

## **Resolving The Religious Freedom Issue Of The Ecumenical Patriarchate**

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*“The participants in the Conference on Peace and Tolerance demand that no hostile acts be perpetrated upon any peaceful group or region . . . we demand the initiation of constructive dialogues to solve outstanding issues between those of different faiths; and demand the right to practice one’s religion in freedom and with dignity.”*

The Bosphorus Declaration (Istanbul, Turkey, 1994)

### **Introduction**

Abandoned since the Armenian genocide of 1915, the Armenian Orthodox Church of Surb Khach (Holy Cross) was reopened on March 29, 2007 after undergoing a high-profile restoration (Armenian News Network, 2007). Located on the island of Akhtamar in eastern Turkey’s Lake Van, Ankara hopes the highly publicized renovation of its country’s best known Armenian ecclesiastical building will improve tense relations with Europe, the United States and neighboring Armenia. The reopening of Surb Khach came two months after Turkey’s most outspoken Armenian journalist, Hrant Dink, was shot dead in Istanbul. The event also occurred amid continuing pressure from the European Union on Turkey to improve its policies of religious freedom.

The two-year \$1.9 million restoration of the Surb Khach Church, one of the most outstanding examples of 10<sup>th</sup> Century Orthodox Christian architecture, is a welcome gesture of religious tolerance by the Republic of Turkey, a nation that is considered by the International Religious Freedom Report (2006), released by the United States Bureau of Democracy, Human Rights, and Labor, as a “violator of international laws by imposing restrictions on religious groups and on religious expression.” Turkey’s decision, however, not to place (re-place) a cross on the apex of the church’s octagonal dome and to confine its usage to that of a museum, reveals that the country has no intention of significantly changing its attitudes towards religious minorities living within its boundaries.

The re-opening of the Armenian Church of the Holy Cross epitomizes the problems associated with a more ancient Orthodox cathedral in dire need of liberating restoration in Turkey, namely

the Church of Hagia Sophia (Holy Wisdom). Erected in Constantinople (Istanbul) by the Eastern Roman Emperor Justinian in 532 A.D., Hagia Sophia is emblematic of a vexing challenge facing the current Republic of Turkey. What is the proper church-state balance with the cathedral's original owner, the Ecumenical Patriarchate?

Universally recognized as one of the most prominent ancient centers (Sees) of Christendom, the Ecumenical Patriarchate (EP) was founded as "the Church of Byzantium" by Saint Andrew the Apostle (36 AD), a millennium before the construction of Surb Khach. One need only recall that the doctrines of the undivided and universal Christian Church were defined and solidified during the seven Ecumenical Councils, all of which were convened under its religious jurisdiction, to understand the vital leadership role played by the EP throughout history.

It was in the jurisdictional territory of the EP that the New Testament was codified, the ecclesiastical framework of the Christian Church established, the creedal formulas developed, and the magnificent cathedral of Hagia Sophia constructed. Symbolizing the Orthodox Christian view that understands the Church and the state as two equivalent institutions, two gifts of God, each with their respective domains of concern (Symphonia), Emperor Justinian and Patriarch Menas opened the great domed cathedral on Christmas in 537. In accordance with the ideals of "Symphonia" they entered hand in hand.

When Constantinople fell to the Ottoman Turks in 1453 A.D., the Christian basilica of Hagia Sophia was converted into a mosque. While its magnificent mosaic icons were, at first, allowed to remain, they were eventually removed or covered in keeping with Islam's ban on the graphic depiction of spiritual beings. In 1934, however, after establishing Turkey as a secular state in which religion was to be held in a sphere separate from government, law, and politics, the first president of Turkey, Mustafa Kemal Atatürk (1923-1938), ordered that Hagia Sophia be closed as a mosque and her icons restored. However, rather than return the basilica to the EP, he insisted that the historic church become a state-sponsored museum.

From what has been briefly described it would be safe to surmise that, while there was certainly a most favorable beginning to Church-State relations in Turkey, the condition of the EP today

provides a useful case study of how the free and equal expression of religion suffers when governments refuse its coexistence. Vryonis (2007), Koumakes (1982), Whitman (1992), Kaloumenos, D, (1966), Ioannides (2006) and others (Helsinki Watch; World Council of Churches) have substantively chronicled the religious as well as human and civil rights violations against religious minorities such as Jews, Catholics, Orthodox Christians and, more specifically, the Greek and Armenian communities living in Turkey during the previous century. Framed in such a fashion it is quite appropriate for a Round Table Discussion on Church/Religion-State relationships to include an honest and open assessment of the current situation of the EP that claims that the Republic of Turkey has committed the following specific violations against its religious liberties:

1. The confiscation of 75% of the 1,747 properties owned by the EP, including an orphanage the Church has held since 1902.
2. The placement of a 42% tax, retroactive to 1999, on Church properties such as the Baloukli Hospital treating 30-40,000 patients a year of which 99% are Muslim and Turkish citizens.
3. The closure of the Orthodox Christian Theological School at Halki.
4. The requirement that only Turkish citizens may be selected as canonically eligible to become the Ecumenical Patriarch.
5. The refusal to recognize the EP as a bona fide legal entity, a critical issue since, without a legal personality, it cannot own property and properly function as a religious institution.
6. The illegal ownership and use of the cathedral of Hagia Sophia as a state-sponsored museum.

Similar to the process employed by Ankara to restore the Orthodox basilicas of the Holy Cross and Hagia Sophia, each of the aforementioned violations should undergo an appropriate consignment of restitution based on accepted global definitions of religious liberties. Such a restoration would, therefore, contribute to the full expression of the EP as a thriving worldwide Orthodox Christian center as opposed to what would be, at best, that of a musty museum of past religious glories. Such an intellectual renovation might best begin with a gentle sandblasting of modern veneers of public misperceptions, followed by the exposition of two important elements

that contribute to the current problematic church-state situation in Istanbul, namely: (a) the historical and ecclesiological development of the EP, and (b) the political ideology of modern Turkey. A proposed solution to the issue of religious freedom, comprised of twelve (12) general recommendations, follow a discussion of specific violations perpetrated against the EP by the Turkish government.

### **The Ecumenical Patriarchate**

**Historical Foundations.** The EP is the honorary and spiritual centre of over 300 million Orthodox Christians throughout the world, tracing its history back to the day of Pentecost and the earliest Christian communities founded by the Apostles of Jesus Christ. Consequently, the EP is the highest See and the holiest center of the Orthodox Christian Church throughout the world. It is an institution with a history spanning seventeen (17) centuries. Saint Andrew the Apostle is considered to be the first occupant of the Throne of Constantinople. His All Holiness Patriarch Bartholomew is the 270th successor of Saint Andrew the Apostle and, as such, the current occupant of the Ecumenical Throne.

The EP constitutes the center of all the local Orthodox churches, heading these not by administration but by virtue of its primacy in the ministry of pan-Orthodox unity and the coordination of the activity of the whole of Orthodoxy. The 3<sup>rd</sup> Canon of the Second Ecumenical Council held in Constantinople (381) confers upon the bishop of this city second rank after the bishop of Rome. Less than a century later, the 28<sup>th</sup> Canon of the Fourth Ecumenical Council (451) offered Constantinople equal ranking to Rome.

The EP holds an honorary primacy among the autocephalous or ecclesiastically independent Churches. It enjoys the privilege of serving as *primus inter pares*, first among equals. While, as a title, the phrase Ecumenical Patriarchate dates from the sixth century and belongs exclusively to the Archbishop of Constantinople, its role was defined as early as the fourth century. At the Fourth Ecumenical Council of Chalcedon (451), the Archbishop of Constantinople was given “equal privileges” to the Bishop of Rome.

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In 330, the Roman Emperor Constantine (306-337 AD) transferred the imperial capital to the small city of Byzantium, renaming it Constantinople or “New Rome.” By virtue of its position as the "Queen City" and as capital of the Byzantine Empire, Constantinople became a very important center of the ancient Christian world. Due to its new political and historical importance, the city quickly assumed prominence politically and ecclesiastically.

By the fifth century, the great Christian jurisdictions (Sees) of the Roman-Byzantine Empire came to number five: one Latin-speaking (Rome) in the West, and four Greek-speaking (Alexandria, Antioch, Constantinople, Jerusalem) in the East. The great and early importance of Alexandria, Antioch, and Jerusalem was, however, soon to be diminished by the invasion and permanent occupation of their territories by the Islamic Arabs in the seventh century. Henceforth, though Orthodox patriarchs continued to exist there, ecclesiastical primacy over the Orthodox Christian East inevitably passed to the capital city, Constantinople.

In summary, the Second Ecumenical Council (381 AD) recognized the See of Constantinople as a Patriarchate, while the Fourth Council (451 AD) recognized it as the first See of the East and second only to Rome. In the year 595 the Patriarch of Constantinople was recognized as the Ecumenical Patriarch and his See as "Universal." After the Great Schism in 1054 the EP emerged as the world center of the Orthodox Church and the Patriarch was recognized by the Orthodox leaders as *Primus inter Pares*.

Ecclesiastical Foundation. According to Roman Catholic ecclesiology, the Pope (Patriarch in Greek), holds more than titular primacy as “first among equals” over the other four religious leaders. The Pope has the right to intervene and to act as supreme judge in the internal affairs of all other churches.

An alternative to the Roman Catholic monarchical view of the Church (Monarchy) is the Eastern Orthodox concept referred to as the Pentarchy Model (Runciman, 1955; Ware, 1993). According to this ecclesiological theory the Church is governed by a supreme body of five religious leaders, each of who exercises jurisdiction over a specific ecclesiastical area but who must convene with the other four in ecumenical councils to regulate matters of dogma and church discipline. The

Pentarchy model was firmly established by the Byzantine Emperor Justinian in the mid-sixth century, as is clearly reflected in his civil-ecclesiastical laws.

However, although the theory of Pentarchy stresses collegiality, Canon 3 of the First Council of Constantinople (381) nonetheless specifically states that the bishop of that city "shall have primacy of honor after the Bishop of Rome because Constantinople is the New Rome." Thus it assumed a position higher than the more ancient Patriarchates of Alexandria and Antioch. In its disputed 28th Canon, the Council of Chalcedon in 451 recognized an expansion of the boundaries of the Patriarchate of Constantinople and of its authority over areas outside the Byzantine Empire or to non-Greeks. In any case, for almost one thousand years the Patriarch of Constantinople presided over the church in the Eastern Roman (Byzantine) Empire and its missionary activity that conveyed the Christian faith in its Byzantine form to many peoples north of the imperial borders. It is no surprise, therefore, that Hagia Sophia, the cathedral church of the Ecumenical Patriarchate in Constantinople, became the emblematic center of religious life for the eastern Christian world.

### **The Turkish Republic**

Unlike the Byzantine principle of Symphonia, the modern Turkish republic was founded on a set of assumptions and reforms that forge a modern nation-state that seeks to remove all manifestations of religion from the public sphere and put them under the strict control of the state (Lewis, 1965). Mustafa Kemal Atatürk (1881-1938), the founder of the Turkish Republic and its first President (1923), is regarded as the creator of the secular nationalist ideology of Turkey (Eisenstadt, 1997). As a declared non-believer, Atatürk officially ended the Muslim Caliphate in 1924. He banned the Islamic dress code, Arabic script, Islamic titles, Islamic family law, and the Islamic calendar claiming that in his new Turkey people would be treated equally regardless of religion. His ideology is referred to as Kemalism. While the tenants of Kemalism should be respected, the harsh realities of its consequences on religious minorities in Ankara should be open to honest scrutiny (Vryonis, 2007).

Kemalism is based on six fundamental principles that undergird the Constitution of modern Turkey. They are: (a) Republicanism, (b) Populism, (c) Secularism, (d) Revolutionism,

(e) Nationalism, and (f) Stateism, (Karal,1997). While it is not the scope of this study to describe each of the principles individually, a brief examination of the secularist principle provides a helpful backdrop for better understanding the problems of religious liberty currently plaguing the EP.

**The Principle of Secularism.** Kemalist secularism advocates the separation of state and religion. It advances the absence of religious interference in government affairs (vice-versa) and independence of institutions from the dominance of religious thinking and religious institutions (Berkes & Feroz, 1998). While it does not advocate atheism, the Kemalist principle of secularism is anti-clerical and, as such, an ideology of laicism. It is not against an enlightened Islam, but against an Islam that is opposed to modernization and democracy. The Islamists in Turkey are opposed to this principle because its aim is the secularization of the Islamic society.

It is here important to note that Kemalism (laicite) is a specific version of secularism designed to allow the state to control, and not replace, all aspects of religion in public life in Turkey. Through the Directorate General of Religious Affairs (Diyamet), the Directorate of Foundations (Vakiflar), and Ministry of Education, as well as the National Council of Education, the Turkish Consequently, this is not secularism in the sense of complete separation, but instead, a version of secularism whereby the state controls and utilizes religion for political purposes.

One of the major results of the Kemalist principle of secularism was the abolishment of the Caliphate on March 3, 1924. Consequently, the article stating that "the established religion of Turkey is Islam" was removed from the constitution and the principles of secularism and revolutionism was added. Neutral in religious affairs, the constitution insists that no Turkish politician can be a protector of any religion or religious sect. Accordingly, the Turkish state must remain an equal distance from all religious groups, neither promoting nor condemning any set of religious beliefs. The government, through the Ministry of Religious Affairs, carefully analyzes decisions related to any religion and is responsible for overall management of religious issues affecting the state.

Secularism, in and of itself, does not automatically negate the dangers of fundamentalism. Prodromou (2005) refers to the examples of European communism, fascism, many right-wing party politics in Western European countries and debates about Fourth Amendment Rights under the US Patriot Act, as compelling evidence of the political ill effects of (Kemalist) secularism in Turkey. Consequently, it can be argued that secularism has unintentionally produced “the kinds of state-sponsored violations of religious human rights that are intrinsically incomparable with democracy . . . of which the experience of the Greek Orthodox community in Turkey is a case in point” (Prodromou, pp. 12-13).

### **Violations Of Religious Freedom**

The executive summary of the International Religious Freedom Report (2006) provides a useful typology of the five (5) major types of abuses of religious liberties that currently persist throughout the globe: (a) totalitarian/authoritarian regimes, (b) state hostility toward minority religions, (c) state neglect of societal discrimination, (d) discriminatory legislation that favors majority religions, and (e) denunciation of certain religions as cults.

The first category is characterized by regimes that seek to control religious thought and expression. While the second category of abuses of religious freedom occurs with state hostility toward minority or non-approved religions through policies designed to intimidate or harass, the third kind of abuse stems from a state’s failure to address either societal discrimination or societal abuses against a religious group. In such countries, while religious groups are protected against overt persecution, legislation fails to prevent conflicts, harassment.

The fourth category of abuses describes governments that have enacted discriminatory legislation or policies that favor majority religions while at the same time placing minority religions at a disadvantage. In such countries, religions linked to national identity are favored over others. Finally, the fifth category outlines the abuse of identifying certain religious groups as dangerous cults or sects.

The violations of religious freedom committed against the EP by the Turkish government may be clustered in six principle categories: (a) property/real-estate constraints, taxation, and

confiscation, (b) international status and historical reputation, (c) educational restrictions, (d) interference with issues of internal governance, (e) repudiation of the EP's legal status, and (f) illegal ownership and use of the cathedral of Hagia Sophia (Trakatellis, 2005; Makris, 2006; Prodromou, 2005; Greece Ministry of Foreign Affairs, 2007; International Religious Freedom Report, 2006). While these abuses do not smartly fall into the aforementioned typology provided in the International Religious Freedom Report Executive Summary (2006) they, nonetheless, typify general characteristics of several of the six categories.

1. Property/Real-estate Constraints, Taxation, and Confiscation. The first cluster of violations of religious freedom committed against the EP by the Turkish government is property/real-estate constraints and confiscation.

In 1936, Turkey's Law on Foundations No. 2762, placed Orthodox Christian property under the administration of the General Directorate of Foundations that has the power to dissolve foundations, seize foundation property, dismiss foundation boards of trustees without judicial decisions, and intervene in the management of foundation assets and accounts. The current law gives the power to the General Directorate of Welfare Foundations to classify minority properties as "mazbut" (seized) and therefore confiscate them. In addition, according to a 1974 ruling of Turkey's highest court, the government of Turkey forbids the buying or selling of real estate acquired by minority foundations after 1936. Property belonging to these foundations and acquired since that time has reverted to the State without remuneration.

To date, a total of 136 properties belonging to one important Patriarchal entity, namely, the Baloukli Hospital, have been forced to cede to the state in accordance with this ruling. The Baloukli Hospital is a private hospital of the EP that administers care without discrimination to all Turkish citizens. The government recently imposed an unbearable retroactive tax upon the very same Baloukli Hospital, leading it to unavoidable bankruptcy.

The highest court of Turkey ruled that the government could also confiscate a very large and historic orphanage belonging to the Greek Orthodox community on the Prince's Islands on the grounds that it had fallen into disuse. In reality, the government has repeatedly refused, over the course of decades, to issue the necessary permits for the maintenance and repair of the structure.

In April 2005, the EP filed an appeal with the European Court of Human Rights (ECHR) concerning the General Directorate for Foundations' (GDF), expropriation of the orphanage. The GDF is the governmental agency that regulates the activities of some 161 officially recognized non-Muslim religious groups (International Religious Freedom Report, 2006). To date, there are no new developments in the case. In addition to the Baloukli and the Prince's Islands confiscations, hundreds of other Patriarchal properties have been arbitrarily confiscated in the recent years by the Turkish government.

2. International Status and Historical Reputation. The second cluster of violations of religious freedom committed against the EP is associated with Turkey's refusal to acknowledge the Patriarchate's international status and historical reputation. Although the International Religious Freedom Report (2006) mentions that Turkish authorities generally do not interfere with the activities of the EP it, nonetheless, supports the claim that Ankara does not recognize the ecumenical status of the Orthodox Patriarchate claiming that it violates the 1923 Lausanne Treaty. The legal international status of the EP has been contested by Turkey on the grounds that the Patriarch is simply the religious leader of the Greek Orthodox Community in Turkey and, as such, limited to its country alone. Issues of internal governance and succession are therefore considered matters of the Turkish authority alone.

In order to deprive the EP of additional hierarchs, the Turkish government employs the formulation described above, to restrict the selection of new bishops and that of Patriarch only to Turkish citizens. All of this is pursued without a relevant citizenship requirement clause placed in the Lausanne Treaty nor in the Constitution of Turkey. The primary example of this deprivation is the consistent denial by the Turkish government of the EP's use of the title "Ecumenical." As previously cited, this title was granted to the Ecumenical Patriarch in the sixth century in recognition of his occupying the See of Constantinople, which was the center of the Roman/Byzantine Empire. All foreign governments and Christian Churches universally acknowledge this title.

Despite this wide recognition of the Ecumenical Patriarch's status as leader of the world's 300 million Orthodox Christians, the Turkish government's official position is that the Patriarch is

not Ecumenical Patriarch, but simply and only the religious leader of the Greek Orthodox minority population of Turkey, which, though once numbered in the hundreds of thousands, today stands at a population of less than 2,500 (International Religious Freedom Report, 2006).

A most recent example of this violation concerns a document outlining a high court appeal decision in favor of the Patriarchate's right to issue documents in the Greek language. A close examination of the text, however, reveals that the Turkish court utilized the decision to include a warning that any reference by the Patriarchate to itself "ecumenical" is unlawful. To make matters worse, Kemal Kerinciz, an ultra-nationalist lawyer, has also applied to the public prosecutor to stop the Patriarch from convening a synod with metropolitans from other foreign national (Autocephalous) Orthodox Churches. The result of these current actions is the metropolitans of the Orthodox Church in Turkey have now been assigned police guards by the Governor's office in Istanbul.

3. Educational Restrictions. The third cluster of violations of religious freedom experienced by the EP is Turkey's interference and restrictions imposed on the education of Orthodox Christian clergy. This violation is a serious deprivation of the fundamental religious right of a religious community to develop its clergy and its spiritual leaders through study and education.

In 1971 the Turkish government closed the Halki seminary on the island of Heybeli in the Sea of Marmara, the sole educational institution for the training of the Greek Orthodox clergy of the EP. Although the Seminary provided both secondary and vocational education, its closure was based on the pretext of abolishing private higher education (International Religious Freedom Report, 2006).

The Halki Seminary was founded in 1844 to provide training for prospective priests who would serve the religious and spiritual needs of the Ecumenical See and Orthodox Christians around the world. Until 1971, the Halki Seminary came directly under the auspices of the Ministry for National Education of Turkey, and its status was governed by the Statute of the Halki Seminary, approved on 25 September 1951 by a decision of the Supreme Education Council of the Turkish Ministry of National Education.

The closure of the Halki Seminary is, in essence, a fundamental violation of the Lausanne Treaty (see above), the European Convention of Human Rights, and other international texts on human and minority rights, which are binding for Turkey. The issue of the Halki Seminary is an important element of the reforms that Turkey should implement in order to improve its human rights record within the framework of its European perspective and as pointed out in the Annual Progress Reports of the European Commission on Human Rights (2005; 2006). Although, the U.S. government, through its Embassy in Istanbul, continues to urge the government to permit the reopening of the Halki seminary, it is expected to continue to be among the European Union's concerns within the framework of Turkey's accession process (International Religious Freedom Report, 2006).

4. Interference with Internal Religious Governance. The fourth cluster of violations of religious freedom committed against the EP is the interference of the Turkish government with the issues of internal governance of the EP. In order to deprive the EP of additional hierarchs, in 1923 and 1970 the Turkish government issued decrees to restrict the selection of new bishops and that of Patriarch to only Turkish citizens.

The Canons of the Orthodox Church state that the Ecumenical Patriarch is to be elected from the entire pool of hierarchs of the EP. Currently there are only 15 hierarchs in Turkey with Turkish citizenship and 40 hierarchs of the EP outside of Turkey. Additionally, there are only two deacons and two priests working at the Ecumenical Patriarchate as candidates to replace them in the future. The result of the 1923 and 1970 restrictions is that in the not so distant future the EP may not be able to elect an Ecumenical Patriarch. All of this is pursued without a relevant citizenship requirement in the Lausanne Treaty or the Constitution of Turkey.

It should be noted, however, that in 2004 Ecumenical Patriarch Bartholomew appointed six non-Turkish citizen metropolitans to the Holy Synod. This action represented, for the first time in the eighty-year history of the country, that non-citizens had been appointed to that ecclesial governing body. To date, the government has not formally responded to the appointments (International Religious Freedom Report, 2006).

Finally, as a result of the non-recognition of the legal personality and the ecumenical nature of the Patriarchate, clergy who come from areas outside of Turkey are not eligible to apply to the authorities for Turkish residence and work permits.

5. Repudiation of the EP's Legal Status. The fifth cluster of violations of religious freedom committed by the government of Turkey is its adamant refusal to provide legal status to the EP. The unwillingness of Turkey to grant legal protection to the EP leads to a host of negative consequences.

The EU-Turkey 2003 Accession Partnership instructs Turkey to conform to European standards with respect to religious freedom and the protection of minorities. The Turkish State continues to violate the Lausanne Treaty by not recognizing legally the Ecumenical Patriarchate, and it has not made any progress towards the EU-Turkey 2003 Accession Partnership. Not having a legal identity is a major source of many other problems of the Ecumenical Patriarchate in Turkey.

As with all religious minority institutions in Turkey (see Kemalist Principle of Secularism above) the EP is recognized as a Turkish institution, subject to the policies and restrictions of the Turkish Office of Religious Affairs. As such, the EP does not enjoy legal status as an independent entity and thereby affects its ability to petition the Turkish government for adequate redress on any and all legal issues (see below). It also affects the EP's ability to press its claims, objectively recognized as legitimate. Instead, the individual persona of the Ecumenical Patriarch must bear the burden of relying on his own personal legal status to represent the EP on all legal matters. The EP, as such, does not enjoy legal personality and is vulnerable to civil court abuses.

6. The Return of Hagia Sophia. The sixth and final cluster of violations of religious freedom committed by the government of Turkey against the EP concerns the ownership and status of the historic Church of Hagia Sophia.

Hagia Sophia was the first Christian sanctuary of significance built to serve as the cathedral church of the Eastern Roman Empire. On May 29, 1453, the Ottoman Turkish Sultan Mehmet

the Conqueror seized the Imperial City and converted the great church into his mosque. It remained a mosque until 1935 when the Turkish head-of-state, Mustafa Kemal, converted it into a museum. Years later the plaster which had been applied by the Muslims to cover the icons was removed revealing for the first time to modern eyes the extent of the desecration perpetrated by the Muslims in their effort to render the structure appropriate for their own purposes.

Although the Turkish government has allocated funds for minor repairs and for restoration of some of the iconography to make the edifice usable as a museum and tourist attraction the church is in dire need of complete restoration. The Turkish government should return Hagia Sophia to the exclusive possession and ownership of the EP and grant reasonable permits for its repair and restoration as a Christian temple for public worship. This gesture should be viewed as a critical condition precedent to any further consideration of its application to join the European Union.

Due to the aforementioned six clusters of violations and given the demand on the part of Turkish authorities that the entire clergy be comprised of Turkish citizens, coupled with the fact that the ethnic minority has dwindled, it is obvious that the EP runs the risk of not being in a position to carry out its mission.

### **Legal Status**

Turkey continues to systematically violate provisions of the Lausanne Treaty (Articles 14, 37-45) regarding minorities, as well as provisions such as Article Nine on Religious Freedom in the European Convention on Human Rights (Greek Ministry of Foreign Affairs). As a result, the EP continues to face many serious problems. According to Turkey's official description, however, there are no minorities in Turkey with the exception of those who are mentioned in the Lausanne Treaty: Greek and Armenian Orthodox, and Jews. Consequently, since no religious establishment in Turkey can obtain legal status, neither the EP nor the Armenian Church have legal status.

The provisions of the Lausanne Treaty indicate that 73,000 Greeks were accorded Turkish citizenship while 30,000 Greek citizens permanently established until then in Istanbul, remained there as members of the Greek-Orthodox community, on the basis of a separate Protocol signed

on the same date (July 1923). Taking into consideration that the families as well as the enterprises of the above population were strictly connected with Istanbul, this population constituted an integral part of the city. The Turkish side accepted their right to stay in their place of birth. This was the result not only of the Lausanne Treaty but also of the Greek-Turkish Conventions signed in July and October of 1930.

Minority foundations were originally established by Ottoman imperial decrees called “fermans”. In 1936, however, Turkey placed foundations under the control of the General Directorate of Foundations as it regarded foundations as a threat to the secular regime. The primary goal of the newly established governmental agency was to, therefore, limit the autonomy of all minority groups in Turkey. The situation was further compounded as a result of an Appeal Court (Yargitay) ruling in 1974 which re-classifying foundations as Charters.

As a result of this controversial decision, two principles emerged: (a) the interests of the state out-weigh the rule of law, and (b) all minorities were considered “indigenous foreigners” and therefore considered a danger to the Turkish state. Classified in such a fashion, minority foundations lost their legal status and, therefore, became vulnerable to arbitrary legal rulings, personal atrocities, persecution, and property confiscation.

Three primary classifications of official documents protect the legal status of Greek Orthodox Christians in Turkey. They are: (a) the Lausanne Treaty (1923), (b) the Constitution of the Republic of Turkey, and (c) various international conventions and protocols on human rights to which Turkey is a signatory.

The Lausanne Treaty. The Lausanne Treaty recognized the religious minority status of three communities namely, (a) Greek Orthodox, (b) Armenian, and (c) Jewish communities. The Treaty established a human rights regime for these specific religious groups and provides for full autonomy and administrative self-governance for the Greek Orthodox minorities.

Articles 37-45 of the Treaty provide that the Greek Orthodox minority in Turkey enjoys political, civil, religious, property, and educational rights as Muslim citizens. Article 37 guarantees and

refers to these minority rights as: “. . . fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.” More specifically, and for purposes of this study, articles 40 and 42 guarantee the security of the Greek Orthodox minority and their religious institutions.

The Constitution of the Republic of Turkey. The religious and human rights of the Greek Orthodox minority living in Turkey are also defined and protected by the Constitution of the Republic of Turkey itself. According to the International Religious Freedom Report (2006), the constitution provides for freedom of religion, and the government generally respects this right in practice. Articles 10 and 24 reinforce these rights.

Article 10 provides for equality before the law by stating that: “all individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations,” and, “State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.”

Article 24 of the Constitution provides for the freedom of religion, conscience and education. The article states that: “Everyone has the right to freedom of conscience, religious belief and conviction.” The provision continues by asserting that; “Acts of worship, religious services, and ceremonies shall be conducted freely (provided that they do not violate the provisions of Article 14).” Although Article 24 further provides that “education and instruction in religion and ethics shall be conducted under state supervision and control . . . and in the case of minors, to the request of their legal representatives,” the Greek Orthodox Seminary of Halki was closed in 1971 for violating the Kemalist principle of secularism (see above). The 2006 International Religious Freedom Report acknowledges the existence of this violation by stating that the Turkish government imposes these restrictions “usually for the stated reason of preserving the secular state.”

International Agreements. The third classification of documents to which Turkey should be held to compliance includes international agreements. Article 14 of the European Convention on

Human Rights and Fundamental Freedoms (1963) specifically requires Turkey to uphold the principle of non-discrimination of rights of religious freedom. Article 14 states that: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Charter of Paris for a New Europe (1990) affirms that: “the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right to freely express, preserve and develop that identity without any discrimination and in full equality before the law. We will ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his rights.”

Similar to the Charter of Paris, the Final Act of the Helsinki Accords (1975) contained guarantees of basic freedoms. While Principle VII includes references to the freedom of belief and religion, thought and conscience, Principle VII supports the respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.

The Helsinki Accords insists “participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.” Furthermore, the Accords place the following obligations on its signatories:

- *They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.*
- *Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.*
- *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.*

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- *The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and cooperation among themselves as among all States.*
- *They will constantly respect these rights and freedoms in their mutual relations and will endeavor jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.*
- *They confirm the right of the individual to know and act upon his rights and duties in this field.*
- *In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including the International Covenants on Human Rights, by which they may be bound.*

Despite being sheltered by the aforementioned covenants, the population of the Greek Orthodox minority in Turkey has steadily declined from an estimated 110,000 in 1923 to less than 2,500 today (International Religious Freedom Report, 2006).

In his briefing on religious freedom in Turkey (2005) Christopher H. Smith, Co-Chairman of the Helsinki Commission on Security and Cooperation in Europe stated that, “although Ankara has made some strides to bring its legal process into conformity, Turkey’s system of regulating religious groups remains problematic.” Smith continued by asserting that “serious problems are being experienced by the EP . . . areas that require close attention and urgent action.” While various EU commissions on security and religious freedom continue to examine the difficult conditions in which the EP exists, it has failed, to date, to impose strict requirements for Turkey to acquiesce to the international treaties and protocols to which it is a signator.

### **Religious Freedom Models**

In the past, the main preoccupation of governments throughout the world was how to secure the state in its development from aggressive religious organizations. Today, in contrast, it is usually the modern state that represents a potential threat to the spiritual liberties of its citizens

and their religious organizations. Generally speaking, there are four clearly differentiated possibilities of church and state relations: (a) complete integration / fusion of the two, (b) a state church, (c) separation with various degrees of strictness or cooperation between the state and religious organizations, and (d) antagonism (Sanneh, 1988).

The history of church/religion-state relations in modern Turkey vacillates between a separation with various degrees of strictness on the one hand and outright antagonism on the other. This attitude is characterized by the tension between Kemalist secularism and societal Islam. As we have observed, Kemalism is a top-down secularist model with a tightly controlled religious bureaucracy. The result of its secular fundamentalist policies has been the severe infringement on the religious liberties of minority groups living in Turkey. Are there alternative patterns of interaction that can be used to promote a more harmonious relationship between the Turkish state and the EP? Are there elements within Turkey that would provide a model that would successfully provide remedies to the violations of religious freedom committed against the EP described above? The following six general political models provide alternative approaches to the expression of religious freedom in Turkey.

The Austrian Model. The first alternative to Kemalism is the Austrian multi-religion state church model. The Law of Recognition of Churches (1874) guarantees recognized churches the right to participate in the state-controlled religious taxation program, to engage in religious education, and the right to enlist the assistance of non-resident religious workers. An inherent problem with the Austrian Model is the designation of what constitutes recognized church status. Numeric and other civic requirements create unintended infringements on religious human rights by excluding smaller religious groups.

The Greek State Model. The second political model that offers an alternative to existing Kemalist –based church/religion-state relations in Turkey is the Greek State model. The government of Greece recognizes the Orthodox Church as the official religion of the state. The Church is consequently given special legal status and benefits. The Constitution of Greece assures that the Church has the right of self-government. The Council of State can, therefore, only cancel matters relating to governmental concerns. When compared to the privileged status

of the Orthodox Church, however, other religions experience a disadvantaged status that has proved particularly problematic.

The Spanish Model. The third alternative to Kemalism is the Spanish model whose Constitution (1978) recognizes five principles of religious freedom: (a) the fundamental rights of ideological liberty, (b) religious liberty and freedom of worship for both individuals and groups, (c) equal treatment under the law with no discrimination on the basis of religion, (d) non-establishment of any religious belief, and (e) cooperative church/religion-state relationship. By providing such a pluralistic framework, however, this model classifies religious groups into four levels with varying non-equal degrees of protection and relations with the state. The four official religions inscribed in the State Religious Entities Registry are: (a) Roman Catholic Church, (b) Protestant (evangelical), (c) Jewish, and (d) Muslim faiths. Faith groups that are not able to classify themselves within the four clusters are considered religious organizations or private associations that do not have the rights and benefits of religious organizations. It should here be noted that the Roman Catholic Church has a special relationship with the state.

The Spanish Religious Freedom Law of 1980 grants individuals a wide range of religious freedoms. Citizens may practice any religious belief, to change religions, and to express religious beliefs openly. They also have the right of freedom of religious worship, the right to instruct and be instructed in religious teachings, and the right to engage in religious activity. Not all religious groups, however, are officially recognized or treated the same. As such, individuals or groups are not allowed to promote any activity related to psychic phenomena, the spread of humanistic and spiritualistic values, or foreign religious values.

The Netherlands Model. The fourth alternative to Kemalism is the Netherlands model. Although specifically omitted from the constitution, churches in the Netherlands enjoy full and equal religious freedom. Religious groups, organizations, and individuals are guaranteed certain fundamental rights, including the right to freely organize, construct buildings, train clergy, and operate freely in society. The Netherlands code guarantees legal status to all churches and religious entities.

The American Model. The fifth alternative solution that may counter the strict Kemalist attitude of Turkey towards the EP is the American model or what is sometimes referred to as the liberal model. The American model advocates a separation of church and state that denotes detachment of religious organizations from secular authorities in all forms. Although, as a theoretical model conceived in Europe, it has been rarely practiced on European soil. Ferrari (1988) observes that the structures supporting such a separation could not be found in the legal systems of most European countries. Hence this model is often considered to be an American contribution to liberal political theory and a core value of American political life.

The American Model owes its wide acceptance to its ambiguousness and multiple meanings. Some of those specific meanings are even contradictory which, in turn, has created a series of legal controversies. Five (5) forms along a continuum of separating religious organizations from the state can be outlined: structural separation, absolute separation, trans-valuing separation, accommodation, and equal separation or neutrality (Weber, 1988).

Structural separation is a minimalist form of separation with a huge area of overlapping authority or claims to it. As part of Western political culture, structural separation could be considered an outcome of the Two Swords Theory (spiritual and temporal power) formulated by Pope Gelasius I (pope 492–496). A good portion of western political history was developed as a result of dialogue/conflict issues surrounding the pope and different temporal rulers.

Absolute or strict separation is on the other extreme pole of the church/religion- state separation continuum. It evolved as a consequence of strict interpretation of the First Amendment to the US Constitution that states that, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” One of the advocates of this model is the U.S. Supreme Court justice Hugo L. Black, who stated the following in the 1947 Everson v. Board of Education case:

*“Neither a state nor the federal Government can set up a church. Neither can pass laws that aid one religion, aid all religions, or prefer one religion over another... No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever format they may adopt to teach or practice religion. Neither a state nor the*

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*Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.”*

This reading of the First amendment is in line with President Thomas Jefferson’s words from 1802 that the First Amendment (1791) aims to “erect a wall of separation between church and state.” However, this model has never been thoroughly applied even in the United States.

The third option along the church/religion-state continuum is often referred to as transvaluing separation (Weber, 1982). Advocates of this form of separation, which is based on the cessation of all religious influence on public education and the nation’s political culture, see religion as a strictly personal, private affair that has no role to play in public affairs of society. This model can easily turn into complete expulsion of religion from public discourse and life. It may, therefore, be argued that this form of separation was the basis of the overt atheistic leaning that characterized the constitution of the former Soviet Union.

A very different model of separation is that of supportive separation. Also referred to as the accommodation principle, supportive separation is based on the principle that state and religious organizations may support each other as long as the state does not give preference to one religious organization over others in administering such support. Finally, equal separation, sometimes called the neutrality or nondiscrimination principle, rejects all political or economic privilege, coercion, or disability based on religious affiliation, belief, practice, or lack thereof. However, according to Weber (1988), equal separation “guarantees to religiously motivated or affiliated individuals and organizations the same rights and privileges extended to other similarly situated individuals and organizations . . . protects the right of religiously motivated groups and individuals to participate in the political process and the economic system in the same manner and to the same extent that it protects the rights of other similar groups and individuals to participate” (p. 685).

Muslimhood Model. The sixth and final alternative approach to the issue of the EP’s existence in Turkey is what White (2005) refers to as the “Muslimhood” model. In this model, Islam’s religious influence/existence in politics is limited to the ethical and moral inspiration of individual behavior (White, 2005; Prodromou, 2005).

The Turkish Muslimhood model constitutes a radical challenge to the notion that Islam and the state are inseparable. While some argue that full religious freedom might contribute to an increase in the influence of Islam and, thus, endanger the western orientation of Turkey, it is unwise to negotiate the issue of religious liberty in Turkey through such apprehensive spectacles. It is vital for the future of the EP that the EU require full religious freedom as a core demand, so that religious pluralism can be strengthened to the point that it can provide another way for coping with the hostility of some Islamic groups.

Many expected Turkey's move towards modernization to lead to a decline in religious attachments. Instead, the processes of modernization transformed traditional Islamic beliefs and groupings and moved Muslims into the public sphere. As a result, elections held in November of 2002 gave power to Turkey's Justice and Development Party (JDP), the nation's first overtly Islamic political group. While debates over the compatibility of Islamic religious views with democratic values and intents continue, political groups in Turkey such as the JDP have attempted to negotiate a balanced middle path by adopting the guiding principles associated with the Muslimhood Model (Prodromou, 2005).

Like JDP, the Nur movement of Fethullah Gulen (1938) is another example of an influential movement in Turkey that provides a way for Muslims to decide how they should live within a democratic system. The Nur movement, also known as Nurculuk, differs from other Islamic movements in terms of its understanding of Islam and its strategy of transforming society by raising individual consciousness. As a resistance movement to the ongoing stateist modernization process in Turkey, it is forward looking and proactive. The movement represents a shift in the institutional location of Islamic authority, from the mosque to the elite. This faith-based social movement brings Islam back to the public sphere by merging Islamic idioms with global discourses on human rights and democracy.

As a consequence of these developments, two competing visions of secularism exist in Turkey today: (a) authoritarian, and (b) pluralist. The Kemalist version of secularism is a system of controlling religion. The pluralist version requires a neutral state and a new tolerance for Islamic

voices and institutions in civil society. Similar to the American church-state paradigm, the Muslimhood model guarantees freedom of individual belief and expression while, at the same time, not hindering the efforts of secular government. Perhaps, as it renegotiates the relationship between religion and political democracy, the Muslimhood model provides the greatest promise for an improvement in religious liberties and human rights in Turkey.

While many contributing factors may be distinguished, it is apparent that Church state relations are primarily influenced by a constituent' perception of the prestige, power and influence of the other. While some desire to protect the state from religion's authority (Anti-Church) the other wants advocates to protect religion from the power and influence of the state (Anti-State). The anti-church posture is a form of state-church relations in which the state not only wants to control religious organizations, but also demonstrates a critical and even hostile attitude towards religious groups. According to Alibašić (2006) state hostility towards religious organizations often expresses itself as prosecution of religious leaders, confiscation of religious property, and prohibition of religious activities.

While the current trend indicates that the American option of supportive separation is the European model of choice, the violations of religious freedom perpetrated against the EP by the Turkish government described in the previous section of this paper, unfortunately, illustrate a deleterious adherence to principles associated with an anti-church posture.

## **Conclusion**

The history of Western civilization has been characterized by the tension that exists between society's two basic choices: allegiance to divine statute or to that of the political order. While ancient theocracies provided no distinction between the divine and political orders, the Greco-Roman Empire was distinguished by its preoccupation with politics. It was not until the advent of Christianity's novel approach to render unto Caesar and unto God their respective essentials (Luke 20:25), that alternative ways of conceptualizing the tension of church-state relations sovereignties were devised.

It was during the emergence of the EP during the Byzantine Empire (330-1453) that the rivalry between faith and patriotism, God and country, was conceptualized within a comprehensive

theological perspective in the legal code of Emperor Justinian (Fourth Century) as part of God's divine plan for humanity. The interior Narthex of the Church of Hagia Sophia exemplifies this unique model (Symphonia) that views the Church and the state as two interdependent institutions, two gifts of God, each with their respective domains of concern (Harakas, 1993). To honor this grand ideal, the cathedral had a grand gold mosaic icon over its doorway depicting Jesus and Mary. On one side of them was pictured the Emperor Constantine, founder of the city, and on the other, Justinian, the founder of the church.

It is indeed a tragedy to compare the mutually beneficial coexistence of a church and state that once typified the gatherings in the Church of Hagia Sophia to that of the current relationship of the EP and the government of Turkey. It is apparent that the twin pillars of Kemalist ideology, Turkish nationalism and secularism, are the main sources of the country's current crises. It has tended to be an authoritarian state ideology that desires to stamp out religious and ethnic differences in the name of Enlightenment values.

As noted, while no modern nation employs the Symphonia Model as the active principle for its current church-state affairs, I believe the following twelve principles, selected from the five alternative approaches to church/religion-state relations that are currently in existence, might provide the government of Turkey with an appropriate alternative structure for providing the EP full enjoyment of religious freedom while simultaneously adhering to a more moderate Kemalist ideology. Unless the state is able to demonstrate a legitimate state interest that cannot be otherwise served by actions less intrusive to religious belief and expression, the government of Turkey should:

- 1. Abide by the statutes and provisions of all international charters and treaties to which the Republic of Turkey is signator.*
- 2. Ensure full legal equality for all religious organizations.*
- 3. Provide all religious organizations free and equal opportunities within Turkish society to propagate their religious views, regardless of their size or age.*
- 4. Not intrude into the internal (governance) affairs of religious organizations.*

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5. *Permit all religious organizations to fully function, without regard to international boundaries.*
6. *Prohibit discrimination based on an individual's religious belief or affiliation.*
7. *Permit the right of all individuals to have and to publicly manifest their private religious beliefs.*
8. *Protect the right of all individuals to change their religious belief.*
9. *Permit the right of private and/or corporate worship.*
10. *Accommodate and protect varied religious beliefs and practices of all.*
11. *Recognize and safeguard the historic personality and the legal status of persons belonging to all religious communities.*
12. *Safeguard the use and ownership of all religious sites, shrines, and structures.*

The ninth academic consultation between Christians and Muslims (1998) that took place in Amman, Jordan, illustrates the degree to which the desire for serious conversation between religious leaders, politicians, and theologians, concerning finding a viable solution to the problem of religious freedom, exists. During the meeting a message from Crown Prince Hasan was read that emphasized the need to develop a common code for coexistence whereby each party may recognize the other on all levels and respect equality for all in order to attain peace for all humanity.

The meeting advanced two important practical measures that constitute the overarching goal of the aforementioned recommendations. They are: (a) complete and unconditional constitutional and legal security for full freedom of religious conscience as well as other religious liberties for all citizens of Christian and Muslim states, and (b) legal protection of the equality, civil rights, and all the internationally guaranteed human rights of the followers of other religions in a constantly widening pluralistic synthesis of the societies of almost all modern states (Papademetriou, 2004). The recipe for success in this endeavor is the desire for honest dialogue that includes a wide consultative process in designing viable solutions and drafting appropriate legislature.

Turkey has historically been a crossroads of political, economic, philosophical, and religious convergence. Given the richness of its past, one can hope that Ankara's laudable desire to enter the European Union will lead it to simultaneously strive towards providing a high level of tolerance and protection of human rights and religious freedoms for all its people. The challenge of such a course of action is to proceed while not infringing on the rights of other religious groups in Turkey, including Muslims and atheists.

In the end, however, apart from pursuing the advancement of the recommendations described above, any viable resolution to the religious freedom issue of the Ecumenical Patriarchate requires the placement (re-placement) of the symbol of the Holy Cross atop the grand dome of the cathedral of Hagia Sophia. Only, in this fashion, will the integrity of this historic symbol of the Ecumenical Patriarchate's international identity be restored, from that of a state-governed museum, to a place where over 300 million Orthodox Christians throughout the world may once again gather for worship.

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