authoritarian-rule8217-2010-02-14> (accessed 14 February 2010)

[29] Committee to Protect Journalists, '2013 Prison Census' (1 December 2013) <http://cpj.org/imprisoned/2013.php> (accessed 1 December 2013)

[30] Şimşek, S. 'Conservative Democracy as a Cosmetic Image in Turkish Politics: The Semiology of AKP's Political Identity'. *Turkish Studies,* vol.14 no. 3 (2013) p.432 (429-446); Tombuş, H.E. 'Reluctant Democratisation: the Case of the Justice and Development Party in Turkey'. *Constellations*, vol.20 no: 2 (2013) p.320 (312-327).

[31] Dornbush, S.M. and Scott, W.R. *Evaluation and the Exercise of Authority* (San Fransisco: Jossey-

Various accounts have attempted to resolve the paradox of Turkey's 'reform fatigue'. Following the top-down conditionality approach, one could draw from the external incentives model of conditionality and the credibility of the EU's membership perspective in particular. Advocates of the external incentives model would argue that double standards of EU behaviour towards Turkey (perceived or real) have increased the domestic cost of undertaking EU-required reforms and thus limited the AKP's motivation and capacity.[32] If the EU appears more partial than impartial during the processes of promoting human rights reform, then it contradicts one of the core principles of normative power Europe ('leading by example') and the normative content of human rights promotion will no longer be accepted.

Indeed, the AKP has challenged EU 'hypocrisy' on three leading fronts. The first is a perception of a 'lesser' degree of human rights protection in European countries. The EU has been understood as an inconsistent actor that imposes human rights criteria on Turkey that several of its own member-states themselves do not themselves fulfill.[33] The alleged lesser standards of human rights protection in Europe have led the AKP to argue that Turkey is currently the most reformist government in Europe, despite all political obstacles.[34] Secondly, perceptions of double standards are linked to a statement by the European Commission's 2004 Enlargement Strategy report that Turkey's pre-accession process should be 'an open-ended process whose outcome cannot be guaranteed beforehand'.[35] The

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Bass, 1975)

[32]Patton, 'AKP Reform Fatigue', p.347; Saatcioğlu, B. 'Unpacking the Compliance Puzzle: the Case of Turkey's AKP under EU Conditionality'. KFG Working Papers, Free University Berlin (2011) p.14; Alessandri, E. 'Turkey's New Foreign Policy and the Future of Turkey-EU Relations'. *The International Spectator*, vol.45 no: 3 (2010) p.92 (85-100); Avcı, G. 'The Justice and Development Party and the EU: Political Pragmatism in a Changing Environment'. *South European Society and Politics*, vol.16 no: 3 (2011) p.419 (409-421)

[33]Patton, 'Reform Fatigue in Turkey', 2007; Düzgit, S.A. 'Seeking Kant in EU's Relations with Turkey' (Istanbul: TESEV Publications: 2006) p.20.

[34] Hürriyet Daily News, 'Turkey prepares its own progress report for the first time' (10 January 2013) <http://www.hurriyetdailynews.com/turkey-prepares-its-own-eu-progress-report-for-first-time-.aspx?PageID=238&NID=38023&NewsCatID=338> (accessed 18 January 2013)

[35] European Commission, 'Recommendation on Turkey's Progress towards Accession'. COM (2004)

reference to an 'open-ended process' was interpreted as an indicator of the 'moving' nature of EU expectations and lack of EU commitment to membership, which affects the AKP's incentive for human rights reform.[36] Thirdly, the AKP criticised the EU's annual monitoring process of Turkey's human rights and democracy record as evidence of EU hypocrisy. Turkish politicians have tended to view EU recommendations on human rights and democratic reform as subjective, poorly researched, and rather sweeping and general in their criticism. For example, the release of the European Commission's 2012 Progress Report caused an ardent reaction by the AKP, which for the first time released its own counter-report that challenged the objectivity of the EU report and highlighted Turkey's reforms over the past year.[37]

However, the aim of this chapter is to demonstrate that the interaction of domestic Turkish politics with EU human rights promotion is more complex than argued by the top-down conditionality approach and Manners' original definition of normative power Europe (a power that shapes conceptions of 'normal' in international politics). Instead, this chapter argues that the domestic power positions, social cleavages and interests of political parties in Turkey determine the processes of change induced by EU human rights promotion. The legitimacy of EU norms is evaluated by political actors in Turkey according to their potential utility in domestic politics. In accordance with a 'logic of consequences', the AKP adopted external human rights norms because they provided the government with significant advantages in the domestic power struggle against the dominant Kemalist elite and the Kemalist opposition party. According to Baudner, once the additional resources provided by EU norms decreased in value and could be replaced by domestic sources of legitimacy, the enthusiasm for EU accession and

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656 final (Brussels: 6 October 2004) p.2.

[36] Interview with scholar from Bilkent University, Turkey (Ankara: 7 October 2010)

[37] Euractiv, 'Turkey accuses EU of bigotry' (2 January 2013) <http://www.euractiv.com/enlargement/turkey-accuses-eu-bigotry-news-516832> (accessed 10 January 2013)

the efforts to comply with EU human rights requirements increasingly slowed down.[38]

Stemming from the above, the AKP government's reform fatigue can be explained according to the idea that EU norms are no longer valuable in the pursuit of the party's domestic interests. At present, the leadership and representatives of the AKP appear to have realised that EU was not as effective in the pursuit of freedom of religion as they had initially envisaged. The AKP's interpretation of EU human rights norms is not always in line with the EU understanding. When, for example, it attempted to include the criminalisation of adultery in the proposed amendments to the Turkish Penal Code in 2004, the EU reacted firmly to such a possibility. Another example was the 2008 attempt to reverse the headscarf ban in education and the civil service, which did not meet with EU support. Also, although the AKP promoted the case of Leyla Şahin to the European Court of Human Rights, the ECtHR rejected the case.[39] Consequently, a growing resistance towards the EU's normative self-representation emerged within the AKP. Furthermore, the decline in public support for EU membership made it difficult for the governing party to seek electoral coalition and consensus for a wide agenda of reform. Domestic resistance to the EU came not only from the disillusioned governing party, but from an increasingly unenthusiastic public that doubted the EU's commitment to Turkey and the EU's capacity to benefit the country (public support to EU membership stood at 44% in 2013, while 20% believed accession would be a 'good thing').[40] Moreover, AKP-induced strategies and reforms that curbed the powers of the military and subordinated the higher judiciary to government power meant that the AKP no longer necessitated the 'umbrella' of EU norms as a guarantor of its political survival. In particular, the Ergenekon investigation seriously weakened the position of the military and shifted the

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[38] Baudner, 'Politics of Norm Diffusion', p.930.

[39] European Court of Human Rights, *Leyla Sahin vs. Turkey* (Strasbourg, 10 November 2005) <http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=turkey&sessionid=72486530&skin=hudoc-en> (accessed 20 June 2011)

[40] German Marshall Fund of the United States, 'Transatlantic Trends: Key Findings 2013' (December 2013) p.45.

balance power in Turkey in favour of the AKP.[41] Consequently, the AKP could now utilise the state executive and the judiciary as domestic resources and as alternative sources of legitimacy.

This section has argued that Turkey's progress towards human rights reform can be better explained by the rational choices of the AKP government, rather than by the influence of EU normative power as able to shape conceptions of 'normal' in Turkey's human rights protection. This situation has recently limited the political space for the continuation of human rights reforms, and has marked a reversal in the AKP government's EU policy at the expense of individuals suffering from human rights violations or state repression. At the same time, exposing the non-normative basis of the EU's 'hypocritical' attitude towards Turkey has become a political tool for the AKP government, which has challenged the EU standard of legitimacy and has shifted its preference towards alternative sources of legitimacy (economic success, pro-Islamic values, erosion of military power). These findings – though they do not cover Turkey's entire political spectrum – contest the conceptualisation of the EU as a normative power in Turkey based on the attitudes and understandings of the 'non-European' partners. The EU did succeed in framing the domestic discourse and policy responses of the AKP. Nevertheless, it was not able to influence the perceptions of political actors and the inter-subjective political environment that acts as a barrier to sustainable human rights reform. Although this by no means excludes the possibility that human rights norms will in the long run acquire their own path dependency, at present their durability appears insecure.

2.   The CHP and human rights: 'European norm rejection'

The Republican People's Party (*Cumhuriyet Halk Partisi,* CHP) is Turkey's oldest party, formed by Kemal Atatürk in 1924 on the basis of the 'six arrows'

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[41] Freedom House, 'The Ergenekon Case and Turkey's Democratic Aspirations' (7 February 2012) <http://www.freedomhouse.org/blog/ergenekon-case-and-turkey%E2%80%99s-democratic-aspirations> (accessed 9 March 2012)

(founding principles) of the Kemalist orthodoxy. It was the only political party in Turkey until 1950, becoming virtually synonymous with the state and formulating its ideology without any organised political opposition. The ideological substance of CHP policy has traditionally been Kemalist orthodoxy (especially secularism and nationalism), western values, and a social-democratic outlook (the CHP is an associate member of the Party of European Socialists). The CHP has traditionally supported Turkey's path to the EU as a natural extension of the vision of modernisation and Westernisation.[42] Party leader İsmet İnönü signed the Ankara Agreement in 1963, and former Prime Minister Bülent Ecevit signed Turkey's candidature document in 1999. Yet, the CHP's position towards human rights reform has been less enthusiastic, and took a sharp turn following the rise of the AKP. In fact, the party opposed the AKP government's human rights reforms by taking legal action against several of them, and accused the AKP of infringing domestic standards of legitimacy through its pursuit of EU-induced reforms.[43] This section will discuss the CHP's understandings of EU human rights promotion as they emerged in the context of its interaction and opposition to the AKP policies.

Several scholars have emphasised that the CHP's human rights agenda has transformed negatively over time. Güneş-Ayata, for example, drew on the party's history to argue that the CHP started as a committed proponent of rights and freedoms at its inception (religious freedom, women's rights), perceiving democratisation as 'a culture where the right to be different and tolerance of that right are... preconditions for coexistence [in Turkey]'.[44] However, according to Ciddi, after the rise of the AKP, the CHP replaced an accommodating and 'rights-based' approach to sensitive issues with concerns for national unity and national security.[45] Kubicek highlighted that the party viewed EU demands regarding the Kurdish issue as going 'too far' and that the EU was playing into the hands of the

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[42] Cıngı, A. 'CHP: a Party on the Road to Social Democracy'. *International Policy Analysis* (June 2011) p.11.

[43] Baudner, 'Politics of Norm Diffusion', p.929.

[44] Güneş-Ayata, A. 'The Republican People's Party'. In *Political Parties in Turkey*, ed. by B.M. Rubin and M. Heper (London: Routledge, 2002) p.112 (102-121)

[45] Ciddi, S. 'The Republican People's Party and the 2007 General Elections: Politics of Perpetual Decline?' *Turkish Studies*, vol.9 no: 3 (2008) p.451 (437-455)

AKP, which 'uses EU harmonisation as an excuse to bolster a religious way of life over Turkish society'.[46] As argued by Öniş, a strong and defensive nationalism in the CHP as well as a narrow and authoritarian understanding of secularism has led to grown Euroscepticism in the post-2005 era, and has strengthened the party against religious conservatives and Kurdish nationalists. In these views, CHP attitudes emphasise that Turkey should fulfil EU criteria, but on the basis of equality and EU respect for the founding principles of the Turkish Republic.[47]

Following the AKP's rise to power, the CHP reflected a growing preoccupation with the governing party's human rights policies. In fact, it has been argued that the CHP's European policy consisted of providing evidence to the Turkish public that the AKP had infringed domestic standards of legitimacy, even when it pursued reforms that were demanded by the EU in the annual progress reports.[48] The CHP approach might even represent a conspicuous indication of 'return to Kemalism', given that prior to the 2002 elections CHP leader Deniz Baykal had attempted a programmatic renewal and reform of Kemalist orthodoxy that would reconcile it with ethno-religious rights ('New Left' and 'Anatolian Left' programmes), only to retreat from these reformist positions as a response to AKP policy. Indeed, Baudner asserted that the CHP's reform outlook has been steeped in the AKP's challenge of rigid Kemalist orthodoxy and the ensuing power struggle between the two major parties.[49] In contrast to the AKP, the CHP did not attempt to infuse EU norms into its political agenda in order to increase its domestic legitimacy. Instead, it counted on the military and higher judiciary establishment to provide it with power and opportunity resources in the domestic political arena. It is not coincidental, therefore, that after the AKP came to power, the CHP firmly defended Kemalist orthodoxy in deeming EU-induced human rights reform as illegitimate. There have been two aspects to the CHP's concerns about the legitimacy of EU human rights promotion: that the AKP and its EU-induced human

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[46] Kubicek, P. 'The European Union and Political Cleavages in Turkey'. *Insight Turkey*, vol.11 no: 3 (2009) p.121 (109-126)

[47] Baskan, F. and Gumrukcu, S.B. 'Positions of Turkish Political Parties on European Integration'. *Southeast European and Black Sea Studies*, vol.12 no: 1 (2012) p.33 (22-44)

[48] Baudner, 'Politics of Norm Diffusion', p.935.

[49] *Ibid.*

rights reforms are unconstitutional, and that the EU is not committed to a credible membership perspective for Turkey.

Although the CHP stated that it supported Turkey's EU membership perspective in principle, it opposed nearly all the reforms conducted by the AKP. With regard to the reform packages addressing specific EU requirements, in 2008 the CHP referred 16 adopted laws to the Turkish Constitutional Court, some of which were intended to introduce EU-induced reforms (e.g. amendments to the Law on the public service broadcaster to include Kurdish, amendment to the Law on Municipalities). In February 2008, the Turkish Parliament adopted a Law on Foundations which addressed a number of issues faced by religious minorities regarding the acquisition and management of property. This law was subsequently vetoed by then President Ahmet Sezer.[50] At the same time, the CHP was reluctant to agree to the reform of the 1982 Constitution, even though it was adopted under military rule and had been considered illiberal by the EU. In 2008 the AKP developed a new draft constitution which envisaged, among other things, reverting the legal meaning of the word 'Turk' to 'citizen living in Turkey', anti-corruption measures, expansion of religious freedoms, and curbing the powers of the military. Nevertheless, the draft constitution never went to parliamentary vote after the CHP ruled out cooperation with the AKP, making it difficult for the governing party to secure two-thirds of the parliamentary majority. At a speech to the CHP caucus in August 2009, party leader Deniz Baykal declared: 'We don't think there is any need to change the constitution's basic philosophy. We say 'no' to changing the constitution just to suit the AKP. Let the AKP adapt itself to the constitution'.[51]

In February 2008, the AKP passed a constitutional amendment that lifted the headscarf ban in university education. Deniz Baykal accused the governing party of using EU requirements to erode secularism and attack the Kemalist standard of

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[50] European Commission, 'Turkey 2008 Progress Report' SEC(2008) 2699 (Brussels: 5 November 2008) p.9.
[51] International Crisis Group, 'Turkey and Europe – the Decisive Year Ahead' (15 December 2008) p.6.

legitimacy. In response, Ali Babacan, minister of foreign affairs, asserted that Turkey lifted the ban in order to comply with EU norms of freedom of religion and respect to private life. This provoked a denial by EU officials, who replied that they had not recommended lifting the headscarf ban since there was no common standard on the issue in the EU. The CHP subsequently filed a case to the Constitutional Court against lifting the headscarf ban, and in March 2008 the chief prosecutor demanded the closure of the AKP under the accusation of anti-secular activities. The Turkish Constitutional Court reinstated the headscarf ban but stopped short of ruling in favour of AKP closure. This outcome occurred after strong warnings by the EU that a ban on the AKP would be a breach of the Copenhagen Criteria and would offer sufficient grounds for suspending membership negotiations.[52] Instead, the Court ruled that the party's treasury subsidy would be cut by half. The crisis in Turkish politics in 2008 demonstrated that the CHP and the pro-Kemalist elite not only opposed the legitimacy of AKP reforms; they also opposed the legitimacy of the party's existence itself. Additionally, the AKP's indictment indicated that the legitimacy of the EU human rights norms was embedded (and dependent upon) domestic power positions and interests, rather than any implicit or explicit EU 'force for good' that might frame such norms.

Another AKP initiative that met with opposition concerned a number of democratisation initiatives to address minority rights, including Kurdish rights, freedom of worship for the Alevi religious community, and socio-economic integration of the Roma (2009). According to the government, the aim of the initiatives was to strengthen the social unity and cohesion of Turkey through a democratic debate on rights and freedoms.[53] Supported by the EU, the AKP government assumed that it would gain political support and popular consent simply because the initiative, primarily designed to resolve the Kurdish question,

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[52] Speech by Olli Rehn, EU Commissioner for Enlargement, 'Turkey to Refocus on EU Reforms' (Strasbourg: 21 May 2008) <http://europa.eu/rapid/press-release_SPEECH-08-257_en.htm > (accessed 20 July 2008)

[53] Johansson-Nogués, E. and Johansson, A. 'Turkey, its Changing National Identity and EU Accession: Explaining the Ups and Downs in the Turkish Democratization Reforms'. *Journal of Contemporary European Studies,* vol.19 no: 1 (2011) p.123 (113-132)

would signify the end of the decades-old low-intensity war between the Turkish military and the PKK.[54] Yet, such a consensus was not achieved, because the CHP and the far-right Nationalist Action Party (*Milliyetçi Hareket Partisi*, MHP) strongly opposed the initiative on the basis that it risked the national unity and territorial integrity of Turkey. Accusations of the initiative lacking a conclusive strategy and being hypocritical were also expressed by the opposition.[55] The CHP's strict refusal to accept a pro-Kurdish democratic opening demonstrated that it did not recognise the attempt (or the right) of the AKP to set national pluralism as a new 'normal' in Turkey's political life in accordance with EU standards. The contest over legitimacy between the two parties invoked their conflicting agendas and entailed power relations,[56] which confronted the EU with the reality that in Turkey's dynamic political environment, the principles of 'normative power Europe' might not be a magnet.

The CHP strategy of comprehensive challenge against the legitimacy of AKP human rights reforms continued with the referendum on constitutional changes of 12 September 2010. The new package of amendments suggested by the AKP primarily focused on restructuring the judiciary, with which it had clashed in the past, and gave less emphasis to human rights and fundamental freedoms. In the area of human rights, the draft constitution introduced new provisions (and expanded previous ones) on children's rights, gender equality, and labour rights. It also envisaged the establishment of a human rights Ombudsman. Similarly to the 2008 draft constitution, the AKP was the sole party supporting the amendments. Following combative and mutually demeaning debates in Parliament between the government and the opposition,[57] the three parliamentary opposition parties (CHP, MHP, and the Democratic Left Party) voted against the amendments while the AKP majority voted in favour. President Abdullah Gül then signed the amendments and

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[54] Keyman, E. F. 'The CHP and the Democratic Opening: Reaction to AK Party's Electoral Hegemony'. *Insight Turkey*, vol.12 no: 2 (2010) p.92 (91-108)
[55] Ulusoy, K. 'The Democratic Opening in Turkey: a Historical/Comparative Perspective'. *Insight Turkey*, Vol.12 no: 2 (2010) p.86 (71-90)
[56] Celep, Ö. 'The Republican People's Party and Turkey's EU Membership'.*South European Society and Politics,* vol.16 no: 3 (2011) p.426-427 (423-434)
[57] Kalaycıoğlu, E. 'Kulturkampf in Turkey: the Constitutional Referendum of 12 September 2010'. *South European Society and Politics,* vol.17 no: 1 (2012) p.6 (1-22)

presented them to a referendum, which saw a clear majority (58%) endorse the new constitution. During the campaign period, the CHP, backed by the armed forces and the higher judiciary,[58] attempted to convince the electorate to reject the proposed changes.[59] The new leader of the CHP, Kemal Kılıçdaroğlu, explained in a public letter to Brussels that the CHP's primary reason for opposing the constitution was 'the AKP government's efforts to create a dictatorship of the majority on the basis of its majority in Parliament, and by holding the whole society under coercion'.[60]

Although the strategy of opposing the legitimacy of the AKP's democratisation initiatives continued with the 2010 Constitution, it is worth noting that the new leadership of the CHP conducted a clear reversal of the party's earlier position of norm rejection. It abandoned the previous populist anti-democratisation strategy based on 'defensive nationalism' and stringent Kemalist orthodoxy.[61] The new CHP leadership has adopted a pro-EU attitude and engaged in a reformist pro-democratic discourse, arguing that the AKP was liable for human rights violations and national disunity.[62] Upon becoming the new leader of the CHP, Kemal Kılıçdaroğlu attempted a programmatic renewal of Kemalist orthodoxy that would reconcile secularism and nationalism with pluralist democracy. Thus, after the old CHP leadership attempted to convince the Turkish electorate that the AKP had infringed standards of legitimacy in compliance to the EU, the new CHP leadership now criticised the AKP for authoritarian tendencies and failure to promote sustainable human rights reform for all citizens of Turkey.[63] For instance, the CHP

[58]Özbudun, E. 'Turkey's Search for a New Constitution'. *Insight Turkey*, vol.14 no: 1 (2012) p.48 (39-50)

[59]Herzog, M. 'Analysing Turkey's 2010 Constitutional Referendum'. Foreign Policy Centre, <http://fpc.org.uk/fsblob/1269.pdf> (accessed 30 December 2012)

[60]CHP, 'CHP President Kemal Kılıçdaroğlu is Letter Explaining his No Vote', CHP EU Representation (2010) <http://avrupabirligihaberleri.files.wordpress.com/2012/08/chp-bulletin-kilicdaroglu-on-referandum-august-10.pdf> (accessed 30 December 2012)

[61]Öniş, Z. 'Domestic Politics, Identity, Conflicts, and the Controversy over EU Membership in Turkey' Istanbul Bilgi University, European Institute, Working Paper no: 2 (2009) p.13 (1-24)

[62] Kılıçdaroğlu, K. Speech to the European Policy Centre (Brussels: 16 September 2010) http://kadersevinc.blogactiv.eu/2010/10/01/the-speech-of-kemal-kilicdaroglu-european-policy-center-16-september-2010/ (accessed 4 September 2011); Kılıçdaroğlu, K. Speech to Socialist International (Paris, 15 November 2010) <http://www.socialistinternational.org/images/dynamicImages/file/KilicdarogluSpeech.pdf> (accessed 5 September 2011)

[63]Gülmez, S.B. 'The EU Policy of the Republican People's Party under Kemal Kılıçdaroğlu: A New Wine in an Old Wine Cellar'. *Turkish Studies*, vol.14 no: 2, (2013) p.318 (311-328)

representation to the EU describes the party's vision for EU-related human rights reform as one asking for 'better fulfilment of the EU's Copenhagen political criteria by Turkey'.[64] Kılıçdaroğlu invoked his party's attempt to end the AKP's challenge *against* the EU standard of legitimacy in a recent article in the Wall Street Journal, where he claimed that 'freedoms of speech, of assembly and of the press no longer apply in Turkey... My CHP is committed to working towards the restoration of genuine democracy and fundamental freedoms in Turkey'.[65] Since 2010, the CHP has gradually come to accept the EU human rights norms and democratic principles as a standard of legitimacy for party behaviour and demands.

Why did the CHP originally challenge the legitimacy of EU-induced human rights reform (post-1999 and 2004 European Councils), and what precipitated the reversal of its position? Facing the need to establish itself as the representative of the pro-Kemalist electorate and the bearer of the official state ideology, an intransigent opposition to human rights reform seemed like a safe option. The acceptance of EU norms and values as a standard of legitimacy would have risked the CHP's relationship with the armed forces and the higher judiciary, which have traditionally been a firm source of power and opportunity structures for the party (with the exception of the 1980 military coup's ban against the CHP). If the CHP reformulated its normative framework according to human rights, it would be endorsing the AKP's pro-Islamic credentials and its attempt to curb the powers of the military and judiciary. Nevertheless, after the AKP's constitutional reforms limited the power of the judiciary, and following the firm stance against the military during the Ergenekon trial, the bureaucratic state elite has lost power to an extent that in the twentieth century would be unfathomable. With the Kemalist legitimacy framework being put seriously into question, the CHP turned towards the EU and began to utilise EU human rights and democratic norms to challenge the overarching power of the AKP over politics, religion, and social life in Turkey.

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[64]CHP, 'The CHP's Vision for EU Membership'. CHP EU Representation (2012) <http://chpbrussels.org/2012/09/27/chps-vision-for-the-eu-membership/> (accessed 21 December 2013)

[65]Kılıçdaroğlu, K. 'The Threat to Turkish Freedom'. *Wall Street Journal* (2 December 2013) <http://chpbrussels.org/2013/12/02/chp-president-kemal-kilicdaroglu-the-threat-to-turkish-freedom-the-wall-street-journal/> (accessed 21 December 2013)

The fact that at present CHP representatives view EU human rights promotion in more universalist lines does not mean that they do not display scepticism regarding other dimensions of policy, such as the EU's perceived inconsistency and unfairness towards Turkey. The EU has been judged as an unfair and inconsistent actor because it does not appear firmly committed to Turkey's membership perspective, and the alternative outcomes (additional conditionality, veto against negotiation chapters) are not considered rightful.[66] In parallel, however, the oscillating political attitudes of the CHP and AKP have similarly filtered perceptions of 'Turkish inconsistency' to the EU level. As an EU official asserted in an interview,

> In certain aspects we are closer to the CHP than we are to the AKP, but then the CHP is close to the army and we have doubts about their approach to democracy. So… we are not totally confident in this situation because we don't know with whom we have to negotiate. There is not one Turkey; there are many Turkeys and this presents a problem'.[67]

3.   Human rights NGOs: European shared values?

This section will argue that an analysis of non-governmental human rights organisations conveys a different narrative of the normative power of Europe as being subject to political conflicts between state and civil society in Turkey. As with the analysis of the two major political parties, the AKP and the CHP, this section aims to contribute to an analysis of norm diffusion in Turkey through a bottom-up approach to discussing the influence of EU human rights promotion in the country. In the literature on normative power and European governance, 'civil society' and 'norm diffusion' have been analysed as a method by which the EU enriches the democratic character of the state by strengthening NGOs, which in turn supports the democratic process.[68] However, this top-down approach misrepresents the complex realities of NGOs in Turkey and their relationship with the wider political context within which they operate. The case of Turkish non-

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[66] Gülmez, S.B. 'The Republican People's Party under Kemal Kılıçdaroğlu'. p.318.
[67] Interview with European Commission official (Brussels: 27 November 2009)
[68] Mercer, 'Civil Society', p.20.

governmental human rights organisations suggests that the change processes induced by the EU might be strongly determined by the interest agenda of the NGOs themselves, the advantages they have (or not) in the political system of Turkey, and their preparedness to accept modifications of their action programme imposed by EU norms. Therefore, human rights NGOs might confront the standard of legitimacy on which EU human rights promotion is based as either a positive external resource or an external constraint.

This section presents brief case-studies from four major human rights NGOs that received funding from the European Commission from 2003 to 2012, and jointly discusses their perceptions of legitimacy regarding EU human rights promotion to Turkey. The organisations selected included both secular and faith-based organisations, such as the Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Derneği*), the Human Rights Association of Turkey (*Türkiye İnsan Hakları Vakfı*), the Association of Liberal Thinking (*Liberal Düsünçe Derneği*) and Mazlumder, the latter a concrete example of a faith-based organisation.[69] These organisations were selected on the basis that they are the largest and most active domestic human rights groups in Turkey. In addition, their closeness to the EU and the economic and symbolic capital it provides them with enables these NGOs to undertake human rights projects, yet simultaneously circumscribes and restricts their agenda. The funding information on these organisations was available on the European Commission's EIDHR Turkey programme, which relates directly to providing financial assistance for macro- and micro-projects organised by the NGOs themselves on a variety of human rights issues. To compensate for inconsistencies in data availability (such as limited data accessibility on the EuropeAid website and lack of consolidation of the programme-year documents into compilations of the programme over time) interviews were conducted with the directors and/or staff of the NGOs concerned, and the following analysis primarily draws on their reflections.

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[69] İçduygu, A. 'Interacting Actors: the EU and Civil Society in Turkey'. *South European Society and Politics*, vol.16 no: 3 (2011) p.388 (381-394)

The aforementioned human rights NGOs require a distinct normative framework for evaluating what they consider legitimate behaviour and legitimate demands in EU human rights promotion. Their participation in EU-Turkey human rights consultations provides a reference framework for legitimacy that is different to NGOs with no direct involvement in the policy. These organisations interact with EU institutions through formalised human rights consultations and EU financial assistance through the EIDHR. Their participation in human rights consultations also includes the provision of information on Turkey's human rights record, which is subsequently included in the European Commission's annual progress reports. This procedural involvement entails that the NGOs in question do not simply observe EU policy; they are *involved* in it as consultation parties and agents of domestic reform. NGOs that participate in EU human rights promotion and have been systematically disadvantaged domestically have a strong incentive to embrace the policy's legitimacy once three preconditions are fulfilled: European norms must be compatible with the NGOs' human rights notions and local goals; EU procedural means should deliver efficiently what is needed on a basis of transparent objectives and clear communication of information to NGOs; and the EU must offer them an advantage towards making a real contribution in the human rights areas that are contentious for Turkey, or must be perceived to be doing so.

Turkey's major non-governmental human right organisations emerged from the experiences of political repression, military coups, human rights violations, corruption, and economic mismanagement of the 1970s and 1980s. Their main purpose is to promote human rights in Turkey in accordance with universal standards enshrined in international human rights instruments. For this very reason, the durability of EU norm endorsement by these NGOs is generally secure. They take a relatively open and proactive stance in tackling obstacles to sustainable human rights protection in Turkey, subject to governmental limitations on their function and financial resources. Against a background of growing doubts and uncertainty regarding EU membership, they stand out as consistent supporters of their country's EU aspirations. The compatibility of their human rights agenda with accepted EU norms can be regarded as a powerful resource, because commitment

to European norms attracts financial and technical assistance from the EU. Attraction of international funding, primarily from EU sources, is an important strategy for survival and sustainability, given domestic limitations on fundraising. Despite constituting Turkey's main non-governmental 'voice', these organisations operate under significant limitations by the state and enjoy only limited public support, due mainly to lack of information on their work.

The Human Rights Association (HRA) was founded in 1986 by a group of 98 left-wing lawyers, academics, journalists, doctors, and former political prisoners, who had been persecuted for their activism following the 1980 coup (including imprisonment and torture).[70] Following its establishment, HRA members drafted a declaration outlining the organisation's main objectives. In the declaration the members − mostly dedicated lawyers and academics − declared that human rights NGOs were already operating in many Western countries and the time had come to establish such an organisation in Turkey.[71] In the absence of proper human rights laws and institutions in Turkey, the founding members thought it necessary to establish an NGO which would contribute to creating an atmosphere of tolerance, public awareness of human rights, and opposition to all forms of human rights violations.[72] Until 1990, the HRA was the sole human rights NGO in Turkey (sporadic grassroots groups not included) and was responsible for carrying the 'rights banner' in the country.

At present, the HRA has succeeded in developing 34 branches across Turkey and includes approximately 17,000 members.[73] Its ability to expand was aided by the financial assistance of international human rights organisations such as Amnesty International, Human Rights Watch, and the Euro-Mediterranean Human Rights Network.[74] The HRA is active across a wide area of human rights issues

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[70] Interview with employee of Human Rights Foundation of Turkey (Ankara: 9 November 2010)
[71] Interview with chair of Human Rights Association (Ankara: 1 November 2010)
[72] *Ibid.*
[73] Sivil Toplum Portalı, 'İnsan Hakları Derneği'
<http://www.siviltoplum.com.tr/?ynt=icerikdetay&icerik=49&id=494> (accessed 6 June 2013)
[74]Interview with employee of Human Rights Association (Ankara: 7 November 2010)

included in the EU requirements (freedom of expression, children's rights, women's rights, and police brutality, among others)[75] and divides its activities among three areas: legal assistance, education, and public outreach and information. In 2013 it commenced a project on minority rights in cooperation with the European Commission.[76] Previous EU-related projects included women's rights (2010), children's rights (2010), elimination of land-mines in South-East Turkey (2007), rights of people with disabilities (2006), and eradication of torture and ill-treatment (2004). Nevertheless, the main issue currently underlying its activism is challenging the AKP's political stance on the Kurdish issue and promoting Kurdish minority rights.[77] In 2013, for example, the HRA was campaigning against political discrimination against Kurdish MPs.[78] Sections of its website are written entirely in Kurdish.[79] Notwithstanding its significant work, the HRA has been subjected to state persecution on numerous occasions, which has limited the scope of its mode of action.[80] Approximately 400 court cases were filed against HRA between 1986 and 2001.[81] In 2009, Muharrem Erbey and Vetha Aydın, chairs of the Diyarbakır and Siirt branches of the HRA respectively, were prosecuted for alleged membership in an illegal organisation.[82] At the time of writing they have spent approximately 1500 days in detention without trial.

The Human Rights Foundation of Turkey (HRFT) and the HRA are closely linked, with the former being created in 1990 as an extension to the latter. The

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[75]Delegation of the European Union to Turkey, 'Democrasi ve İnsan Haklaıı için Avrupa Araci-Tamamlanmış Projeler'. <http://www.avrupa.info.tr/tr/ab-ve-sivil-toplum/demokrasi-ve-insan-haklari-icin-avrupa-araci-dihaa/desteklenen-projeler/tamamlanmis-projeler.html> (accessed 6 June 2013)

[76]Delegation of the European Union to Turkey, 'Democrasi ve Insan Haklari icin Avrupa Araci-Devam Eden Projeler'. <http://www.avrupa.info.tr/tr/ab-ve-sivil-toplum/demokrasi-ve-insan-haklari-icin-avrupa-araci-dihaa/desteklenen-projeler/ongoing-projeccts.html> (accessed 6 June 2013)

[77]Interview with chair of Human Rights Association (Ankara: 1 November 2010)

[78]İHD (HRA), 'Kürt Siyasetine ve Kürt Milletvekillerine Yönellik Ayrımcılık'(17 December 2013) <http://www.ihd.org.tr/index.php/baslamalarinmenu-77/genel-merkez/2746-kurt-siyasetine-ve-kurt-milletvekillerine-yonelik-ayrimcilik.html> (accessed 17 December 2013)

[79]İHD (HRA), 'Rêziknameya Komeleya Mafên Mirovan' <http://www.ihd.org.tr/index.php/d-hakk-mainmenu-65.html> (accessed 1 December 2013)

[80]Interview with employee of Human Rights Association (Ankara: 7 November 2010)

[81]Human Rights Agenda Association, 'Turkey: Defend Human Rights Defenders' (Ankara: 2008) p.5.

[82]Human Rights Watch, 'World Report 2011 – Turkey' (New York: Human Rights Watch, 2011) p.481.

HRFT claims broad-based involvement with human rights, though in practice it tends to be quite issue-based, focusing on the prevention of torture and inhumane treatment. The HRFT action on prevention of torture is quite pioneering in Turkey, and its rehabilitation activities for victims of torture arguably carry more weight than those of the Turkish government. Its 'Five Cities Project' established rehabilitation centres across Turkey (Ankara, Istanbul, Izmir, Adana, and Diyarbakır) to provide physical and psychological treatment to people subjected to torture in detention places and prisons.[83] Until the year 2011, 12,452 victims of torture had been provided with treatment and rehabilitation services by the HRFT in those five centres.[84] In an interview to the author, one of the founders of the HRFT described torture in Turkey as a 'public epidemic', and declared that the organisations' medical teams could detect signs of torture up to 12 years after the event.[85] Another important contribution of the HRFT to human rights protection in Turkey has been its publication of annual and considerably substantial human rights reports (up to 400 pages) since 1993. These reports were used as points of reference by the EU in the compilation of its annual progress reports on Turkey, but the HRFT discontinued them in 2009 due to lack of funds.[86] The HRFT is currently conducting an EU-funded project on 'Effective Protection of the Rights of Refugees, Asylum Seekers, and Other Persons in Need of International Protection'.[87] The organisation's main funding sources are individual member donations and financial support by Amnesty International, the Council of Europe, the International Red Cross and the United Nations.[88] It is based in Ankara with branches across major cities in Turkey.

Mazlumder, also known as the Organisation for Human Rights and Solidarity for Oppressed People, was established in 1991 by a group of lawyers, journalists,

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[83]HRFT, 'Torture and Rehabilitation Centres' <http://www.tihv.org.tr/index.php?treatment-and-rehabilitation-centres > (accessed 7 June 2013)

[84]HRFT, 'Treatment and Rehabilitation Centers Report 2010' (Ankara: June 2011) p.12.

[85]Interview with founding member of Human Rights Foundation of Turkey (Ankara: 2 November 2010)

[86]Interview with employee of Human Rights Foundation of Turkey (Ankara: 5 November 2010)

[87]HRFT, 'Effective Protection of the Rights of Refugees, Asylum Seekers, and Other Persons in Need of International Protection' <http://arsiv1.tihv.org/index.php?id=95,751,0,0,1,0> (accessed 7 June 2013)

[88]Interview with employee of Human Rights Foundation of Turkey (Ankara: 5 November 2010)

authors and businesspeople. Mazlumder was listed as having 4,000 members in 2008 and is based in Ankara.[89] It was initially established to work against religious discrimination, such as problems arising from the wearing of the headscarf by women in public service, or measures against military personnel with alleged pro-Islamic ties.[90] Mazlumder has since broadened its scope of activities to promote the human rights of other categories of oppressed people, such as Syrian refugees to Turkey[91] and Kurdish MPs who have had their political rights curtailed.[92] The chair of Mazlumder claimed in an interview to the author that the organisation has been criticised for exclusively promoting the rights of religious individuals and 'headscarf freedom', a criticism which he rejected: 'whoever the tyrant is, we are on the side of the oppressed'.[93] The organisation was also accused by the State Security Court in 2003 of being linked to armed Islamist groups, but charges against its members were eventually dropped.[94] Mazlumder has been a beneficiary of EIDHR funds with projects conducted in 2005 and 2007 on the protection of women and children refugees in Turkey, and on the training of Muslim functionaries (imams) on international human rights standards. It has also participated in several EU-funded projects run by the HRA. Mazlumder criticises the EU for failing to demand more religious freedoms for the Muslim majority, but declares that it embraces the EU's standard of legitimacy as the most appropriate framework for tolerance and national unity in Turkey.[95]

The Association for Liberal Thinking (ALT) engages in the dissemination of research and information on human rights in Turkish politics, EU-Turkey relations, and Turkey's fulfilment of the Copenhagen Criteria. It was established in 1992 by a group of academics from Turkey and is based in Ankara. The ALT's main contribution is openly discussing sensitive political issues and their long-term

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[89]Human Rights Agenda Association, 'Türkiye İnsan Hakları Hareketi'.(Ankara: November 2008) p.6.
[90]Interview with chair of Mazlumder (Ankara: 7 November 2010)
[91]Mazlumder, 'Syrian Refugees in Turkey: the Istanbul Sample' (Ankara: 12 September 2013)
[92]Interview with chair of Mazlumder (Ankara: 7 November 2010)
[93]*Ibid.*
[94]Amnesty International, 'Turkey Human Rights Defender Imprisoned' (1 December 2003) <http://www.amnesty.org/en/library/asset/EUR44/027/2003/en/a3b0ac9e-d65d-11dd-ab95-a13b602c0642/eur440272003en.html> (accessed 9 August 2009)
[95]Interview with chair of Mazlumder (Ankara: 7 November 2010)

effect on human rights in Turkey. For instance, in November 2013 it hosted an international conference in Istanbul to discuss how issues of Turkish national security affect the struggle for a liberal society.[96] The ALT's advocacy and policy research is organised according to five areas: Freedom of Religion, Human Rights, Economic Freedom, Environmental Policies, and Education Policies. Within these centres a range of activities occur, such as student essay competitions on topics related to democracy and human rights, and the publication of a quarterly journal (*Liberal Thought*).[97] The ALT has been a recipient of EU financial assistance and its most recent completed project was entitled 'Interreligious Affairs: Investigating the Opportunities for Peaceful Secular and Democratic Co-Existence'. Another major EU-funded ALT project was a nation-wide survey on human rights and freedom of expression in Turkey in 2003, which examined public perceptions on human rights, the level of public recognition of human rights NGOs, attitudes on the content and limits of specific rights, attitudes towards the EU, and attitudes towards the Turkish judiciary.[98] Overall, the ALT acts as an association of public information and education on liberal democracy and human rights, but does not actively campaign for specific rights, unlike the HRA, HRFT, and Mazlumder.

Interviews with the HRA, HRFT, the ALT and Mazlumder demonstrated that these organisations consider the EU's normative framework to be generally compatible with their human rights agenda. However, compatibility with accepted norms does not exclude the possibility that the EU might overestimate the ability of these organisations to be a bastion of individual freedoms for all people in Turkey. The above organisations appear to have internalised European norms even prior to the EU's involvement in Turkey's human rights protection, through accepting universal human rights standards as a self-evident means towards human dignity and national reconciliation. For this very reason, their recognition of the EU's standard of legitimacy appears secure and, unlike the major political parties, it is

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[96]ALT, 'Round table Conference on Struggling for an Open Society Coping with Issues of National Security and Sovereignty' (21 November 2013)
<http://www.liberal.org.tr/details.php?id=MTAwOQ==> (accessed 30 November 2013)
[97]Interview with chair of the Association of Liberal Thinking (Ankara: 18 November 2010)
[98]Association for Liberal Thinking, 'Human Rights and Freedom of Expression in Turkey' (Ankara: July 2003)

not subjected to strategic cost-benefit calculations. This was indicated in an interview with Yavuz Önen,[99] one of the founders of the HRA, who stated that: 'the EU is now less committed to Turkey's membership and its reforms. However, we will always continue struggling [for human rights in Turkey] and we will never give up'.

Nevertheless, the interviews revealed that the standard of legitimacy promoted by the EU does not resonate with all groups claiming to defend human rights in Turkey. The interviewees confirmed the idea (discussed in Chapter Three) that civil society in Turkey continues to be divided across ideological lines that subscribe to different conceptions of human rights. Thus, organisations that do not adhere to the EU's liberal democratic framework will only regard it as legitimate if it does not infringe the Kemalist, nationalist, conservative, or religious principles that they may advocate. Although there is no *a priori* reason to associate such organisations with opposition to human rights protection, this study has previously shown that societal and political actors in Turkey have adopted their particular attitudes towards human rights in accordance with the predominant narratives of Turkish nationalism and secularism. In other words, the attitudes of NGOs towards human rights reform are likely to be a function of their perception of Turkish national interest. The convergence of many NGOs in Turkey with state doctrine can make support for EU-related human rights reform lose significant ground. For example, an interviewee from the HRFT stated that when the EU is conducting human rights consultations with civil society representatives, NGOs that are affiliated to the state establishment sometimes contradict the statements made by the HRFT, claiming to the panel of EU representatives that the violations reported by the HRFT never actually occurred.[100]

In contrast, the organisations interviewed appeared to consider EU human rights promotion as contextually relevant and consonant with their aspirations for

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[99]Yavuz Önen was the only interviewee who granted permission to the author to cite his full name.
[100]Interview with employee of Human Rights Foundation of Turkey (Ankara: 1 December 2010)

human rights protection in Turkey. Through having goals that are independent from the government, these human rights NGOs have evolved towards alignment with the EU's universalist rights approach. They have come to focus not on the essentialist discourses of national identity that characterise some segments of civil society in Turkey, but on diverse principles for all dimensions of society: women, children, environmentalists, Kurds, LGBT, refugees, prisoners, religious minorities.[101] Additionally, it is worth noting that the NGOs examined here are selected by the EU for financial assistance on the basis of congruence between their goals and the EU's idea of what human rights protection ought to look like. Since the organisations interviewed generally have harmonious goals for Turkey with those of the EU, they tend to regard the EU normative framework as generally considerate of the social context in which it is applied, at least at the level of general principles. Simply put, the EU feeds directly into their core activities. This generates a positive reaction that enhances their acceptance of the legitimacy of EU human rights promotion.

Another area that is revealing for the construction of legitimacy for EU human rights promotion by the NGOs in question is EU financial assistance. Although other civil society organisations in Turkey consciously steer clear from EU funding, due to having their own normative framework about legitimate human rights demands,[102] the organisations interviewed have consciously sought EU funding on several occasions. The choice on seeking funding is partly based on what the NGO perceives its own sources of legitimacy to be, and whether EU assistance would enhance or undermine them. For the associations discussed, EU funding programmes are perceived to support the values they uphold as organisations, and to enhance their agenda with external resources. Another reason for requesting EU financial assistance is that, since the relevant NGOs support a conception of human rights not traditionally pertaining to Kemalist orthodoxy, they could not secure funding sources domestically. In contrast, state-affiliated NGOs

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[101]Ketola, M. 'EU Democracy Promotion in Turkey: Funding NGOs, Funding Conflict?' *International Journal of Human Rights*, vol.15 no: 6 (2011) p.791 (787-800)

[102] Example mentioned in the interviews were the Association for the Protection of Modern Life (*Çağdaş Yaşamı Destekleme Derneği),* a pro-Kemalist organisation that promotes education for young girls, and the Association of Ataturkist Thought (*Atatürk Düşünce Derneği*).

have been weary towards EU funding and have claimed that EU-induced human rights reform could only have a diffuse impact on Turkey, as opposed to home-grown nationalist or conservative ideals that could more effectively elevate Turkey 'beyond contemporary civilisation'.[103] In general, acceptance or refusal of EU financial assistance depends on the importance that EU-related human rights reform has on the agenda of NGOs. Either EU human rights promotion is conceived as an 'anchor' for activism in their specific issue areas, or EU-funded projects might simply be too distant to the organisations' mission to pursue.

Although the NGOs interviewed have displayed commitment to EU-related reform in recent years, they do challenge the EU on particular limitations regarding its proper functioning and 'being good at what it does'. The criticism is most acute in the area of policy relevance, arguing that some proposed ideas do not properly correspond to local experience. Interviews with the ALT revealed that the organisation considers the EU strategy of funding civil society as an avenue for active participation in policy-making to misconstrue the realities of Turkish civil society, and that it is important to recognise these limitations for any policy outcomes. The logic employed by the ALT is that the Turkish state, since the 1980 coup, has functioned as a 'paternalistic centre that has frequently employed a totalising ideology to dominate the citizenry'.[104] Given this factor, ALT interviewees argued that NGOs should not be encouraged to co-produce human rights reform, but rather to influence the opinions of policy-makers by introducing them to liberal solutions to problems. According to an ALT member, co-formulation of reform would result in expanding the state, rather than changing it, and this would perpetuate rather than mitigate the mutual mistrust between policy-makers and NGOs on human rights issues. In short, the ALT purported that EU human rights policy and its funding programmes in particular may have difficulties relating to aspects of civil society that are not consistent with the EU's own standard of legitimacy.

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[103] Zihnioğlu, Ö. The 'Civil Society Policy' of the European Union for Promoting Democracy in Turkey: Golden Goose or Dead Duck?, *Southeast European and Black Sea Studies*, vol.13 no: 3 (2013) p. 390 (381-400)
[104] Interview with member of the Association of Liberal Thinking (Ankara: 18 November 2010)

In addition to the ALT, members of the Human Rights Association also challenged EU policy relevance in their interviews. Their area of contestation was that EU requirements are often made in an abstract sense, articulated as principles that ought to be adhered to rather than specifically applied. According to the HRA, EU human rights policy falls short of resonating with the local context because it places human rights 'at the heart of the accession process' only in theory. There is a key omission and contradiction: the EU does not detail specific behavioural changes or benchmarks to encourage these changes. Although the value of this abstraction for 'local ownership' is understood by the HRA, the chair of the organisation argued in the interviews that lack of strength and clarity shows that human rights are lower on the EU's agenda than demonstrated by its rhetoric. To support the idea of lack of EU effort, he employed the Cyprus issue as evidence. The EU's blocking of negotiations on several chapters of the *acquis* until Turkey opens its ports and airspace to Cyprus detracts attention, time, and resources from human rights in Turkey in a way that signals that rights are of limited importance to European leaders. In the words of the chairman:

> We understand the political dimension of Cyprus... but people there are not dying. In Turkey, however, many human rights problems remain unchallenged... We expect more from the EU, but in the end we are realistic. They are not a human rights organisation, they do politics.[105]

Faith-based NGO Mazlumder welcomes EU membership but is not responsive to all areas of the human rights policy. It argues that EU policy is framed in a way that does not fully engage all civil society actors with the planned change processes. Specifically, interviews with Mazlumder revealed that the organisation blames the EU for promoting the freedoms of religious minorities, while at the same time it remained conspicuously silent on the secular state's limitations on the religious expression of the Muslim majority. In an interview with the author, the director of Mazlumder condemned Europe's 'pro-minority' and

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[105]Interview with chair of Human Rights Association (Ankara: 1 November 2010)

'anti-majority' attitude towards freedom of religion in Turkey.[106] He challenged the EU's official stance on Turkey's headscarf issue, a stance which consisted of refusal to acknowledge the matter by claiming that there is no common European legislation on the headscarf as a political symbol (especially following the support to the Turkish Constitutional Court's decision to reinstate the headscarf ban in 2008). Mazlumder accused the EU of bias in favour of an interpretation of human rights that does not take into account cultural and religious diversity, but borders on cultural imperialism. Thus, it challenged the legitimacy of EU human rights support by asserting that its policy goals remain external to the social context where they intend to have an impact: '99% of Turkish people are Muslim'.[107]

Another important source determining the legitimacy of EU human rights promotion through civil society stems from the procedural characteristics of the cooperation in terms of transparency, coherence, coordination, and effective communication. All NGOs interviewed agreed that EU funding had been a positive experience. The application for EU financial assistance and the completion of their projects had generated improvement to their managerial capacity, in other words to their organisational ability to 'get things done'. In addition, EU funding was a valuable financial contribution to their organisational budget, as access to domestic funding sources in Turkey is limited. EU financial assistance also encouraged NGOs to become active in diverse geographical areas of Turkey.[108] The HRA and Mazlumder, for example, conducted a joint project in South-Eastern Turkey in 2010 on the protection of children who had taken part in pro-Kurdish demonstrations and were being tried in Turkish courts as adults.[109] Moreover, EU funding facilitated dialogue and communication with counterpart grassroots organisations in peripheral areas of the country. According to the Third Sector Foundation of Turkey, 'the rise in support networks and funds (especially from the European Union) is creating more opportunities for grassroots organisations and

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[106]Interview with chair of Mazlumder (Ankara: 7 November 2010)
[107]Interview with member of Mazlumder (Ankara: 7 November 2010)
[108]Arabacı, A. 'Explaining Transformation of Turkish Civil Society in the EU Accession Process'. *Insight Turkey*, vol.10 no: 2 (2008) p.88 (77-93)
[109]Interview with member of Mazlumder (Ankara: 7 November 2010)

increasing the involvement of women, minorities and the poor'.[110] The experience of engaging in constructive dialogue with other civil society actors, especially grassroots organisations, helps improve domestic perceptions about their activism. As explained in Chapter Three, for many among the Turkish public, civic activism continues to evoke images of troublemaking caused by marginal societal elements, rather than attempts to precipitate positive change through constructive dialogue with the government. EU financial assistance, however, can counter broader scepticism and improve the public image of human rights NGOs by conveying the message that their advocacy is internationally legitimate and socially valuable. These positive effects of EU-funded projects illustrate how EU policy can generate a positive response in civil society towards its goals, methods, and appropriation.

The analysis of perceptions of legitimacy held by major human rights organisations in Turkey reveal several traces of lack of confidence in the policy's performance and in 'Europe', such as claims that the EU does not represent their needs and values, and criticisms against the policy's performance and its capacity to deliver the goods. Although the EU has made significant efforts to ensure a comprehensive process of inclusion of NGO activities in human rights promotion, as explained in Chapter Four, it is fair to say that it has not been able to instil sufficient confidence in Turkey's major human rights organisations. Human rights promotion to Turkey, characterised by procedural shortcomings and dilemmas of implementation, could be improved by more closely matching its competences with those that civil society actors consider appropriate,[111] by empowering recipients instead of functioning merely as an efficient service provider,[112] and by offering a close and certain EU membership perspective.[113]

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[110] CIVICUS and Third Sector Foundation of Turkey (TÜSEV) 'Civil Society in Turkey: at a Turning Point'. TÜSEV Publications no: 51 (Ankara: 28 March 2011) p.114.
[111] Mahoney, C. and Beckstrand, M.J. 'Following the Money: European Union Funding of Civil Society Organisations'. *Journal of Common Market Studies*, vol.49 no: 6 (2011) p.1358 (1339-1361)
[112] Warleigh, A. 'Europeanising Civil Society: NGOs as Agents of Political Socialisation'. *Journal of Common Market Studies*, vol.39 no: 4 (2001) p.623 (619-639)
[113] Kelley, J. 'International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions'. *International Organisation*, vol.58 no: 3 (2004) p.431 (425-457)

The EU human rights policy to Turkey must take the initial commitment of civil society actors and harness it by encouraging and developing their will and ability to effectively represent a plurality of vulnerable groups/minorities. This is an area where EU human rights policy can do well, due to the prior socialisation of human rights NGOs (demonstrated by their support to universal human rights) and the lesser degree of political polarisation and fragmentation within Turkey's civil society than in previous decades. Additionally, the EU will achieve its stated goal of civil society development by more rigorously pursuing funding mechanisms that offer clear and consistent information, are non-preferential, and stress the importance of cooperation. Moreover, the EU can become more compatible with Turkey's local human rights experience by focusing more explicitly not only on human rights promotion but also on protection: by pressuring for real protection to peoples threatened by repression, by analysing the underlying causes of repression, and by not shunning politically sensitive issues. Thus, NGOs will not merely respond to EU, they will adopt the EU agenda as their own.

The contribution of human rights organisations to the legitimacy of EU human rights promotion is thus to perceive it as breaking down undesirable traits and structures in Turkey that subordinated civil society to the state. In particular, they perceived European norms as generally supportive and complementary to their own human rights agenda; they offered then an advantage in the policy-making system of the state; and the EU practice of providing financial and technical assistance to civil society organisations increased their organisational capacity and their ability to pursue their human rights objectives.

Conclusion

The aim of this chapter was to examine the recognition of the legitimacy of EU human rights promotion by Turkey's major political parties and human rights organisations. This analysis brought us back to the definition of Nicolaidis. Discussed in Chapter Two, that recognition by the 'other' is a key aspect of normative power. Such recognition entails that the EU be perceived not as an

enforcer of orders, nor as a distinct 'outside' actor to be used for strategic interests, but as an actor that engages its partners in shared practices and frames their human rights responses. The empirical analysis of this chapter explored the extent to which this domestic understanding underpins the diffusion of EU norms in Turkey's political life.

Drawing on the political reform agendas of the AKP and CHP and on interviews with human rights activists, the analysis sought to demonstrate that domestic understandings of European human rights norms reflect a sense of both opportunity *and* risk as part of the country's pre-accession process. Political parties showed that EU human rights norms were open to emulation not as universal patterns, but as articulators of party interests. Thus, they were changeable over time and their adoption was not secure. Human rights NGOs revealed that the ability of EU civil society development to shape the 'normal' from below depends on the recognition of this ability by NGOs that might hold conflicting agendas, and on its performative and procedural qualities. The dilemmas discussed in this chapter were a) the perception of political parties that EU-induced reform both strengthens and erodes their political interests and their dominant standard of legitimacy, and b) the perception of human rights NGOs that EU human rights promotion greatly increases their performance, financial capacity, and outreach, while at the same time eroding their independence and applying human rights as a straightjacket, irrespective of local political and societal context. The above dilemmas frame Turkey's receptivity to the arguments of the EU as a human rights promoter and affect the domestic diffusion of EU human rights norms negatively.

The conclusion, thereby, is that legitimacy becomes an important permissive context for the EU's normative power within enlargement. The emphasis on legitimacy-in-context draws attention to the necessity for the EU to construct a community of shared practices and we-feeling with Turkey, and to enhance its performative abilities so as to communicate and advance human rights through inclusive norm-building practices.

Conclusion

The introductory chapter of this thesis formulated the overall research question guiding the study as follows: how should the European Union promote human rights to Turkey, if the country's reform progress is to be understood not simply as a result of domestic dynamics, but as dependent on the legitimacy of EU human rights promotion? The rationale behind this thesis has been to explore ideas and practices that can contribute to improving the EU policy of human rights promotion to Turkey. Although the scholarly literature abounds with analyses of EU-Turkey relations, reviewing these texts revealed that legitimacy, as the normative justification of EU human rights policy, has not been a core concern of previous studies. In an overall perspective, therefore, this thesis makes contributions both to the theory and to the practice of EU human rights promotion. It does so by shedding new light on the prospects and prerequisites for positive human rights outcomes in Turkey, as well as by suggesting a re-thought approach to the study, evaluation, and analysis of EU normative power. The conclusion will summarise the main theoretical and empirical findings, will discuss the value and applicability of the suggested analytical framework, will draw broader conclusions about the European Union's human rights promotion within enlargement, and will make some suggestions about further avenues of research that can be opened by the thesis' analysis.

1. Theoretical and empirical conclusions

To its essence, the central theoretical finding has been, firstly, that many studies focusing on Turkey's relations with Europe in the area of human rights have fallen short of capturing the impact of legitimacy on policy outcomes. In the literature on NPE, a strikingly low number of scholarly works has placed at centre stage the interplay between the EU's established human rights norms and the values and beliefs prevalent in the socio-political sphere of the recipient country (domestic 'standards of legitimacy'). Instead, there are explanations to policy

success and failure that focus on the details of the policy process at intergovernmental level and on the top-down execution of reforms. Thus, the focus is on whether the EU is doing 'things', rather than the 'right thing'. Secondly, when considering those studies examining NPE in consideration of domestic socio-political contexts, there is ambiguity surrounding its precise meaning in situations where the EU is involved in an asymmetrical relationship with a powerful country – a country such as Turkey, which possesses its own normative framework that arguably also 'predisposes' it to acting in a certain way. Normative power Europe is a multidimensional concept applied to describe an abundance of EU relations, policies, and situations. However, if it means everything concerning the EU's international action, then it means nothing. Studying it empirically and applying it as a variable in relations with other potential 'normative actors' can lead us to more interesting conclusions regarding the role of norms in EU foreign policy.

For these purposes, Chapter One began the exploration of the research topic by discussing and clarifying the progressive development of human rights into the EU's dominant standard of legitimacy in external relations. It argued that the EU did not begin as a normative power per se. It developed into a self-identified 'Union of values' following the deepening of European integration and the leverage of enlargement and other external policies. Chapter One strengthened the analytical and explanatory power of the thesis by arguing that normative power is not entirely an intrinsic property of the EU, but was constructed in a temporal and spatial fashion. Another conclusion of Chapter One concerns the realisation that Turkey's case might not be essentially 'different' from previous candidate states when they, too, had to face the magnitude of their accession to the EEC/EU.

Chapter Two, which reviewed and elaborated different ideas surrounding normative power and legitimacy, argued that legitimacy should be a central part of any study attempting to explain the external actions of EU normative power and human rights promotion in particular. It began by building on existing works on normative power and legitimacy in order to construct a conceptual framework for application to the case of Turkey. It proceeded to conceptualise specific

requirements for legitimate EU human rights promotion based on standards of procedural legitimacy (policy relevance, participation, and effectiveness) and on legitimacy as recognition by the non-European 'other'. The main conclusions of Chapter Two are primarily conceptual in nature. These relate to the role of legitimacy in the conduction of normative power analyses, especially in relation to human rights promotion. A study of legitimacy within EU normative power analysis helps to acknowledge that being 'normative' and 'shaping conceptions of the normal' are not essential properties of the EU. Instead, EU normative power has been constructed in a spatial and temporal fashion, and its underlying norms reflect the power structures of the Western political communities. Thus, it is essential to study normative power as a power in-context. This entails examining how the methods and instruments of EU human rights promotion function within the rubric of Turkey's specific human rights problems, and how local political and societal actors frame their responses in relation to EU norms. At bottom, the chapter concluded that EU normative power is one that is recognised as such through its interaction with its non-European recipients.

Following from Chapter Two, Chapter Three investigated human rights protection in Turkey in relation to its home-grown standard of legitimacy, which gyrates around the notion of Kemalist orthodoxy. It argued that human rights have been and remain an important area of contestation in Turkey. Chapter Three advanced the aims of the thesis by deepening its understanding of the character of those legitimacy issues facing EU human rights promotion to Turkey. Its interpretive contextual analysis provided insights into how the degree of legitimacy and thereby sustainable human rights change can be furthered and improved. The main conclusion stemming from Chapter Three was that Turkey's political system possesses foundations for acceptance of the EU's standard of legitimacy that are entrenched in the country's modernisation and westernisation process. Nevertheless, these have been limited in their operation due to the nature of the exercise of Kemalist orthodoxy.

The empirical study of legitimacy presented not a single but two distinct issues, addressed in Chapters Four and Five. When applying human rights policies through enlargement, legitimacy influences the prospects and prerequisites for policy success and affects performance both in the short-term and the long-term. Human rights policies that are lacking in legitimacy are unable to properly address actual human rights issues on the ground, and cannot sufficiently improve the conditions of the disadvantaged groups they set out to benefit. Thus, they can be expected to be increasingly vulnerable to the long-term volatile workings of Turkish politics. To address this possibility, Chapter Four argued that the policy content of the EU human rights promotion should be improved according to the procedural requirements of policy relevance, participation, and effectiveness. This particular set of criteria was provided by the conceptual tools of legitimacy as studied in international human rights promotion and normative power Europe.

Apart from the risk of unsuccessful implementation of human rights instruments due to procedural legitimacy deficits, EU policymakers also need to consider the political counterpart of procedural legitimacy: the legitimacy of human rights promotion in the real world of politics, as perceived by political and non-governmental actors in Turkey. From a normative perspective, Chapter Five concluded that implementation amounts to a correspondence between the value systems of the EU and the target government and opposition. Political actors thus tend to make decisions that align with a number of politically established values and beliefs. It was argued that the compatibility between the EU standard of legitimacy and that of the major political parties in Turkey is important for the effective implementation of EU human rights policy. The policy's implementation is shaped by the desires and preferences held by the actors participating in the process of human rights reform, and the outputs of the process can be perceived as a political necessity (or not) according their system of norms and interests and their views on the EU as a legitimate actor in Turkish politics.

2. Towards an alternative thinking for EU human rights promotion to Turkey

The overarching aspiration guiding the thesis was to determine how the legitimacy of EU human rights promotion should be understood, and what main challenges it faces in its application to Turkey. At this point, it is possible to summarise the broad theoretically-oriented findings of the thesis.

Firstly, normative power denotes the ability of the EU to shape international policymaking in accordance with its internally-developed 'standard of legitimacy', in other words liberal governance based on human rights, democracy, and the rule of law. Normative power should therefore be treated as an issue separate from its recognition by its partner countries, which may or may not share in the EU's definition of the 'normal'. Thus, what was problematised in the present study was the counter-productive idea that the quality and appropriateness of EU policy and its techniques are guaranteed, and any reform obstacles in Turkey can be attributed entirely to the country's very conduct. Although the view held by several EU officials – that implementation lies within the responsibility of Turkey's policymakers and their repertoire of policy tools – retains its validity, focusing on Turkey's task to the neglect of EU role risks exacerbating slow reform progress.

A second finding was that legitimacy does not *cause* the implementation of human rights in Turkey. Rather, it is a permissive condition, and other factors need to be present for short- and long-term implementation to occur. The supporting factors for Turkey were mentioned in the introductory chapter, but their analysis exceeded the scope of this thesis. In addition, legitimacy is not an all-or-nothing affair, but a matter of degree. Procedural legitimacy can exist in varying degrees in different dimensions of the policy process (e.g. policy relevance was low for IPA, but high for the EIDHR). Also, the socio-political principles and beliefs that comprise legitimacy are changeable and can either maintain it or erode it. For example, the AKP assumed office as a pro-reform and pro-EU party and was

challenged by a Eurosceptic CHP, yet at present the AKP is showing less commitment to human rights and the rule of law and the pro-reform agenda has been transferred to the CHP. Accordingly, studying the legitimacy of human rights promotion requires a three-tiered study, where EU human rights instruments, the target government/opposition parties, and human rights NGOs are compared and contrasted with the EU human rights system itself and with each other. It thus requires analytical tools that explore both policy content (e.g. official policy documents, instruments of financial and technical assistance) and beliefs held by individuals.

A third finding was that when discussing the normative power of the EU vis-à-vis the 'other', most analysts note the dependence of partner countries on the EU and their perception of the organisation as a magnet. Owing to the asymmetrical power relations between the EU and its candidate states, whereby the EU is the 'norm-maker' and the candidate the 'norm-taker', the EU's normative power has been treated largely as coterminous with a unique aspirational goal or partner states. This study revealed, however, that Turkey does not perceive the EU as a magnet. Instead, it confirmed that the ability of EU normative power to affect human rights norms in Turkey is limited. This distinct point brings into focus the need for NPE studies to conceptualise 'normative power Europe' in the EU's relations with countries that could be considered emerging 'normative powers' on their own accord. Turkey's position as a former empire and emerging economic power, its leadership in the Middle East, its distinct (to Europe) religion and culture, and its demand for equality and respect in its foreign policy interactions, construct a country with strong international agency. Arguably, Turkey's external outlook is steeped in its own normative values to the same extent that might be the case with China and the US.

Yet, academic studies on EU-Turkey relations and policymakers alike have overlooked the fact that Turkey is not simply a country in orbit around Europe. It is a state that conceives itself as a reliable international player that has shaped, and continues to shape, Western political institutions, and one that offers a viable

alternative to the models promoted to the Middle East by Western actors. Despite this, EU policy has not adjusted its normative objectives to fit Turkey's distinct political setting. Instead, it maintains the position of 'asymmetry' and 'hierarchy', which may be useful for protecting the non-negotiable character of EU law, but may not go a long way in persuading Turkish political actors to reframe their policy choices according to EU norms. Stemming from these observations, an important finding of the thesis is that a major progression is required in the literature on human rights in EU-Turkey relations. The literature on conditionality and asymmetrical power relations is no longer adequate, because it treats Turkey's political actors as weak partners that uncritically accept the EU as a magnet. NPE literature, on the other hand, predominantly explores Europe's interaction with countries and regions that lack a dominant international presence (e.g. Northern and Sub-Saharan Africa, or the countries of the European Neighbourhood Policy). Its engagement with EU relations vis-à-vis countries that are nascent normative powers on their own accord is limited. Consequently, a fresh conceptual approach should be set forth that studies EU-Turkey relations according to the perspective outlined above.

The foregoing findings raise two broad empirical conclusions. First, it needs to be recognised that EU human rights promotion within enlargement may not be the 'golden goose' it seems to be for the EU. We need to be more finely attuned to the hidden political and economic visions within the broad moral sphere of the European Union's human rights promotion. EU policy rhetoric tends to accentuate human needs and represent them as its primary value within its role as a provider of international peace and stability. Despite claims by EU policy-makers regarding 'rigorous conditionality', and the promotion of human rights system being 'at the heart of EU external action', this thesis did not discover the positive picture the EU projects.[1] Apart from generating a momentum for legislative change, the EU refrains from discussing solutions to problems that would take

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[1] Europa – RAPID press release, 'Consolidation, Conditionality, Communication – the Strategy of the Enlargement Policy' (Brussels: 9 November 2005) <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1392> (accessed 23 September 2011); Füle, S. 'Turkey and the EU: a Multi-faceted Relationship'. Speech at the Bosphorus Conference Plenary Debate (Istanbul: 23 October 2010)

historical, political, economic, social, and other special aspects into account. Rather, EU policymakers appear to view the process of human rights implementation as a largely administrative exercise. In the words of Grabbe, 'the whole accession process has an executive bias'.[2] This approach gives priority to efficiency over sustainable reform and directs Turkey – an exceptionally intricate case in the area of human rights – on redrawing its political and moral geography without sufficient cooperation and negotiation of ingrained problems.

The second conclusion relates to the empirical literature on EU-Turkey relations. Notwithstanding the important inroads that approaches emphasising current affairs over theoretical insights make to EU-Turkey relations, much essentialist thinking remains and maintains its grip over writings in both Europe and Turkey. Such approaches conceive EU human rights promotion in an objectivist manner, overlooking the mutually constitutive relationship between the role of Turkey *and* the European Union in achieving sustainable human rights protection. The legitimacy approach adopted by this thesis offers a fuller and more adequate picture of the dynamics of EU-Turkey relations in the area of human rights, and reveals how EU practices and principles can be complicit in the hesitant pace of reform in Turkey. Reform impasse in Turkey has been informed by the way in which EU policy instruments construct human rights as a neutral label, and the way in which potential Turkish membership is presented in ambiguous terms. These have been exemplary of the argument that EU practices do not leave Turkey 'unaffected'.

Moreover, these theoretically- and empirically-derived conclusions show that human rights promotion within enlargement has not received sustained attention in the literature on the EU as a normative power on the international scene. Whereas a number of studies have tackled the issue of legitimacy in enlargement and EU conditionality, and have suggested that a legitimate policy for the EU is one that is coherent and consistent with internal EU standards, analysts of

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[2] Grabbe, H. 'How does Europeanization affect CEE Governance? Conditionality, Diffusion and Diversity'. *Journal of European Public Policy*, vol.8 no: 6 (2001) p.1029 (1013-1031)

EU normative power have remained somewhat silent on human rights promotion within enlargement.[3] The applicability of 'normative power Europe' terminology to enlargement has been scarce. This might be partly attributed to the fact that the EU enlargement policy is considered its most successful external policy of norm diffusion, thus encouraging researchers to focus more extensively on human rights and democracy promotion in external relations.[4] This study sought to develop a perspective to study EU human rights promotion to candidate states as part and parcel of its internal and external human rights policy. This perspective was operationalised in the case of Turkey, selected due to its perceived 'differing identity', its role as a powerful regional actor, its intricate human rights situation, and the temporality of its EU candidacy.

The implication of these conclusions for empirical practice is that becoming aware of the 'conditions underpinning the application of human rights conditions' helps reveal the role the EU has played as an agent of human rights in the past, and could play in the future. Hence the need for a critical perspective that emphasises the need for the EU to think alternatively about promoting a vision of human rights support that not is sensitive to candidate states' multiple human rights problems and how they think they should be solved.

3. Avenues for further research

This section identifies avenues for further research that emerged from the analysis, yet at the same time were beyond the scope of the research topic. It also suggests new political questions that might be amenable to the development of a

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[3]Eriksen, 'Cosmopolitan Polity?' p.253.
[4]Kok, W. 'Enlarging the European Union: Achievements and Challenges'. Report to the European Commission (Florence: European University Institute, 19 March 2003); Smith, K.E. 'Enlargement and European Order'. In *International Relations and the European Union*, ed. by C. Hill and M.Smith (Oxford: Oxford University Press, 2005) p.271 (270-291); Ferocci, F.N. 'EU Enlargement Policy: from Success to Fatigue'. In *Frontiers of Europe: a Transatlantic Problem?* ed. by F. Bindi and I. Angelescu (Washington DC: Brookings Institution, 2011) p.25 (25-34)

more legitimate system of human rights promotion. Specifically, it is possible to recommend two possible lines of further research.

Firstly, future research could investigate EU human rights promotion through a 'standard of civilisation', rather than a standard of legitimacy. Specifically, it could explore how the promotion of human rights through asymmetric dialogue and strategic use of norms can be reconciled with ideas of the so-called EU 'civilising process'.[5] Their interest would lie in the way in which the recipient country's political and economic institutions are expected to incorporate a European 'standard of civilisation' in the construction and application of their domestic policies.[6] EU human rights conditionality is neither abstract nor theoretical, but leaves room for tensions and contradictions between the prevailing norms of the applicator and recipient of conditionality. This, in turn, can lead to different understandings about solutions to problems, each of which can make different legitimacy claims based on the same norms. At its most extreme, human rights conditionality can be considered an instrument of 'imperialism', especially by countries whose officials advocate moral relativism.

In this perspective, it would be useful for future research to achieve a more profound understanding of the civilisation-human rights nexus in the international use of EU human rights policy. Within enlargement, human rights conditionality should aim to relate to a reciprocal collaborative effort between EU and candidate state. Such an approach is likely to promote a moral and political 'overlapping consensus' between local norms and international human rights standards.[7] This means that EU human rights promotion could be described as more likely to be understood as legitimate when it is underpinned by a 'we' feeling, which makes

[5]Soderbaum, F. 'African Regionalism and EU-African Interregionalism'. In *European Union and New Regionalism*, ed. by M. Telo (Burlington: Ashgate, 2007) p.199 (185-201)

6 Donnelly, J. 'Human Rights: a New Standard of Civilization?' *International Affairs* vol.74, no: 1 (1998) p.1-23; Bowden, B. and Seabrooke, L. *Global Standards of Market Civilization* (Abingdon: Routledge, 2006); Hobson, C. 'Democracy as Civilisation'. *Global Society,* vol.22 no: 1 (2008) p.75-95; Towns, A. 'The Status of Women as a Standard of Civilization'. *European Journal of International Relations* vol.15 no: 4 (2009) p.681-706.

[7] Monshipouri, M. *Constructing Human Rights in the Age of Globalization* (Armonk NY: M.E. Sharpe Publications, 2003) p.259.

candidate states more likely to feel that it is *them* who are willing to adhere to the validity of the rules and norms that are bestowed on them, rather than 'they' who are imposing unwanted policies.[8]

Secondly, there is a rich avenue of work to be pursued on how a human rights promotion within enlargement can be related analytically and empirically to internal EU human rights protection. The issue of internal-external coherence raised in Chapter One needs to be further researched. The European Union has been increasingly reflecting on the quality and appropriateness of its fundamental rights governance in the light of recent challenges that impact on the sustainability of European integration (financial crisis, unemployment and migration, countries considering to exit the EU). The debate on the improvement of fundamental rights and active citizenship has not been limited to internal policies, but has extended to the EU's international role as a promoter of human rights and good governance.[9] However, the enlargement policies have been absent from this debate, despite their potentially important implications and opportunities for shaping future patterns of the Union's prosperity and sustainability in a changing world. Therefore, future research could be directed towards evaluating how its enlargement policies and their mode of application can contribute to sustainable human rights protection within an enlarged European Union. Such an examination would capture the challenge for the EU to systematically assess its short-term actions of human rights support within enlargement against the long-term integration goal.

Any of these research avenues could lead to a more profound understanding of the EU as an agent of human rights promotion in an increasingly globalised world. Such insights would further advance the existing knowledge in both theory and practice about the usage of human rights conditionality in terms of legitimacy

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[8] Lord, C. 'Accountable and Legitimate? The European Union's International Role'. In *International Relations and the European Union*, ed. by Hill, C. and Smith, M. (Oxford: Oxford University Press, 2005) p.119 (113-133).

[9] See, for example, European Parliament, 'Democracy Building in External Relations'. OJ C 265 E/3 (30 September 2010) p.4. For a scholarly perspective, see Thomassen, J. 'Legitimacy of the EU after Enlargement'. In *The Legitimacy of the European Union after Enlargement*, ed. by J. Thomassen (Oxford: Oxford University Press, 2009) p.1-20.

and the question of complementarity between external human rights requirements and the internal practices of its promoter. Ultimately, these would contribute to answering the question of how the protection of the individual not as a mere recipient of positive or negative protection, but as a subject of rights with the capacity to *act* for their protection. This can present not simply optimistic thinking, but a pragmatic view of the future.

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Appendix 1: Semi-Structured Interview Questions

1. Questions asked in European Commission interviews

EU human rights promotion

1. What are the main instruments of human rights promotion within the EU's enlargement strategy?

2. Why does the European Union use the term 'fundamental rights' internally and 'human rights' externally? Is there a differentiation between these two terms?

3. What is the position of minority rights within EU conditionality?

4. How deeply does the EU look into the human rights situation of a candidate country?

5. Does any candidate country have the 'right' to join the EU?

6. What are 'European' human rights standards? Not all member states have the same standards, and several of them are less advanced than what conditionality would require.

7. How are the EU's annual progress reports compiled?

8. How impartial is the European Commission in its assessments?

9. How do you respond to criticism about double standards or inconsistencies in the application of EU human rights policy?

10. Do you agree with the idea that if HR were really at the heart of Union activity, EU law would need to be rewritten from a human rights perspective?

11. What is the role of the European Parliament in EU human rights promotion within enlargement?

12. How does the IPA function in practice and what are its main components?

13. Who is the main point of contact between the EU and Turkey concerning pre-accession assistance? Who does the Commission primarily negotiate with?

14. How does the EIDHR work in practice within enlargement?

15. The EIDHR began as a human rights instrument within external relations. How did it become included in enlargement?

16. If the EIDHR funding is confidential, how do you advertise it to the NGOs of the country?

17. How do human rights consultations work in practice?

18. Do human rights consultations include representatives of civil society organisations?

Human rights promotion to Turkey

1. What particular policies do you use to apply human rights to Turkey?

2. In which human rights areas has Turkey achieved the most progress?

3. There is not much debate in the academic literature about the social issues Turkey faces. Are civil and political reforms prioritised over social reforms by the EU?

4. What is the reason that less IPA money is being channeled into Turkey?

5. Does Turkey ever complain about the lesser amount of financial assistance?

6. Does the European public have the power to impede Turkey's accession, even if the country implements all the criteria?

7. The EU is a proponent of Kurdish rights in Turkey. Is there a specific benchmark that it has set?

8. Which are the most serious human rights concerns the EU faces in Turkey?

9. Are you concerned that Turkey has stalled in its reform process?

10. Do different actors in Turkey, such as political parties or civil society, have different expectations of the EU in terms of human rights promotion?

11. Do you believe that the AKP government recognises the moral validity of human rights norms, or is its aim to fulfill them just to achieve EU membership (their state interest)? Or both?

2. Questions asked in interviews with human rights organisations in Turkey

1. Is contemporary human rights reform in Turkey a result of instrumental calculation of the benefits of EU accession, or of recognition of the normative validity of human rights?

2. Do you believe/trust in the liberal pro-reform statements of the AKP government?

3. What is the central understanding of human rights in Turkey? May it be different to Europe's understanding?

4. What is the main human rights philosophy of this organisation?

5. What would you respond to the strands of politics and civil society that suggest that Turkey's political identity is 'different' and cannot accommodate human rights protection as required by the EU?

6. Why is there currently absence of a strong political debate on human rights in Turkey?

7. Do perceptions of EU 'unfairness' affect the implementation of human rights in Turkey?

8. Do you agree with the claim that Turkish society is not 'ready' for reforms?

9. Do you agree with the claim that civil society in Turkey is weak?

10. Do human rights NGOs in Turkey encounter state interference in their activities, and how does this manifest?

11. What do you consider the most serious contemporary human rights problems in this country?

12. What kind of cooperation do you have with the government? Are you invited to consultations, for example?

13. What kind of cooperation do you have with other major human rights organisations in Turkey?

14. How would you evaluate your experience with EU funding and your EIDHR projects in particular?

Appendix 2

Interviewees

European Commission (Brussels, November 2009)

Directorate-General	Position	Unit
DG Enlargement	International Relations Officer	Turkey Unit
DG Enlargement	Policy Officer	Western Balkans Unit
DG Enlargement	Policy coordinator	Enlargement Strategy Unit
DG Enlargement	Public Relations Officer	Information and Communication
DG Enlargement	Adviser on Inter-Institutional Relations	Turkey Unit
DG External Relations	Policy Officer	Human Rights Unit
EU Delegation in Ankara	Policy Officer	Political Criteria Unit
EU Delegation in Ankara	Policy Officer	Political Criteria unit

Human rights organisations (Ankara, November 2010)

Organisation	Organisation (in Turkish)	Position
Human Rights Foundation	*İnsan Hakları Vakfı*	Director
Human Rights Foundation	"	Administrator
Human Rights Association	*İnsan Hakları Derneği*	Director
Human Rights Association	"	Administrator
Mazlumder	*Mazlumder*	Director
Association for Liberal Thinking	*Liberal Düsünce Derneği*	Director
Association for Liberal Thinking	"	Deputy Director
Association for Liberal Thinking	"	Trainee
Association for Prevention of Torture (phone interview)		Europe and Central Asia Programme Officer

Academia

University	Position
Bilkent University, Ankara	Assistant Professor in International Relations