

Transnationalization of Human Rights Norms and Its Impact on Internally Displaced Kurds

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ABSTRACT

This paper addresses the less researched topic of internal displacement as a human rights issue and analyzes the extent that the transnationalization of human rights issues and the pressures from regional organizations affected the rights of ethnic minorities, particularly internally displaced ethnic groups. In order to shed light on how much state sovereignty on sensitive internal matters can be challenged by regional organizations, the paper examines Turkey's efforts to join the European Community (through membership in the Council of Europe and the European Union) in light of its policies toward its internally displaced Kurdish population. Although the analysis focuses on internal displacement as an issue within this field, it also studies general human rights problems, such as minority rights, cultural rights, and representation of minorities, within the context of Turkey's Kurdish Question.

I. INTRODUCTION

For about a decade, scholars have argued that the nation-state has lost control over economic, political, social, and cultural issues within its

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borders. Although global civic organizations and transnational social movements have been more active in the issues affecting global citizens, regional organizations recently have increased pressure toward nation-states with regard to issues that the latter traditionally consider as matters of domestic concern. One such domain is in the area of human rights.

The transnationalization of human rights norms and movements has indirectly resulted in international organizations increasing their monitoring of states' policies toward Internally Displaced Persons (IDPs), the conflicts producing IDPs, and efforts resolving the conflict and resettling IDPs. This has proven especially true in cases in which the majority of the IDPs constitute an ethnic minority within that state. But to what extent has the transnationalization of human rights issues and the pressures from regional organizations affected the rights of ethnic minorities, particularly when they are internally displaced ethnic groups? To answer this question, an examination of Turkey's efforts to join the European Community (through member to the Council of Europe and the European Union) in light of its policies toward its internally displaced Kurdish population proves illuminating. This case in particular clearly illustrates the degree to which states still exercise a certain degree of control over human rights issues with regard to their own ethnic minorities and to the internally displaced, contrary to the assertions of those proclaiming the decline of the state's capacity to do so.

This article proposes that the issue of internal displacement can and should be studied within the human rights plane. A review of the literature on the role of international and regional organization in forcing states to comply with human rights standards concerning these issues focuses the discussion on how states breach human rights standards before, during, and after internal displacement. In focusing on internal displacement, the argument is not that it is a qualitatively different human rights problem but that like any other human rights issue that the state claims sovereignty over, it is a matter that is difficult for states to reach consensus with international organizations. As with any other part of the world, what makes the consensus between Turkey and the European Community harder to reach is the local importance given to the issue.

By using Turkey as a case study, this article makes the argument that although increasing pressures of regional and international organizations on human rights issues challenge state sovereignty more and more, states still treat certain issues such as internal displacement as their internal matters and discount such coercions. Yet, in some cases, these pressures prove effective in the sense that they make states accept certain rights and agree to give remedies to those affected, even though these rights may not be fully protected in practice. From a pessimistic point of view, accepting certain human rights, at least on paper, might seem still far away from the full exercise of these rights. An optimist might, on the other hand, evaluate the

acceptance of certain rights as a step forward to that end. Taking a European organization, the Council of Europe, Pamela Jordan addresses a similar issue by examining the characteristics that may lead a state to adopt her policies consistent with the norms promoted by the organization.¹ Similar to Jordan's work, this article argues that "membership has its privileges" in persuading members to conform to certain standards of human rights, but the success of the persuasion depends on whether the state is already a member or is waiting to become one as well as the nature of the human rights issue at stake and the local importance given to it.

This article discusses the degree to which certain international and regional mechanisms work for the improvement of human rights, and how the steps taken by these organizations should be utilized in making states comply with human rights issues by using Turkey as a case study. Although the analysis focuses on internal displacement as an issue within the field of human rights, it also studies general human rights problems, such as minority rights, cultural rights, and representation of minorities, within the context of Turkey's Kurdish Question.

II. STATE SOVEREIGNTY AND THE TRANSNATIONALIZATION OF HUMAN RIGHTS

After the end of the Cold War, nation-states started to feel the effects of international organizations, regional organizations, and the global political community more powerfully than ever before. Human rights issues came to the fore after the fall of the communist regimes. With violent ethnic conflicts occurring all over the world, the international community initiated efforts to prevent conflict *before* its appearance as well as worked for post-conflict reconstruction. These efforts concentrated on pressuring nation-states on such issues as human rights practices, cultural liberties, and other similar issues.

While it may appear at first that states have begun to relinquish some of their authority to international bodies, this argument does not stand up under closer scrutiny. For governments with a stronger preference for autonomy, accession to international organizations is much more difficult²; thus, some states have limited their compliance with international human rights conventions and treaties. In her analysis of the twenty-one former Soviet bloc countries, Jordan, following Virginie Guiraudon's work, argues

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1. Pamela A. Jordan, *Does Membership Have Its Privileges?: Entrance into the Council of Europe and Compliance with Human Rights Norms*, 25 HUM. RTS. Q. 660 (2003).
 2. ROSEMARY FOOT, RIGHTS BEYOND BORDERS: THE GLOBAL COMMUNITY AND THE STRUGGLE OVER HUMAN RIGHTS IN CHINA 2 (2000); Jordan, *supra* note 1.

that the nation-state is the primary actor in determining the extent to which this sovereignty may be diminished by external pressure to conform to human rights norms.³ States sometimes overcome this limitation either by ignoring international pressures or by referring to international law that prevents international intervention to domestic matters. In particular, states cite Article (2)7 of the United Nations Charter, which prevents international intervention in the domestic affairs of states.⁴ Through these states' invocation of the UN Charter, organizations experience difficulties in detecting violations of human rights: "Those who herald the end of the nation-state all too often assume the erosion of state power in the face of globalizing pressures and fail to recognize the enduring capacity of the state apparatus to shape the direction of domestic and international politics."⁵ Despite international pressure, territoriality is still the defining element of a state's sovereignty and power on any particular issue. "Blocking factors" such as popular nationalism, secessionist movements, territorial integrity, or social value structures may affect a nation-state's commitment and adherence to human rights practices.⁶ The international community, for example, is currently frustrated in modifying the human rights practices of the strong Chinese government. Viewing such cases as examples of the international community's failure to challenge state sovereignty on bad human rights practices, one can cheer the long-lasting paradigm of the *realists* that the states are the ultimate sovereigns within their own territories and that transnational forces do not have the means and power to meaningfully challenge states on human rights practices.⁷

There is, thankfully, an increasing belief that the international advocacy channel, transnational social movements, and regional and international organizations, through different channels, oppose states even in matters once considered internal. A body of recent literature now exists on how noncompliance prevention mechanisms can be effective in forcing states in commitment to international human rights standards.⁸ International and

3. Jordan, *supra* note 1, at 660.

4. The article states that "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter." U.N. CHARTER, art. 2, ¶ 7, signed 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (entered into force 24 Oct. 1945).

5. DAVID HELD, POLITICAL THEORY TODAY 212 (2001).

6. FOOT, *supra* note 2, at 13.

7. See also KENNETH WALTZ, THEORY OF INTERNATIONAL POLITICS (1979); F.H. HINSLEY, SOVEREIGNTY (2d ed. 1986); HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 3 (5th ed. 1973) (explaining the realist paradigm).

8. See, e.g., THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse et al. eds., 1999); MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (1998); Kathryn Sikkink, *Human Rights, Principled Issue-Networks, and Sovereignty in Latin America*, 47 INT'L ORG. 437 (1993).

local pressure from NGOs, persuasion, shaming, and isolation can motivate states to comply with human rights understandings and practice.⁹ Kathryn Sikkink argues that state practices can also be transformed through material benefits such as trade benefits and military or economic aid, but these benefits may not be effective if the leaders are unwilling to take the normative messages.¹⁰ There is also an increasing belief that access to membership in international and regional organizations can motivate states to comply with human rights standards.¹¹ At the practical level, there have recently been attempts to reconstruct the traditional understanding of *state sovereignty*. The Report of the International Commission on Intervention and State Sovereignty emphasizes the need to recharacterize the concept of *sovereignty* from *sovereignty to control* to *sovereignty as responsibility*. The introduction of *sovereignty as responsibility* incurs extra responsibility on the state toward its citizens as well as legitimizes the practice of international bodies in checking on the status quo of these responsibilities. The Commission's report on 18 December 2001 elaborates on the threefold significance of this shift: a) state responsibility to protect the safety and lives of its citizens; b) state responsibility toward its citizens and the international community through the UN; and c) state accountability for the acts of commission and omission. The report also emphasizes the ever-increasing impact of international human rights norms and the concept of human security on the reconstruction of the *sovereignty* concept.¹²

However, the question remains to what extent international mechanisms, norms, and reconceptualizations are or have been influential in forcing states to comply, especially in areas that they consider sensitive or untouchable? Within the context of this article's focus, the use of the state sovereignty argument means that IDPs are vulnerable as states often claim that such situations are internal matters. The remainder of this article will be dedicated to the issue of conflict-induced internal displacement as a human rights issue, the need for transnational mechanisms to address the issue, and the application of this discussion to Turkey's actions and policies toward the Kurdish population. Turkey provides a good case study because it presents both the issue of a strong state with a long-lasting ethnic problem and internal displacement and the issue of international pressures challenging this strong state fit the theoretical picture. The last section of the article recommends improving Turkey's acceptance of human rights agreements and examines whether Turkey's eagerness to join the European Community

9. See FOOT, *supra* note 2, at 10; KECK & SIKKINK, *supra* note 8.

10. Sikkink, *supra* note 8, at 437.

11. Jordan, *supra* note 1, at 660.

12. INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (2001).

has actually contributed to improving the country's human rights practices concerning the internally displaced Kurds.

III. CONFLICT-INDUCED INTERNAL DISPLACEMENT: AN INTERNATIONAL CONCERN OR AN INTERNAL MATTER?

Internal displacements can happen due to economic, political, and environmental reasons in both developing and developed states. "Displacement in Africa is primarily a result of failure of the economy, while in the Middle East it is due to the failure of the polity, and in the United States, of administration."¹³ However, conflict-induced internal displacement has been most common in the developing world during the process of state-formation or as a result of efforts to keep nation-states homogenous. Aristide Zolberg et al. argues, as reported by Howard Adelman, "whereas all ages have witnessed people forced to move from their homes, refugees [including IDPs] are a creation of the modern world. They are not just forced migrants but are part and parcel of the development of the nation-state."¹⁴ In most cases, internal displacement is a result of conflict between different ethnic groups or between governments and ethnic, racial, linguistic, or religious minority groups. Conflict-induced internal displacements caused by the failure of the polity often are linked directly to the state's active involvement in a conflict (i.e., the state choosing a side in the conflict through its policies), its inability to perform its functions by failing to isolate itself from incompatible interests, or its failure to take seriously or to even comprehend the nature of the conflict.

Intrastate conflicts can produce either refugees or IDPs, with the distinction resting upon whether the migrant crosses an international border. Recently, the number of IDPs has surpassed the number of conventional refugees by a ratio of two-to-one.¹⁵ In the 1990s, the number of IDPs started to increase dramatically worldwide. By 1997, the number reached "more than 20 million in at least thirty-five countries."¹⁶ Recent statistics indicate that some 22 to 25 million have been internally displaced because of internal strife, armed conflict, and communal tensions.¹⁷

13. SETENEY SHAMI, *POPULATION DISPLACEMENT AND RESETTLEMENT: DEVELOPMENT AND CONFLICT IN THE MIDDLE EAST 2* (1994).

14. See Howard Adelman, *Modernity, Globalization, Refugees and Displacement, in REFUGEES: PERSPECTIVES ON THE EXPERIENCE OF FORCED MIGRATION* 83, 89 (Alastair Ager ed., 1999).

15. The Global IDP Project, available at www.db.idpproject.org/global_overview.htm#9.

16. *THE FORSAKEN PEOPLE: CASE STUDIES OF THE INTERNALLY DISPLACED 1* (Roberta Cohen & Francis M. Deng eds., 1998).

17. Erin D. Mooney, *Principles of Protection for Internally Displaced Persons*, 38 INT'L MIGRATION 82, 82 (2000).

In most cases both forced refugees and IDPs are results of coercion and compulsion; thus, the mechanisms protecting the two should be the same.¹⁸ However, policies protecting the two differ greatly because the agencies in charge of the governing policies differ. In the case of refugees, international agencies¹⁹ and the host state care for the refugee problems; for IDPs, the cases are considered “internal matters” and the state in which the internal displacement has occurred dictates the policies. An important distinction to note here is that in the case of internal displacement, international refugee laws protecting refugees against discrimination by the hosting states do not apply because internally displaced persons remain within the borders of their home states. When governments insist that they can handle issues by their own means, internally displaced persons are deprived of any international material assistance.²⁰ Such circumstances often affect migrants’ physical security and material well-being.

Until about fifteen years ago, the issues of internally displaced people were not even discussed in the international arena. The United Nations implemented protection for IDPs in 1992, and in 1997 the appointed special representative of the UN Secretary-General firmly brought the issue to the international human rights agenda. According to the modified United Nations definition, the internally displaced are the persons or groups of persons

who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular, as a result of, or in order to avoid the effects of, armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.²¹

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18. Luke T. Lee, *Internally Displaced Persons and Refugees: Toward a Legal Synthesis?*, 9 J. REFUGEE STUD. 27 (1996).
 19. The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol are the basic international documents that gave the UN High Commissioner for Refugees (UNHCR) an international legal basis to protect refugees by establishing the signatory nations’ obligations for the protection and rights of refugees. CONVENTION RELATING TO THE STATUS OF REFUGEES, *adopted* 28 Jul. 1951, U.N. Doc. A/CONF.2/108 (1951), 189 U.N.T.S. 150 (*entered into force* 22 Apr. 1954), *reprinted in* 3 WESTON III.G.4.; PROTOCOL RELATING TO THE STATUS OF REFUGEES, *done* 31 Jan. 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (*entered into force* 4 Oct. 1967) (*entered into force for U.S.* 1 Nov. 1968).
 20. Cohen argues that several cases exist in which governments discourage international involvement, and these IDPs remain beyond the range of international activities. The governments of these countries either do not acknowledge that there is a problem (*i.e.*, Algeria, Myanmar, India) or insist that they can handle the issue themselves (*i.e.*, Turkey, India). See Roberta Cohen, *Hard Cases: Internal Displacement in Turkey, Burma and Algeria*, 6 FORCED MIGRATION REV. 25, 25–26 (1999).
 21. MASSES IN FLIGHT: THE GLOBAL CRISIS OF INTERNAL DISPLACEMENT 18 (Roberta Cohen & Francis M. Deng eds., 1998).

Thus, the definition includes both those *forced* and those felt *obliged* to leave their homelands. The category includes people affected by natural or human-made disasters as well as those fleeing conflicts and violence. The definition recognizes groups as well as individuals as victims of this experience, a distinction which is crucial to understanding the role of the state when the source of forced mobility is the conflict between groups, when the state is an incapable actor, or when IDPs result from state-group conflicts.

Although the introduction and definition of the concept through an international document is a significant step in the international governance of the issue, the United Nations document contains mostly guiding, rather than binding, principles. On the other hand, the existence of such documents can and may force states to comply with international norms, albeit only to a certain extent. For example, in 1995, the Colombian government created the System of Comprehensive Assistance to the Population Displaced by Violence and recognized forced displacement as a public policy issue. With the introduction of Law No. 387 on 18 July 1997, this System set out the concrete steps and the specific responsibilities of the entities involved. However, recent reports by international organizations still underscore the need for greater protection and assistance to Colombia's IDPs.²² The reluctance of many states to have themselves bound by international documents that address IDPs creates certain problems, particularly when the internal displacement issue is analyzed on the human rights plane. As noted earlier, human rights practices on *internal matters* have only recently begun to be governed by guidelines and compliance mechanisms. In the international environment, the most frequently used compliance mechanism for the problems of civil war and ethnic conflict is sanctions. In recent years, the most practiced sanctions are economic ones, and, increasingly, the international community is resorting to isolation policies to encourage state compliance by adopting soft policies, such as public "shaming" and threatening to prohibit access to international organizations.

In most cases, these compliance mechanisms may prove effective in some regards. However, because IDPs are usually the product of civil wars or ethnic conflict, sanctions are useless if they have already been imposed in response to a civil war or ethnic conflict issue. Of course, states still fall back on the internal affairs argument with regard to sanctions over IDPs.

Human rights violations cut across all phases of internal displacement because during and after internal displacement, physical insecurity and

22. The Global IDP Project, Country Information Page: Colombia, available at www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Colombia.

material deprivation can take place.²³ Areas in which internal displacement and human rights issues converge include the tragedy of being caught in the crossfire of armed conflict during the flight; inadequate shelter, food, and medical care; denial of access to education and opportunities in the place of destination; and life and security problems that may emerge in return and resettlement. According to human rights law, states have to “ensure the survival, well-being, and dignity of all persons subject to their territorial jurisdiction.”²⁴ Mission reports prepared by the Representative of the Secretary-General discuss “human rights of the displaced with regard to equality and nondiscrimination, life and personal security, personal liberty, subsistence, freedom of movement, personal documentation, property and land, family and community, education and employment, asylum in third countries, and return to normal life.”²⁵ Following these arguments and practices, some responsibilities of states emerge when internal displacement is made part of the human rights plane: a) establishment of prevention mechanisms for conflict-induced displacements; b) the need to provide assistance during and after the emergency; c) protection of individual rights (the right to life, the right to property, etc.) during the forced movement; d) safe and voluntary return of the IDPs; and e) the overall improvement and strengthening of state institutions to guarantee and protect these rights. During and after internal displacement, states are also obliged to protect certain rights, such as the right to life, the prohibition of torture and degrading treatment or punishment, the right to liberty and security, the right to a fair and public hearing, the rights to land and resource access, and the rights to freedom of movement and residence. If internal displacement is a consequence of an armed conflict, states carry the responsibility to protect their citizens²⁶ as well as their rights to freedom of movement and residence.²⁷ However, in most circumstances, the challenges to state

23. Mooney, *supra* note 17 at 82.

24. *Id.*

25. Maria Stavropoulou, *Displacement and Human Rights: Reflections on UN Practice*, 20 HUM. RTS. Q. 515, 531 (1998).

26. Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 Aug. 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (*entered into force* 21 Oct. 1950) (*entered into force for U.S.* 2 Feb. 1956); Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 8 June 1977, art 13, ¶ 1, 1125 U.N.T.S. 609 (*entered into force* 7 Dec. 1978), *reprinted in* 16 I.L.M. 1442 (1977).

27. Universal Declaration of Human Rights, *adopted* 27 Nov. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1) at 71, art. 13, U.N. Doc. A/810 (1948), *reprinted in* 43 AM. J. INT'L L. 127 (Supp. 1949); International Convention on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, art. 12, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976).

sovereignty have been possible only in humanitarian relief; however, cases exist in which states did not allow humanitarian aid to reach the affected populations because the issue was believed to be one of internal affairs.

To shed some light on how much the international pressures and noncompliance mechanisms work in changing state compliance, the case of the Kurds in Turkey can be used to highlight the salient issues and themes involved.

IV. TURKEY AND KURDISH INTERNAL DISPLACEMENT

The Kurds have never existed as an independent political community²⁸ and thus have been under the rule of others throughout their history—including the Sassanian, Safavid, and Ottoman Empires and the Turkish Republic. The basic documents and international treaties, such as the Treaty of Lausanne in 1923,²⁹ that shaped the legal foundations of the Turkish state only registered non-Muslim groups—Greeks, Armenians, and Jews—as officially recognized minorities. Over the course of time, resentment grew among the Kurds in Turkey who had rebelled against the Republic with the larger aim of carving out a separate Kurdistan within the territorial boundaries of the Turkish Republic. During the first years of the Republic, several Kurdish uprisings occurred. Of the eighteen rebellions that broke out between 1924 and 1938, seventeen were in Eastern Anatolia and sixteen involved Kurds.³⁰

From the late 1930s through the late 1950s, Kurdish opposition to the regime subsided, but the pattern shifted in the late 1980s as a result of the emergence of the *Partiya Karkerên Kurdistan* (the Kurdistan Workers' Party, PKK). The PKK launched its first attack on the Turkish state in 1984. In 1987, following the PKK's attacks, the government declared emergency rule in thirteen Kurdish-populated cities. Since then, the war between Kurdish insurgents and Turkish military forces has claimed 27,000 lives.³¹

Regional and international organizations have gained some influence in the aftermath of the cold war with the increase in *intra-* rather than *inter-*state disputes. Violent ethnic conflicts broke out in rapid succession,

28. The only exception is the short-lived, December 1945 Mahabad Republic in today's Iran. The Republic ceased to exist when the Soviet forces and support, which helped the foundation of the Republic, were withdrawn in December 1946. See DAVID McDOWALL, *A MODERN HISTORY OF THE KURDS* (1997).

29. Treaty of Peace with Turkey, 24 Jul. 1923, Turk.-Allies [Gr. Brit., Fr., Italy, Japan, Greece, Rom., & Serb-Croat-Slovene State], 28 L.N.T.S. 11 [hereinafter, Treaty of Lausanne].

30. KEMAL KIRIŞCI & GARETH WINROW, *THE KURDISH QUESTION AND TURKEY: AN EXAMPLE OF A TRANS-STATE ETHNIC CONFLICT* 100 (Frank Cass ed., 1997).

31. Kemal Kirişçi, *Turkey*, in *INTERNALLY DISPLACED PEOPLE: A GLOBAL SURVEY* (Janie Hampton ed., 1998).

prompting the international community to expand its role from post-conflict reconstruction to conflict prevention as well. Scholars and activists are nearly unanimous in the belief that Europe represents the best examples of regional organizations (specifically, the Council of Europe, the Organization for Security and Cooperation in Europe, and the European Union) providing agreed upon norms for implementing human rights standards and for monitoring state compliance.³² Scholars also point out the increasing engagement of regional and international organizations in monitoring the conditions of internally displaced people.³³ These standards, compliance issues, and monitoring mechanisms have been the source of some tension between the European Community's political bodies and Turkey. In recent decades, Turkey garnered the attention of the international community with respect to human rights issues because of several issues, among which we can include its treatment of the minority Kurdish population. World attention focused on the Kurds at the end of the Persian Gulf War in 1991 and continued throughout the 1990s with increasing levels of forced migration from the Kurdish populated regions of eastern and southeastern Anatolia.

The conflict-induced internal displacement of the Kurds in the 1990s was the result of a) the evacuation of villages by the military, allowed by the 1987 emergency rule;³⁴ b) the PKK's pressure against the villagers who do not support the PKK to abandon their villages; and c) insecurity resulting from being caught between the PKK and Turkish security forces.³⁵ As a result of this conflict, many Kurds left their villages and moved to the nearest urban centers. A significant proportion of the population moved in the last fifteen years,³⁶ mostly to the periphery of nearby cities as well as to

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32. See, e.g., PREVENTING CONFLICT IN THE POST-COMMUNIST WORLD: MOBILIZING INTERNATIONAL AND REGIONAL ORGANIZATIONS 1, 7 (Abram Chayes & Antonia Handler Chayes eds., 1996); CONNIE PECK, SUSTAINABLE PEACE: THE ROLE OF THE UN AND REGIONAL ORGANIZATIONS IN PREVENTING CONFLICT 98 (1998); Connie Peck, *The Role of Regional Organizations in Preventing and Resolving Conflict*, in TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT (Chester A. Crocker et al. eds., 2001); Terence Hopmann, *The Role of Multilateral Organizations in Conflict Resolution: The Case of Organization for Security and Cooperation in Europe 2* (2002) (occasional paper, Sabanci University, Program on Conflict Analysis and Resolution).
 33. See Mooney, *supra* note 17, at 87; Stavropoulou, *supra* note 25.
 34. In 1987, the Prime Minister Turgut Özal established a system of emergency rule (OHAL) with a regional governor for most of the southeast. It aimed to control the region with strict state measures. The system was also supported by the village guard system of thousands of civilian, pro-government Kurds to supplement the state's control in the region. See MICHAEL M. GUNTER, THE KURDS AND THE FUTURE OF TURKEY 61 (1997).
 35. Kirişçi, *supra* note 31, at 198.
 36. Southeastern Anatolia is characterized as a traditional agricultural region. Beginning in the late 1960s, the region started to lose its population to the big metropolises as a result of increasing dominance of market mechanisms in the region. The rate of out-migration increased especially after the 1980s due to the conflict between the Kurdish insurgents

shantytowns surrounding big cities such as Istanbul, Ankara, Izmir, and Adana.³⁷ It is estimated that between 2–3 million people have been internally displaced.³⁸ According to a report prepared by a committee of the Turkish Grand National Assembly, in six Eastern and Southeastern Anatolian cities that were under the State of Emergency legislation (Diyarbakır, Hakkari, Siirt, Şırnak, Tunceli, and Van) and five nearby cities (Batman, Bingöl, Bitlis, Mardin, and Muş), 820 villages and 2,345 hamlets were evacuated, and 378,335 people were forced to leave.³⁹

Internally displaced Kurds migrated to big cities such as Istanbul, Ankara, Izmit, and Izmir in Western Anatolia and Adana and Mersin in the Mediterranean region, but there was also a village-to-city migration within the Eastern and Southeastern Anatolian regions. Many internally displaced Kurds did not know about the well-being of their lands, homes, and belongings during their long periods of displacement due to the decrease in security conditions in the region. In the case of those whose villages were evacuated, access to the village was prohibited.⁴⁰

Some domestic and international organizations have argued that human rights have been abused during this displacement process, which later became the focus of the international community's criticism of Turkey's human rights practices. These organizations claimed that Turkey violated

and the Turkish military. However, the latest developments to boost economic growth through a series of irrigation and development projects such as the GAP (Southeastern Anatolia Project) helped to attract in-migration toward the urban centers, and the population growth in the urban centers began to increase again. See Bahattin Akpıt et al., *Population Movements in Southeastern Anatolia: Some Findings of an Empirical Research in 1993*, 14 *NEW PERSPECTIVES ON TURKEY* 53 (1996). Thus, the region is losing its rural population to the big cities in Western Anatolia as a result of the conflict between the Kurdish insurgents and the Turkish military on the one hand, and administrative-urban centers of the region are attracting people on the other hand, increasing the urban population of the region.

37. Human Rights Association, *Habitat II Alternatif Rapor: Eşit, Özgür, Ayrımsız Yerleşim Hakkı* (Habitat II Alternative Report: Right to Equal, Free, Indiscriminate Residence) (undated).
38. *Id.*
39. Grand National Assembly of Turkey, Report of the Committee of the National Assembly to Inquire the Problems of the Citizens, Who Migrated as a result of Evacuations in Eastern and Southeastern Anatolia, and To Determine Solutions, Commission Report No. 10/25 (9 Feb. 1997).
40. After the 1999 capture of Öcalan, the leader of the PKK, the government initiated a return program. The previous inhabitants in some villages of Bingöl, Bitlis, Tunceli, Batman, and Diyarbakır, and Van are allowed to return to their villages if they sign a petition form, and indicate that their villages were evacuated because of terrorism. However, these villages require a reconstruction and public facilities to be able to welcome the returnees. Although there are still some minor problems faced by these returnees, international reporters such as those assigned by the Council of Europe report positive developments in the region. Council of Europe, Parliamentary Assembly, *Humanitarian Situation of the Displaced Kurdish Population in Turkey*, Doc No. 9391 (22 Mar. 2002).

the rights of the Kurdish IDPs not only in the areas of the rights to life and property but also by the state's inability to provide food, temporary housing, and medical care.⁴¹

The Kurds were displaced into large cities and faced difficult living conditions mainly because they had to leave the region with their families without any support from those who remained behind. In contrast to voluntary migration, in which one individual usually first establishes a living and brings the family to the city, these IDPs had no jobs or homes waiting for them and their families in the cities.⁴² With a substantial number of Kurdish migrants in big cities, the social and economic gap between the Kurds and "the others" became more obvious, with the former possessing fewer socioeconomic assets (e.g., financial capital and education) and less access to social and economic resources, in part due to linguistic barriers.⁴³ Forced migration revealed this larger picture of inequalities existing in the society. Among the difficulties the IDPs encountered in big cities, the most significant was employment. Beginning in the mid-1980s, the range of opportunities for occupational and social mobility for migrants, once high in the 1960s and 1970s,⁴⁴ shrank as unemployment rates increased and income differentials widened.⁴⁵ Combined with the resource access problem, many IDPs who lacked jobs, even through their informal networks, faced economic difficulties in their new environments. Also, the Kurdish IDPs faced not only economic marginalization but also social isolation. In terms of settlement, for example, the displaced Kurds were forced to choose different patterns from those who moved to Istanbul earlier. Most Kurdish IDPs who came to Istanbul in the 1990s settled on the peripheries of Istanbul either because of the lower rents or the opportunity to build an

41. See *Turkey's Failed Policy to Aid the Forcibly Displaced in the Southeast*, 8 HUMAN RIGHTS WATCH (June 1996), available at www.hrw.org/reports/1996/Turkey2.htm; Global IDP Project, Country Information Page: Turkey, available at www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wCountries/Turkey; IMMIGRANTS' ASSOCIATION FOR SOCIAL COOPERATION AND CULTURE (GOC-DER), *THE RESEARCH AND SOLUTION REPORT ON THE SOCIO-ECONOMIC AND SOCIO-CULTURAL CONDITIONS OF THE KURDISH CITIZENS LIVING IN THE TURKISH REPUBLIC WHO ARE FORCIBLY DISPLACED DUE TO ARMED-CONFLICT AND TENSION POLITICS: THE PROBLEMS THEY ENCOUNTERED DUE TO MIGRATION AND THEIR TENDENCIES TO RETURN BACK TO THE VILLAGES* (2002).

42. SEMA ERDER, *KENTSEL GERILIM* 151 (1997).

43. Some Kurdish IDPs, especially women, do not speak Turkish, which affects their job opportunities in the city. According to a survey done by GOC-DER, forced migration particularly affected "the citizens of Turkish Republic, whose native language is Kurdish," and there is a significant number of Kurdish IDPs in big Western Anatolian cities who only speak Kurdish (25.4 percent of the 2139 respondents); GOC-DER, *supra* note 41.

44. MICHAEL DANIELSON & RUŞEN KELES, *THE POLITICS OF RAPID URBANIZATION. THE GOVERNMENT AND GROWTH IN MODERN TURKEY* (1984).

45. Ayşe Ayata, *The Emergence of Identity Politics in Turkey*, 17 *NEW PERSPECTIVES ON TURKEY* 59, 59–73 (1997).

informal dwelling without the authorities' taking notice. Such isolation can have significant consequences, as social exclusion "is not necessarily equated with economic exclusion, although this form is often the cause of a wider suffering and deprivation."⁴⁶ Hence, social exclusion can be multidimensional, with consequences in cultural, economic, and political domains.⁴⁷

These findings demonstrate that internally displaced Kurds require special assistance from the state because of the decreased quality of their living conditions as a result of the conflict in their home regions and that the state should facilitate the necessary conditions for their return. According to the United Nations *Guiding Principles on Internal Displacement*, Principle 4, "children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons should be entitled to special protection."⁴⁸ Nevertheless, the Turkish state has been either unwilling or unable to assist these people. The state's position on this, however, recently began to change with Turkey's increased willingness to comply with the norms of the European Community. Although Turkey's path toward European integration started earlier with membership in the Council of Europe, more significant steps were taken after Turkey's candidacy for European Union membership was accepted in 1999. Both cases will be analyzed further, as they affect the policies of the Turkish state toward its Kurds.

V. TURKEY'S LONG PATH TOWARDS EUROPEAN INTEGRATION

The 1990s marked a watershed for Turkey in terms of integrating into the global community. Turkey's efforts to become a member of the European Union (EU) had an important effect on its policies toward its minorities in general and with the Kurds specifically. However, long before these efforts, Turkey signed several regional and international treaties to protect human rights. There are several international documents to which Turkey is a signatory, including the Universal Declaration of Human Rights,⁴⁹ the European Convention on Human Rights,⁵⁰ and the United Nations Covenant

46. Ali Madanipour, *Social Exclusion and Space*, in *SOCIAL EXCLUSION IN EUROPEAN CITIES* 76 (Ali Madanipour et al. eds., 1998).

47. *Id.* at 77.

48. See Mooney, *supra* note 17, at 90.

49. See U.N. CHARTER, signed 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (entered into force 24 Oct. 1945).

50. See European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 Nov. 1950, 213 U.N.T.S. 221, Europ. T.S. No. 5 (entered into force 3 Sept. 1953) [hereinafter ECHR].

on Civil and Political Rights.⁵¹ Aside from these treaties, Turkey has also bound itself with the obligations to be part of the Council of Europe.⁵² These treaties and regional organizations, to some extent, have influenced the Turkish state's policies toward the Kurds and have influenced indirectly the country's policies concerning internal displacement from Kurdish-populated regions.

In fact, the path Turkey had taken has been increasingly taken by others since the end of the Cold War, when former Communist bloc countries wanted to be part of the liberal democratic Europe and its institutions. Turkey's path draws parallels to theirs in terms of fulfilling the obligations to become an EU member, but it diverges slightly because it has been willing to be part of the process for a much longer period. According to Jordan, the degree to which states comply with and learn the norms diffused by these institutions varies from one state to another. She differentiates three categories of compliance: high, which includes those members that are not under the investigation by the Parliamentary Assembly of the Council of Europe (PACE) or the Committee of Ministers, have generally complied with the Council's recommendation, and appear to actively promote democratic practice; medium, which includes members that have shown progress toward fulfilling their obligations and commitments to the Council of Europe, but not enough to qualify them for the high-compliance group; and low, which includes members that are being monitored by the PACE because they failed to fulfill key obligations and commitments in their accession agreements. In Jordan's categories, Turkey, until recently, fit into the low compliance group because of the Council of Minister's monitoring.⁵³ However, it is safe to argue that Turkey's recent moves in overcoming its human rights problems through fulfilling the obligations to become an EU member have switched it to one of the upper categories. In the next section, a history of these improvements will be presented.

51. See International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976).

Even though the Covenant was prepared in 1966, Turkey signed it on 15 August 2000 together with the International Covenant on Economic, Social and Cultural Rights. Even though the draft was sent to the Assembly for ratification it was later withdrawn. See Taryk Ziya Ekinci, *Avrupa Birliđi'nde Azınlıkların Korunması Sorunu, Türkiye ve Kürtler* (2001).

52. The Council of Europe is an intergovernmental organization that aims to protect human rights, the rule of law, and pluralist democracy and to promote democratic stability in Europe. It has forty-five member states, which, by agreement, bounded themselves to respect the principle of the rule of law, and to guarantee human rights and fundamental freedoms to everyone under their jurisdictions. For further information about the objectives, see the Council of Europe webpage, *available at* www.coe.int [hereinafter Council of Europe's webpage].

53. Jordan, *supra* note 1, at 663.

A. The Council of Europe

Turkey became a member of the Council of Europe in 1949. Its membership to the Council of Europe led to the Turkish state's recognition of the protection of human rights, at least on paper. Of the important documents Turkey has signed as a member of the Council of Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms⁵⁴ was one of the most significant. The signatories aim collectively to enforce the rights stated in the 1948 United Nations Universal Declaration of Human Rights. The Convention formed three institutions, all of which had supranational powers that Turkey accepted: a) the European Commission of Human Rights (1954)⁵⁵; b) the European Court of Human Rights (1959)⁵⁶; and c) the Committee of Ministers of the Council of Europe. Among these bodies, the first two have recently been important to some Kurds who claimed that their rights are violated by the Turkish state. These institutions also serve as important international actors in monitoring Turkey's policies and actions concerning the rights of the internally displaced Kurds. Overall, these institutions are concerned with Turkey's human rights practices. However, a significant portion of these concerns up until now regarded Turkey's treatment of Kurds in general and the Kurdish IDPs to a certain extent.

According to international law, states have to protect the rights of their citizens. If they do not comply with this rule, citizens have the right to resort to the international agencies to secure their rights. In early 1987, Turkey ratified Article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,⁵⁷ which provides the right of individual

54. ECHR, *supra* note 50.

55. Until November 1998, this international body examined the admissibility of all individual or state applications against a member state in accordance with the European Convention on Human Rights. It expressed an opinion on the violation alleged in applications found to be admissible in cases in which no friendly settlement is reached. See Council of Europe's webpage, *supra* note 52.

56. Based in Strasbourg, this is the only truly judicial organ established by the European Convention on Human Rights. It is composed of forty-three judges (as of April 2003) and ensures, in the last instance, that contracting states observe their obligations under the Convention. Since November 1998, the Court has operated on a full-time basis. *Id.*

Turkey ratified the ECHR on 18 May 1954 but recognized the right of individual petition on 28 Jan. 1987. See Council of Europe, Turkey and the Council of Europe, available at www.coe.int/T/e/Com/about_coe/member_states/e_tu.asp#Topofpage.

57. Article 25 of the Convention states that "The Commission may receive petitions . . . from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention . . . those of the High Contracting Parties who have made such a declaration [to recognize individual petition] undertake not to hinder in any way the effective exercise of this right." European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 25, *opened for signature* 4 Nov. 1950, 213 U.N.T.S. 221, *Europ. T.S. No. 5 (entered into force* 3 Sept. 1953), available at www.hri.org/docs/ECHR50.html.

petition to the European Commission of Human Rights after exhausting domestic resources. In the Turkish context, the human rights abuses garnered the attention of international human rights agencies, mostly in the case of Kurdish Members of Parliament⁵⁸ and internal displacements. Several NGOs requested compensation from the Turkish state on behalf of those affected by village evacuations. Kurds who brought cases in Turkish courts for possible compensation from the state failed to get any money. These cases were subsequently taken to the European Commission of Human Rights. There have been approximately 1,500 applications to the European Court of Human Rights related to the breach of several articles of the European Convention on Human Rights.⁵⁹

Most of these were cases in violation of the European Convention on Human Rights, Articles 2 (right to life), 3 (prohibition of torture and degrading treatment or punishment), 5 (right to liberty and security), 6 (right to fair and public hearing), 8 (right to respect private and family life), 13 (right to effective remedy), 14 (prohibition of discrimination), and 18 (restrictions under convention shall only be applied for prescribed purposes).⁶⁰

Sikkink argues that domestic NGOs play a significant role in breaking off state sovereignty by publicizing human rights abuses to the international community, and these NGOs then pressure states to correct them.⁶¹ In the Turkish case, the European institutions became more important for those

58. On 16 June 1994, the Constitutional court banned the pro-Kurdish DEP. Its thirteen deputies were stripped of parliamentary immunity, and seven who did not flee abroad were charged with treason and put in jail. The MPs Türk, Dicle, Doğan, Sadak, and Zana were given thirteen-year sentences, and Sakık received a three-year sentence, based on the claim that they were members of an armed group. The trial and charges against the MPs attracted a great deal of attention from the world's political leaders and media. Many representatives of international nongovernmental organizations came to Turkey to support the MPs. The European Parliament and Amnesty International asked for their release. Yet, the decision was clear: the MPs were found guilty.

Exhausting all possible solutions in domestic law, the case was brought to the European Court in 1995 (Case of Sadak and Others v. Turkey, App. No. 27100/95, Eur. Ct. H.R.). Finally, on 17 July 2001, the case was resolved and the Court decided that the State Security Court in Ankara, which tried the MPs was not an "independent and impartial" tribunal and that it violated the principle of fair trial under Article 6 of the European Court of Human Rights. Under Article 41 (just satisfaction) the Court awarded \$25,000 to each applicant (namely the four MPs) for damages.

After the abolishment of State Security Courts in June 2004, these MPs were released. Interestingly, the release came the same day of first the Kurdish broadcast on a Turkish TV channel. European institutions welcomed these two developments.

59. See specifically application numbers 8803–8811/02 and 8815–8819/02. See 2004 Regular Report on Turkey's Progress Towards Accession, COM(2004)656 final at 50, available at http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_tr_2004_en.pdf.

60. See ECHR, *supra* note 50, arts. 2, 3, 5, 6, 8, 13, 14, 18. For a detailed analysis of these and other cases, see the Kurdish Human Rights Project's webpage, available at www.khrp.org.

61. Sikkink, *supra* note 8, at 414.

Kurds who thought that their rights were violated by the Turkish state. In particular, several Kurdish associations and foundations, founded in the 1990s to defend the rights of these Kurds in European courts, applied to these institutions more often after the 1990s, when forced evacuations led them to leave their homes involuntarily. *Toplumsal Hukuk Araştırmaları Vakfı* (The Foundation for Social Jurisprudence Researchers, TOHAV) is one of these foundations dealing with issues such as Turkey's alleged human rights violations against Kurdish individuals. TOHAV provides lawyers, opens cases in Turkish courts, and takes cases to the European Court of Human Rights if all avenues in domestic courts have been exhausted.

The European Court of Justice has also been influential in affecting the possible implementation of the new law on compensation of the losses arising from the conflict in the region. A recent decision of the Court signaled to the Turkish state that the burden of proof in cases in which an IDP makes a claim for his or her property without any proof of property lies with the state.⁶² Against the claims of the state that there is no proof of ownership, the Court decided that the applicants "had unchallenged rights over the common lands in the village and earned their living from breeding livestock and tree-felling. Those economic resources and the revenue the applicants derived from them qualified as 'possessions' for the purposes of Article 1 of Protocol No. 1."⁶³

Grassroots associations from the Kurdish-populated regions, identity-based Kurdish associations, and human rights organizations also play a crucial role in bringing such cases to the attention of international organizations. Some locally based associations representing these regions, for example, assist their members in directing them to other associations or to law firms that can find them lawyers to take their cases to the European Court of Human Rights. Whether through NGOs or individual applications, the bodies of the Council of Europe began to influence somewhat the issue of Kurdish internal displacement. In the late 1990s, the vocabulary of the European Court entered into the lives of those who believed that their rights had been violated.

The Council of Europe's exertion of influence also has been evidenced through its visits to the Kurdish-populated regions and reports on the "humanitarian situation of the displaced Kurdish population in Turkey."⁶⁴

62. Dilek Kurban, *Legal and Practical Evaluation of Turkey's Problem of Internal Displacement* (Jan. 2005) (unpublished working paper presented in TESEV's Working Group on Internal Displacement), *citing* Doğan and Others v. Turkey, App. Nos. 8803–8811/02, 8813/03, 8815–8819/02 (2004) (Eur. Ct. H.R.).

63. Press Release, European Court of Human Rights, Chamber Judgment in the Case of Doğan and Others v. Turkey (29 Jun. 2004), *available at* www.coe.int/T/D/Kommunikation_und_politische_Forschung/Presse_und_Online_Info/Presseinfos/P2004/20040629-GH-Dogan.asp.

64. Council of Europe, *supra* note 39.

Through its recommendations on the Iraqi Kurdish refugees⁶⁵ and Kurdish IDPs,⁶⁶ the Council of Europe tried to improve the lives of the Kurds affected by forced migration. Its most recent report indicates “positive developments in the humanitarian situation of the displaced Kurdish population”⁶⁷ and asks for “additional international financial assistance with a view to fostering economic development in the southeastern part of Turkey”⁶⁸ to help resettlement of the internally displaced.

B. Turkey and the European Union

Although less directly but more powerfully, the EU⁶⁹ has exercised some influence in Turkey’s policies toward the internally displaced Kurds, specifically toward the cultural component of the conflict and resettlement problem. For years, Turkey sought membership in the EU; finally, on 11 December 1999, the European Council of the EU, in the Helsinki Summit of December 1999, decided to include Turkey in its enlargement list by elevating its status from applicant to candidate.⁷⁰ Turkey had to undertake some political and economic reforms, however, for those accession negotiations to begin. Since December 1999, Turkey has paid careful attention to its policies that most concern the EU. This attention, and the subsequent changes, brought about a partial success in the last EU Summit, held on 16

65. See Council of Europe, Recommendation 1150 (1991) on the situation of the Iraqi Kurdish population and other persecuted minorities.

66. See Council of Europe, Recommendation 1377 (1998) Humanitarian situation of the Kurdish refugees and displaced persons in South-Eastern Turkey and Northern Iraq.

67. Council of Europe, *supra* note 39, at 1.

68. *Id.*

69. The following information came from the European Union webpage available at www.europa.eu.int (hereafter, the EU webpage).

70. Officially, Turkey’s efforts to join the European Community (EC) goes back to 31 July 1959 when it applied to EEC membership immediately after Greece. On 12 September 1963, it signed an Association Agreement with the EC, the Ankara Treaty, to become an associate member. Its association was expanded in 1970, and it applied for full membership on 14 April 1987. The protocol in 1970 laid down basic objectives in Turkey’s relations with the EU, such as the continuous and balanced strengthening of trade and economic relations and the establishment, in three phases, of a customs union.

Turkey’s application for full EC membership was turned down in 1989 with the claim that the country was not ready to become a member. Instead the Commission suggested the operation of the Association Agreement and the realization of a customs union, which became a reality on 6 March 1995 as the Customs Union Agreement (CUA) and put in effect in 1996. See Meltem Müftüler-Baç *The Never-Ending Story: Turkey and the European Union*, 34 MIDDLE EASTERN STUD. 240, 241 (1998).

Although the establishment of a customs union between Turkey and the EU awakened hopes on the side of Turkey, on 12 December 1997 during its Luxembourg Summit, the European Council decided not to include Turkey in its enlargement process, after which Turkey reacted severely. *Id.*

and 17 December 2004, during which the European Council called on the Commission to present a proposal for a framework for negotiations, which are expected to start on 3 October 2005 and to last at least a decade.

The conditions for starting the EU accession negotiation process (*acquis communautaire*) with candidate states are set forth in the Copenhagen Criteria, adopted in the Copenhagen European Council Meeting of June 1993.⁷¹ According to the Copenhagen Criteria, candidate states must fulfill several standards and criteria.⁷² Among them were political criteria indirectly affecting the issues related to Turkey's internal displacement policies and its approach to the Kurdish Question. Of the political standards, respect for the principle of the rule of law and for minority rights serves as a crucial part of the basis for compliance. In the December 1997 Luxembourg Meeting, the European Council asked the European Commission to prepare progress reports on the candidate countries.⁷³ The Commission Progress Reports of 1998, 1999, 2000, and 2001 presented Turkey's adherence to the political conditions of the Copenhagen Criteria as an important criterion to start the accession negotiations.⁷⁴

The European Commission's 1997 opinions on the eligibility of each candidate clearly state that "observance of human rights is part of the *acquis communautaire*."⁷⁵ Within the context of the Kurdish Question, the EU was most concerned about human rights abuses, cultural rights of minorities, and the removal of the State of Emergency in eastern and southeastern Anatolia. Overall the Commission paid special attention to the structural problems in Turkish democracy. These problems were so central to the EU's decisions that when Turkey was included to the EU's enlargement candidacy list in 1999, the Council's decisions emphasized the need for the commitment to the political conditions:

71. European Council in Copenhagen (21–22 Jun. 1993), Conclusions of the Presidency, SN 180/1/93 Rev 1, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf.

Also, through the entry into force of the Treaty of Amsterdam in May 1999, the political criteria defined at Copenhagen have been essentially enshrined as a constitutional principle in the Treaty on European Union. See Consolidated Version of the Treaty on European Union, available at http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.000501.html.

72. These standards include: 1) *political standards*: stable institutions governing democracy, the rule of law, and respect for human rights; 2) *economic standards*: the existence of a functioning market economy and the capacity to cope with competitive pressure; 3) *compatibility standards*: the ability to take on the obligations of membership including adherence to the principles of political, economic, and monetary union. See Müftüler-Bac, *supra* note 70, at 241.

73. European Council in Luxembourg (12–13 Dec. 1997), Presidency Conclusions, Doc/97/24, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm.

74. European Commission, Regular Report from the Commission on Turkey's Progress Toward Accession (1998, 1999, 2000, & 2001).

75. European Union, Agenda 2000.

Building on the existing European strategy, Turkey, like other Candidate states, will benefit from a pre-accession strategy to stimulate and support its reforms. This will include enhanced political dialogue, with emphasis on progressing toward fulfilling the political criteria with particular reference to the issue of human rights.⁷⁶

In some cases, the pressures on Turkey were effective even before these developments. For example, the acceptance of the Customs Union on 13 December 1995 took place after many debates,⁷⁷ and the European Parliament⁷⁸ stated that the Turkish authorities should continue the necessary process of reforming the constitution and that the financial aid enabled through the Customs Union could be frozen if human rights deteriorated.⁷⁹ More specifically, the European Parliament asked Turkey to progress toward solving its Kurdish problem, along with other issues such as changing the 1982 Constitution⁸⁰ and Article 8 of the Anti-Terror Law⁸¹ as well as improving the positions of the MPs from the pro-Kurdish DEP and fostering better human rights practices.⁸² The ratification process was nearly rejected by the European Parliament because Turkey did not note any improvement in reforming laws on matters relating to human rights and the "Kurdish problem."⁸³ However, some articles in the constitution were modified to broaden political participation, such as Article 8 of the Anti-Terror Law,⁸⁴ which was softened in October 1995.⁸⁵ However, no improvement was made concerning the case of the Kurdish MPs. These improvements were satisfactory enough for the European Parliament to ratify the Customs Union in 1996.⁸⁶ Yet, paradoxically, following these events, on 17 January 1996,

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76. European Council in Helsinki (10–11 Dec. 1999), Presidency Conclusions. Cf. MELTEM MÜFTÜLER-BAÇ, ENLARGING THE EUROPEAN UNION: WHERE DOES TURKEY STAND? 18 (2002).
 77. European Commission, Competition, VI Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (CE-TR 106/1/95).
 78. The role of the European Parliament became a stronger one with the Article O of the Maastricht Treaty in 1992. The Article stated that "Any European State may apply to become a Member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after *receiving the assent of the European Parliament*, which shall act by an absolute majority of its component members (emphasis added) available at www.europarl.eu.int.
 79. See generally TURKISH DAILY NEWS (14 Dec. 1995).
 80. TURK. CONST. of 1982, Official Gazette, Law No. 2709 (9 Nov. 1982).
 81. Anti-Terror Law, No. 3713, art. 8 (Turk.). See also Republic of Turkey, Ministry of Foreign Affairs, available at www.mfa.gov.tr.
 82. See Müftüler-Bac, *supra* note 70, at 248–50.
 83. See Council of Europe's webpage; GUNTER, *supra* note 33; William Hale & Gamze Avci, *Turkey and the European Union: The Long Road to Membership*, in *TURKEY IN WORLD POLITICS: AN EMERGING MULTIREGIONAL POWER* (Bary Rubin & Kemal Kirişçi eds., 2001).
 84. Anti-Terror Law, No. 3713, art. 8 (Turk.).
 85. Law No. 4126 (Turk.).
 86. Decision No. 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC).

the European Parliament decided to award Leyla Zana, the only female Kurdish MP in prison, the Sakharov Prize⁸⁷ as a warning to Turkey.⁸⁸ The European Parliament's decision to warn Turkey about its practices and its vote in 1997 to force the Turkish government to grant general amnesty to and to start negotiations for a possible political solution with all Kurdish organizations, including the PKK,⁸⁹ frustrated the Turkish state. Following these events, at the Luxembourg Summit of the European Council in December 1997, EU officials did not include Turkey in their plans for future enlargement and stressed the need for economic and political reforms as well as for the improvement of Turkish-Greek relations as conditions for strengthening the EU-Turkish relationship. One of the political conditions mentioned by the EU was the improvement of human rights practices and of the treatment of its Kurdish minority, a condition to which the Turkish state reacted harshly.⁹⁰

Following the Helsinki Summit of December 1999, which granted Turkey candidate status as of November 2000, the EU issued an Accession Partnership Document (ADP) with a list of issues that Turkey had to address. These issues dealt mainly with minority rights, torture, the role of military in politics, and the Cyprus issue. Turkey adopted its National Programme for Adoption of the *Acquis* in March 2001, which resulted in the enactment of eighty-nine new laws and amendments to ninety-four others in order to, *inter alia*, "improve Turkey's human rights and bring the country's inflation-prone economy up to European standards."⁹¹

As part of harmonizing its laws with the European norms in the process for the adoption of the *acquis*, Turkey signed the 1969 UN Convention on the Elimination of All Forms of Racial Discrimination, albeit with a reservation to Article 22 to the effect that cases involving Turkey can only be referred to the International Court of Justice with the state's consent,⁹² and

87. The Sakharov Prize for Freedom of Thought, named after Soviet scientist and dissident Andrei Sakharov, was established in December 1985 by the European Parliament as a means to honor individuals or organizations that had dedicated their lives to the defense of human rights and freedom. It is awarded annually on or around 10 December, the day on which the United Nations Universal Declaration of Human Rights was signed.

88. İHSAN D. DAĞI, *İNSAN HAKLARı: KÜRESEL SİYASET VE TÜRKİYE* 130 (2001).

89. *Id.*

90. Birol A. Yeşilada, *The Worsening of EU-Turkey Relations*, 19 SAIS REV. 1 (1999).

91. Philip Martin et al., *Best Practice Options: Turkey*, 40 INT'L MIGRATION 123 (2002).

92. International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 Dec. 1965, 660 U.N.T.S. 195 (entered into force 4 Jan. 1969), reprinted in 5 I.L.M. 352 (1966). Article 22 reads: "Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

the European Agreement Relating to Persons Participating in Proceedings of the European Court of Human Rights.⁹³ Following the Council's decision for Strengthening the Accession Strategy for Turkey, on 26 March 2003, the government modified its National Programme with the intent to sign the International Covenant on Civil and Political Rights,⁹⁴ its optional protocol, and the International Covenant on Economic, Social and Cultural Rights,⁹⁵ to ratify Protocol No. 6 of the European Convention on Human Rights regarding the abolition of the capital punishment;⁹⁶ and to comply with the judgments of the European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly the judgments of the European Court of Human Rights (Section II of the Convention).⁹⁷ In fact, the European Commission criticized Turkey's failure to execute judgments of the European Convention on Human Rights, referring specifically to ninety cases in which Turkey did not ensure the payment ordered by the Court and eighteen cases in which the authorities did not erase the consequences of criminal convictions for violating the Convention in the exercise of freedom of expression. The European Commission also warned Turkey to respond to the Committee of Ministers' demands regarding the situation of the Kurdish ex-MPs mentioned previously.

On 13 December 2002, the Copenhagen European Council Summit left Turkey as the only applicant country with no specific date to start the

93. European Agreement Relating to Persons Participating in Proceedings of the European Court of Human Rights, ETS No. 067, *entered into force* 17 Apr. 1971, *available at* <http://conventions.coe.int/treaty/en/Treaties/Html/067.htm>.

94. International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976).

95. International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976).

96. Protocol No. 6 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. 114, *entered into force* 1 Mar. 1985, *available at* www1.umn.edu/humanrts/euro/z25prot6.html.

Even though since 1984 there have been no executions exercised in Turkey, the Turkish Penal Code, until recently, provided for the death penalty for nine different offenses: crimes against the territorial integrity of the state, collaboration with a state at war with Turkey, espionage, attempts to overthrow the existing constitutional system by force, armed rebellion against the government, preventing the cabinet from performing its functions, inciting the people to revolt and to kill one another, attempting to assassinate the President, and aggravated homicide. See Criminal Law No. 765 (1 Mar. 1926) (Turk.). The GNAT passed the resolution to abolish capital punishment and to replace it with life imprisonment without remission on 3 August 2002, and signed Protocol 6 of the European Convention on Human Rights. See Law No. 5218 (14 July 2004) (Turk.).

97. Commission of the European Communities, Communication from the Commission to the Council, Strengthening the Accession Strategy for Turkey, Brussels 2003. See also www.abhaber.com.

accession negotiations. However, the Summit resolved that if the European Council in December 2004 decides that Turkey fulfils the Copenhagen Criteria, on the basis of a report and a recommendation from the Commission, the EU would open accession negotiations with Turkey “without delay.”⁹⁸ Following the summit, the government in power accelerated its efforts to pass the necessary laws to harmonize its domestic laws with the European standards, which resulted in a partial success in the 16–17 December 2004 European Union meeting in Brussels.⁹⁹

Notwithstanding these shortcomings, recent political developments, especially initiated through new laws and constitutional amendments, have the potential to bear positive developments for Kurds in general and the Kurdish IDPs in particular. Because the conflict between the Turkish army and the PKK seems to have diminished, or at least has decreased in intensity since the capture of PKK leader Abdullah Öcalan, the new legislation might offer better opportunities for the Kurdish IDPs. One such item of legislation that indirectly affects the lives of Kurds in general covers linguistic rights. As mentioned earlier, linguistic barriers have been a problem for Kurdish IDPs. The Grand National Assembly of Turkey has accepted broadcasting in other mother tongues besides Turkish and has eased bans on languages other than Turkish.¹⁰⁰ For the first time in the history of the Turkish Republic, the

98. Copenhagen European Council (12–13 Dec. 2002), Presidency Conclusions, Doc. No. 15917/02, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/73842.pdf.

99. Brussels European Council (16–17 Dec. 2004), Presidency Conclusions, Doc. No. 16238/1/04 Rev. 1, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf.

100. The *National Program for the Adoption of the Acquis* (adopted on 8 Mar. 2001) used the phrase “teaching in native language” rather than education in native language as foreseen by the accession partnership. Even though the new article allows learning Kurdish (and other mother tongues and accents) in private courses and broadcasting in Kurdish, the state will still be able to exercise strict control in such areas. For example, the Kurdish TV programs will only be broadcasted by public television and will be limited in content. Article 4 (as amended by the Law No. 4756 on 21 May 2002 and by Law No. 4771 on 9 Aug. 2002) of the Law of the Radio and Television Supreme Council states that

there may be broadcasts in the different languages and dialects used traditionally by Turkish citizens in their daily lives. Such broadcasts shall not contradict the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation. The principles and procedures for these broadcasts and the supervision of these broadcasts shall be determined through a regulation to be issued by the Supreme Board.

See Radio and Television Supreme Council, available at www.rtuk.org.tr.

The content of the private courses offering Kurdish lessons will also be determined by the state. The most serious limitation to these courses was brought by limiting who the attendees could be: those under the age of eighteen, those who did not finish their eight years primary education, and those who do not know Turkish cannot attend these courses. Also prohibited is attending the courses with garments that have yellow, red, and green together, representing the banner of the Kurdish armed group, the PKK. See SABAH (18 Sept. 2002).

languages and cultures of groups outside those defined by the Lausanne Treaty¹⁰¹ have found a public voice, however limited.

Following these decisions, the first private Kurdish schools opened their doors to students in April 2004 in the two Kurdish-populated cities in the regions affected by the conflict.¹⁰² In June 2004, the same day that the first Kurdish broadcast appeared on Turkish state television, the Appeals Court ordered the release of the four Kurdish MPs, a decision highly welcomed by human rights NGOs in Turkey and high officials within the EU.¹⁰³ However, the Court of Cassation of 14 July 2004 decided for re-trial of the four.

In June 2004, a state-owned television channel broadcast the first TV program in five of the non-Turkish languages spoken in Turkey, two of which are dialects of Kurdish. However, even though the new article allows learning Kurdish (and other mother tongues and accents) in private courses and broadcasting in Kurdish, the state will still be able to exercise strict control in such areas. For example, Kurdish TV programs will only be broadcasted by public television and will be limited in content.¹⁰⁴ According to many Kurdish NGOs, even though these legislative reforms have made steps towards granting rights to Kurds, such rights are far from being fully realized due to the restrictive regulations.¹⁰⁵

Of course, the clearest direct legislative effect of Turkey's eagerness to join the EU came with the gradual removal of the State of Emergency rule in thirteen Kurdish-populated provinces in Eastern and Southeastern Anatolia. However, the national NGOs dealing with the return still note problems in return migration to the villages that have been evacuated by the security forces, especially violations undertaken by village guards.¹⁰⁶

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101. The Lausanne Treaty signed between the occupying allies and Turkey in 1923, which shaped the legal foundations of the new Turkish Republic, registered only non-Muslim groups such as Greeks, Armenians, and Jews as recognized minorities.
 102. There are two regions affected by the conflict, but the schools opened in two cities in one of the regions affected by the conflict. In Turkey, *region* is an administrative unit (like a *city*).
 103. Press Release, Javier Solana, EU High Representative for the CFSP, Welcomes the Release of Leyla Zana by Turkish Authorities (9 Jun. 2004), Doc. No. S0162/04, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/declarations/80900.pdf.
 104. Law of the Radio and Television Supreme Council, art. 4, as amended by Law No. 4756 (21 May 2002) and Law No. 4771 (9 August 2002), available at www.rtuk.org.tr.
 105. *Presentation to OSCE: Kurds as a National Minority in Turkey*, KURDISH HUMAN RIGHTS PROJECT NEWSLINE, Winter 2004, at 3, available at www.khrp.org/newsline/newsline28/newsline28.pdf.
 106. The village guard system was established by the state in 1985 (Law on Villages, Law No. 3162; Law No. 442). Law No. 442 asked for the establishment of the village guard system "to protect the integrity, life and property of everybody." It was composed of around 60,000 civilian pro-government Kurdish militias guarding against the PKK in the conflict-affected regions. See also various newsletters available on the Göç-Der website, available at www.gocder.com.

One of the criticisms Turkey received from the European Commission over the years was that it did not provide the necessary legal and economic infrastructure to facilitate IDPs' return migration to the conflict-affected areas in Eastern and Southeastern Anatolia. Attempts such as the 2003 Law on Integration to Society and the Return to Village and Rehabilitation Program initiated by the government did not bear significant results. Following European Union's criticisms, in Spring 2001, the government submitted to the cabinet a bill on compensation for harm caused by acts of terrorist organizations and from measures taken by the state in the struggle against terror.¹⁰⁷ The bill aimed to provide compensation on the basis of assessments by multilateral commissions, composed of deputy governors, government civil servants, and members of the bar association. The law, which was approved on 17 July 2004, has still not been implemented. However, even in the way the law was set up, many NGOs directed their criticisms to the law's lack of comprehensiveness (due to the restrictions it set on who can receive compensation) and possible problems in implementation.¹⁰⁸ Yet, on the other hand, in his visit to Turkey, Walter Kalin, Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, expressed his satisfaction with the willingness shown by interlocutors to approach the problem with an open mind. Even though noting several areas where improvements are needed (e.g. the high rejection rate of applicants, falling behind scheduled time framework) and suggesting an extension of the application date for compensation, Kalin underlined the importance of waiting for the strategy document the government will finish soon.¹⁰⁹ Previous efforts initiated by the government could only lead the return of around 124,218 IDPs to their homes.¹¹⁰

Turkey's efforts to join the European Union bore eight sets of reform packages, through which the Grand National Assembly actualized a total of 261 new laws between October 2003 and July 2004.¹¹¹ In several areas, including freedom of expression, freedom of association, freedom of

107. Law on Compensation for Damage Arising From Terror and Combating Terror, Law No. 5233, *in* Official Gazette No. 25535 (17 July 2004), *put in force* 4 October 2004.

108. Deniz Yksekler, Latest Situation in the Problem of Internal Displacement in Diyarbakır: Problems Arising from Internal Displacement and Implementation of Law No: 5233 (Feb. 2005) (unpublished working paper presented in TESEV's Working Group on Internal Displacement).

109. Press Release, United Nations Development Programme, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons Sees New Hope for the Internally Displaced Persons in Turkey (9 May 2005), *available at* www.undp.org.tr/PressRelease_9may05.asp.

110. Commission of the European Communities, 2004 Regular Report on Turkey's Progress Towards Accession, COM(2004)656 final at 51, *available at* http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_tr_2004_en.pdf.

111. *Id.* at 20.

religion, and legislative organs (such as in the judicial system), major changes took place on paper. However, considering that most laws have been approved but have not been put into practice and that previous regulations, such as the State of Emergency practiced in Eastern and Southeastern Anatolia, have left a bitter legacy, one must be cautious of the possible outcomes.¹¹²

VI. THE ROLE OF REGIONAL ORGANIZATIONS IN FURTHERING THE HUMAN RIGHTS OF INTERNALLY DISPLACED PEOPLE

Using Turkey as a case study addresses the conceptual issue of international pressure changing a state's internal behavior on sensitive issues. However, answering the question as to what extent these pressures can shift state policies to comply with international human rights standards still requires elaboration. Local, regional, and international organizations have recently started to argue that if states deliberately displace their populations, subject them to starvation, and fail to protect them from abuse, these states should be held accountable. Furthermore, in cases in which these states are incapable of providing basic human rights during and after the displacement, regional and international organizations should gain access for humanitarian relief. In either situation, new international understanding emphasizes that there should be limits to sovereignty. Transnational actors are constantly challenging state sovereignty in the area of human rights: directly through guiding principles, monitoring mechanisms, and membership conditions; and indirectly through pressuring them to sign treaties that guarantee the civil, political, and cultural rights of minorities if the majority of the affected population is an ethnic minority within that state.

Turkey is one of these countries, feeling the effects of increasing international and regional pressures on its policies toward its Kurdish population. During most of the 1990s, the government became caught in the nexus of its domestic and foreign policies. On one hand, Turkey's domestic policies toward the Kurds and the internally displaced created a serious domestic crisis that the government considered exclusively an internal matter. On the other hand, Turkey's bid for membership in the EU opened its internal policies to severe criticism from the EU members and to demands for change before Turkish membership can be achieved. Pressure mounted on the Turkish government to change its policies toward the Kurds

112. Dilek Kurban, Note, *Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey's Path to the European Union*, 35 COLUM. HUM. RTS. L. REV. 151, 195 (2003).

from both the Council of Europe and the conditions established for the EU membership.

While the Turkish state started to reevaluate its past position on the issue and passed laws that would make return and resettlement easier, returnees still inform organizations about the problems they encounter. International and regional organizations monitoring the internal displacement have recently reported positive developments and attitudinal changes by state officials. Moreover, with the economic aid received from regional organizations and other groups, the Turkish government appears to be making efforts to build an environment conducive to allowing IDPs to return to their homelands.

Turkey's efforts to resolve the Kurdish Question and other concerns about minority rights and problems in internal displacement reveal an ambition for membership in the EU that is actualized more in signing treaties than in putting new legislation in effect. Further, this "ratification gap" puts Turkey into the category of states with challenges to changing human rights understanding. On the other hand, in Sikkink's continuum of acceptance of human rights norms, increasing international and regional pressures have recently shifted Turkey from the category of "refusal" to "more cooperation." According to Sikkink "[t]he passage from denial to lip service may seem insignificant but suggests an important shift in the shared understandings of states that make certain justifications no longer acceptable."¹¹³

Similarly, in Jordan's categorization, Turkey moved from low-compliance to the upper categories. The most obvious evidence of this came on 22 June 2004, when PACE decided to remove Turkey from its monitoring process with a majority of the votes (141 of 153 votes).

VII. CONCLUSION

Globalization has assured the world that no state exists in a political vacuum. International political, economic, and cultural forces tremendously influence the actions and policies of states. However, the extent of that influence may vary over time and between issues, particularly if such issues pose a serious challenge to a state's sovereignty.

States can face pressures from the international community from time to time in varying degrees. This article has argued that in some cases pressures from regional and international organizations can help shape the understanding and policies of states, even in matters the states wish to keep private. Through mechanisms such as political conditionality for member-

113. Sikkink, *supra* note 8, at 415.

ship to regional organizations and condemnation by member states of those organizations, states have begun to feel these external pressures more and more. When a *domestic* issue falls in the scope of international affairs through new understanding and reconceptualization, innovative pressure, monitoring, and compliance mechanisms emerge. Sikkink argues that “[i]n the realm of human rights, it is the combination of moral pressure and material pressure that leads to change”¹¹⁴ that can shift an internal matter to the focus of the international community. Of course, the extent to which these mechanisms are successful depends on different factors. Among these factors, membership conditionality is the most effective in the countries that Jordan labels “medium compliance” countries and, to a certain extent, in the “low compliance” countries in which Turkey was placed in for a long time.¹¹⁵ Now that we can consider Turkey in the “medium compliance” category, the pressures might bear more fruitful outcomes. Yet, at the same time, one must take into account the fact that implementation of these new laws will be as important as passing them.

This article has studied Turkey’s efforts to join the European Community and the latter’s effects on Turkey’s human rights practices toward its Kurdish population in general and toward the internally displaced Kurds specifically. Undertaking this case study was an attempt to analyze how modifying the attitudes and practices of a state with regard to international human rights pressures challenges state sovereignty, even in matters states regard as *domestic*. In the Turkish context, the humiliation of failing to obtain a starting date for accession negotiations served as a moral pressure, and a political conditionality for membership for the EU played a significant role as a material challenge for Turkey’s ongoing human rights understanding. The acceptance of the power of the European Court of Human Rights of the Council of Europe inserted material pressures upon Turkey for a more positive approach to human rights policies on Kurdish IDPs. However, the dual humiliation and material pressures do not invalidate the fact that all states retain the power to decide what policies can be changed and what international norms can be declined. It is only the scope and limits of state sovereignty that can be open to change over the years, not a removal of this power.

114. *Id.* at 437.

115. Jordan, *supra* note 1.