

**ISTANBUL BILGI UNIVERSITY  
INSTITUTE OF SOCIAL SCIENCES  
EUROPEAN STUDIES MASTER'S DEGREE PROGRAM**

**TURKISH APPROACH TO MINORITY CONCEPT: EVOLUTION OF MINORITY  
CONCEPT AND COMPETENCE OF TREATY OF LAUSANNE IN CONTEMPORARY  
TIMES**

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**ISTANBUL**

**2019**

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AZINLIK KAVRAMINA TÜRK YAKLAŞIMI: AZINLIK KAVRAMININ EVRİMİ VE  
GÜNÜMÜZDE LOZAN ANTLAŞMASI'NIN UYGUNLUĞU

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Tezin Onaylandığı Tarih:

29.05.2019

Toplam Sayfa Sayısı:

125

Anahtar Kelimeler (Türkçe):

- 1) Azınlık
- 2) Lozan Antlaşması
- 3) Uluslararası Hukuk
- 4) Azınlık Hakları
- 5) Türkiye'de Azınlıklar

Anahtar Kelimeler (İngilizce):

- 1) Minority
- 2) Lausanne Treaty
- 3) International Law
- 4) Minority Rights
- 5) Minorities in Turkey

## **ABSTRACT**

Although there are different views on its emergence, minority concept has always occupied a wide place within the past and today of political life. Since social differences among people all around the world will not disappear in the short run, this situation will continue in the future. Yet, from past to present the meaning attributed to minority concept has been subject to a change process and this situation, naturally, causes changes also in approaches to minority concept and progress in minority rights and protection. Since the Ottoman era, approaches toward minority groups living in Turkey has always been- directly or indirectly- affected by all these changes. Thus, widely-accepted minority concept and ground for minority protection in Turkey have been evolved within this framework. Main aim of this thesis has been the examination of the Treaty of Lausanne -as the main minority protection document of Turkey- in terms of its competency with evolving minority concept and minority protection principles in the world. Within this context, history of minority concept accepted in international level and minority protection principles were given place, after that, the competence of the Treaty of Lausanne with this evolution process has been questioned.

**Key Words:** Minority, Lausanne Treaty, International Law, Minority Rights, Minorities in Turkey

## ÖZET

Azınlık kavramı, ortaya çıkışına dair farklı yaklaşımlar olmasına rağmen siyasi hayatın dünü ve bugününde geniş yer kaplamıştır. Sosyal farklılıklar dünyanın her yerinde yakın gelecekte ortadan kalkmayacağından, bu durum gelecekte de devam edecektir. Ancak geçmişten bugüne azınlık kavramına yüklenen anlam tüm diğer kavramlar gibi bir değişim sürecine tabidir ve bu durum azınlık kavramına olan yaklaşım ile birlikte azınlık hakları ve koruması alanında da değişimlere yol açmaktadır. Osmanlı İmparatorluğu'ndan bu yana Türkiye topraklarında yaşayan azınlık gruplarına karşı gelişen yaklaşım da tüm bu değişimlerden direkt veya dolaylı olarak etkilenmiş, günümüzde karşılaşılan azınlık tanımı ve azınlık koruması zemini de bu çerçevede evrilerek bugüne gelmiştir. Bu tezin temel konusu da evrilerek gelişen azınlık kavramı ve azınlık koruma prensiplerine, Türkiye'nin temel azınlık koruma metni olarak kabul edilen Lozan Antlaşması'nın ne derece uyumlu olduğudur. Bu çerçevede uluslararası alanda kabul gören azınlık kavramı ve azınlık koruma prensiplerinin tarihçesine yer verilmiş ve Lozan Antlaşması'nın bu evrilme süreci ile olan benzerlik ve farklılıkları ayrıca günümüz standartlarına göre yeterliliği sorgulanmıştır.

**Anahtar Kelimeler:** Azınlık, Lozan Antlaşması, Uluslararası Hukuk, Azınlık Hakları, Türkiye'de azınlıklar

# Table of Contents

ABSTRACT .....	III
ÖZET.....	IV
TABLE OF CONTENTS.....	V
INTRODUCTION .....	1
CHAPTER 1 .....	8
WHAT IS MINORITY IN HISTORY? .....	8
1.1. VARIOUS DEFINITIONS OF THE CONCEPT OF MINORITY.....	8
1.2. CONTROVERSIES ABOUT THE CONCEPT .....	21
1.3. EMERGENCE AND HISTORICAL DEVELOPMENT OF THE CONCEPT .....	24
1.4. TYPES OF MINORITIES .....	27
1.4.1 RELIGIOUS MINORITIES .....	27
1.4.2 LINGUISTIC MINORITIES .....	28
1.4.3 ETHNIC MINORITIES.....	28
1.4.4 NATIONAL MINORITIES.....	29
1.4.5 NEW MINORITIES.....	31
CHAPTER 2 .....	33
MINORITY PROTECTION ON INTERNATIONAL LEVEL AND CONTEMPORARY TRENDS .....	33
2.1. NEGATIVE AND POSITIVE RIGHTS .....	35
2.2. RELATIONSHIP BETWEEN PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES	38
2.3. INDIVIDUAL AND COLLECTIVE/GROUP RIGHTS .....	39
2.4. MINORITY PROTECTION THROUGHOUT THE HISTORY.....	41
2.4.1. MINORITY PROTECTION BEFORE THE FIRST WORLD WAR.....	42
2.4.1.i MINORITY PROTECTION BY UNILATERAL ACTIONS.....	42
2.4.1.ii MINORITY PROTECTION BY BILATERAL OR MULTILATERAL AGREEMENTS.....	45
2.4.1.iii MINORITY PROTECTION UNDER THE TUTELAGE OF GREAT POWERS.....	48
2.4.2. MINORITY PROTECTION AFTER THE FIRST WORLD WAR .....	51
2.4.2.i LEAGUE OF NATIONS.....	51
2.4.2.ii UNITED NATIONS.....	55
2.4.2.iii COUNCIL OF EUROPE.....	59
2.4.2.iv ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE.....	62

2.4.2.v EUROPEAN UNION.....	63
CHAPTER 3 .....	66
A BRIEF HISTORY AND ANALYSIS OF THE TREATY OF LAUSANNE .....	66
3.1. LAUSANNE PEACE CONFERENCE, THE PROCESS OF SIGNING OF THE TREATY AND THE CONTENT OF THE TREATY .....	68
3.2. ACTUAL POLITICAL CONTROVERSIES ABOUT THE TREATY OF LAUSANNE.....	72
CHAPTER 4 .....	77
MINORITY CONCEPT AND APPROACH OF THE TREATY OF LAUSANNE.....	77
4.1. DEFINITION OF MINORITY IN THE TREATY OF LAUSANNE AND ITS ACQUISITIONS FOR MINORITY GROUPS IN TURKEY .....	78
4.2. EVALUATION OF MINORITY APPROACH IN THE TREATY OF LAUSANNE.....	88
4.3. LIMITED EUROPEANIZATION OF TURKEY'S MINORITY REGIME.....	92
CONCLUSION .....	98
BIBLIOGRAPHY.....	103

## INTRODUCTION

As any concept in social sciences, minority concept and its scope has evolved in years while Turkey has been trying to solve one of its long-standing questions which has been perceived as a problematic subject up until today both in sociological and legal frameworks. It can be claimed that failure for a permanent solution to minority question and a more democratized Turkey sparked off missing the contemporary developments and standards on the international level. Especially after the end of the Cold War, discussions about minority concept and minority rights changed direction parallel to developments on democracy, human rights and rule of law taking place in international arena.

At the present time United Nations has 193 members (UN, 2018). None of its members are ethnically, linguistically and religiously uniformed. Among these 193 members, there are six hundred different language groups and more than five thousand ethnic groups (Kymlicka, 2015, p.26). Although this kind of a variety could be highly welcomed in theoretical level, it brings along some significant problems about minority-majority relations, linguistic rights, political representation and so on. In a similar manner, Turkey shows a significant variety of ethnic and linguistic groups within its borders. This situation brings about fervent discussions on cohabitation on a common political, social, economic and cultural ground. To demarcate all these discussions, Turkish public opinion has used even a specific name: Minority Question. To understand the question, it is really important to understand the founding principles of the Republic.

Today, Turkey is a country having ongoing accession negotiations with the European Union. This process requires some certain standards on wide-range political, economic and social topics. Turkey's approach to minority concept which was mainly shaped by the Lausanne Treaty also should be compatible with the European Union's approach to the issue. According to the European Union's definition, anybody who considers him/herself different than the majority and considers this difference as an inseparable part of his/her identity should be regarded as a minority (Oran, 2009; p.154). It is obviously seen that Turkey has a long way off from this definition with its own definition set by the Lausanne Treaty. The reason for this situation is not that implicit actually. According to a former member of the Turkish government, Minister for Culture Ömer Çelik, accepted definition and extent of the minority concept in Turkey is a pure reflection of the standardization aim which lies behind the constituent mind of the Turkish nation-state (Koptaş, 2013). Official stance towards the issue, with no doubt, should be changed if developed standards on democracy, human rights and the rule of law desired to be achieved.

As minority concept has evolved in recent decades and minority rights started to be seen as a key concept for more democracy, all these concepts should be taken into account with states' long-standing stances for embracing such concepts. It should be to do so since evolving concepts in politics could be the key elements to find a solution to such problems. It cannot be denied that states should modify themselves to the current development and evolution of concepts if they would like to catch contemporary standards in internal and external affairs.

Therefore, this study predicated on minority concept and minority rights with all their evolution to offer a proper solution to one of Turkey's compelling problems which has been labeled as the minority question. This study claims that a more precise and developed understanding of

minority concept will help us to offer an alternative yet perpetual solution to Turkey's minority question.

In the light of brief introduction above, this study will come up with a question stated as follows:

“Is the Treaty of Lausanne, with its narrow definition of minorities, an adequate source for defining minorities and minority rights in Turkey within our contemporary times in which standards and concepts have been positively evolved especially since the end of the Cold War?”

This question is an important one to be answered since it embodies a key element to solve a long-standing question of Turkey: To define minorities more properly and to put an end to discrimination against minority groups. Question above summarizes a long quest for a more democratized Turkey which we all have been seeking since the foundation of the Republic in 1923. Although putting the right question matters a lot, finding the answer is more important despite all its difficulty to do so.

Finding an absolute answer to main question of this study may seem impossible since the matters related to minority concept and minority question are quite involute. This study will not be neither the first nor the last endeavor to contribute a perpetuate and chronic problem of Turkey. Yet, it can be expected that the more we mull over on the subject the more we have a possibility to reach to reliable solution.

When the literature and former studies are combed out, a wide range of academic endeavor can be found in order to understand the minority concept and its historical development. The same detection can be made in terms of Turkey's chronic minority question. Yet, even the current discussions about the Treaty of Lausanne, whether it is a victory or one of the greatest defeats of

Turkish diplomatic history, hinders us to have a deeper examination on Treaty's stance against minority concept and minority rights. Although it has been 96 years after the Treaty was signed, there is no common opinion about it. That is why it is easy to fail noticing its superficial approach to minority concept.

This study will examine the minority concept and minority rights on a chronological framework and will come up with an idea that the more these concepts will be understood better, the more they help for contributing the solution of one of Turkey's long-standing problems. It is obvious that developments in minority rights on international scale and endeavors to define minority concept are changing the rules of the game. If one thrives in understanding and analyzing these developments, it will be much easier to understand and analyze the Turkey's minority question and the main concern of this study is to contribute such a pursuit.

Until now, Treaty of Lausanne has usually been considered as the founding document of the newly formed Turkish state. Its provisions about minorities and minority rights have rarely been deeply analyzed. Thus, its shortcomings in our contemporary times have been rarely shown. As it has always been sanctified as a founding document, its provisions on minorities and minority rights have not been easily criticized. It is possible to mention about a tacit approval of it with all its positive and negative aspects. As mentioned above, there have always been arguments which asserts some other people groups which are not mentioned in the Treaty of Lausanne, should be considered as minority groups or exact the opposite. This study aims to examine both arguments and find the more suitable one to solve the minority question of Turkey. By this way, a deep gap will be filled since minority concept has not been offered for a more democratized Turkey with a more inclusive stance since the Treaty of Lausanne was signed.

Most importantly, the motivation for this study comes from my personal debt of gratitude for the minority nationals living in this country. I believe that we all should try our bests to find an answer to minority question since we will have the country that we have been pining for years. I sincerely hope that this study will be considered as a small but gracious effort for a real democratized Turkey.

Since minority concept and minority rights have been two topics which attracted much of an interest in academia, secondary sources will have a pillar role in this study. When a literature review is made through the subject, there is a considerable amount of work which examines and tries to understand minority concept, minority rights; their emergence and historical development. Hence, secondary sources pave the way for a rich field of study to researchers (Altunışık et al., 2007, p.64). By using secondary resources, this study will contain a comparative point of view on the concepts in subject.

Last but not the least, this study will use a qualitative approach which will use both descriptive analysis and content analysis. In accordance with the descriptive analysis, this study will put a framework, will evaluate data coming from primary and secondary sources, will define and interpret findings (Altunışık et al., 2007, p.268). Content analysis will be another important pillar of the qualitative spirit of this study, because understanding and comprehension of legal texts on the minority concept and minority rights have a concrete importance.

In the first half of this study, historical background of minority concept and its development will be presented. After examining the international developments on minority concept and minority protection principles from past to present, Turkish perspective on minority concept and minority rights will be discussed in details to evaluate Turkey's position which leans on the Treaty

of Lausanne. In this context this study starts with an introductory part putting the main problem about minority concept and minority protection principles around the world and in Turkey.

The first chapter is dedicated to understanding minority concept within a historical context by giving both sociological and legal definitions of the concept and its development with the effect of political, social and economic developments. Various definitions put by different scholars and international organizations will be put in this chapter to give reader a wider perspective on the scope of the concept. Then, controversies about the concept will be touched upon since minority concept has always been a hard one to comprehend from a unilateral perspective. It is hard to find a unified definition of minority concept because the concept itself has always been influenced and got shaped by political concerns of political actors with its openness to be instrumentalized. For revealing this complex trait of minority concept, historical development of it are presented in this chapter with a chronological method. In the last part of this chapter different types of minority groups are tried to be explained by showing which aspects plays role in forming minority groups.

The second chapter is called “Minority Protection on International Level and Contemporary Trends”. This chapter aims again to give a chronological perspective to reader on how minority rights and minority protection principles emerged and developed. Before getting into historical details about minority protection process throughout the history as of middle ages, some technical terms will be examined for the sake of a better terminological understanding. This chapter is mainly divided into two parts while examining minority protection on international level. Since the essentials quite changed after World War One, the first part is given to period before World War One while the second half contains developments on minority protection after the World War One. This chapter also classifies minority protection phases on the base of actors pioneered the developments on this matter.

Third chapter touches upon the Treaty of Lausanne with its essentials as a very important part of modern Turkish history. As it is widely accepted it is seen as the founding document of Turkey, therefore there have always been lots of misinformation about it, too. In this chapter, after examining the historical process paving the way for the Treaty and Treaty's importance for Turkey, these mis informative aspects will also be examined in the light of actual discussions. No doubt, the Treaty of Lausanne will continue to be a source of intense debates in Turkish politics in the future since there have been lots of different interpretations on it both in political and social spheres in Turkey.

The fourth chapter called "The Minority Concept and Approach of the Treaty of Lausanne" establishes the core of this thesis. After giving various definitions of minority concept and minority protection history on a chronological basis, this chapter mainly evaluates the competence of the Treaty of Lausanne with the contemporary tendencies both on minority definition and rights. As it is seen, with its limiting aspects both on definition and rights, the Treaty has also shortcomings in terms of application today. Therefore it is far from meeting the modern requirements in this field since it makes Turkey's stance static while lots of positive change has been taking place in minority related areas of politics. Once for all, this study comes to an end with a conclusion part which contains inferences from each chapters and personal comments both on the subject of this thesis and for further studies.

# **CHAPTER 1**

## **WHAT IS MINORITY IN HISTORY?**

### **1.1. VARIOUS DEFINITIONS OF THE CONCEPT OF MINORITY**

Minority concept has constituted a significant place within political terminology especially since the beginning of the twentieth century. Examining the wide-range academic studies, it is seen that concept itself has historical, political, social, economic, cultural and ideological dimensions apart from being a legal subject (Alpkaya, 1992, p.145). Besides, in terms of historical transformation, minority has been a concept that has gained an ever-increasing importance and different meanings in legal and socio-economic terms. This ongoing differentiation has showed itself in legal and political literature (Okutan, 2004, p.61). It is possible to claim that minority is a created concept rather than emerge on its own since it leans on a relationship between the perceptions of two different groups. According to Akgönül (2013, p.9), this creation can take place through two different facts. Firstly, massacres, exiles and population exchanges can play a role. By being oppressed or deprived of its rights, the group decreases in number is transformed into a minority by the dominant group (Akgönül, 2011, p.27). This situation can form an example for minority creation with extortive means used by the dominant group. On the other hand, migration can result in a minority creation process since world history has still been witnessing lots of mass migrations movements for the sake of a better life from one land to other. Millions of people, even today, are leaving their homelands due to wars, oppression and poverty. Although they are taking this action to find better conditions for themselves, this process usually ends up with creation of new minority groups. Since the majority in receiving country see themselves as the owners of the country, they

transform the newcomers into a minority by oppressing and depriving them of their rights (Akgönül, 2013, p.9).

As a result of this multi-dimensional formation, it has been almost impossible to make a universally agreed definition of minority concept up until our day. Although there is no consensus about the universal definition of minority concept in the world, dialectically, there must be a group of people calling themselves as a majority for existence of a minority in the same context (Akgönül, 2015, p.211). Because the concept has a many-sided view, no academic endeavor has been able to make a common definition while everyone accepts the fact that concept itself exist as a solid phenomenon. Following quote by former high commissioner of Organization of Security and Cooperation in Europe's (OSCE) Max van der Stoel would help one to understand the difficulty of finding a common definition for minority concept: "Even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one." (van der Stoel, 1993). Preece points out this problem as a fundamental one in international system and says: "Any examination of international minority protection is immediately confronted with the problem of conceptual clarity stemming from the lack of a universally agreed upon definition of the term minority." (Preece, 1998, p.14).

Etymologically, the word "minority" derives from Latin word *minor* which means little and few and suffix '-ity' which means small (especially in numerical scale) (Arıdemir and Duran, 2005, p.1). Word has also been used to express numerically inferior and generally the losing party (Arsava, 1993, p.40). The Disctionary of Turkish Language Association defines the concept of minority as such: "a group of peoples which differs in many respects from and counts less than the rest of population" (TDK, 1998). With this respect concept covers legal connotations. Showing a similar meaning, another Turkish dictionary edited by Ali Püsküllüoğlu (1994) gives the following

definition: “a group of citizens who share specific racial, religious and linguistic characteristics distinct from the dominant nationality of the country”. According to this definition, standard of citizenship is seen as a key factor for being recognized as minority, apart from religious and linguistic differences. Looking at the Oxford Dictionary which has been one of the well-rounded linguistic resources, there are four different definitions for the word “minority”, yet only one of them is directly related to its sociological meaning: “A small group of people within a community or country, differing from the main population in race, religion, language or political persuasion (Oxford Dictionary, 2018). Another well-recognized source of information, Encyclopedia Britannica, on the other hand, gives the following definition: “a culturally, ethnically or racially distinct group that coexists with but is subordinate to a more dominant group. As the term is used in the social sciences, this subordinacy is the chief defining characteristic of it” (Encyclopedia Britannica, 2018). In parallel to definitions mentioned above, Dictionary of International Human Rights (Gibson, 1996) gives a definition that “a minority is a collectivity of people in a state sharing a common characteristic, usually one of religion, ethnicity, language or other identifiable property”. Although a universally accepted definition of minority concept cannot be made up until today, it can be claimed that, utilizing elements such as number, indigenesness, ethnic origin, linguistic origin, sexual orientation, ethnic origin or citizenship is possible to give a meaning to minority concept (Tendre, 2000, p.578). Yet, none of these elements alone is sufficient to define minority concept because with the development of the concept within international terminology, exceptional cases could emerge. Indeed, numerical inferiority is usually emphasized for defining minority concept, but Apartheid Regime of South African Republic is a useful reverse example for the relation of minority and numerical inferiority since black people who comprised %80 of the population were subject to a minority status (Oran, 2018, pp.98-99).

According to Harris (1959), the minority is a subgroup within a larger society and that its members are subject to disabilities in the form of prejudices, discrimination, segregation, or persecution at the hands of another kind of subgroup, usually called a majority. As it is simply put, minority is perceived with its differences from a larger group of which it is part. Another important try-out to set a proper definition of minority concept was made by American sociologist Louis Wirth in 1941. In his work “Morale and Minority Groups” he defines minority as follows: “A group of people who because of social or physical and cultural differences receive differential treatment and who regard themselves as a people apart. Such groups characteristically are held in lower esteem, are debarred from certain opportunities, or are excluded from full participation in the national life” (Wirth, 1941). Wirth attributes a significant role to discrimination and inequality for emergence of a minority. He also points out that membership of a minority group is subjectively claimed by its members, who may use their status as the basis of group identity or solidarity (Turnsek et al., 2010, p.3).

Prominent British sociologist Anthony Giddens states that minorities are perceived on the base of three-dimensional differences among the wider society (Giddens, 1989, p.245). Firstly, he defines discrimination as a group’s being bereft from some rights and opportunities and says that as a result of discriminatory processes, minorities stamp into a disadvantageous position among the society. Secondly, members of minority group have a strong feeling of belonging to each other and by this feeling they start to believe that they have a common destiny. Finally, minorities are exposed to some certain physical and social isolations. These isolations play an important role for preserving the cultural differences. However, Giddens explains these isolations not with the stance of minority group, but with the attitudes assumed by the majority against the minority group (Canatan, 2013, p.37).

Dutch sociologist Hendriks asserts that minorities differ from the rest of the society with their four basic features and according to him these four features are indispensable (Hendriks, 1981, pp.55-69). According to him, minorities diverge from low-classes and lower-castes with their marginal position. Low-classes and casts are perceived as intra-system elements while minority status is positioned outside of the social hierarchy instead of being at the bottom of this hierarchy. Secondly, minorities are deprived of political and economic power such as disadvantaged groups and they are subjected to discrimination. Yet, differently from the disadvantaged groups, minorities are defined as “alien” or “other”. Thirdly, being defined as alien or other occurs on the base of some contrarian qualities and minorities have such qualities such as language, ethnicity, gender and religion. The more these qualities are far from society’s qualities, the stronger the perception of difference is. Finally, off-system position, dissimilarity and victimhood of minorities cause in a surrounding of prejudices for minorities. This surrounding plays an important role for conducting relationships (Hendriks, 1981, pp.55-69).

Another prominent Dutch minority specialist Amersfoort draws attention to some other elements about minorities (Amersfoort, 1974, p.37). He pleads that minority is a continuous collectivity within the society and this continuity has two sides: in the first-place, minority group has a generation continuity and besides that being included in a minority has a superior meaning above other social definitions and classifications. Another feature Amersfoort attributes to minorities is objectively being in an inferior position within the society. Numerical inferiority is also a significant criterion since it hinders minority group from actively participate into the political processes. As it can be understood from the information given above, today, there is a tendency to position word “minority” as opposite to “dominant” rather than its literal antonym “majority” (Canatan, 2013, p.40). This kind of a positioning shows that minority concept should not be taken

into account and examined within just a numerical power relation since it has a deeper meaning leaning on the social, economic and political relationship networks among a society. Besides, all the given definitions of minority concept in this study obviously shows that concept has developed on the base of ascribed meanings by the human beings compatible with the zeitgeist.

As Akgönül has claimed, most minorities have two “objective” qualities: Language and faith as the two determinants of a community identity (Akgönül, 2011, p.17). Since these elements can be interpreted in wider terms with their obvious effects on culture and identity, minority concept cannot only be confined to ethnic or religious differences. People who defend a different ideology or who hold a different sexual orientation can even form a minority (Kurubaş, 2006, p.30). On the brink of this definition, if a group of people consider themselves disadvantaged against others on the base of political, social, civil, cultural and economic rights; this group can sociologically be labeled as a minority. Although numerical inferiority is counted as a feature of a minority group, it is not a solely necessary one when the case of South African apartheid regime is considered (Tunç, 2004, p.145). As it is seen, black population in South African Republic during the Apartheid Regime was even numerically superior to white ruling class.

Evaluated from the legal point of view, it is not possible find an accurate and totally accepted definition of minority concept on international level. The main obstacle about defining a minority group is the political sensitivity of the subject in terms of contemporary political actors and the political implications that the concept has itself (Kurubaş, 2006, p. 27). Despite all these negativities, a number of endeavors were made to find and accurate definition of minority concept on international level. Legal approaches and endeavors on this matter will be reflected below.

J. J. Preece (1998) in her work *National Minorities and European Nation-States System*, sees the concepts of nation and minority as two similar parts of a common framework. Her definition of minority is based on the relationship between nation and minority concepts. She states that:

“Minorities are none other than ethno-nations who have failed to secure the ultimate goal of ethnic nationalism—independence in their own nation-state— and consequently exist within the political boundaries of some other nation’s state; their very existence is an uncomfortable reminder of the ‘national self-determination fudge’ in international society” (Preece, 1998, p.29).

Samim Akgönül considers the concept of minority from a sociological point of view again and predicate the concept on belonging. According to him “a minority is a community of individuals possessing a common sense of belonging. Their number is less than another larger community that possesses a different sense of belonging. They are socially persecuted, or at least they believe to be so.” (Akgönül, 2013, p.2). J.A Laponce in his work *The Protection of Minorities*, defines the minority concept as follows: “a minority is a group of people who, because of a common racial, linguistic or national heritage which singles them out from the politically dominant cultural group, fear that they may either be prevented from integrating themselves in the national community of their choice or be obliged to do so at the expense of their identity (Laponce, 1960, p.6). I. L. Claude embraces, according to Preece, a totally subjective definition of minority (Preece, 1999, p.23). According Claude “one can only say a minority exists when a group of people within a state exhibits the conviction that it constitutes a nation, or a part of a nation, which is distinct from the national body to which the majority of the population belongs, or when the majority element of the

population feels that it possesses a national character in which the minority groups do not and perhaps cannot share (Claude, 1955, p.2).

Although there is no universal consensus on what minority means, Baskın Oran tends to claim that its meaning can be embraced from two different dimensions. The first meaning is the sociological (wide) meaning while the other one is legal (narrow) one. According to wide (sociological) term, minority is a group of people who are numerically inferior within a greater group, who are not dominant and who has different qualities than the majority (Oran, 2009, p.67). Oran asserts that this is the most general definition of minority concept and also includes LGBT individuals (Oran, 2018, p.97). The second meaning is stated as the legal (narrow) one. According to Oran, this meaning mainly refers to a definition in international law. Despite the lack of a common ground on definition on this area, each state, as the main political entity of our times, has a tendency to define minority concept for its own benefit (Oran, 2018, p.97). Evaluated from the legal perspective, it is not possible find an accurate and totally accepted definition of minority concept on international level. The main obstacle about defining a minority is the political sensitivity of the subject in terms of contemporary political actors and the political implications that the concept has in itself (Kurubaş, 2006, p. 27). Despite all these negativities, several endeavors were made to find and accurate definition of minority concept on international level. Yet, international efforts to reach to a universally accepted definition of minority concept has not been very successful up to now. Following statements reveals this situation with all its explicitness. As Hannum narrates from Francesco Capotorti (Hannum, 2007, p.56), the preparation for definition of minority capable of being universally accepted has always proved a task of such difficulty and complexity that neither the experts in this field nor the organs of the international agencies have been able to accomplish it to date. Besides, minority is an ambiguous term, potentially definable

through an endless combination of interacting variables like religion, language, ethnicity, race, culture, physical characteristics and a variety of other traits (Rehman, 2000, p.14).

The first use of minority as a concept in international practice dates from the 1919 Versailles Peace Conference, when it was included in the peace treaties with the successor states of Austro-Hungarian Empire, Ottoman Empire and Prussian Kingdom (Laponce, 1960, p.3). Although those treaties did not make any definition for minority concept they all included the term “persons who belong to racial, religious or linguistic minorities (Macartney, 1934, p.505). As J. J. Preece asserts (1999, p.15), League of Nations documents and reports confirm a relatively objective understanding of the concept. According to Permanent Court of International Justice ruling in 1928 on the Upper Silesia Minority Schools Case, the process of determining if a person belongs to a minority or not is a question of fact not of will (Laponce, 1960, p.4). In parallel to this stance, the jurist Mello Toscano, Brazilian representative in League of Nations, directly relates the minority standing with objective criteria of association with a particular geographic region and history (Preece, 1999, p.15). Thus, he defines a minority as follows: “The part of the permanent population of a state, which, linked by historical tradition to a determined portion of the territory and having a culture of its own, cannot be confused with the majority of the other subjects because of the difference of race, language or religion (Laponce, 1960, p.4).

Despite given importance to an objective setting for a legal definition of minority concept, 1925 report of League of Nations council seems to propose a more subjective stance. Definition of this report mainly gives an insight of what a minority is not: “a minority... is not only a racial group incorporated in the body of a nation of which the majority forms a different racial unit. There is also a psychological, social and historical attribute, constituting, perhaps, for the purposes of the definition we are seeking, its principal differential characteristic (Macartney, 1934, pp.290-291).

One of the other definitions during the League of Nations era was formulated by Permanent Court of International Justice in 1930 and referred to Greco – Bulgarian Communities case. It referred only to a contract between Greece and Bulgaria, however its universal character determined its inclusion into general minority protection system. Regarding to this definition: “By tradition, “community” (refers to minority group) is a group of persons living in a given country or locality, having a race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other” (PCIJ, 1930, p.21).

In the United Nations era, however, a broader consensus seemed to be reached around the definition of Francesco Capotorti in 1978. The so-called Capotorti definition appeared in response to a formal request of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1977. Accordingly, Capotorti defined minority as: “a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members- being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (Capotorti,1991, p.96). It should be kept in mind that Capotorti limited his definition specially to the context of Article 27 of the Covenant on Civil and Political Rights of 1966 (Hannum, 2007, p.58).

Since Capotorti’s definition is a well-elaborated one, it deserves to be a deeply examined in terms of its elements. As stated in his definition, the principle condition of being considered as a minority is the difference. Thus, difference becomes the pivotal and first element of minority definition. These differences, in today’s context, are stated as ethnic, religious and linguistic ones

(Akgönül, 2011, p.18). Based on this, a minority group can be labeled as a group of people who share differing qualities from surrounding majority group on a common geography (Fairchild, 1944, p.134). Second element of the minority definition is the numerical inferiority. On this matter, geographical concentration is out of question because a numerically inferior group can concentrate on a certain area and constitute a majority, yet the balance among a society is an important measure on this respect (Saraçlı, 2012, p.32). Nevertheless, almost all bilateral and multi-lateral international documents require a minority to reach a certain level of concentration in a given geographical region without prescribing specific numbers or percentages. Since modern states grant the freedom of worship to all citizens without regard of geographical concentration, these specific rights are usually centered on language (Akgönül, 2013, p.3).

Thirdly, if a group demands to be considered as a minority, it should not be in a dominant position. This element is significant because there have been such numerically inferior human groups in the world that have also been dominant to other groups among their societies. White population in South Africa during the Apartheid regime and Tutsis in Burundi in 1990s were dominant social elements of their societies (Oran, 2009, p.68). Thus, being non-dominant becomes one of the most important criteria for being in a minority situation. Besides, a dominant religion even though its followers are numerically inferior, cannot be labeled as a minority religion (Akgönül, 2011, p.20).

Fourth, hence the last objective element of Capotorti's definition is about citizenship issue. If the members of a human group are not nationals of the state in subject, they are considered as aliens. Minority protection and foreigner protection concepts has always been differentiated in international law (Oran, 2009, p.69). This criterion is a controversial one since there are more than a few groups in the world that achieves all the conditions for a minority yet cannot draw on minority

rights because they are not nationals of the state in subject (Akgönül, 2011, p.20). The final element of Capotorti's minority definition is minority consciousness. This is a subjective component of minority definition when compared to other four. Just as a class cannot exist without class consciousness, a group of people who do not comprehend their difference and do not recognize this difference as an essential part of their identity cannot constitute a minority (Oran, 2010, p.27). This consciousness may become manifest, or sometimes manufactured, by associating with a group. Sometimes, this association is dictated by the majority (Akgönül, 2013, p.4). Therefore, it can be claimed that existence of a minority requires an awareness of a common identity and an expression of this identity.

Widely accepted Capotorti definition precludes some minority groups such as foreigners, refugees, stateless individuals, dominant minority groups (i.e: White ruling class during South African Apartheid regime) and enforced minorities (Oran, 2009, pp.69-70). United Nations Commission on Human Rights, in 1984, requested Sub-Commission on Prevention of Discrimination and Protection of Minorities to explore again the issue of defining minority concept related to a prior appeal from Yugoslavia to the United Nations in 1979 (Hannum, 2007, p.58). Jules Deschenes, the Canadian reporter of the same UN Sub-Commission, further suggests in 1985 that a minority is "A group of citizens of a state constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and law" (Deschenes, 1985, p.30). While possessing ethnic, religious or linguistic characteristics differing from those of the rest of the population; numerical inferiority;

non-dominance and bond of citizenship are classified as the objective criteria. People's will of preserving the distinctive features of the group forms the subjective side (Çavuşoğlu, 1998, p.96).

Eide (1993) also includes non-nationals in the concept of minorities in his final report to the UN Sub-Commission. He stated that: "For the purpose of this study, a minority is any group of persons resident within a sovereign State which constitutes less than half the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population." (Eide, 1993, p.7). Defining minority concept has also been a concern for Council of Europe, an international organization founded in 1949 to defend human rights, democracy and rule of law. European Commission for Democracy Through Law (also known as the Venice Commission) which is an advisory body of the Council of Europe also offered a definition for the concept as such: "minority refers to a group numerically inferior to the rest of the population of a State, whose members- being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language" (Çavuşoğlu, 1998, p.96).

Another definition concerning the Council of Europe joins in the Additional Protocol on the Rights of Minorities to the European Convention on Human Rights. According to this document which was published in 1993 the expression "national minority" refers to "a group of persons in a state who: reside on the territory of that state and are citizens thereof ; maintain longstanding, firm and lasting ties with that state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state ; are motivated by a concern to preserve together

that which constitutes their common identity, including their culture, their traditions, their religion or their language.” (Council of Europe, 1993). When this additional protocol is discursively analyzed, differently from the United Nations approach, it is seen that minority concept is used with a limitation with the word “national” (Çavuşoğlu, 1998, p.96). This case is going to be examined within the following parts of this study.

## **1.2. CONTROVERSIES ABOUT THE CONCEPT**

In the light of above-presented efforts for defining the minority concept, some controversial situations arise about the human groups’ definition as a minority. The first controversial situation on the issue is the necessity of legal recognition of groups as minority by the state. This situation can also be perceived as “existence of minority” and continues to be relevant since states are still the primary actors on international level, and their stance about such subjects is still significant. As seen in the French example, some nation-states which have a rigid unitary system think that entitling minority status to a certain group may harm integrity of nation and state. Besides, the group in subject can be used by other political actors (Kurubaş, 2006, p.31). In accordance with this idea, France has never accepted existence of any ethnic group-whether it is in numerically minor condition or not- within its territory (Capatorti, 1991, p.13). Yet another view is quite different than the former one. According to the opposite claim, unless minority status is granted to some certain groups living in a country by state’s recognition, it would have been hard to establish internal peace and security in that country. By this way, it would be even harder to prevent those groups to be abused by other political actors. (Kurubaş, 2006, p.31). Yet, to clarify this controversial situation, contemporary trends in international organizations should be taken into account. Simply put, to gain minority status, recognition of state is not necessary. In a historical context, this proposition that existence of minority cannot be left to the discretion of states, is based

on an advisory opinion given by Permanent Court of International Justice in 1930 on Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration (PCIC, 1930).

Advisory Committee Reports on the Framework Convention for the Protection of National Minorities of 1995 clearly states that signatory states are not totally free to define minority since there is no definition of minority within the text of Convention (Kurubaş, 2006, p.210). According to the United Nations Human Rights Committee's general comment on article 27 of International Covenant on Civil and Political Rights of 1966, existence of a minority is not related to recognition of state in which they inhabit. Article 5.2 of this general comment states this situation as follows: "The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria (HRC, 1994). Last but not the least, according to the Report of the Conference on Security and Co-operation in Europe (CSCE) Meeting of Experts on National Minorities held in Geneva in 1991, the issue of national minorities with all its aspects is out of domestic jurisdiction. Thus, it cannot be seen as an interior part of states' affairs (CSCE, 1991).

Second controversial issue about minority concept is the self-definition of a certain human group. Even if a human group can be labeled as a minority in terms of objective criteria, individuals are totally free to define themselves included in a minority group or not. One cannot be labeled as a member of minority by force (Kurubaş, 2006, p.31). At this point "minority consciousness" emerges as an important element of minority concept. Only one of each difference of human groups cannot be sufficient for creation of minority (Oran, 2010, pp.40-41). If there is no minority consciousness, it is possible to claim that there is no minority. The relation between upper and sub-identity plays an important role on this matter. If a human group only struggles for preserving its customs and traditions, minority consciousness is not a matter of question. Yet, this effort for

protecting group characteristics brought forward and cause political demands, there exists a minority consciousness and therefore a minority (Oran, 2018, p.100).

Third controversial element on this subject is about the citizenship status of minority group's members. Council of Europe's Framework Convention for The Protection of National Minorities does not include an explicit provision on this matter and according to the 27th article of United Nation's International Covenant on Civil and Political Rights, citizenship is not a condition for the groups who get entitled to minority protection status (Klebes, 1995, pp.92-93). Yet today, states tend to grant minority status to groups holding their citizenship. This situation is mainly caused of the subjective interpretation of international legal documents by the contemporary nation-states (Çavuşoğlu, 2001, pp.41-47). Besides, various international documents including International Labour Organization's Migration for Employment Convention No:97 and United Nation's Geneva Convention Relating to the Status of Refugees puts protective provisions for people holding non-citizenship status. Thus, opinion for non-citizens' disapproval as minorities gains strength (Kurubaş, 2006, p.33).

Finally, indigenous people of a certain land should be considered on the matter of definition. Such groups are autochthonous and have long been living on these lands, they present solid differences from the ruling ethnic group on the basis of ethnicity, culture and linguistics and they have difficulty on integrating to the dominant culture. Any legal documents related to minority protection principally includes the indigenous people of a certain geography. Because they accurately contain the criteria of being a minority group with their differences, non-dominant position and their consciousness about those differences from the rest of the society (Kurubaş, 2006, p.33).

### **1.3. EMERGENCE AND HISTORICAL DEVELOPMENT OF THE CONCEPT**

Generally stated, each period of time which witnessed major changes in population, political authority and geographical borders paved the way for emergence of minorities. Therefore, it can be asserted that minorities have existed since the ancient times (Kurubaş, 2006, p.1). Looked from a historical perspective, minorities were mainly identified with empires until the end of middle ages. Yet nowadays, we are observing a similar relationship between minorities and nation-states parallel to major changes of the international actors in contemporary times (Tunç, 2004, p.142). Tunç (2004, p.142) states that international awareness about the subject emerged as a result of the solemn wars in Europe, although it is possible to mention about minority concept in every period of time since the Roman Empire. At this point a conceptual divergence arises about historical development of the minority concept. Contrary to Tunç, Oran claims that minority concept is a relatively a new one since it can only be traced since the Reformation Movement in Europe in sixteenth century. He asserts that there was no minority concept in ancient period (Rome and Greece) since the citizenship was confined only with the free people. Although there was a division on the base of classes, there was no distinction which could be conceptualized on the base of minority and majority (Oran, 2010, p.17). Kurubaş has a similar stance with Oran in this matter and states that minorities existed even in the ancient times, yet they were not recognized by the political authority of those times and they did not have any self-consciousness to feel themselves as a minority (Kurubaş, 2006, p.9). According to this divergence among authors on the appearance of the concept, one can claim that historical roots of the minority concept could be perceived either with numerical or political and social criteria. Tunç claims that minority concept has existed since the ancient times because numerical difference of people was the determinant element even in those times. Yet, according to Oran (2009, p.66) and Kurubaş (2006, p.9), being a minority has always been about qualities of human groups and people had no chance to show any differentiated features

during the ancient times. Besides, recognition as a minority group is becoming a principle element for minority concept to be shaped.

Oran also con-substantiates the nonexistence of minorities before sixteenth century with the coherence ideology of the era in accordance with the zeitgeist. According to him, during the middle ages the main coherence ideology was the religion and although the people were politically fragmented, they reflected a strict unity on the base of religion (Oran, 2009, p.66). Religious belonging has been the primary type of belonging since Ancient Rome, and the rulers of the Middle Ages imposed their faiths on the societies they dominated. In other words, the first minorities were religious ones, and their feeling of “otherness” arose out of how they approached the sacred (Akgönül, 2013, p.1). In the light of this information one can claim that people could not even recognize their ethnic or linguistic differences since they were dominated by a single religious identity. Under these circumstances, it would not be easy to expect that one could come up with a claim of being different.

It cannot be denied that there was an extended dispute between Catholic and Protestant states after the Reformation. Political actors of those times regarded that this situation was not sustainable anymore and began to protect religious minorities living on their lands for their co-religionists to be protected by the other states (Oran, 2014, p.18). Therefore, minority concept came to light with a religious qualification as a result of the Reformation Movement and brought some certain rights to religious minority groups along with the Peace of Westphalia in 1648 (Aktoprak, 2010, p.84). Yet, alike with the recognized rights to those groups, minority status was given to people not as a result of their self-realization but a discretion of the political hegemon (Preece, 2001, p.72). Therefore, it could be possible to claim that minority concept was technically born with the Peace of Westphalia since it acknowledged capability of choosing their own religion to

nation-states for the first time in history as well as the territorial unity and sovereignty (Ongur, 2006, p.7). As the cohesion ideology in sixteenth and seventeenth century was the religion, the categorization criteria for minorities to be separated from the majority were shaped upon religion-based differences. However, it was not still possible to reach to a certain definition of minority concept on the base of religious differences while Treaty was giving the chance to minorities for being differentiated from the rest of the society (Ongur, 2006, p.7).

During the same period of time, Treaty of Oliva signed in 1660 among Poland, Sweden and Livonia gave a new impulse to the issue since it was foreseeing some religious freedoms in the case of land handovers (Ongur, 2006, p.7). Besides, 1598 Edict of Nantes, 1535 Commercial Agreement between France and Ottoman Empire and 1773 Treaty of Warsaw shows a similar reflection on this matter (Ongur, 2006, p.8). With the Edict of Nantes, Protestant minority was granted religious freedoms and rights to benefit from citizenship rights (Oran, 2018, p.30). When the religion is taken into account as the main coherence ideology of pre-Reformation period, it can be claimed that minority concept historically emerged as a reaction to collapse of the religious integration (Kurubaş, 2006, p.10).

As of the beginning of eighteenth century, minority concept gained more currency within international arena. This era points out a significant change of cohesion ideology. Religion, which had been the main cohesion ideology of former period started to be replaced with nationalism. Nation concept sparked off and era in which differences were considered more importantly. Emergence of nation-state concept showed that a non-religious identification of human groups could also be possible (Ongur, 2006, p.8). Minorities were defined as national groups instead of religious ones for the first time in Vienna Congress of 1815 which was held after Napoleonic Wars. Aftermath, ethnic and national groups in a given territory began to be defined as minorities). As Preece asserts language became a more impotent determinant to differentiate minority groups rather

than the religion (Preece, 1999, p.69). Therefore, it is possible to state that emergence of nation-state paved the way for a qualitative change in minority definition. Religious quality evolved to an ethnic and national one (Thornberry, 1992, p.1). From this point of view Preece's definition of minority presents a good example for this evolution. Preece defines minority as such: "Minorities are none other than ethno-nations who have failed to secure the ultimate goal of ethnic nationalism—independence in their own nation-state—and consequently exist within the political boundaries of some other nation's state; their very existence is an uncomfortable reminder of the 'national self-determination fudge' in international society." (Preece, 1998, p.29). All in all, the concepts of nation and minority emerged and unfolded after a simultaneous and turbulent process. As a result of this, various groups were left over in states' boundaries and they began to be perceived as a threat to national unity of those states.

#### **1.4. TYPES OF MINORITIES**

Minorities can be sorted into four different types in terms of the elements differentiating them from the rest of the population. Although a minority group can contain different elements of differentiation, the most important element here is the main difference which constitutes the principle element of identity (Kurubaş, 2006, p.34). Yet, a new type of minority concept, which is the "New Minorities", is coming into prominence with the changing nature of identities and contemporary politics.

##### **1.4.1 RELIGIOUS MINORITIES**

According to classification above, the first type of minority is the religious one. In terms of forming a national consciousness, religion can be seen as a primitive sort of nationalism (Oba, 1995, p.23). Therefore, first steps in history for minorities to emerge were taken on a religious basis. Since the

relationships between minorities and majorities are constructed upon “awareness of the other” and “dominancy” above all, the concept of religious minority constitutes the foundation of the minority concept (Akgönül, 2013, p.1). As stated before in this study, the main cohesion ideology (Oran, 2018, p.21) was religion for a long time of period, therefore it is possible to claim that religious minority can be labeled as the oldest type of minorities. Turkish Orthodoxes in Turkey and Muslim Huis in China can be cited as religious minorities today. Although they belong to the majority of the population on an ethnic basis they are different from the majority in terms of their religious affiliation (Arsava, 1993, p.56-57).

#### 1.4.2 LINGUISTIC MINORITIES

Second type of minorities can be classified as the linguistic minorities. As the matter of fact, linguistic difference provides a basis for ethnic or cultural differences (Kurubaş, 2006, p.35). According to Council of Europe’s European Charter for Regional or Minority Languages minority languages are that traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and different from the official language(s) of that State (Council of Europe, 1992). This Charter was documented in 1992 and entered into force in 1998. It would be correct to identify these languages’ native speakers as linguistic minorities. As one of the most significant elements of contemporary nationalism, language is a mean which is frequently embraced by minority groups since it reflects cultural, scientific, immaterial and literal life of a nation. It also creates a basic difference for minority groups from the rest of the society (Oba, 1995, p.22).

#### 1.4.3 ETHNIC MINORITIES

Third type of minorities is the ethnic minorities. Yet, it would be useful to examine the concept of ethnicity in a deeper manner since it has a conceptual intensity within itself. Thus, fact of being a minority on an ethnic basis is a bit more complex when compared to religion and language. However, with respect to have a common culture and history, therefore sharing a common “destiny”, one can possibly to classify linguistic and religious minorities within ethnic minorities (Allardt, 1981, p.427). Concept of ethnicity, which derives from latin word *ethnos*, expresses a belonging to a certain society and it contains not only genetic and physical traits, but whole biological, cultural and historical qualities instead (Arsava, 1992, p.54). Therefore, this concept refers to ethnic groups whose members share a common origin, while having identity traits such as cultural, historical and geographical bonds but do not have any political quality (Kurubaş, 2006, p.35). At this point, a strict differentiation between ethnic and racial minority concepts should be made. While former concept is defined with a historical background and cultural traits, latter one is mainly defined with physical characteristics (Canatan, 2013, p.42). Besides, durability of ethnic and racial traits is different. A minority group can lose its ethnic characteristics while racial traits are more durable (Canatan, 2013, p.42). In political discourse as well, this differentiation between ethnic and racial concepts is quite apparent. During the League of Nations era “racial, religious and linguistic minorities” pattern was very popular, yet just after the Second World War this pattern lost favor because during the War racism was widely revealed around Europe (Oran, 2018, p.75). Although “ethnic” concept seems to have a wider meaning compared to “racial”, it would not be a wrong assumption that it also refers to kindred element of human groups.

#### 1.4.4 NATIONAL MINORITIES

The fourth and the last type of the minority concept is national minorities. Oxford Dictionary defines the term “national minority” as such: “A minority group within a country felt to be distinct

from the majority because of historical differences of language, religion, culture, etc.” (Oxford, 2018). Council of Europe’s The Framework Convention for the Protection of National Minorities does not contain a definition of "national minority" as there is no general definition agreed upon by all Council of Europe member states. Each party of the Framework Convention is therefore left with a margin of appreciation to assess which groups are to be covered by the Convention within their territory. Yet, Additional Protocol on the Rights of Minorities to the European Convention on Human Rights has a definition of as such: ‘national minority’ refers to “a group of persons in a state who: reside on the territory of that state and are citizens thereof ; maintain longstanding, firm and lasting ties with that state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state ; are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.” (Council of Europe, 1993). In his study in Oran approaches to this concept from two different dimensions (Oran, 2010, p.41): According to him, national minority refers to minority ethnic, linguistic and religious minority groups exists in a country and this approach is mainly accepted by North European countries (Oran, 2010, p.41). Secondly, national minority can be labeled as a minority group which has a kin state. Turkish minority in Western Thrace region of Greece can be considered as an example to this category. Another meaning of national minority concept can be found in a study by J.E Magnet. By national minority he refers to groups within a state who are long established in a particular territory that they regard as their homeland and whose members are bound together by a common consciousness and culture (Magnet, 2001, p.399). As from the beginning of the 21<sup>st</sup> century, “national minorities” has been used as a counter-concept against “new minorities” (Oran, 2018, p.72). Compatible with this view national minority concept has a direct connection with actual political concerns.

#### 1.4.5 NEW MINORITIES

Since it has repeatedly emphasized in this study that concepts of social sciences are quite changeable in terms of their nature, it would be beneficial to add another -maybe a contemporary-type of minority classification here. Alike human beings, concepts are born, get mature and even die. Post-World War Two period of history led a new type of minority to be born and we can call this type of minority groups as “new minorities”. The term “new minorities”, has been generally used in order to refer to the minority groups resulting from post-World War Two immigration (Turnsek, Hinge and Karakatsani, 2010, p.6). In recent decades, most EU member States have experienced a marked increase in the number of third country nationals (people from non-E.U. countries). New minorities originating from immigration thus encompasses categories of third country nationals legally present on the territory of an EU member State and includes not only migrant workers with permanent or seasonal contracts, but also asylum-seekers, refugees, and ethnic migrants with the main focus on the integration of the first generation.

New minorities as a concept beckons three different meaning in three different discipline as Nihal Eminoğlu has stated in her study (Eminoğlu, 2015). In sociology, it refers to groups that have been existed for a long time but reach to a minority consciousness in the second half of 20<sup>th</sup> century. LGBTIs can be included in this group. In politics, it refers to groups that were once dominant but became minority after border changes. Example of this can be new population formation in Eastern Europe after the collapse of the United Soviet Socialist Republics. In international law, it refers to people who migrated to developed countries with economic or political concerns such as Turkish guest workers going to Germany.

New minorities, as a concrete concept, first found voice in OSCE's Edinburgh Declaration documented in 2004. According to 60<sup>th</sup> paragraph of this document "...in addition to 'traditional' national minorities, there are large 'new' minorities in several OSCE participating States as a result of migration during recent decades" (OSCE, 2004). As it has been shown in this chapter of the study, there is not a universally agreed definition of minority concept; legally, politically or socially accepted around the international arena. All the explanations made above obviously shows us that the concept of minority is quite a relative one in terms of political, economic, social and legal stances of political authorities. Although existence of minorities is widely accepted around the world, making a proper definition of the concept has not been possible even up until today. While diversity of human groups living in the world paves the way of recognition for minority groups, other kind of diversity on political range makes it almost impossible to reach a universal agreement on the nature and definition of the concept. Compatible with the human nature, states today have a tendency to lean on subjective criteria for defining minority concept on behalf of their concrete interests in international politics. Limberness of those interests brings us into a world in which minorities exist but are treated in numerous different ways by the contemporary nation-states.

## **CHAPTER 2**

### **MINORITY PROTECTION ON INTERNATIONAL LEVEL AND CONTEMPORARY TRENDS**

In this chapter of the study, after reflecting the theoretical and historical development of minority concept in the previous part, endeavors for protecting minority groups is going to be presented on a historical basis. As it is usually observed social sciences, each concept is apt to create some side-concepts deriving from the same source of knowledge. Therefore, it is possible to state that, the concept of minority protection is of the same age with minority concept itself (Oran, 2009, p.119). Moreover, protection of minorities is still a hot spot and still a legally evolving issue (Papoutsis, 2014, p.305) that an inadequately solved question of this issue may disrupt peace and stability of states even today (Petricusic, 2005, p.1)

Protection of minorities can be provided in two different levels today: One is the national law of the state in subject and the other is the international law (Bilgin, 2007, p.134). Minority protection can easily gain an international dimension in contemporary times and it cannot be only confined to be a domestic issue for states because today, some of the minority groups around the world have a transboundary quality and minority rights are perceived directly related to universal human rights (Tunç, 2004, p.8). Kurubaş, to some extent, holds a more state-centric stance on internationalization of minority protection. In his opinion, protection of minorities is a matter of international actors-mainly states- because minority groups can be easily instrumentalized by other political actors (Kurubaş, 2006, pp.25-26). As Arsava summarizes, there are mainly three different way of minority protection in international level: protection with direct or indirect regulations,

protection with positive rights and prevention of discrimination within the framework of equality principle; and the third way is the protection of minorities with individual or collective approaches (Arsava, 1993, pp.24-30). On conceptual basis, as it can be understood with the expressions above, such a protection gains meaning if only it is addressed within the frame work of legal rights. For this reason, in this chapter, the concept of minority protection is going to be examined based upon legal rights which have been granted to minority groups since the Middle Ages. This situation necessitates explanation of concepts such as positive-negative rights, individual-collective rights and the relation between prevention of discrimination and protection of minorities in this part of the study. Then, a brief history of minority protection movements is going to be presented at the second part of this chapter.

Minority rights, in general terms, are the special human rights granted by states to member of minority groups and utilized collectively as a group (Oran, 2010, p.33). With this definition, Oran (2018, p.113) acknowledges that minority rights are sub-branch of human rights. Çavuşoğlu (2001, p.85) defines minority rights as the rights which are granted based upon equality principle and within the framework of democratic society. Minority rights are significant with their aim to enable minority groups living their distinctive features, which makes them unique, freely (İnanç, 2004, p.15). When the international documents and regulations are analyzed, it can be observed that there are three main rights of minority groups. First fundamental right of minority groups is the right to exist. This right can be evaluated within the framework of right to live and expresses minority groups' right to preserve their existence being safe from genocides or ethnic cleansings (Rehman, 2002, pp.100-106). Second main right of minorities is the right for equality and anti-discrimination. Although this right has been stressed in various international human rights documents, it is vulnerable since it can be easily limited or violated by the political authorities.

That's why it is also stressed in the documents related to minority rights specifically (Kurubaş, 2006, p.37). Third and the last main right of minorities is the right to recognition and development of minority identity. As it is seen, the first and second types of rights granted to minorities can be embraced related to human rights, yet the third one has a connotation for positive quality since it forbids assimilation of minority groups coupled with recognition and development of minority identity (Kurubaş, 2006, p.37). On the contrary, Oran (2010, p.37) makes a distinction between recognition of minority identity and granting rights to minority groups. According to him, recognition of a minority identity does not necessarily mean that the respective state naturally grants minority rights to that specific group (Oran, 2010, p.38). At this point, it would be beneficial to examine the concepts of negative and positive rights to elaborate the subject and have a better understanding of the minority rights' nature.

## **2.1. NEGATIVE AND POSITIVE RIGHTS**

To have a better understanding on minority rights and minority protection, it is important to emphasize on negative and positive rights which are closely related to each other when it comes to question of minorities. Negative equality rights -shortly negative rights- are the individual rights granted to each citizen of a country. This kind of rights contains equality before law, right to travel, right to own property, right to freedom of religion, etc. (Oran, 2018, p.113).

Positive rights, on the contrary, are not granted to each citizen. They are mainly granted to the disadvantaged groups, thus minorities. Person belonging to a minority group exploits these rights with her/his group (Oran, 2010, p.33). Granting and applying positive rights are also entitled as “positive discrimination” and “affirmative action” (Oran, 2018, p.113). Treaty of Lausanne accommodates a decent example of positive rights. According to Article 40 of the Treaty:

“Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein” (Treaty of Lausanne, 1923)

As given above, the Treaty gives the right to establish educational institutions and use their own language only to Non-Muslims, not to each citizen of the state. At this point another controversial issue arises around the subject of granting positive rights to a certain group within the citizens. From minority group’s point of view, granting these rights might cause in a deeper isolation of the minority group and increase the reaction of majority which already have discomfort against minority group (Oran, 2010, p.39). It is, indeed, a conformable apprehension in today’s political atmosphere, but it should be kept in mind that, the main aim of granting positive rights- thus providing a positive discrimination- is the provide equality among the society. From majority’s point of view, the situation is not any different on this matter. Majority might instrumentalize those rights given to minority group to feed populist reaction directing towards minority groups. Oran gives a sharp example on this matter. One of the prominent political figures of Turkish politics, Necmettin Erbakan once claimed that, referring to positive minority rights given in Treaty of Lausanne, that non-Muslims have more rights than Muslims living in Turkey (Oran, 2018, p.115).

States, as the main political actors of international order today, are observed to hold irresolute stance against minority groups’ demands and reflects extremely sensitive reactions for those demands. This is the general tendency shown in the world politics in our day. Yet, when it comes to minority rights, various forms of legal precautions have been taken for appeasing states’

sensitivities on this matter (Çavuşoğlu, 2002, pp.127-128). For example, according to first paragraph of Article 46 of the United Nation's Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007;

“Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States” (UN, 2007).

Again, according to last paragraph of the same article, “The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith” (UN, 2007). As it can be obviously inferred from the text, a subtle comforting for states is on the carpet. Besides, another conceptual differentiation between “minorities” and “individuals belonging to minorities” becomes significant to reflect the general tendency for setting a pro-state scene (Oran, 2018, p.117).

After having definitions of negative and positive rights within the framework of minority rights, one injunction becomes necessary on terminological basis. Meaning of positive and negative rights in human rights terminology differs from the meaning of these concepts in minority rights terminology. In human rights terminology, while negative rights refer to non-intervention of state to individual sphere; positive rights points states' interference for individual to achieve her/his rights (Oran, 2018, p.118). As mentioned above, minority rights are perceived as sub-branch of human rights, and this kind of a nuance between terminological meanings can be seen natural.

The distinction between negative and positive rights explained above, brings us to obligation for examining relation between prevention of discrimination and protection of minorities.

## **2.2. RELATIONSHIP BETWEEN PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES**

Distinction between negative and positive rights becomes even more visible in two closely related concepts called prevention of discrimination and protection of minorities. As understood by its name, prevention of discrimination aims ensuring legal equality of individuals or groups by avoiding any kind of discriminatory actions (Oran, 2010, p.36). As Oran states (2018, p.118), it is a temporary phenomenon and a pre-condition of protection of minorities. Protection of minorities, on the other hand, aims to realize the real equality of minority individuals or groups by aiding them to preserve their identity features (Oran, 2016, p.36). Dilek Kurban, in her study in 2003, brings forth one of the most explicit statement on this matter. According to her, by preventing discrimination state implies “I will leave you alone and punish those who do not”; by applying positive elements about minority protection implication means “I will ensure that you live in equal conditions with the rest” (Kurban, 2003, pp.160-161). According to Oran (2018, p.118), protection of minorities is a permanent fact since it must always be applied to keep the minority’s status. In an advisory opinion given in 1935 on Minority Schools in Albania, Permanent Court of International Justice asserts that both prevention of discrimination and minority protection measures should be taken by states because the purpose of treaties for the protection of minorities is not just to ensure the placement of minorities on equal footing with the other nationals, but also to provide the minorities with the means enabling them to preserve their culture and identity (Kurban, 2013, p.161). Besides, the Court finds these two concepts very related while emphasizing the importance of minority protection on the 52th article of the Advisory Opinion: “These two

requirements are indeed closely interlocked for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions, and were consequently compelled to renounce that which constitutes the very essence of its being as a minority” (PCIJ, 1935).

As, stated in the paragraph 23 of Commentary of The Working Group on Minorities to The United Nations Declaration on The Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in international law minority protection is based on four requirements: protection of the existence, non-exclusion, non-discrimination and non-assimilation of the groups concerned (UN, 2005). As it is seen from the relationship between prevention of discrimination and protection of minorities, prevention of discrimination is not enough all by itself to provide a genuine equality of minority groups. To prove this situation, Oran offers to imagine a regime in which all legal equality is supplied but none of the class differences are taken into consideration, the he labels this regime as classical democracy (Oran, 2018, p.119). In this regime, prevention of discrimination is totally on the carpet, yet there is to assurance for minority identities to be protected. At this point the term equality should be clearly understood. In the matter of minority protection, equality does not mean treating everyone the same for all purposes, but may require treating some individuals differently, and in fact more favorably, than others precisely because they are different (Kurban, 2003, p.162). The principles of equality and affirmative action are not contradictory. On the contrary, they are interdependent because the former justifies the latter and the latter is often a prerequisite to achieve the former (Kurban, 2003, p.162).

### **2.3. INDIVIDUAL AND COLLECTIVE/GROUP RIGHTS**

Minority rights have displayed two other major forms in the sense that rights and freedoms have been granted either to individual members of minority groups or to the corporate existence of groups themselves (Soner, 2004, p.31). This classification signals another important controversial

situation about distinction between individual and collective rights. The term collective rights have been interchangeably used with the term group rights, yet there are some other approaches about the issue that makes a distinction between these two concepts, too. Indeed, according to Çavuşoğlu, while collective rights can be explained as the ones that groups -collectivities- can utilize for preserving and developing their distinctive features; groups rights are instrumental rights for member of groups to gain their rights by coming together (Çavuşoğlu, 2001, p.55).

Individual rights, in the light of explanations above, are the rights held and exploited by the individuals by only themselves (Kurubaş, 2006, p.50). Examples for these rights can be universal human rights and civil rights and citizens can use these rights with their personal legibility (Oran, 2018, p.120). Unlike the individual rights, collective rights have closely been associated with the group-specific features of individual citizens (Soner, 2004, p.33). In this perspective, collective rights signal the rights that can be exploited by the citizens with only their groups and they are entitled to minority group as a whole (Kurubaş, 2006, p.41).

When the motive behind the distinction between individual and collective rights is examined, it can be claimed that individual leads her/his life as a member of cultural, ethnic, or linguistic group. Thus, these concepts have been existing in an interwoven nature (Oran, 2009, p.84). Although there have been various and contrasting international approaches to the issue of individual and collective rights (Alpkaya, 1992, p.169), general tendency is to define minority rights with individual rights (Tunç, 2004, p.11). Besides, minority rights in international law, since Thomas Hobbes and John Locke, has an individualist and universalist nature (Oran, 2018, p.120). When most of the international documents examined, it is seen that there is always an emphasize on individual, expressing “rights of persons belonging to minorities” instead of “rights of minorities” (Kurubaş, 2006, p.41). This individualist stance has three different dimensions: Firstly,

individuals have been perceived as the core subject of international law, but minorities have not (Oran, 2009, p.84). As it can obviously be seen, secondly, such a terminological preference directly reflects the effort for appease states' domestic political concerns that creates a fear of disintegration and. Thirdly, individualist approach has a philosophical dimension: With the reference to liberalism's concern for protecting individual, Kymlicka (2015, p.79-80) claims that alike to states' coercive actions on individuals, a similar pressure can be applied to individual by the minority group itself. On the contrary, according to Arsava (1992, pp.14-15), individual rights alone cannot be sufficient to guarantee collective rights, for this reason, especially after 1980s there has been a return to group rights.

Within the scope of this conceptual clash between individual and collective rights, Çavuşoğlu's definition of minority rights, in the final analysis, has an assembler formula. According to her minority rights are individual rights which have a collective dimension (Çavuşoğlu, 2001, p.64).

#### **2.4. MINORITY PROTECTION THROUGHOUT THE HISTORY**

Similar to minority concept, minority rights and protection as a phenomenon emerged in Europe during the 16<sup>th</sup> century within the context of religious minority (Oran, 2018, p.17). Yet, when the literature on minority protection is examined, it is possible to claim that there are some forms of minority protection documents even before the 16<sup>th</sup> century. In this part of the study minority protection documents and approaches to minority protection concept is going to be presented on a historical basis in international level. The main classification for approaches to minority protection can be divided into two main frameworks as pre-First World War One period and post-World War One period.

#### 2.4.1. MINORITY PROTECTION BEFORE THE FIRST WORLD WAR

As mentioned above, minority protection can be evaluated on a historical basis picking the World War One as a turning point about approaches to minority protection concept. Pre-World War One period, again, can be divided into three different stages in which protection for minorities had been provided by the political authorities within the related period of history. As Preece asserts (2001, p.70), the interest of international relations discipline with minority concept and minority rights is not a subject of post-Cold-War era or only peculiar to 20<sup>th</sup> century; contrarily it is a process which started as of 1640s. That is why, it would not be a mistake to specify World War One as a distinctive point. Besides, we are witnessing some other documents that signals minority protection even before 1640s as Preece gives as a benchmark on the issue. Thus, the first subpart of this part of the study is going to reveal unilateral actions as initiative pioneers of minority protection concerns throughout the history.

##### *2.4.1.i MINORITY PROTECTION BY UNILATERAL ACTIONS*

While documents related to protection of minorities are reviewed, it is seen that the first category can be the unilateral actions by the political authority of the related era. Declarations or edicts can be included in these kinds of unilateral actions. According to Thornberry (1992, p.27), the first document concerning the minorities is the declaration of Louis IX (also known as St. Louis) in 1250 to Maronites living in France. In this declaration, King of France makes a commitment on behalf of the state to protect Maronites living under his reign. Yet, Azcarate claims that the first document concerning the minority protection is dated to 1085 (1945, p.21). In this written order, The King Alphonso IV of Castile and Leon, just after the conquest of Toledo, commands protection

of Muslim institutions such as mosques in Toledo and guarantees religious freedoms of Muslims living in Toledo.

Yet, there has always been a tendency in academia to date minority protection issue to the era of Reformation which brings forth the severe clashes between Catholics and Protestants. Since the clashes between Catholic and Protestant entities spreads over a long time, documents concerning these religious minority groups are several within the history of 16<sup>th</sup> century. As most of the authors admit that minority protection, just like minority concept itself, emerged during the 16<sup>th</sup> century within the framework of Reformation movement (Oran, 2018, p.17; Kurubaş, 2006; p.44), Edict of Nantes which was issued in 1598 can be respected as one of the antecedent unilateral documents concerning the minority protection after Middle Ages. Reformation, thus Protestantism, movement spread in France with Activities of Jean Calvin, and his followers were called “Huguenots” since they made their first mass protests near to Port of Saint Hugues in the city of Chartres (Fayet and Fayet, 2009, p.107). Their emergence as a religious minority group caused in a turbulent era of conflicts within France. Before declaration of the Edict of Nantes there had been seven different edicts that were recognizing Protestants’ rights and allow their freedoms even in a limited form (Oran, 2018, p.31). Yet, during all this time, Protestants had been subject to severe oppression and even massacres. St. Barthelemy Massacre took place on 24<sup>th</sup> August 1572 is one of the most prominent examples of this oppression. In 1598, twenty-six years after the St. Barthelemy Massacre caused thousands of people to die, King Henry IV of France declared Edict of Nantes which was granting limited religious freedoms to French Protestants in some limited geographical zones in France (Oran, 2009, p.120). According to Kurubaş (2006, pp.44-45), Edict of Nantes was declared since the state understood that it was impossible to demolish minorities by killing them in masses, and state itself was damaged by this long-standing religious clash among people. Edict

soothed the tension between Catholics and Protestants of France, yet it was not easy to apply those advanced rights and freedoms in those days' political and social atmosphere (Oran, 2018, p.30). The most important point about this edict is its being a unilateral action taken by the executive authority of France in those times. Since it was unilateral, it was declared by the King Henry IV, and all the rights and religious freedoms given to French Protestants were drawn back by the king Louis XIV's Edict of Fontainebleau in 1685 (Krishnaswani, 1960, p.4).

At this point, mentioning Ottoman *Millet System* and examining its approach to minority and minority protection concepts would be serving to aim of this subpart of the study. If unilateral actions towards minority protection is considered, *Millet System* constitutes a shapely example since the rights and freedoms granted to minority groups takes their roots in the one-sided will of the ruling class. Millet is an Arabic word (Ortaylı, 2009, p.59) which can be translated in English as nation (Karpat, 1982, pp.141-170). Yet, academics studying Ottoman History uses the term to define non-Muslim communities (Braude, 1982, p. 69). In Islamic doctrine non-Muslims should be protected groups as being the people of the book, thus, state has a duty to preserve their legitimate interests as long as they do not clash with state's interests (Öztürk, 2014, pp.71-72). In parallel to this religious reference, Ottoman ruling class granted non-Muslim communities some certain non-territorial rights and freedoms by establishing *Millet System* in 1454, right after the conquest of Istanbul by Ottoman Emperor Mehmed II (Oran, 2018, p.20). Therefore, it could be asserted that *Millet System* allowed non-Muslim groups to enjoy relatively wide social and religious rights and freedoms by practicing their religions freely, applying their own religious law within their societies and operating their own schools under the control of the state (Öztürk, 2014, pp.74-75). *Millet System* has been briefly defined above since as it can be understood from its merits that it leans on

the unilateral act of ruling class of the state. Therefore, it can be seen as a unilateral approach for minority protection concept within the framework of its own era.

#### 2.4.1.ii MINORITY PROTECTION BY BILATERAL OR MULTILATERAL AGREEMENTS

When the pre-World War One period is evaluated within the framework of approaches to protection of minorities, minority protection via bilateral or multilateral agreements occupies a significant place. The first example of this approach becomes concrete with the Peace of Augsburg which was signed in 1555 between Holy Roman Emperor Charles V and Schmalkaldic League of Bavaria. According to Encyclopedia Britannica, Peace of Augsburg sets the first legal basis for the coexistence of Lutheranism and Catholicism in Germany (Encyclopedia Britannica, 2018). This agreement between two parties brought the principle of *cuius regio, eius religio*, which means suzerains have the right to determine on their subjects' religion between Lutheran or Catholic faiths instead of Papacy in Vatican (Oran, 2018, p.28). The treaty-also known as the Treaty of Vienna (Thornberry, 1992, p.28)- signed between King of Hungary and Prince of Transylvania in 1606, with its provisions on guaranteeing protection of Protestants living in Transylvania, can be seen one of the pioneers of bilateral or multilateral agreement approach for minority protection (Oran, 1991, p.45).

Chronologically, the Treaty of Westphalia forms another important milestone for approaches about protection of minorities. Besides, it has been interpreted as one of the most important documents which shaped the political sphere 17<sup>th</sup> century onwards. The Treaty of Westphalia is actually a set of two different treaties signed in German cities Osnabrück and Münster. The text concerning minority rights is the second treaty signed in Münster (Beaulac, 2000, pp.162-163). At the end of Thirty Years' War took place between 1618-1648, the Treaty of

Westphalia designated the principles of new world order (Osiander, 2001, p.261). In Seyom Brown's words (1992, p.74):

“The two tenets of Treaty of Westphalia such as ‘government of each country is unequivocally sovereign within its territorial jurisdiction’ and ‘countries shall not interfere in each other’s domestic affairs’ still constitute the basis of international relations and international law today”.

As the Treaty of Westphalia gave an end to corporate state system, the same process prompted European states to devise an earlier model of minority protection and promotion of minority distinctions (Fink, 2000, p.385). With the Treaty of Westphalia both Protestants and Catholics living on German lands reached to equal religious rights and freedoms. Apart from Lutheranism, Calvinism was recognized as another sect of Protestantism (Oran, 2018, p.28). The Treaty of Westphalia has an affirmative quality for the Peace of Augsburg, yet it takes religious rights one step further by forbidding suzerains to determine their subjects’ religion and force them to convert from one religion to another (Akbulut, 2006, p.12). With its gaining for religious minorities, the Treaty of Westphalia can be seen as a monumental multilateral gathering with no precedents and only few successors and it established a paradigm for the insertion of religious minority clauses into international system (Liebich, 2008, p.251). Yet, it would be beneficial to note an opposing idea at this point. J.J. Preece does not have a positive opinion about the consequences of the Treaty of Westphalia. According to her:

“...these minority provisions should not be interpreted as evidence of an emerging international norm in favour of religious freedom per se but are better understood in terms of the special relationship between a prince and his co-religionist subjects” (Preece, 1997, p.77).

In 1660 the paradigm created in the Treaty of Westphalia was reproduced in the Treaty of Oliva by which Sweden acquired Prussian Pomerania and Livonia and via this agreement Catholic minority of these two cities were granted their rights to apply their religious rituals and keep their schools open (Türk, 1992, p.153). The Treaty of Nijmegen signed in 1678, was aiming to end continuous state of war between France and the Netherlands and the text was predicting protection of Catholic rights living on the lands transferring from France to the Netherlands (Thornberry, 1992, p.28). France and the Netherlands signed six more treaties up until 1815 and all these treaties includes provisions for protection of minorities. These treaties are the Treaties of Ryswick, Nimegue, Nystad, Breslau, Versailles and Frederickshamn (Thornberry, 1992, p.28).

According to Treaty of Dresden signed between Prussia and Saxonia in 1745, Protestants living in both lands would be subject to protection in accordance with the related articles of the Treaty of Westphalia (Thornberry, 1992, p.29). Similarly, The Treaty of Paris signed among France, the United Kingdom and Spain in 1763 brought religious guarantees to Catholics living in Canada and the North America (Akbulut, 2006, p.13). As Macartney points out (1934, p.158), while Belgium was coming under the rule of the Netherlands, prince of the Netherlands granted Belgian subjects some certain rights and freedoms in terms of religious applications and being recruited in public jobs.

When the subject is minority protection by bilateral or multilateral agreements, it makes sense to touch upon Ottoman Empire's records with European states up until 19<sup>th</sup> century since Ottoman geography hosted various religious minority groups. With the Capitulations Agreement signed in 1535 between Ottoman Empire and France, French nationals living in Ottoman lands gained their religious rights protected and eliminated any pressure to convert their religions (Öktem, 2002, p.61). The Treaty of Zitvatorok between Austria and Ottoman Empire in 1606, then

amended by 1615 Agreement, has been one of the first steps for Catholic minority's protection in Ottoman Empire with bilateral agreements (Oran, 2009, p.122). Religious minorities living in Ottoman Empire, since main difference of human groups was defined on the base of religion, had been subject to various bilateral or multilateral agreements for protecting their rights and freedoms. The Treaty of Karlowitz in 1699, the Treaty of Passarowitz in 1718, the Treaty of Belgrade in 1739 and the Treaty of Svistov in 1791 has the same qualities in terms of protecting religious minorities living under Ottoman control (Thornberry, 1992, p.27). As Oran points out (2009, p.122), endeavours for protecting religious minorities in Ottoman Empire reached to a peak with the Treaty of Kuchuk-Kainarji signed in 1744. According to article 14 of this treaty, a Russian Orthodox Church was going to be established in İstanbul and Russian Ambassador would have the right to protect this church (Ongur, 2006, p.16). This treaty, according to Oran (2018, pp.54-55), has a significance since it was extending protection, before provided only to Catholics living in Ottoman Empire, to Orthodoxes within the same context.

#### *2.4.1.iii MINORITY PROTECTION UNDER THE TUTELAGE OF GREAT POWERS*

The shift from bilateral or multilateral agreements to tutelage of great powers for protection of minorities started with Vienna Congress took place in 1815 (Oran, 2009, p.123). With this congress, change in the cohesion ideology from religion to nation basis was clinched. As Preece states (1999, p.69), the old phrase “*cuius regio, eius regio*” was replaced by the new slogan “*cuius regio eius lingua*” which means “whose rule, his language. As stated before, emergence of minority concept in 16<sup>th</sup> century was identical with religious identity. Therefore, the main concern was to protect “religious minorities”. Yet, this concept, after the Vienna Congress, with the impact of French Revolution transformed to “national minorities” (Oran, 2018, p.72; Fink, 2000, p.386). In general term Congress of Vienna can be labeled as an effort of Europe's multinational monarchies

to formulate a common way to resist nationalism triggered by the French Revolution and Napoleonic Wars (Chousein, 2006, p.20). Besides having a significance for shifting the cohesion ideology from religion to nationality, the Congress of Vienna had another important effect on international politics in terms of minority protection. According to article placed in the final act of the Congress, The Poles, who are respective subjects of Russia, Austria, and Prussia, shall obtain a representation, and national institutions, regulated according to the degree of political consideration, that each of the governments to which they belong shall judge expedient and proper to grant them. This article signals the commence of an era in which minority protection would be subject to tutelage of Great Powers of that era (Kurubaş, 2006, p.46).

Treaties following the Congress of Vienna reflected to same spirit about minority protection. The London Protocol signed among Russia, France, the United Kingdom and Ottoman Empire in 1830 recognized the independence of Greece against Ottoman Empire and also recognized protective actions for Muslims in the lands left for Greece (Oran, 1991, p.58). According to Oran (2018, p.56), the pure example of collective attitude towards minority protection is the Treaty of Paris which was signed in 1856. The Paris Treaty was important because it was tacitly stating that Christians minority groups living in Ottoman lands were subject to collective protection of Great Powers as it was committed with the European Concert declared with the Congress of Vienna (Krstitch, 1924, 181). As Tanör asserts (2001, p.84), Edict of Reform was declared just before the Treaty of Paris and it was foreseeing full equality between Muslims and non-Muslims within the Ottoman Empire. Even this situation reflects the effect of collective action of European Powers over Ottoman Empire about protection of minorities.

The order initiated with the Congress of Vienna in 1815 and sealed with the Treaty of Paris in 1856 was fully carried into effect with the Congress of Berlin held in 1878. Independence of

Greece triggered to nationalist movements in Balkans and led to Russian-Ottoman War of 1877-78. With defeat of Ottoman Empire at the end of the war the Peace Treaty of San Stefano was signed, Serbia, Montenegro, Romania and Bulgaria gained independence against Ottoman Empire accordingly (Ongur, 2006, p.13). As other Great Powers of Europe take a share from the gains of Russia, the congress was summoned. Taylor defines the Congress of Berlin as a breakthrough point for the minority protection concept with its stipulating character that leads to re-awakening of Southern Slavs and the translation of Italian and German spirit to the Balkan languages (Taylor, 1992, p.222-223). Berlin Treaty, signed within the Conference also had an effect on internationalization of Armenian Question of Ottoman Empire (Oran, 2018, pp.56-57). Furthermore, and more importantly, congress, with the article 43 of the Treaty, made protection of minorities a pre-condition for recognition of new-born states in the international platform (Israel, 1983, 975). The main motivation behind this thesis was that new-born states in Europe were backward and they needed to be guided by the Great Powers in order to establish peace and stability across the continent (Preece, 1999, p.62). Berlin Conference per se, signals the paradigm change towards protection of minorities with its consequences strengthens the tutelage of European Great Powers.

The main principles in terms of minority protection before the World War One period has been presented in a historical context above. As three different phases has been revealed, it is possible to claim that none of the approaches had been successful to find a permanent solution to minority questions. The wars broke out after all these efforts forms the concrete proof for this implication. After presenting endeavors before the World War One, in the following part, efforts made for a flourishing solution to protect minorities after the World War One are going to be examined.

## **2.4.2. MINORITY PROTECTION AFTER THE FIRST WORLD WAR**

Evaluated within a historical context, the matter of minorities created even more intense discussions especially since the beginning of the 20<sup>th</sup> century. As it is known and widely accepted 20<sup>th</sup> century witnessed major political and social changes. The attitude and approach in political sphere towards protection of minorities, naturally, has been affected by these changes during this period. If there is a need for a special classification for protection of minorities, 20<sup>th</sup> century onwards can be labeled as minority protection under the guarantee of international organizations (Oran, 2009, p.124). Therefore, examining the developments in terms of minority protection and rights in 20<sup>th</sup> century can be possible with examining the approaches of international -or regional- organizations' approach to minority concept and protection of minorities. In this subpart of the study, League of Nations, United Nations (UN), Organization for Security and Cooperation in Europe (OSCE), Council of Europe (CoE) and European Union (EU) are going to be scrutinized with their approaches and activities within the framework of minority protection.

### *2.4.2.i LEAGUE OF NATIONS*

Akgönül splits minority protection approaches into three different terms as of 20<sup>th</sup> century onwards and shows the first deference to League of Nations (2015, p.121). This term occupies the years between 1919-1945 -also known as the interwar period-. Under the influence of idealism concept mainly embodied in famous *fourteen points* of American President Woodrow Wilson, the League of Nations was founded with the purpose of establishing a system of collective security to prevent another war meaning peaceful settlement of disputes through negotiation and diplomacy and improvement of global welfare (Dunne, 1997, p.276). The League of Nations can be labeled as the pioneer of international organizations to offer guarantees to minorities for the first time in history. As it was mentioned above, protection of minorities was subject to tutelage of great powers of

Europe prior to birth of League of Nations. The Paris Conference gathered in 1919 right after the World War One, paved the way for establishment of this international organization. Within the framework of League of Nations system, there are various documents related to protection of minorities that adopts mainly four different methods which underlie the minority protection regime of the League of Nations (Arsava, 1993, p.9). Oran (2018, p.64) classifies these documents compatible with those four methods:

1. Minority protection treaties signed between the Principal Allied and Associated Powers and the countries which are newly-born, or which expanded their lands after the World War One: Treaty of Versailles with Poland in 1919, Treaty of Saint Germain en Laye with Czechoslovakia in 1919, Treaty of Saint Germain en Laye with Serb-Croat-Slovene State in 1919, Treaty of Paris with Romania in 1919, Treaty of Sévres with Greece in 1920.

As the Treaty of Versailles with Poland was the first one signed on 28<sup>th</sup> June 1919 in terms of minority protection, it served as a model to its consecutives (Fink, 1996, p.198). This Polish minority treaty was consisted of twelve articles and it covers a wide range of rights and freedoms for minorities as cultural, political, social and linguistic ones (Fink, 1996, p.198-199). When the text is examined, it is seen that the treaty contains both negative and positive rights for the minority inhabitants of Poland. Preece (2001, p.74-75) summarizes the common characteristics of minority protection treaties signed after the World War One in four dimensions: Firstly, citizenship was not compulsory to enjoy rights and freedoms granted to minority groups; secondly, basic civil and political rights were granted to all inhabitants of those states; thirdly, these treaties presented guarantees for non-discrimination, equality before law, equal access to civil and political rights;

and finally, these treaties recognized and guaranteed cultural rights such as use of mother language in different segments of daily life.

2. Peace treaties containing clauses regarding protection of minorities signed between 1919-1923 with four defeated countries after the World War One: Treaty of Saint Germain en Laye with Austria in 1919, Treaty of Neuilly-sur Seine with Bulgaria in 1919, Treaty of Trianon with Hungary in 1920, Treaty of Sévres with Ottomon Empire in 1920 and Treaty of Lausanne with Turkish Government in 1923.
3. Four other bilateral or multilateral regional treaties signed between 1920-1924: Treaty between Poland and Gdansk in 1920, Treaty between Sweden and Finland in 1921, Treaty between Germany and Poland in 1922, Traty between the Principal Allied and Associated Powers and Lithuania in 1924.
4. Unilateral declarations on minority rights and protection between 1921-1932: Declaration of Albanian government in 1921, Declaration of Lithuanian government in 1922, Declaration of Latvian government in 1923, Declaration of Estonian government in 1923 and Declaration of Iraqi government in 1932.

Akgönül claims that, during this term, the main international concern was not to protect minorities but to provide perpetuity for nation-state and stability for international order (Akgönül, 2015, p.213). As Aktoprak corroborates with Akgönül, she also claims that minority protection system under the League of Nations regime was holding political concerns rather than humanitarian ones (Aktoprak, 2008, p.85). Therefore, it is possible to state that minority protection system under the League of Nations regime was far from being universal. Yet, Preece (1997, p.346) finds, to some extent, a humanitarian side behind the motive of minority protection in that era claiming that the thought of rendering minority groups happy would make them more loyal citizens.

Although some views are quite critical about minority protection during this period, a serious credit should be given that peace treaties signed after the World War One, under the League of Nations regime, developed a detailed minority rights system and granted both negative and positive rights to minority groups in order to prevent possible clashes that might have occur due to border changes within Europe (Aktoprak, 2008, p.85). According to Arsava (1993, p.13), the most significant success of these treaties is that they brought an international dimension to minority problems with the guarantee of League of Nations.

Despite all the functional shortcomings of League of Nations system about protection of minorities, Thornberry and Estebanez sums up the merits of this system as follows (2004, p.11):

“League of Nations introduced first, recognition of the minorities question as one with distinct parameters; second, an attempt to guarantee the rights of minorities for humanitarian and pragmatic reasons-the threat to world peace presented by the mistreatment of the groups; third, procedures to implement the rights, including a system of petitions for individuals and groups, fourth, encouragement of human rights throughout state laws and constitutions; fifth, treaties and declarations providing rights for all inhabitants of the states, rights for all nationals and nationals belonging to racial, religious or linguistic minorities; and last, autonomy rights for groups concentrated in particular regions.”

Under the light of explanation given above, it is again possible to claim that minority protection system under League of Nations brought two different novelty to international system: first, a guarantee and monitoring provided by an international organization; secondly, a judicial organ called Permanent Court of International Justice came into scene to assure this guarantee and monitoring (Oran, 2018, p.65). Apart from these two elements, League of Nations set three

different criteria into motion with using the terms ‘racial, religious and linguistic minorities’ concept (Oran, 2018, p.65). However, it would be beneficial to emphasize that League of Nations system was not perfect in terms of protection of minorities. Even its constitutive document, the Covenant of League of Nations did not contain any articles about protection of minorities (Oran, 2018, p.64). According to Fink (2000, p.394), “the organization tried to balance three irreconcilable interests, those of the minority states, the minorities and the international community, and the first invariably prevailed.” As it can be understood, problems of League of Nations system enumerated as problems arising from the tense political atmosphere of the inter-war period and the clashing approaches of great powers towards the implementation of the minority rights (Fink, 2000, pp.394-395).

#### *2.4.2.ii UNITED NATIONS*

The failure of the League of Nations system in terms of minority rights and protection caused a more cautious approach to be followed in the post-World War Two period (Vijapur, 2006, p.367). As it is known, inter-war period was mainly motivated by idealist approach to international system, yet World War Two broke out and collapsed the international order with its ideals. The UN minority rights regime developed in response to the collapse of the League of Nations system during which minority questions were often associated with those pejorative notions of ethno-nationalism, irredentism and aggression (Soner, 2004, p.112)

Akgönül (2015, p.212) defines the period starting with establishment of the United Nations in 1945 to 1992 as one in which minority concept perceived dangerous by nation states and the focus during this period was the individual human rights. Will Kymlicka (2015, p.116) defines this period as “bonafide omission term”. The main difference of the UN from League of Nations was that UN was setting up the principles for adoption of universal human rights yet was not making

any emphasize on minority rights in the Charter of the UN as the founding document of the organization (Oran, 2018, p.68). Charter was based on the principles of non-discrimination and non-intervention in the internal affairs of any state unless any human rights violations were committed (UN, 1945). According to articles 1, 13, 62 and 76, UN limited minority protection with the negative rights granted to people (Kurubaş, 2006, p.57). As it can be implied, principle of non-intervention in internal affairs pushed minority rights into the sphere of domestic concerns for states. Intervention was allowed only on the ground of human rights violations and loyalty to the state was the norm for the minorities and intervention following minority issues was rejected by the UN members (Fawcett, 1979, pp.5-12). Benoit-Rohmer (1996, p.21) defines this general approach as universalist-individualist approach rather than group-specific formula of minority rights. Indeed, peace treaties signed with Romania, Bulgaria, Hungary and Italy after World War Two following the Paris Peace Conference in 1946; unlike minority treaties of the League of Nations era, did not involve any specific provisions on minority protection (Preece, 1997a, pp.85-87).

First terminological use of the concept of minority during UN era took place with the establishment of The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1947. The famous definition of minority concept made by Capotorti was first placed in a report that conducted with the initiation of this sub-committee. According to Preece (2001, p.129), with the establishment of this sub-committee minority issues were started to be addressed, yet the general tendency about not to deepen exclusively on minority protection was insulated. Although the Universal Declaration of Human Rights declared on 10<sup>th</sup> December 1948 did not mention minority or minority protection (Oran, 2018, p.70), according to General Assembly

Resolution titled as “Fate of Minorities”, it was committed that the UN cannot remain indifferent to the fate of minorities (UN, 1948a).

Considering the UN era documents containing provision about minorities, Convention on the Prevention and Punishment of the Crime of Genocide signed in 1948 forms a significant point with its terminology using “a national, ethnical, racial or religious group” concept. According to the 2<sup>nd</sup> article of the convention (UN, 1948b):

“Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

As seen, this convention is a document which provides an indirect protection for minority rights (Kurubaş, 2006, p.60). Examined on the base of this “indirect” quality International Convention on the Elimination of All Forms of Racial Discrimination signed in 1965 forms another decent example. Again, minority concept is not mentioned in the text, according to the first article of the Convention(UN, 1965): In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic,

social, cultural or any other field of public life. Another document indirectly related to minority rights is the Convention against Discrimination in Education by United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1960. Article 1 of the Convention defines discrimination as follows (UNESCO, 1960): “For the purposes of this Convention, the term ‘discrimination’ includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education”.

The International Covenant on Civil and Political Rights of 1966 (ICCPR) has been one of the cornerstones for minority protection since the term minority was contained in it. Starting to be in 1947, prepared and completed in 1966, article 27 of this text has been the most radical one about cultural protection of minorities up until today (Oran, 2018, p.74). According to this prominent article: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” (UN, 1966). As it is seen, the term “ethnic, religious and linguistic minorities” was used instead of “national minorities” in the text, and this is a remarkable progress within the record of minority protection literature, too. Thornberry and Martin Estebanez (2004, p.13). regard that the expression in the Art. 27 stating ‘in those states in which ethnic, religious or linguistic minorities exist’ provides a flexibility for states not to accept the existence of minorities within their boundaries. As Akgönül (2015, p.220) supports this idea with claiming that Art. 27 totally reflects the *zeitgeist* by pointing out three dimensions. Firstly, article assumes that there are states that does not harbours any minorities by saying ‘In those States in which ethnic, religious or linguistic

minorities exist'; secondly, article does not mention minority rights but the rights of 'persons belonging to such minorities'; and thirdly, article gives the initiative to states for deciding whether minorities exist on their lands or not. However, article 5.2 of the General Comment No.23 released by the UN High Commissioner for Human Rights states that the situation regarding the "existence of an ethnic, religious or linguistic minority" in a country cannot be decided by only that country's criteria and requires objective criteria (UNHCHR, 1994). Those objective criteria, however, is not defined in the Comment. Last but not the least, Art. 27 of the ICCPR does not contain any definition for minority concept while foreseeing certain rights and freedoms for minority groups.

As of 1990s, with the end of the Cold War, affected by the clash of identities within Eastern Europe minority concept, to some extent, was rehabilitated (Akgönül, 2015, p. 221). Correspondingly, a shift from prevention of discrimination to protection of minorities took place within the scope of minority issues (Oran, 2018, p.77). This shift first became concrete in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities documented in 1992. Since it was accepted with a consensus, it is not legally-binding for states, but it is significant since it is the first international document subjecting only the minority rights (Çavuşoğlu, 2001, p.23).

#### *2.4.2.iii COUNCIL OF EUROPE*

At the end of the World War Two, a consensus emerged in Europe that respect for human rights and fundamental freedoms was the only basis on which peace and stability would more strongly be assured (Weil, 1963, pp.804-805). Founded in 1949, the Council of Europe (CoE) aimed to strengthen peace and cooperation in Europe via protection of human rights, democracy and rule of law. From this point of view, it is possible to assert that legal texts adopted by the Council have served as main sources of approach towards human rights and minority rights (Duvan, 2016, p.267).

Yet again, up until 1990s, the approach of Council of Europe towards minority rights protection shows a sharp parallelism with the UN system since it did not make a distinction between human rights and minority rights, thus, associate minority protection with the concept of prevention of discrimination (Kurubaş, 2006, p.65). The main example verifying this claim is the European Convention on the Protection of Human Rights and Fundamental Freedoms which was signed in 1950 and came into force in 1953. As mentioned before, considering the political atmosphere of the Cold War era, CoE traditionally struck with individual human rights and non-discrimination measures and attributed no direct and specific attention to the issue of minority rights (Weil, 1963, p.824). Accordingly, European Convention on the Protection of Human Rights and Fundamental Freedoms had no direct containment of minority concept except a reference in Art. 14 titled “prohibition of discrimination”. This article is worded as follows: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (CoE, 1950). One of the most important achievements of the CoE was the establishment of the European Court of Human Rights as a monitoring body for possible violations of the European Convention on the Protection of Human Rights and Fundamental Freedoms. Importance of the court becomes more apparent in one case brought before the Court in 1968. In the *Belgian Linguistic Case*, the Court decided in favour of French-speaking parents demanding education in French for their children in a Dutch-speaking region of Belgium with attribution to Art. 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (Thornberry, 1992, p.302).

Changing nature of political sphere after the end of the Cold War directly influenced the approach of CoE towards minority concept and protection of minorities. While political

transformation was underway, the CoE reacted to this transformation swiftly in terms of minority issues (Akgönül, 2015, p.224). The first legal text adopted by the Council is the The European Charter for Regional or Minority Languages (ECRML) which was adopted in 1992 yet came into force in 1998. In the first article of ECRML, a definition is given for ‘a regional or minority language’ (CoE, 1992). According to this definition, a regional or minority language should be ‘traditionally used’ in a ‘given territory’; ‘different from the official language of the state’ and should be spoken by a ‘numerically smaller population’. As it can be implied from the text, the languages of immigrants and the different dialects spoken within the boundaries of a country cannot fit with the concept of regional or minority languages (Thornberry&Martin Estebanez, 2004, p.26). Akgönül (2015, p.225) attributes a special significance to this document by claiming that it is one of the most important identity texts on the subject of minority with its linguistic rights granted to minority groups.

The second reaction about minority concept given by the CoE after the Cold War is the Framework Convention for the Protection of National Minorities which was documented in 1995 and entered into force in 1998. Upon the need of a document dealing specifically with minority rights, Parliamentary Assembly of the Council of Europe presented the Recommendation no. 1201 in 1993 and demanded the Committee of minister of the Council of Europe to additional protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms (Benoit-Rohmer, 1996, p.36-37). According to Oran (2018, p.83), this convention has been the most inclusive legal document on minority rights. While using the term “national minorities” within the text, Convention does not contain any definition for minority concept (CoE, 1995). Preference for using national minorities is explained with an attribution to Art. 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. Since the Convention of 1950 uses

the term “national minority” in Art. 14, discourse of the Framework Convention of 1995 reflects the same approach.

#### *2.4.2.iv ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE*

Another international organization worth-examining in terms of minority rights and protection is the Organization for Security and Co-operation in Europe. Therefore, it is important to touch upon efforts under the activities of this organization within the scope of this study. Established as a conference gathered in 1973 on cooperation for international peace, Conference on Security and Cooperation of Europe gradually transformed into a permanent intergovernmental organization and was renamed as Organization for Security and Cooperation in Europe (OSCE) as of 1<sup>st</sup> January 1995 (Wright, 1996, p.1). Two important documents prepared under CSCE and OSCE has a pivotal location in protection of minorities with attributions put in both documents: Helsinki Final Act of 1975 and Charter of Paris in 1990. In the former one, minority concept is emphasized in one paragraph and was used as expressed as follows: “The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere” (CSCE, 1975). According to Oran (2018, p.85) has not any legal but political and moral binding on participating states. The former document, Charter of Paris, rather than Helsinki Final Act, went one step beyond with its more positive stance about minority rights. According to a paragraph placed in the document CSCE participatory states “...affirm that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law” (CSCE, 1990). Another part of the document

declares the decision to convene a meeting of experts in Geneva in on July 1991 about protection of national minorities (CSCE, 1990).

Yet, before this meeting took place, Conference on the Human Dimension of the CSCE held in Copenhagen in June 1990. Document of Copenhagen declared within this conference gave place to protection of national minorities between the Art. 30-40 (CSCE, 1990a). Yet again, no definition for the term “national minority” was offered by the participatory states due to the political concerns (Kurubaş, 2006, p.85). The Meeting of Experts which was mentioned in the Charter of Paris was gathered on July 1991. The most significant point about this meeting was the report declared after the meeting. According to the third paragraph of chapter two of the report “Issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State” (CSCE, 1991). As it is seen, this expression takes the minority issues from internal sphere of states and, to some extent, internationalize it for the common good of minority groups. While speaking about minority issues within the framework of CSCE-OSCE system, the post of High Commissioner on National minorities (HCNM) reserves a significant place with its preventive role on conflicting situations accommodate national minority problems (Shoraka, 2012, p.160). This post mainly works for meeting of minority demands by states going beyond their international obligations (Duvan, 2016, p.265).

#### *2.4.2.v EUROPEAN UNION*

In comparison to LoN, UN, CoE and CSCE-OSCE; the European Union (EU) can be associated with a silent stance towards minority concept and minority rights since it has no initiative or legal document directly related to the issue (Oran, 2010, p.122). According to Toggenburg (2000, pp.1-

2), this situation has three main reasons: Firstly, even though it displayed political aspects from its outset, integration process of the EU has largely rested on economic considerations. Secondly, achieving a consensus among member states on legislating general standards relating to the issue of minority has never been possible. Finally, supranational nature of the community law rendered centrally inaugurated standards of minority rights more dangerous for the member states.

Another challenge to form a common and active stance towards minority concept and minority rights is the sharp distinction made by EU member states as internal and external dimensions. According to Topidi (2004, p.183), internal level deals with minorities residing in the EU while external level deals with minority issues between the EU and the third countries. In Thornberry and Martin Estebanez's study (2004, p.19), it is claimed that the minorities of Eastern Europe are seen as separate nations whose rights should be under the protection of collective rights while minorities in Western Europe are regarded as the cultural motive of the society and their rights are examined under the framework of individual rights. Pentassuglia (2004, p18) again argues that there are two levels of the EU approach to minority rights: at the internal level, the emphasis is on equality and non-discrimination rather than minority rights; at the external level, "the core of minority rights activities lies in a range of mechanisms designed to facilitate and/or consolidate transition towards democracy by Eastern European Countries."

At this point, it would be beneficial to touch upon initiatives or documents which has attributions to minority concept and protection of minorities under the scope of the EU. The first initiative which embraces minority concept is the Copenhagen Criteria which was revealed during the Copenhagen Summit in 1993 following the Maastricht Treaty; and developed in Madrid (1995) and Luxembourg (1997) Summits (Oran, 2018, p.89). According to political criterion, "stability of

institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities” are expected for the initiation of integration to the EU (European Council, 2018).

Charter of the Fundamental Rights of the European Union declared in 2000 is another document that the EU touches upon minority concept. According to Art. 21 of the Charter titled as “Non-Discrimination”, “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited” (EU, 2000). Lastly, the Treaty of the European Union which is one of the two elements of the Treaty of Lisbon signed in 2007 and entered into force in 2009, should be considered for understanding the approach of the EU towards minority concept and protection of minorities. In the Art. 2 of the Treaty, general principles of the EU are described as follows: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (Foundation for EU Democracy, 2009).

As presented on a historical context in this chapter, approaches towards minority rights and protection of minorities have always been influenced by the political formation and developments of the related period. Within this chapter of the study, different approaches by different authorities have been examined for showing the development of the situation about minority protection. Yet, it is highly possible to claim that as there is no universally agreed definition for minority concept, international system have not been able to create a standard system from which minorities around the world could benefit.

## **CHAPTER 3**

### **A BRIEF HISTORY AND ANALYSIS OF THE TREATY OF LAUSANNE**

In this chapter of the study, the Treaty of Lausanne signed on 24<sup>th</sup> July 1923 is going to be assessed with its historical place, characteristics and significance for the Turkey's republican history. Such an assessment is required since the Treaty is seen as one of the most important legal documents for Turkey. The main aim of this chapter is not to repeat stereotypical information about the Treaty already given in History of Turkish Revolution courses take place in higher education system of Turkey, but to give a concise summary about the Treaty within the scope of contemporary debates which embrace Lausanne Treaty mainly in a political manner. Accordingly, this chapter will first touch upon the general information about the Treaty and then will try to reflect counter-views about Treaty's essence and its gaining or alleged-loss for Turkey. Just before examining the Treaty of Lausanne in terms of its approach to minority concept and protection within the next chapter of this study, it would be beneficial to work through its basics to have a precise understanding about the Treaty apart from its political and historical perception. As it is known, there have been several studies attempting to present a better understanding of the Treaty by various authors and academics. Yet, the subject is worth to analyze deeply since it continues to be a hot spot in the Turkish public opinion.

Doubtlessly, the Treaty of Lausanne has been one of the cornerstones within the Turkish history. Signed on 24<sup>th</sup> July 1923, the Treaty of Lausanne was the legal document which included the establishment principles of sovereign and independent Republic of Turkey. With this respect,

as Oran points out that (Oran, 2001, p.222) it has three striking significance for Turkey: Firstly, it is a document which establishes equality principle for Turkey among the international powers. As it is widely known, and accepted Ottoman Empire had had a relationship with Western powers on the base of political inferiority due to its weakness within the political sphere. Yet, examining the signing process of the Treaty, it can be understood that the State of Turkey had a chance to negotiate important topics on the base of equality during the Lausanne Peace Conference. Actually, Turkish delegation had consistently stressed that the Lausanne Peace conference was a negotiation process among equals (Özdemir, 2013, p.160). Turkey has been one of the participatory states that had been highlighting equality principle (Demirci, 2013, p.96). According to Akyol (2014, p.96), Turkish side came to table with the military victory thus it would be considered as equal by the other parties Secondly, economic independence of Turkey was established and guaranteed with the Art. 28 of the Treaty (Treaty, 1923) since each of the contracting parties accepted the complete abolition of the Capitulations in Turkey in every respect. This was also a turning point that giving Turkey a fully independent economic structure free from any economic privilege presented to any other political power. The final point makes the Treaty of Lausanne significant for Turkish history is the obtaining of political independence among international power with the achievement of international political recognition and geographic integrity compatible with the National Oath which was approved by the Ottoman Parliament in 1920 (Akyol, 2018). In substance, the Treaty of Lausanne is a multilateral document that covers political, military and economic issues among different states. With all these aspects, this treaty has been a document via which Turkey makes itself accepted among international powers (Akin, 2002, p.314).

There has always been a tendency for sanctification of the Treaty by Turkish authors and authorities with all its bringing to newly-born state of Turkey. This sanctification even reached

calling the Treaty as a “Holy Peace” by some writers (Dinamo, 1988). Dinamo’s denotation is more than enough to reflect Turkish political elite’s approach to the Treaty of Lausanne. The first president of the Republic of Turkey and commander-in-chief of Turkish army during the War of Independence (1919-1922), Mustafa Kemal Atatürk describes the Treaty of Lausanne as such: “This Treaty is a political victory which overcomes every kind of plot had been prepared against Turkish nation since centuries.” (Öke, 1983: v). Although the main tendency towards the Treaty is to point out its positive sides on political, economic and social bringing while calling it as a great success for Turkey; a totally opposite stance has been taken by some authors while calling it as a fiasco (Mısıroğlu, 2016). When such a stance is investigated carefully, political concerns and comprehension about the Treaty becomes more visible even almost one hundred years after it was signed. Yet again, an observation from a third-eye, historian Arnold J. Toynbee, would be beneficial to understand the outcome of the Treaty for the Turkish side. According to him (1923), the signing of the Treaty was a surprising achievement for Turkish state since Turkish delegate succeeded to convince allied power representatives on almost every demand that Turkey had. It was surprising since Turkey had just been out of a period of harsh wars for almost a decade. According to Brown (1924, p.113), the old-fashioned Treaty of Sévres was successfully replaced by the Turks with the Treaty of Lausanne with resisting the imposition of the former Treaty.

In the light of introductory information given above, it will be suitable to reveal the actual political controversies about the Treaty following the historical process and points paving the way for signing of the Treaty of Lausanne.

### **3.1. LAUSANNE PEACE CONFERENCE, THE PROCESS OF SIGNING OF THE TREATY AND THE CONTENT OF THE TREATY**

As mentioned before, the Peace Treaty of Lausanne was signed between Turkey and allied powers on 24<sup>th</sup> July 1923 after long negotiations started on 20<sup>th</sup> November 1922 and interrupted between 4<sup>th</sup> February 1923 and 23<sup>rd</sup> April 1923 (Toprak, 2003, p.67). These negotiations took place under the name of Lausanne Peace Conference and its aim was stated as bringing full peace to the East (Oran, 2010, p 126). It is also important to put signatory parts of the Treaty correctly to understand the complexity of the signing process. The Treaty was signed between the British Empire, France, Italy, Japan, Greece, Romania and the Kingdom of Serbs, Croats and Slovenes on one side, and Turkey on the other (Oran, 2007, p35). Yet, before giving the historical details of the Conference and the Treaty, one different characteristic of the conference should be pointed out. Although the parties attending to the Conference were apparent, there was a vagueness about the victorious side of the former warfare period among the parties (Özdemir, 2013, p.159). The complexity on this matter comes from the ongoing state of war of Turkey with the other parties. Although Turkey had just won the war against Greece in Anatolia, Turkey also inherited the Ottoman defeat of 1918 against the Allied Powers (Demirci, 2013, p.95). This situation makes a difference in terms of the political qualification of the Lausanne Conference at the first glance. As seen, the concepts of victory and defeat were highly relative when it came to Lausanne since it contained various parties getting together to make a settlement among their selves.

The qualifications of participatory states are another important point to understand the nature of the Conference. The scope of attending states can be divided into four categories and when these categories are analyzed deeply, the difference between attendants of the Conference and signatory parties of the Treaty can be understood precisely since not all the participatory states signed the Treaty of Lausanne. Oran (2010, p.129) categorizes the participatory states as follows: The first category is the ones made the invitation to other parties; British Empire, France, Italy and

Japan can be included in this category. The second category is the states which had been invited by British Empire, France and Japan. Turkey, Greece and Serb, Croat and Slovene State consists of this category, yet it should be emphasized that Turkey was invited to Conference as the main participant state. Third category of states are the ones which have been invited only for negotiating issues such as Thrace Border and Turkish Straits. Bulgaria and Soviet Russia fall into this category. The final category contains the states of Belgium and Portugal, and they are invited to deal with specific topics such as trade and residency.

When the main parts of the Treaty of Lausanne are examined, it is possible to claim that it dealt with a wide range of issues covering political and economic topics among the participatory states (Treaty, 1923). The first part of the Treaty is titled as the political clauses and mainly deals with the territorial subjects, nationality issues, and the protection of minorities. Second part of the Treaty hold the title of Financial clauses. It consists of Ottoman Public Debt and miscellaneous clauses sections. The third part of the Treaty is directly related to Economic Clauses and settles property, rights and interests issues; contracts, prescriptions and judgements; industrial, literary and artistic property rights, mixed arbitral tribunal and treaties questions. While the fourth part is titled as communications and sanitary questions, fifth and the last part of the Treaty is named as miscellaneous provisions.

After the endorsement of Mudania Armistice on 11st October 1922 which ended de facto warfare between Turkey and Greece in Anatolia, British Empire, France and Italy sent a diplomatic note on behalf of themselves and Japan, to İstanbul and Ankara Governments, for putting an end to Eastern Question (Soysal, 2000, p.76). This two-sided communication led into a representation question for Turkish side. Yet, Mustafa Kemal acutely rejected this approach of inviting states and stated that İstanbul Government does not exist anymore according to 1921 Constitution adopted by

the National Grand Assembly in Ankara, and the Assembly is the responsible political authority for representing Turkey (Akyol, 2014, p.64). This statement put an end to Turkey's problem of representation during the Lausanne Conference.

Another dual situation took place about the selection of delegates who were to represent Turkish government in Lausanne. The main tendency within the National Grand Assembly was to select Rauf Bey (Orbay) as the chief of delegation while Yusuf Kemal Bey (Tengirşenk) and Rıza Nur Bey were going to be other members of the delegation (Ertan, 2013, p.70). However, in contrast to expectations of the term, İsmet Pasha (İnönü) was selected as the chief of delegation while Rıza Nur Bey and Hasan Bey (Saka) had been selected as the members of it (Karacan, 2011 p.40). It should be noted that Mustafa Kemal himself supported İsmet Pasha's leadership of the Lausanne delegation (Atatürk, 1997, p.663).

After the invitation and delegates' selection process, the Peace Conference in Lausanne started on 20<sup>th</sup> November 1922 as the fourth big conference ending the First World War, in Mont-Benon Club, with the opening speech of the President of Federation of Switzerland, M. Haab (Karacan, 2011, p.68). Although it was not placed on the agenda of the opening ceremony, İsmet Pasha walked to the rostrum and made a speech (Akyol, 2014, p.114). This was a pure reflection of equality demand of Turkish side as mentioned above. Three different commissions set up by the participatory states gives a certain idea about scope of the Conference: The first commission was dealing with territorial and military questions; second one was about financial and economic questions and the last one was set up for find a solution to judicial status of foreigners in Turkey (Erhan, 2005, p.13).

Although the Peace Conference was disrupted between 4<sup>th</sup> February 1923 and 23<sup>rd</sup> April 1923, all signatory parties could get over the diplomatic challenges ahead their selves and the

Treaty of Lausanne was signed on 24<sup>th</sup> July 1923. Thus, another important date has been saved to Turkish public opinion's memory since then. Whether the Treaty was a diplomatic success or failure for Turkey, it is a certain fact that the Treaty of Lausanne paved the way for an independent state of Turkey.

### **3.2. ACTUAL POLITICAL CONTROVERSIES ABOUT THE TREATY OF LAUSANNE**

Today, the Treaty of Lausanne continues to occupy a broad place for the Turkish public opinion due to the historical importance for Turkey which was tried to be reflected above. Naturally, it becomes a hot spot for persons who are studying the Treaty with all its aspects. With its main quality for being the founding document for the modern State of Turkey (Akyol, 2018), it can easily be understood that the Treaty has been subject to controversies from different point of views. Yet, when the approaches and reactions about the Treaty are deeply analyzed, two main motives are observed: the lack of knowledge and political concerns which are fed by the historical antagonism (Akyol, 2017). These controversies taking place are mainly caused by the “urban legends” pumped into public opinion mainly with the political concerns. This sub-section of the study is going to try to reflect the content of such controversies by giving solid examples of those “urban legends” about the Treaty of Lausanne. Yet, mis-information about Treaty's provisions on minority concept and minority rights is going to be examined in detail within the next chapter of this study. At this point, dominant false notions about the Treaty of Lausanne are going to be presented in this sub-section.

The first mis-information about the Treaty is about its validity period (Oran, 2018, p.249). When the text of the Treaty is deeply examined, it is easily seen that there is no provision within the text related to its validity period (Treaty, 1923). Besides, the Treaty of Lausanne is not only related to commerce or defense issues, thus as a treaty putting an end to a warfare situation it is not supposed to have a “date of expiry” (Oran, 2018, p.249). This tendency to think that the Treaty of

Lausanne apparently caused by imperfect knowledge since the ones making this claim seem not to read all provisions of the Treaty text. The second “urban legend” about the Treaty of Lausanne is that claiming the Treaty has secret provisions hidden from the public opinion for almost a century. This claim mainly relies on the idea that lots of people believes that it is impossible for such treaties to contain secret provisions (Akyol, 2016). Since there is no concrete evidence about such secret provisions of the Treaty, it naturally requires having negative presumptions by some. In addition to all these, as stated above, there have been several academic studies regarding the Treaty of Lausanne, yet none of these could have revealed that the Treaty has secret provisions. Besides, all the minutes of the proceedings of the Lausanne Conference have been published, and no such secret provisions were mentioned in those minutes (Akyol, 2016).

Eğilmez (2016), gives a beneficial insight on this matter of secret provisions by questioning the natural resources issue within the range of boron mineral, natural gas and crude oil of Turkey. First he states that some authors claim that the Treaty of Lausanne has secret provisions on Turkey’ natural resources which forbids Turkish state to process these materials. According to those claims, the Treaty will expire in 2023 (one hundred years after its signing) and Turkey will enjoy full right on its natural resources. Yet, Eğilmez (2016) confutes all these claims with solid information taken from Turkish official authorities. Turkey, regardless to the Treaty of Lausanne, have been enjoying full right on its natural resources since the foundation of the Republic (Oran, 2018, p.249).

The third mis-information is about a territorial issue. It is claimed by some that if Mosul or Kirkuk provinces gets under sovereignty of another state than Iraq, Turkey has a right to annex those lands according to the Treaty of Lausanne (Oran, 2018, p.249). Using the direct source related to this information will help to reach a better understanding on this claim. According to Article 3 Prg. 3 of the Treaty of Lausanne (Treaty, 1923):

“The frontier between Turkey and Iraq shall be laid down in friendly arrangement to be concluded between Turkey and Great Britain within nine months. In the event of no agreement being reached between the two Governments within the time mentioned, the dispute shall be referred to the Council of the League of Nations. The Turkish and British Governments reciprocally undertake that, pending the decision to be reached on the subject of the frontier, no military or other movement shall take place which might modify in any way the present state of the territories of which the final fate will depend upon that decision.”

Regardless of the Iraqi border dispute resolution in the following years after the Treaty of Lausanne, the Treaty itself answers the question about Turkey’s so-called right to annex two provinces of Iraq state leaning upon the Lausanne. Besides, as it can be inferred from the text, any military action is not allowed in terms of border dispute.

A final popular claim about the Treaty of Lausanne is that the Treaty is not legally binding for Turkey, since the United States, as a participatory state, refused to consent the Treaty within its legislative body (Oran, 2018, p.250). Firstly, the United States, as it can be inferred from the Treaty, was not a signatory part of the Treaty, thus consent or refusal of the United States makes no difference for binding of the Treaty (Oran, 2018, p.250). This claim, unfortunately, reflects another big misinformation about another bilateral treaty signed in Lausanne between Turkey and the United States. On 6<sup>th</sup> August 1923, Turkish and American delegations signed a Treaty of Amity and Commerce to revive diplomatic and commercial relations between two states, yet this Treaty did not have enough vote for being consented by the American congress (van der Lippe, 1993, pp.31-32). Yet, this is a totally different kind of agreement between two sides which does not have any effect on the application of the peace Treaty of Lausanne signed on 24<sup>th</sup> July 1923. As it can be shown above, the Treaty of Lausanne as a hot spot since its signing in 1923, continues to occupy

the public agenda even today. These examples given above are a pure reflection of public opinion mainly fed by misinformation about historical and political concepts. Yet, the speculative comments or information do not only come from public sphere. The Treaty of Lausanne has also been instrumentalized on a political level by politicians themselves.

For example, President of Republic of Turkey, Recep Tayyip Erdoğan, in his message published on 24<sup>th</sup> July 2017, regarding the 94<sup>th</sup> anniversary of the Treaty of Lausanne, states that the Treaty is the founding document for Turkish Republic and intermediary for Turkish people's saga of independence (TCCB, 2017). This discourse totally matches up with the long-standing approach of Turkish public opinion towards the Treaty of Lausanne. Yet, interestingly, in another speech, Recep Tayyip Erdoğan stroke a totally different attitude about the Treaty and called it as a source of problem, not a victory (BBC, 2016). In another speech, he calls for structural changes in the Treaty of Lausanne since it does not contain the spirit of contemporary political times (Milliyet, 2017). One certain implication can be made through all these comments by public and political sphere: The Treaty of Lausanne, with all its negative and positive sides, keeps its pivotal position for Turkish public opinion, and wit this nature, it becomes quite open to discursive speculations. Its use in daily politics shows that it has a direct political connotation for Turkish electors, political figures enjoy instrumentalizing the Treaty for the sake of motivating electors.

All in all, the Treaty of Lausanne's significance for history of Turkey is incontestable with all its bringing on political and economic spheres. The importance of the Treaty can be better understood when it is compared to other peace treaties signed with defeated parties of the First World War such as Treaty of Versailles with Germany, Treaty of Saint-Germain with Austria, Treaty of Neuilly with Bulgaria and Treaty of Trianon with Hungary and more importantly the Treaty of Sévres with Ottoman Empire (Bilsel, 1998, p.571). Since the Treaty of Lausanne

overruled and replaced the Treaty of Sévres, it should be kept in mind that the Treaty of Lausanne emerges as a greater success when compared to the Treaty of Sévres in terms of political and economic gains. Mustafa Kemal Atatürk himself also make a comparison between two treaties on the base of political, geographical and economic criteria to point out the significance of the Treaty of Lausanne for Turkey (Atatürk, 1997, pp.499-510).

It is not an easy task to determine measuring the success of diplomatic negotiations (Özdemir, 2013, p.165). Since the problems tried to be solved during the Lausanne Conference were quite complex, the same rule can be applied to the Treaty of Lausanne, as well. Although it seems easier to measure the diplomatic success on territorial issues, it does not, either, gives us a certain result since the quality of a certain territorial land can be inversely correlated to its quantity. It should not be forgotten that the Treaty of Lausanne had been resulted after a long period of negotiation among different states and witnessed stiff bargains among signatory parties. Under these circumstances a holistic approach to measure diplomatic success of the Treaty would be misleading.

Yet, rather than having sharp conceptual limitations on the nature of the Treaty of Lausanne whether it is a victory or failure, a more moderate way in can be taken examining all its positive and negative sides for all signatory parties. Indeed, according to Oran (2018, pp. 248-249), the Treaty of Lausanne is a reconciliation among the parties. Yet, for the Turkish side it is a reconciliation which its victorious aspects outweigh all its shortcomings. With this point of view, the Treaty of Lausanne can be embraced without making judgements on the base of actual political concerns and can be understood in a better way.

## **CHAPTER 4**

### **MINORITY CONCEPT AND APPROACH OF THE TREATY OF LAUSANNE**

After touching upon minority concept and its evolution (chapter two), minority rights and its development (chapter three) and the Treaty of Lausanne on a historical and theoretical basis (chapter four) within the previous chapter of the study, fifth chapter is going to be dedicated to two main subheadings. In the first part of this chapter, minority definition placed in the Treaty of Lausanne will be examined in detail while the second subheading of the chapter is going to incorporate an assessment of the Treaty of Lausanne with its approach to minority concept and minority protection. Such an assessment is aiming to reflect competency -or incompetency- of Treaty of Lausanne in our contemporary times during which a plenty of progress have been made by political and non-political actors in terms of minority issues.

It should be kept in mind that the Treaty of Lausanne -contrary to persistent emphasizes- is not only related to Turkey's independence and sovereignty which were both won after a long period of wars within the first quarter of 20<sup>th</sup> century. High level of importance attributed to the Treaty in terms of victory and independence concepts, has always caused in a loss sight of its other provisions which are also significant for paving the way for a modern Turkey. Looking at its provisions, it is clearly seen that the Treaty of Lausanne developed an approach towards minority concept and protection of minorities within Turkey's boundaries (Treaty, 1923, art. 37-45).

Making an assessment of the Treaty of Lausanne in the light of developments on subjects such as minority concept and minority rights is important in the sense of understanding Treaty's

positive and negative aspects with comprehending its characteristics. This evaluation of the Treaty is also important since Turkish authorities have always referred to the Treaty of Lausanne while putting reservations or declaring interpretative declarations to international agreements somehow related to minority concept and protection of minorities (Oran, 2010, p.49). At this point, an important question emerges: To what extent is the Treaty of Lausanne compatible with the contemporary ongoing trends on minority concept and protection of minorities? This question is an important one to be answered since it embodies a key element to solve a long-standing question of Turkey: To define minority concept more properly and to put an end to alleged-discrimination against minority groups during the Republican history.

Question above summarizes a long quest for a more democratized Turkey which have been sought since the foundation of the Republic in 1923. With no doubt, as explained within the previous chapters, minority concept and minority protection subjects have been evolving positively especially since the end of the World War Two. Thus, examining Treaty of Lausanne's competence with the global trends becomes an important task in today's Turkey which is consisted of various ethnic (Alford mentions 42 different ethnic groups living in Turkey's soil [Alford, 1992, p.56]), religious and cultural identities. Today, it has been 96 years since the Treaty of Lausanne was signed and paradigms, perspectives and even political attitudes have significantly changed with respect to minority issues. International standards are rather higher compared to 1920s' political atmosphere. Under these circumstances, evaluating the Treaty of Lausanne would be beneficial to see Turkey's consistence with its contemporaries on minority issues.

#### **4.1. DEFINITION OF MINORITY IN THE TREATY OF LAUSANNE AND ITS ACQUISITIONS FOR MINORITY GROUPS IN TURKEY**

As stated above, scope of the Treaty of Lausanne cannot only be confined neither political nor economic independence and sovereignty of Turkey, yet it also includes minority related issues concerning newly-born Turkish state (Varol, 2005, p.149). Despite the fact that the Treaty of Lausanne regulates the minority regime within Part I- Political Clauses' Section III Protection of Minorities, the Treaty itself does not contain a specific definition of minority concept (Oran, 2009, p.155). For making a general statement, it can be claimed that Turkey's minority regime which is rooted in the Treaty of Lausanne, is also affected by the strategies of the Turkish state authorities and society regarding minorities in Turkey (Toktaş and Aras, 2009, p.699). When the text of the Treaty is examined, it is seen that minority protection issues were covered between the articles 37 and 45. The language of the Treaty in terms of minority-related topics have significant similarities with the other treaties signed during the same period and finalizing World War One.

Polish Minority Treaty became the first legal document, concerning minority issues, signed between Allied Powers and some other states and with this "being the first" feature it set a template for the upcoming treaties including provisions on minorities and minority protection (Oran, 2009, p.155). Articles under Protection of Minorities Section in the Treaty of Lausanne are almost the same as those in the Polish Minority Treaty signed on 28<sup>th</sup> June 1919, with one significant dissimilarity: The expression 'racial, religious or linguistic minorities' in the Polish Minority Treaty was changed with 'non-Muslim minorities' in the Treaty of Lausanne (Oran, 2000, p.151). As a result of this major change in discourse, only the non-Muslim communities are recognized as minorities and are granted the right to use their own language, the right of political and civic equality, the right to establish religious, educational and social welfare institutions, and the right to freedom of religion, travel and migration (Hurewitz, 1956, p.122). As a treaty signed in 1920s, in accordance with the political climate of those times, Turkish Board representatives in Lausanne

made a great endeavor to limit the scope of “minority” term in Turkey with the confidence of being the victorious side of Turkish Independence War (Şimşir, 1990, p.xiv).

Since there has always been a tendency among the Turkish public opinion during the late-Ottoman era for seeing minority concept as a “problem”, definition of concept during the Lausanne Talks was one of the hardest topics to deal with (Kaptan, 2002, 44). Minority issue was perceived as a security matter by Turkish delegation in Lausanne. Dr. Rıza Nur, one of the members of delegation who was assigned to work in “Sub Commission on Minorities”, stated that Turkish delegation tried really hard to prevent Western Powers defining minorities on the base of ethnicity and language beyond religion, and their aim with this was to crumble the integrity of Turkish State (Nur, 1999:83). As it is seen, limiting the scope of minority concept at a very early phase of modern Turkey was seen as a striking task by the authorities.

When statements of some more conservative authors on this issue are examined, the logic behind seeking such a narrow definition of minority becomes more visible. According to Kaptan, Turkey prevented other parties from interfering in its internal affairs with the excuse of minorities by restraining the minority concept in the Lausanne Treaty (Kaptan, 2002:44). With this respect, Turkish delegation representatives in Lausanne put a special effort on this issue and insisted on the narrow definition of minority concept which regards only non-Muslims as minorities of Turkey (Kaptan, 2002: 62). Dr. Rıza Nur states this situation as follows: “French understands three things by minority concept: ethnicity, language and religions. This is a fatal thing for us, a big danger. These men think really well when the situation is against us... they intend to include Circassians, Bosnians and Kurds with the term of ethnicity. Thus, they will tear us apart. I put all my effort to put away these expressions and I hardly did” (Nur, 1999:83). Analyzing the main motives behind

this limiting logic has also importance. Oran (2010, pp.47-49) capsulizes these three motives as stated below:

- 1) Historical motives: As Turkey is perceived as the successor of the Ottoman Empire from various perspectives, it has also been affected by prominent Millet System in which minority categorizations were made on the base of religion rather than ethnic and linguistic differences. Accordingly, Muslims were never considered as minority (Oran, 2000, p.151).
- 2) Political Motives: The main concern for Turkish authorities here is the fear of instrumentalization of minority groups by external political actors. As witnessed during the late Ottoman era, Great Powers had always a tendency to declare protection on Christian minority groups while the Ottoman Empire had been in a downfall. This situation signaled a high possibility for Great Powers to interfere in Turkey's internal affairs (Oran, 2000, p.152).
- 3) Ideological Motives: According to Oran (2010, p.48), the founding leaders of Turkey can be labeled as nationalists parallel to political facts and necessities of those times, and minority topic had been perceived by them as a threat to a more harmonized Turkey.

In general terms, it is usually claimed that minority definition made in the Treaty of Lausanne was made upon the criterion of religion. Yet, according to Oran, the coverage of the concept is even narrower since the Treaty contains only the term “non-Muslims” (Oran, 2010, p.47). As a result of this approach, Muslim citizens, even if they hold ethnic or linguistic differences, are not considered

as minority according to minority protection regime which was established by the Treaty of Lausanne in 1923.

After revealing the conceptual approach and analysis of the Treaty of Lausanne in terms of minorities, it would be beneficial to examine its provided acquisitions for minority groups living in Turkey. As mentioned above, rights granted to minority groups are placed within the Section III of the Political Clauses of the Treaty. This section consisted of the articles between 37 and 45 includes both negative rights for minorities which guarantees their equality with other Turkish nationals and positive rights which gives them a chance to preserve their language, culture and traditions (Saraçlı, 2012, p.100). At this point, to have a better understanding on this matter, a one-by-one analysis of the Treaty's articles could be helpful to examine these positive and negative rights structure. When the articles 38, 39/1, 39/2, 39/3 and 40 of the Treaty are examined, it is seen that these are the ones granting negative rights to minority groups living in Turkey.

Article 38: "...Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order" (Treaty, 1923).

As it is seen, this article is related to providing equality and protection even under extraordinary conditions which can be occurred and managed by Turkish authorities. With granting this negative right to minority groups, Turkey undertakes a responsibility to maintain equality among its subjects.

Article 39/1: "Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems" (Treaty, 1923).

Article 39/2: All the inhabitants of Turkey, without distinction of religion, shall be equal before the law (Treaty, 1923).

Article 39/3: Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries (Treaty, 1923).

Article 40: Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. [...] (Treaty, 1923).

Within these articles shown above, the Treaty's language, once again, establishes an equal relationship between minority groups and other nationals of Turkey, by granting minorities negative rights which are purely related to non-discriminatory approach developed by the government. It is understood by these articles that religion, as a distinctive element for determining the scope of minority concept in the Treaty, cannot be used as a justification for any kind of discriminatory act taken by the Turkish authorities.

On the other hand, articles 39/4, 39/5, 40, 41,42 and 43 of the Treaty of Lausanne can be labeled as the ones granting positive rights to minorities living in Turkey.

Article 39/4: No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings (Treaty, 1923).

Article 39/5: Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts (Treaty, 1923).

As seen in the articles 39/4 and 39/5, positive linguistic rights were granted to minorities living in Turkey. Besides, for minority groups to preserve their language, their use of language is safe from any restrictions.

Article 40: [...] In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein (Treaty, 1923).

Article 40, with its granted religious, educational and social rights to minority groups, sets an example of positive rights which ensures minorities to preserve their distinctive features compared to other elements of a society.

Article 41: As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.

The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned (Treaty, 1923)

Article 41 mainly touches upon two important matters for minority groups by granting them positive rights in education, religious affairs and access to public funds. By this approach, teaching of mother tongue would have been leveraged by authorities while cultural support for minority groups would be enhanced.

Article 42: The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.

These measures will be elaborated by special Commissions composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in agreement an umpire chosen from amongst European lawyers.

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature (Treaty, 1923).

With this article, Turkish authorities assures also a physical religious protection to minority groups while granting them the right to develop and pursue an internal legal system in terms of civil code based upon minority groups' customs and traditions.

Article 43: Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious observances and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest.

This provision, however, shall not exempt such Turkish nationals from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order (Treaty, 1923).

Article 43 of the Treaty of Lausanne, with its wording, is a good example of legal regulations presenting a positive rights approach to minorities. As revealed above, according to this article, Turkish authorities guarantee non-constraining approach for minority groups both in legal and religious spheres.

After presenting related articles of the Treaty and evaluating them shortly, it would be appropriate to touch upon the legal abidingness and protective limits of the Treaty of Lausanne. As it can be seen in the 44<sup>th</sup> article of the Treaty which states (Treaty, 1923):

Article 44: Turkey agrees that, in so far as the preceding Articles of this Section affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations. The British Empire, France, Italy and Japan

hereby agree not to withhold their assent to any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

Turkey agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

Turkey further agrees that any difference of opinion as to questions of law or of fact arising out of these Articles between the Turkish Government and any one of the other Signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Turkish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

This article is purely about the guarantee of the rights granted to minority rights by League of Nations as the supranational organ of that era. Oran states that (2018, p.236), as League of Nations does not exist as an international organization today, this guarantee on minority rights emerged in the Treaty of Lausanne disappeared as well. Yet, as Grand National Assembly of Turkey ratified the Treaty of Lausanne as Code No.340 in 1923, it also became a part of Turkey's internal legal system (TBMM, 1923). Besides, Turkey's Constitution of 1982's article 90/5 signals a very

important situation in terms of norms of hierarchies related to application of the Treaty of Lausanne, too. Mentioned article is as below (TBMM, 2018):

Article 90/5: International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. (Sentence added on May 7, 2004; Act No. 5170) In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

Saliently, it is possible to claim that the Treaty of Lausanne provisions related to minority groups and their rights always prevails any internal legal regulations made by the Turkish authorities.

#### **4.2. EVALUATION OF MINORITY APPROACH IN THE TREATY OF LAUSANNE**

Although the scope of minority concept and rights was confined with religious criteria within the Treaty of Lausanne, there is no concrete standard for application and this initiative has been left to stance of Turkish authorities up until today. Indeed, according to Turkey's official position, only Armenians, Jews and Greeks are accepted as minority groups and they have been subject to minority rights and protection principles (Oran, 2010, p.70). This situation can be seen as a result of Ottomon Millet System, according to Aras and Toktaş (2009, p.700), since these three groups were the largest Millets within the Ottoman Empire.

Under this structure which accepts only three groups as minorities, other non-Muslim communities such as Assyrians, Chaldeans and Nestorians have not been given any distinct minority status during the Republican history (Aras and Toktaş, 2009, p.700). Turkey's limitation

of minority groups only with “Non-Muslim Communities” is legally consistent since triplet criteria of “ethnic, linguistic and religious minorities” concept was replaced with “non-Muslims” within the Treaty of Lausanne” contrary to general tendency of post-World War One treaties (Oran, 2010, p.64). Yet again, the extent of “non-Muslim communities” have always been considered within a narrower approach by the Turkish authorities.

However, if the general standard which is based on the triplet of ethnicity, language and religion; it should be accepted that there are other minority groups in Turkey beyond Greeks, Armenians and Jews. Turkish standard which was defined and accepted in the Lausanne Treaty is inadequate to achieve this international standard today. It has been 96 years after the Lausanne Treaty was signed and this triplet standard has become widely accepted around the world. Besides, within the United Nations and Organization for Security and Co-operation in Europe systems, discretionary power to decide on the existence or the kind of any minority group is not left to states (Oran, 2010:65). From this point of view, there are various minority groups under contemporary international standards such as Arabs, Alawites, Circassians, Albanians, Georgians and Kurds (Oran, 2018, pp.203-223).

As it can be seen, this narrow definition of minority concept in the Lausanne Treaty was also fed by the past experiences which led to “Sèvres Paranoia”. This situation is still observable in today’s Turkey and makes it easier to understand the context in which this inadequate definition of minority was adopted in the Lausanne Treaty. Even today, the word minority is enough to make some people’s hair stand on. As it was stated by Özcan Yeniçeri, any idea which could widen the official definition of Turkey on minority concept should be seen as an existential threat to Turkish State (Yeniçeri, 2004). When looked at the development of the minority concept, it does not seem illogical for new Turkish state to adopt a narrow one on the base of religion. Since the concept

emerged as a consequence of the clash between Catholics and Protestants, religion constituted a ground for minority definition (Preece, 2001:10). However, minority concept became wider by time with the developments in the political realm of Europe. Religious character of the definition gained a national aspect with emergence of the nation-state concept (Bilgin, 2007:33). Therefore, it would not be wrong to claim that narrow definition of the minority concept put in the Lausanne Treaty does not seem inadequate to satisfy contemporary requirements only today, but it was also behind the times of 1920s. Because, distinctive qualitative features beyond religion was in use even in the times that the Treaty was signed.

It is possible to mention two different approaches when it comes to management of diversity within the societies. While *multiculturalist* approach provides a sphere for minorities to mobilize themselves on a cultural and ethnic basis; *Republicanist* approach has an assimilationist stance towards the subject (Kaya and Tarhanlı, 2006: 19). It is unquestionable that Republic of Turkey adopted the Republicanist approach with its narrow definition of minority concept in the Lausanne Treaty.

Apart from evaluating the Treaty of Lausanne on the base of its founding principles on minority definition and minority protection, another important aspect to be considered the is the appropriate application of the Treaty since 1923. According to Oran (2018, p.238), Turkey has always had a tendency to apply Treaty's protective provisions even to Jews, Armenians and Greeks within a deficient framework. The application of granted rights has been deficient since internal legal regulations have always prevailed the related provisions of the Treaty of Lausanne with the motivation of assimilation (Oran, 2018, p.254).

After revealing the main principles of the Treaty of Lausanne on minorities and their applications, another aspect of the Treaty should be taken into account since it is directly related to

contemporary global political atmosphere. With reference to minority rights' positive nature, it is widely accepted that the Treaty of Lausanne grants right to only non-Muslim groups. Yet, if well examined, it is seen that the Treaty of Lausanne grants positive rights to other groups, but these rights are not subject to any international protection while rights given to non-Muslims are (Oran, 2001, p.211). Oran classifies these groups who were granted certain rights by the Treaty of Lausanne under four different types:

- 1) Non-Muslim minorities,
- 2) Turkish Nationals of non-Turkish Speech,
- 3) Turkish Nationals,
- 4) All inhabitants of Turkey (Oran, 2018, p.239).

As shown above, non-Muslim communities are one of the four different groups gained rights with the Treaty of Lausanne. With this quality, the Treaty of Lausanne is interpreted as a document on human rights and multiculturalism (Oran, 2001). However, some authors reject this opinion asserting that the section of the Treaty of Lausanne is titled "Protection of Minorities" (Terzioğlu and Özarslan, 2007, 296). While the text of the Treaty is examined, the four different groups mentioned above are explicitly stated, thus it is obvious that the section of the Treaty also grants rights to other groups beyond non-Muslims in Turkey. More importantly, the Treaty of Lausanne's compatibility with the contemporary standards can still be questionable with its language and application. Yet, if it is interpreted in wider terms, this would definitely make a positive contribution to its scope today.

Consequently, after an evaluation of the Treaty of Lausanne's provisions on minorities and minority rights, it is possible to claim that these provisions remain incapable of reaching the developing contemporary universal standards on minority rights (Oran, 2010, pp.65-66). Besides,

the narrow minority definition implied in the Treaty of Lausanne, today contradicts with the widening tendencies around the world (Oran, 2009, p.154). It should be kept in mind that there has always been a positive progress within the scope of human rights and minority approaches as of the end of the Cold War. This situation was highlighted in the previous chapters of this study. The more flexible Turkey becomes in terms of application of the Treaty of Lausanne, the more it gets closer to international standards on the issue.

#### **4.3. LIMITED EUROPEANIZATION OF TURKEY'S MINORITY REGIME**

Although Turkey's minority regime, its approach to minority concept and protection seems shaped and restrained mainly by the Treaty of Lausanne, it is possible to claim that the European Union has a leverage effect on transforming Turkey's minority regime especially after the candidacy period started in 1999. As it was stated in the previous parts of this study, there is not common policy within the European Union on this matter. Yet, the European Union created a multi-dimensional approach to improving minority regimes in candidate countries by defining protection of minority rights as a moral condition for membership and ensures that there is a standard in the Union (Toktaş and Aras, 2009, pp.706-707). At this point, there are some notable criticisms about the approach and applications of the European Union. Member of the Union usually demand higher standards for the candidate countries on minority regimes, they remain unwilling to meet these standards with regard to their own minority population (Johns, 2005, p.684). There is a lack of common European Union policy, as well as diverse minority policies in the member states, creates such an ambiguity on minority-related issues (Vermeersch, 2003, p.9). These criticisms become more meaningful when the cases of Germany, France and Luxembourg are examined on the matter of their approach to existence of minority groups on their territories (Toktaş and Aras, 2009, p.706).

While German authorities do not recognize Turkish-German population as minority, France and Luxembourg legally do not recognize the existence of any minority on their territories either.

The European Union has always challenged the traditional minority regime in Turkey with annual progress reports by the Commission, summit decisions by the European Council and by oral and written statements by the European parliament (Toktaş and Aras, 2009, pp.706-707). Annual progress reports made by the Commission have included calls reforms on the issues of minority protection and minority rights (Hughes and Sasse, 2000, p.3). Within this framework, the Accession Partnership Documents of Turkey obviously reflects the expectations from Turkey on minority-related issues. According to these documents Turkey should be capable of fulfilling the Copenhagen Criteria that includes respect for minorities in political terms (European Council, 2001, p.3). Turkey should ensure cultural diversity and guarantee cultural rights of all citizens regardless of their origin. Also, Turkey should provide effective access to radio/TV broadcasting and education in languages other than Turkish (DPT, 2003, p.9). In accordance with the European standards, Turkey should adopt a law that addresses all the challenges faced by non-Muslim minorities in as comprehensive manner. Besides, that accordance with principles confessed in the Council of Europe Framework Convention for the Protection of National Minorities and the European Convention on Human Rights and in line with best practice in Member States, minorities should be respected, and the protection of minorities should be improved. In accordance with Protocol No. 1 of the European Convention on Human Rights, Turkey should guarantee legal protection of minorities especially regarding of property rights. Also, Turkey should adopt appropriate measures to support the teaching of languages other than Turkish (Avrupa Konseyi, 2006, p.9). Turkey should “ensure the possibility of religious education for non-Muslim minorities, including the training of their clergy (European Council, 2008, p.8).

The European Union, since it does not have a uniformed set of legal rules on minority definition and protection, also uses the treaties legislated by the Council of Europe and Organization for Security and Cooperation in Europe, yet, these are not the only sources that the European Union utilizes. The Union also uses the data produced by these organizations' monitoring mechanisms, such as the European Commission Against Racism and Intolerance (ECRI) country reports and the OSCE High Commissioner on National Minorities (Toktaş and Aras, 2009, p.709). The ECRI has released three reports on Turkey, in 1999, 2001, and 2005. At this point, it becomes clear that the pressure of the EU on Turkey to change its traditional minority regime set out in the 1923 Treaty of Lausanne is part of a larger international framework (Toktaş and Aras, 2009, p.709).

In the light of all these monitoring and pressure tools used by the European Union, Turkey has not changed its main pillars for minority related-issues, yet some significant progress was made especially during the first half of the 2000s. From this point of view, it would not be wrong to claim that the European Union has been a driving force for transforming Turkey's minority regime. This transformation, though, has not either taken place as fast as it was demanded or essential for changing the main characteristics of Turkey's minority approach. The Turkish state presents its position as that of a responsible partner in reforming individual rights and freedoms, while resisting the need to address minority rights as an independent issue (Toktaş and Aras, 2009, p.712). As part of fulfilling the Copenhagen criteria and developing its human rights record, Turkey mainly uses three fields as spheres of change and reform without changing the overall minority framework: eliminating discrimination, improving cultural rights, and improving religious freedom (Toktaş and Aras, 2009, p.712).

In terms of eliminating discrimination, according to Toktaş and Aras (2009, p.712). following actions were taken by the Turkish authorities:

- 1- Despite no change in specifying the religion on national identity cards, citizens were allowed to their faith blank on those cards.
- 2- Some certain sanctions were defined against intolerant expressions and acts directed on minority groups or their members by sections of the media or members of the public.
- 3- The new criminal code adopted in 2004 included some provisions aimed at fighting racism, prohibiting genocide and crimes against humanity, and penalizing discrimination based on language, race, color, religion, or sect in employment and access to services.
- 4- The Labor Code, which was amended in 2003, targets the prohibition of discrimination on the grounds of language, race, religion, and membership in a religious group
- 5- By Ministry of Education, religious textbooks have also been redrafted to address the concerns of Christian minorities.
- 6- With the initiation of the new laws, the Directorate of Religious Foundations is paying the electricity bills of all places of worship, including those belonging to minority religious groups.

When the Turkey's Accession Partnership Document is examined, it is seen that, on the base of cultural rights, there is an expectation by the European Union to giving priority to enhancing linguistic and cultural rights minorities living in Turkey. These expectations have been met to some extent by the Turkish authorities by the steps taken as follows (Toktaş and Aras, 2009, pp.713-714):

- 1- Although Turkey did not grant recognition to the country's Kurds as a separate minority group government granted universal cultural rights so that they benefited from the use of their mother tongue in broadcasting and in language schools. Consequently, as part of the 2002 major constitutional amendments, it became legal to broadcast in both minority languages and dialects used traditionally by many Turkish citizens in their daily lives.
- 2- Although the official language of education in the schools remained Turkish, special courses for different languages and dialects were henceforth allowed. With the EU harmonization laws of 2003, it was possible to open private schools to teach languages and dialects.

Religious freedom in Turkey is one of the most important issues to be covered during Turkey's membership negotiations with the EU. In this manner, Franco Frattini, the vice president of the European Commission and EU Commissioner for Justice, Freedom, and Security, during a speech he made regarding the killing of the priest Andrea Santoro in Trabzon, said that "freedom of religion will be a constant issue during Turkey's membership negotiations with the EU (Turkish Daily News, 2006). Progress made by Turkey on this matter during the European Union negotiation process can be summarized as follows (Toktaş and Aras, 2009, pp.714-715):

- 1- With the introduction of constitutional amendments in 2002, foundations run by non-Muslim minorities were allowed to acquire and dispose of property
- 2- With the amendment to the Law on Foundations, foundations run by non-Muslim minorities were allowed to register property that they actually used if they could provide satisfactory evidence of ownership.

3- in 2005, Turkish Council of State issued a ruling that should significantly narrow the opportunity for the Directorate General for Foundations to take over the management of a foundation and thereby effectively confiscate its property.

All these changes stated above certainly contributed Turkey's democratization process on the base of its approach to minority-related issues. It can also be seen that the European Union membership process has been a positive effect on Turkey's traditional minority regime by making slight transformation on diverse areas. Yet, it should be noted that even this Europeanization has been a limited one since Turkey has always been stuck to its deeply-rooted approach on minority concept and minority protection caused by the Treaty of Lausanne which was signed in 1923. This conclusion can be inferred when the stance of Turkish state on the re-opening of Halki Seminary, the legal status of Alevi's Cemevis and using of mother tongue in all daily activities is examined.

## CONCLUSION

Starting point of this study was to answer one of the most complex questions of Turkey both within the international and domestic context. While minority concept and minority rights have been continuously developing in international arena, Turkey always seemed less reactive to all these changes especially after the Cold War era. Although a lot has been done throughout the European Union accession process with the leverage of the European Union itself, it is still possible to claim that Turkey still has not achieved the contemporary standards set in terms of minority-related issues. It seems quite interesting to me that a country which consists of various ethnic, linguistic and religious groups still cannot meet the universal principles for the sake of better living conditions for its citizens while almost the all of its politicians have always boasted of this social diversity. This situation designates one of the most striking contradictions for modern Turkey.

As it has been inferred from this study, minority concept has been a hot spot both in domestic politics of each country which host various ethnic, linguistic and religious groups and international platform. There has been a significant amount of development within this area throughout the history and it is still quite open to progress with the changing ideals of democracy human rights and rule of law. The chronologic developments shown in the first half of this study indicates that there is still a lot to do for Turkey on this matter. Although Turkey seems to have a framework on minority-related issues on the base of the Treaty of Lausanne signed in 1923, after the examination in this thesis, there are still lots of dimensions that Turkey improve in terms of perception of minority concept and protection of minorities. Therefore, it would not be wrong to claim that the Treaty of Lausanne, today, alone cannot be an adequate source to catch up with

global contemporary trends in minority-related areas of international and domestic politics. Besides, Turkey is still a part of international organizations and sets of agreements which create important decisions about minority rights and protection, yet, the Treaty of Lausanne has a confining effect over all these decisions. Thus, when the introduction part of this study is examined, it can be seen that minority question has been one of the most important milestones for a more democratized Turkey which is more committed and aligned to universal values such as human rights and rule of law.

The first chapter called “What Is Minority in History?” tried to show that there have been various definitions of minority concept on a historical basis and these definitions have been shaped with the effect of political, social, economic paradigms of the era in subject. In general, it is claimed that minority concept has both legal and sociological definitions which show us that it is really hard to find a standard definition. Besides, minority concept has always been a controversial one since there has never been a universally agreed definition. When the emergence and historical development of the concept is examined on a chronological point of view, it can also be inferred that concept is also mutant. It is mutant since five different types of minorities put in this chapter shows the changing nature of the concept from different cohesion ideologies such as religion, language and ethnicity. The new minorities as a newly emerging category of minority groups obviously shows the changefulness of the concept with the effect of actual political, social and economic variables. The main finding of this chapter is that it is almost impossible to find a concrete and objective definition of minority concept. That is why many various attempts to define minority concept have been put into this chapter’s scope.

The second chapter was called “Minority Protection on International Level and Contemporary Trends”. Some technical legal explanations were made in this chapter to make it

easier for reader to understand following international development of the minority protection. In the first part of this chapter legal concepts such as negative/positive rights, individual/collective rights, prevention of discrimination and protection of minorities have been examined. Under the light of these concepts, in the second part of the chapter, minority protection actions have been examined on a chronological basis. According to main findings of this chapter, minority protection actions can be mainly divided into two phases during the modern history and the World War I was the turning point in terms of minority protection both in domestic and international level. As it can be understood, mainly international organizations played an important role to achieve better standards for protection of minorities after the World War I. Parallel to changing attitudes of international actors towards minority protection, there has always been progress for protection of minorities living under the sovereignty of different states. Yet, it should be kept in mind that protection of minorities, as a hot spot within the international politics, has never been free from political concerns of the international actors.

Third chapter was dedicated to examining the Treaty of Lausanne, one of the most important international legal documents concerning the Republic of Turkey. The Treaty, with the subjects it covered, has been accepted as the founding document of the modern Turkish state by authorities. It has been also important for the main inference of this study since it also covers the minority definition and minority protection regime of Turkey since 1923. Turkey took all its positions on minority-related issues according to the Treaty of Lausanne. As it has always been sanctified, the Treaty has always been quite open to speculations on political level. Again, the comments on the nature and technicality of the Treaty has always been shaped by actual political concerns of domestic actors within Turkey. These political concerns have also played an important role on international level since the signing process of the Treaty between 1922-1923.

The fourth chapter has constituted the core of this study with its examination of the Treaty of Lausanne's minority definition and minority protection regime. When the discourse analysis of the Treaty made, it is possible to conclude that the Treaty holds the political language of 1920s. Yet, there is one major difference of the Treaty of Lausanne compared to other minority-related agreements of that era. Minority concept was limited with the "Non-Muslim Population" instead of "ethnic, religious and linguistic minorities". This situation is directly related to political concerns of the Turkish delegation representing Turkey during the Lausanne Conference. After giving objective facts about the treaty while referring its related articles, it is obvious that the Treaty of Lausanne has a concrete restraining effect on minority concept and protection compared to international standards which have always been changing in favour of minority groups.

It should always be remembered that any subject related to minority concept or minority rights will be still worth to be examined academically since these areas of research has never been static. On the contrary, minority related topics have always been much dynamic since they are directly related to changes in politics, sociology and economics. It would be beneficial for future researchers on minority-related subjects to take a chronological way of examination since both minority concept and minority protection principles have always reflected the ideas, actions and reactions of the era in subject. Thus, each progress on these matters can easily be observed within a chronological concept as it has been tried in this study. Besides, since there are various ethnic, linguistic, religious groups living on earth, minority-related areas of research will always be desirous for new endeavours to illuminate new aspects on these subjects.

Since domestic and international actors, their stance on the minority-related issues and universal paradigms can change, this area of academic interest will always be dynamic in terms of further studies. This study's scope has been limited with the constraining effect of the Treaty of

Lausanne for Turkey's minority-related approaches both on definition and protection sides. Yet, subject of minority definition and protection for Turkey can be embraced within lots of different perspectives by other academic endeavours. Thus, it would not be wrong to claim that minority question of Turkey is quite open for further academic examinations. Indeed, Turkey has been a party to various international organizations and agreements. Each of these institutions and set of agreements create different areas of academic interest for future studies on this matter.

If one major conclusion would be inferred from this study, it is highly possible to claim that minority concept and minority rights as two solid subjects in politics have never been static and always developed with the leverage of international political actors. Turkey, with the Treaty of Lausanne and then with various international agreements, has always formally been a part of this progressive process. Yet, it is also clear that the standards relevant in Turkey today are far to be adequate to meet universal requirements on minority concept and minority rights since both these subjects are confined to limited language of the Treaty of Lausanne signed in 1923. Today, standards and approaches are very different compared to 1920s and minority rights indeed are an integral part of modern democratic systems. Besides, as a candidate country to the European Union, Turkey is not free from all this progress on this matter and a regenerated legal and social approach to minority concept and minority rights is required to achieve better democratic standards.

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