The International Legal Personality of the Eastern Orthodox Ecumenical Patriarchate of Constantinople

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NOTE

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I. INTRODUCTION.

This note addresses the international legal personality of the Eastern Orthodox Ecumenical Patriarchate of Constantinople in the light of its mistreatment by the Turkish government. The Ecumenical Patriarchate, the center of Eastern Orthodox Christianity, is located in Istanbul, Turkey. For centuries, the Ecumenical Patriarchate has been subjected to direct and indirect persecution and oppression by the Turkish government. Today, that persecution continues and ranges from undue restrictions on the Patriarchate’s activities to acquiescence in overt threats and attacks from extremist groups operating in Turkey. The international legal status of the Patriarchate determines to a significant degree whether the Turkish government is accountable under international law for its acts or failures to act that are detrimental to the Patriarchate.

1. The city of Constantinople was the seat of one of the Holy Sees of the early Church. Today, it remains the seat of the Holy See of Constantinople (i.e., Ecumenical Patriarchate of Constantinople) in the Orthodox Church, though the city of Constantinople is now Istanbul. *Infra*, pp. 115-120.
4. "A subject of the law is an entity capable of possessing international rights and duties and having the capacity to maintain its rights by bringing international claims." IAN BROWNLEE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 58 (4th ed. 1990) (citing Reparations for Injury case, 1949 I.C.J. Reports 174, 179). Sir Hersch Lauterpacht distinguishes between subjects and objects of international law when he describes the position of individuals in the traditional view of international legal personality:
   According to what may be described as the traditional view in the matter, States only and exclusively are the subjects of international law. In particular, on that view, individuals are not the subjects of international law; they are its objects in the sense that by customary and conventional law. States may be bound to observe certain rules of conduct in relation to individuals. Thus, while they may be bound to accord privileged treatment to foreign diplomatic representatives, the latter are not on that account subjects of international law; the right to privileged treatment is the right of their own State.
That is, does the Ecumenical Patriarchate have the requisite international legal personality to confer on it the capacity to call the Turkish government to account for its actions against the Ecumenical Patriarchate under international law?

Section II of this note examines the mistreatment of the Ecumenical Patriarchate by the Turkish government. Section III establishes the international legal personality and international law rights of the Ecumenical Patriarchate and the correlative duties of the Turkish Government to respect those rights. Section IV concludes that the mistreatment of the Ecumenical Patriarchate by the Turkish government violates fundamental principles of religious freedom under international law and infringes upon its international legal personality. It also asserts that the international legal personality of the Ecumenical Patriarchate entitles it to assert claims of its mistreatment before international law fora.

II. THE TURKISH GOVERNMENT'S MISTREATMENT OF THE ECUMENICAL PATRIARCHATE.

The factual predicate for an examination of the international legal personality of the Ecumenical Patriarchate is the past and present mistreatment of the Ecumenical Patriarchate by the Turkish Government.

A. Historical Mistreatment.

The mistreatment of the Ecumenical Patriarchate is not a new phenomenon. Its direct mistreatment by Turkish governance extends back to at least the 15th Century.

The city of Constantinople was sieged by Ottoman Turks on May 29, 1453. The conquering Sultan, Mehmet II, recognized the Eastern


The city had been weakened before the 15th century. In the seventh century, Arab Muslims had reached the gates of Constantinople, and nearly taken the city; the city (and Byzantine Empire) held out for eight centuries, when it was taken by Ottoman Turks. See WARE, THE ORTHODOX CHURCH, supra note 5, at 29-30.
Orthodox Christian faith and other religions, and organized them into separate “millet” (or nations within the Empire). The sultans classified

In the eleventh century, nomadic tribes from Central Asia (the Seljuk Turks) attacked and conquered much of Asia Minor. These invasions, along with earlier Western and Eastern invasions greatly weakened the city of Constantinople and made it possible for Ottoman Turks (named after their leader Osman or Othman) to seize the city of Constantinople in the 15th century. Among the Ottomans’ other conquests were the conquests of the Balkans and Eastern Europe (eg. Serbia, Bulgaria, Albania, Bosnia, and part of Hungary). In 1453, they seized Constantinople, and thereafter all of Greece. Their conquests in the Middle East greatly expanded the territories and peoples who would become subjects under the Ottoman Empire. RICHARD CLOGG, A SHORT HISTORY OF MODERN GREECE, 16-18 (reprint. 1980)(1979); MARJORIE HOUSEPIAN DOBKIN, SMYRNA 1922: THE DESTRUCTION OF A CITY 22-24 (Kent State Univ. Press reprint. 1988)(1972); DONALD M. NICOL, THE LAST CENTURIES OF BYZANTIUM: 1261-1453, at 390-391 (2d ed. Cambridge Univ. Press 1993).

6. DOBKIN, supra note 5, at 25-26; CLOGG, supra note 5, at 18-19. Different reasons are given as to why the Sultan did this. Some treatises refer to a Muslim ‘tradition’ that Ottoman Turks reportedly inherited from Arabs, which provided that ‘People of the Book’ (in which they included Christians, Jews, and Zoroastrians) should be “tolerated” by being permitted to keep their places of worship after Islamic conquest over their lands. However, in practice, Ottoman Christians (like Christians conquered by Arabs) were treated as ‘non-believers’ and consequently as inferior to Muslims. They were referred to as “rayahs” (sheep) or “giaours” (infidel dogs) and their places of worship were often seized by their new rulers. DOBKIN, supra note 5, at 25-26; CLOGG, supra note 5, at 18-19; WARE, supra note 5, at 87-88; RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 166-167; see generally, SIR PAUL RYCAUT, THE PRESENT STATE OF THE GREEK AND ARMENIAN CHURCHES (Harry Schwartz adv. ed., Arno Press and the N.Y. TIMES 1971)(1678). The seizure and conversion of Christian churches to Islamic mosques is discussed infra, pp. 106-107.

Among other factors, Mehmet II (sometimes referred to as Mohammed II) was probably aware that the subject peoples of the Byzantine state would be an asset to the Ottoman Empire both commercially and culturally. Granting these peoples some degree of freedom of religion would help to ensure that no immediate uprisings would occur following Mehmet’s own violent conquest. Indeed, the Ottomans soon came to rely on the subject peoples for their abilities and willingness to engage in commercial trade and the practice of medicine and other professions. RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 166-168, 196, 215; DOBKIN, supra note 5, at 25.

7. Included among these millet were the Orthodox millet, the Gregorian Armenian millet, and the Jewish millet. CLOGG, supra note 5, at 18. “[T]he Muslims drew no distinction between religion and politics: from their point of view, if Christianity was to be recognized as an independent religious faith, it was necessary for Christians to be organized as an independent [religious] political unit, an Empire within the Empire.” WARE, supra note 5, at 89.

“Subject populations such as the Christians, which the Ottomans had incorporated during their drive through the Balkans, were classified by their religious affiliation. The settlement of their civil concerns was delegated to their own ecclesiastical authorities - which the government used in order to secure access to their non-Muslim subjects.” ATATÜRK, FOUNDER OF A MODERN STATE 192 (Ali Kazancıgil & Ergun Özbudun, eds., 1981).

the religious leaders as secular officials, and identified the Ecumenical Patriarchate as the spiritual leader and civil head of all other Orthodox Christians in the Empire. The Patriarch and Holy Synod were permitted to have control over the church administration. However, the seat of the Patriarchate was subordinate to the Sultan, and the patriarch was required to obtain permission from the Sultan by payment of a large sum of money in order to obtain the office (a “berat”).

This control of

8. Ware, supra note 5, at 89; Constantelos, Understanding The Greek Orthodox Church, supra note 7, at 93-94.
9. Ware, supra note 5, at 89, 91; Constantelos, Understanding The Greek Orthodox Church, supra note 7, at 93-94; Clogg, supra note 5, at 20; Studies In The Greek Orthodox Church 15 (Archbishop Antony Bashir, comp. 1960). See also, Maximos, supra note 7, at 278.

From 1453, the Oecumenical Patriarchate was recognized not merely as a religious leader, but to some extent also as a political leader: Ethnarch, or in Turkish Millet Başı, of the entire Rum Milleti, which comprised the entirety of orthodox people within the empire.... In his capacity of Millet Başı, the Oecumenical Patriarch was answerable to the Sultan alone and held a position far above all the other patriarchs in the Ottoman state.... This was clearly demonstrated in 1517, when Egypt, Syria and Palestine were taken by the Ottomans from the Arabs, and three other patriarchates were united in one state, as sections of the single Rum Milleti, the one Christian people.

"But the Patriarch of Constantinople never violated the canonical view that all patriarchs were 'co-equal'." Id. at 298-299.

10. "It was generally accepted that the Patriarch, in conjunction with the Holy Synod, had complete control over the whole ecclesiastical organization, the bishops and all churches and monasteries and their possessions. Though the Sultan's government had to confirm episcopal appointments, no bishop could be appointed or dismissed except on the recommendation of the Patriarch and the Holy Synod." Runciman, The Great Church in Captivity, supra note 5, at 171; see generally, id. at 171-207.
11. Ware, supra note 5, at 90. See generally, Runciman, The Great Church In Captivity, supra note 5, at 186-207.
12. "When there were several candidates for the Patriarchal throne, the Turks virtually sold it to the highest bidder; and they were quick to see that it was in their financial interests to change
elections was abused by the sultans. The imposition of a berat induced some instances of uneasiness within the Church organization, as the position of Patriarch was in essence being sold by the Turks. In practice, the election to the Patriarchate was vested "rather in the hands of the Turks than of the bishops." There was also a financial motive for the Turkish leaders to encourage instability among the Patriarchs and Holy Synod, in order to collect the "berat" fee on a regular basis.

These political, financial and other motivations to control the Christian

the Patriarch as frequently as possible, so as to multiply occasions for selling the berat. Patriarchs were removed and reinstated with kaleidoscopic rapidity." WARE, supra note 5, at 90.

"It had become the regular custom now that the Patriarch had not only to pay a sum to the Sublime Porte to have his election ratified, but also had to provide a regular annual offering." RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 198. "By the end of the seventeenth century the usual price paid by a Patriarch on his election was in the neighborhood of 20,000 piastres (roughly 3,000 gold pounds)." Id. at 201. "The Patriarchs were forced to pay taxes beyond their resources both at their election [and] year by year." STUDIES IN THE GREEK ORTHODOX CHURCH, supra note 9, at 15.

13. STUDIES IN THE GREEK ORTHODOX CHURCH, supra note 9, at 15. But see, CONSTANTELOS, UNDERSTANDING THE GREEK ORTHODOX CHURCH, supra note 7, at 94:

Notwithstanding many outbreaks of Islamic fanaticism during those four centuries, the Greek Church manifested a great deal of vitality. No epoch that produces martyrs can be described as morbid and corrupt. In particular during the sixteenth and seventeenth centuries, many Orthodox witnessed to their faith 'unto death.' The Greek Church commemorates the names of many neomartyrs, who preferred to die rather than deny their Christian faith, among them Michael Mauroides, Gabriel II, Theodore of Mytilene, Christodoulos, Cyril of Thessalonica (burned alive in July 1566, at the age of 22), Mark Kyriakopoulos (beheaded in 1643 at Smyrna), John (put to death in 1652, at the age of 14) - 172 in all.

14. WARE, supra note 5, at 90; see generally, CONSTANTELOS, UNDERSTANDING THE GREEK ORTHODOX CHURCH, supra note 7, at 93-95.

15. RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 204 (citing SIR PAUL RYCAUT, THE PRESENT STATE OF THE GREEK AND ARMENIAN CHURCHES (London 1678)); see also, CONSTANTELOS, UNDERSTANDING THE ORTHODOX CHURCH, supra note 7, at 94-95:

[T]he British consul Paul Ricaut, stationed in Smyrna about 1678, wrote a vivid account of the state of the Greek and the Armenian churches under the Turks. The increase and prevalency of the Christian faith against the violence of kings and emperors, and all the terrors of death, is a demonstration of its verity; so the stable perseverance in these our days [i.e., 1678] of the Greek Church therein, notwithstanding the oppression and contempt put upon it by the Turk, and the allurements and pleasures of this world, is a confirmation no less convincing than the miracles and power which attended its first beginnings: for indeed it is admirable to see and consider with what Constancy, Resolution, and Simplicity, ignorant and poor men kept their Faith; and that the proffer of worldly preferments and the privilege which they enjoy by becoming Turks, the mode and Fashion of that country which they inhabit . . . would have induced the Greeks to denounce their faith.

Sir Paul Ricaut served as "secretary at the Cosmopolitan Embassy from 1661 to 1668 and then Consul at Smyrna." RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 308.

16. See supra, note 12.
subjects, to change Patriarchs and to collect berats, created great instability, insecurity and criminal abuse:

Out of 159 Patriarchs who have held office between the fifteenth and the twentieth century, the Turks have on 105 occasions driven Patriarchs from their throne; there have been 27 abdications, often involuntary; 6 Patriarchs have suffered violent deaths by hanging, poisoning or drowning; and only 21 have died natural deaths while in office.\textsuperscript{17}

During the seventeenth century, the Patriarch changed sixty-one times (many patriarchs served more than once, returning to their post after having been exiled or deposed).\textsuperscript{18}

During the Ottoman Period the Turks arbitrarily denied freedom of religion by annexing Churches and converting them to mosques, or other uses.\textsuperscript{19} Those conversions caused “legal and economic problems”\textsuperscript{20} for the Patriarchate. The most ancient Orthodox Church, the Holy Church of

17. \textsc{Ware, supra note 5, at 90 (citing B.J. Kidd, \textsc{The Churches of Eastern Christendom} 304 (London 1927); see also, Studies In The Greek Orthodox Church, \textit{supra} note 9, at 15; Constantelos, \textsc{Understanding The Greek Orthodox Church, supra note 7, at 94}: Many patriarchs and other clerics of the Orthodox Church who refused to obey the whim of the sultans were dethroned or exiled or in most cases put to death. A few cases may suffice to substantiate this point. Joachim I (1504) was dethroned; Cyril Loukaris (1638), Cyril Kontaris (1639), Parthenios II (1504), Parthenios III (1657), Gregory V (1821), and others were put to death. Neophytos V (1707) was thrown into the galleys, and several others, such as Jeremias II (1769), Athimos III (1824), Chrysanthos (1826), and Agatheagelos (1830) were exiled. In addition to heavy taxation of the Christians, as well as insults and arbitrary actions on the part of the Turkish autocracy, the Church suffered from confiscation of its houses of worship and property, and Christians were forced to deny their faith and adopt the Moslem religion.

18. \textsc{Runciman, The Great Church in Captivity, supra note 5, at 201. But see, Clogg, supra note 5, at 25}: Yet if the condition of the Orthodox Church and more particularly of the patriarchate during the sixteenth, seventeenth and eighteenth centuries was scarcely edifying, nonetheless a number of simple Orthodox Christians steadfastly maintained their faith in the face of Ottoman pressure or blandishments to apostasies and the example of these ‘neo-martyrs’ confirmed many more in an attachment to their faith.

19. \textsc{Runciman, The Great Church in Captivity, supra note 5, at 187-192; 188 n.1}. Runciman notes that a visitor to Constantinople in 1499, Arnold von Harff, stated several times that Orthodox churches were being used as menageries; \textsc{Runciman, The Great Church in Captivity, supra note 5, at 188 n.2 (citing The Pilgrimage Of Arnold Von Harff at 241-242, 244 (Hakluyt ed.))}. Many other churches were taken and used for secular purposes, such as an armory or a menagerie. \textit{Id. at 188 n.2, citing Runciman, The Fall Of Constantinople, supra note 5, at 199-200}. For a photographic survey of Byzantine Churches of Constantinople, now Istanbul, se\textit{e generally, Thomas F. Mathews, The Byzantine Churches of Istanbul: A Photographic Survey (1976).}

20. \textsc{Runciman, The Great Church in Captivity, supra note 5, at 192}. 
Wisdom (Hagia Sophia), which was begun by Constantine the Great, was declared a mosque by conquering sultans.\textsuperscript{21} Several other churches were taken by sultans, including the Patriarchal church of the Pammacaristos which was converted to a "Mosque of Victory" (translated as Fethuye Cami),\textsuperscript{22} the churches of Saint Demetrius, Saint Sophia and Saint George in Thessalonica,\textsuperscript{23} the church of Our Lady in Athens,\textsuperscript{24} and countless others.\textsuperscript{25} The Christians found it difficult to obtain permission to rebuild these churches,\textsuperscript{26} or build new ones.\textsuperscript{27} There were numerous other restrictions on Christians such as certain clothing requirements and a ban on riding horses.\textsuperscript{28} It was also made a crime to preach Christianity to Muslims\textsuperscript{29} although Muslims could lawfully and forcibly convert Christians to Islam.\textsuperscript{30}

Although Mehmet II recognized religious minorities (albeit as a subject class), the period after his conquest was among the darkest in the history of Orthodox Christianity. Many Christian boys were seized by government forces and involuntarily converted to Islam and trained in the fanatical Janissary armies.\textsuperscript{31} Christian girls were routinely taken from

\begin{footnotes}
\item[21.] \textit{Id} at 187. The Holy Church of Wisdom, also known as Hagia Sophia, or St. Sophia, is an ancient Byzantine Orthodox Church. Built by Constantine and rebuilt by Justinian (after a fire), it was consecrated in 537 A.D. The invading Turks in the 15th century stripped the Church of most of its Christian ornaments, and installed a sultan box in the center. It is currently being used as a secular museum (since 1934). BARON PATRICK BALFOUR KINROSS, HAGIA SOPHIA 11 (1972); see also, PHILLIP SHERRARD, et. al. BYZANTIUM 34 (1966). \textit{But see infra}, pp. 112-113.
\item[22.] RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 190-191.
\item[23.] \textit{Id.} at 192.
\item[24.] \textit{Id.}
\item[25.] \textit{Id.} at 184-185, 192.
\item[26.] RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 192.
\item[27.] DOBKIN, supra note 5, at 25.
\item[28.] RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 179; WARE, supra note 5, at 88-89; CLOGG, supra note 5, at 20-21; DOBKIN, supra note 5, at 25-26. \textit{See generally}, RYCAUT, supra note 6.
\item[29.] WARE, THE ORTHODOX CHURCH, supra note 5, at 88.
\item[30.] RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 179.
\item[31.] \textit{See} DOBKIN, supra note 5, at 25-26; \textit{see also}, RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 179:

Christian families had to submit to the arbitrary seizure of their young sons, to be converted to Islam and enrolled in the Janissary regiments. A Christian who was converted to Islam, even involuntarily as a child or as a captive, was liable to the death penalty if he reverted to his old faith. \textit{See also}, CLOGG, supra note 5, at 20:

Probably the most onerous imposition to which the Christians of the Balkans were liable was the janissary levy (\textit{devshirme} [in Turkish] or \textit{paidomazoma} [in Greek]). This was the obligation, imposed at irregular intervals, for Christian families to deliver a certain proportion of the most intelligent and best-looking of their children to the officers in
their families to be enslaved into the infamous seraglio (harem).\(^{32}

The Ottoman Empire was greatly weakened in the 19th Century, as
subject peoples revolted against the Ottomans.\(^{33}\) This led to the estab-
lishment of independent states and national Orthodox Churches.\(^{34}\)

The Ottoman State at the end of the 19th century and the beginning
of the 20th century was no less intolerant towards its Christian subjects.
The period that followed the revolutions in the Balkans was marked by
the continued genocide of Christians, who had not been part of those

32. The "seraglio", or Grand Seraglio, referred generally to all the quarters of the Sultan’s
palace, one of which was the Sultan’s harem. The seraglios were partially committed to education
and training of young subjects of the Empire. This has led some modern writers to re-characterize
the seraglio as a positive institution of sorts, and to minimize the suffering of those whose daughters
were forced into the harem, and of the girls and women who would never see their freedom again. See,
eg., NORMAN MOSLEY PENZER, THE HAREM: AN ACCOUNT OF THE INSTITUTION AS IT EXISTED
IN THE PALACE OF THE TURKISH SULTANS, WITH A HISTORY OF THE GRAND SERAGLIO FROM ITS
FOUNDATION TO MODERN TIMES (1965).

33. Among the peoples who gained their independence in the 19th century were Bulgarians
and Serbs (who had been conquered by the Ottomans around the 14th century). Some Greeks also
gained their freedom following the Greek War of Independence of 1821, although the vast majority
were still subjects under the sultans. DOBKIN, supra note 5, at 32-38. See generally, RUNCIMAN,
THE GREAT CHURCH IN CAPTIVITY, supra note 5.

34. These included the Church of Greece, the Church of Romania, the Church of Bulgaria,
and the Church of Serbia. WARE, supra note 5, at 91.

The adoption of Orthodox Christianity by Slavs (eg, Serbs, Bulgarians, Russians) had been
initiated by teachings of the Greek brothers Cyril and Methodius from Thessaloniki, beginning 863
A.D. See, eg., WARE, supra note 5, at 73-86; ANDREI NIKOLAEVICH MOURAVIEFF, A HISTORY
OF THE CHURCH OF RUSSIA 8, 349 (Rev. R.W. Blackmore, trans. 1971)(1842); CONSTANTILOS,
UNDERSTANDING THE GREEK ORTHODOX CHURCH, supra note 7, at 89-90. The Slaves’ conversions
and contributions to the tradition of Orthodox Christianity came at a critical point in the faith’s
history, when many other Eastern Orthodox Christian centers were rapidly falling under the force
of the Arab Islamic invasions. The lands of the Orthodox Christian centers of Antioch, Alexandria,
and Jerusalem [see infra, pp. 115-117] had been conquered by Islamic Arabs in the sixth and seventh
centuries. STUDIES IN THE GREEK ORTHODOX CHURCH, supra note 9, at 12. They came under
Ottoman rule when the Turks took Egypt, Syria and Palestine from the Arabs in the 16th century.
MAXIMOS, supra note 7, at 278; see also, RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra
note 5, at 176. Not long after their independence from Ottoman rule, the [Slavic] Orthodox Christian
Churches in Eastern Europe became oppressed by domestic political forces. Under the Stalinist and
Leninist periods, thousands of Orthodox Churches were destroyed, and the Churches were oppressed
by the intolerant Communist and atheist regimes, for decades.
movements and remained subjects under the Empire. In 1908, the Committee of Union and Progress (a revolutionary nationalist government later known as the “Young Turks”) came to power and revealed a plan to “turkify” the Christian minorities, a plan which turned into a drive to rid the Empire of non-Turks.

During and after the first World War, Turkish forces demolished or expelled almost all of the Christian communities of Asia Minor.

35. Dobkin, supra note 5, at 31-38. See generally, The Massacres of Chios: Described in Contemporary Diplomatic Reports (Philip P. Argenti ed.) (1932); George Horton, The Blight of Asia: An Account of the Systematic Extermination of Christian Populations by Mohammedans and of the Culpability of Certain Great Powers; with the True Story of the Burning of Smyrna (1926). George Horton’s treatise is principally relied upon as a truthful account of historical events as they occurred. See generally, Henry Morgenthau, I Was Sent to Athens (1929). The same (or virtually the same) account was printed in England in 1930, under the title, An International Drama (1930). Sir Henry Morgenthau had served as American Ambassador to Turkey, and personally witnessed many of the atrocities herein alluded to.

36. Dobkin, supra note 5, at 7, 36.

37. Dobkin, supra note 5, at 36-40. “The idea ‘Turkey for the Turks’ took definite shape and developed into the scheme of accomplishing its purpose by the final extinction of all the Christian populations of that blood-soaked land . . .” Horton, supra note 35, at 28. See also, Morgenthau, I Was Sent to Athens, supra note 32, at 47-48.

All these atrocities were clear evidence of the deliberate intention of the Turks to remove utterly all Greek population from Asia Minor, in pursuance of the program of the Turkish Nationalists under Kemal, by which Asia Minor was to be completely “Turkeyfied”.

See also, Dickran H. Boyajan, Armenia: The Case for a Forgotten Genocide (1972); The Treatment of Armenians in the Ottoman Empire, 1915-16: Documents Presented to Viscount Grey of Fallodon, Secretary of State (2d ed. 1972); An Anthology of Historical Writings on the Armenian Genocide of 1915 (Viscount James Bryce, et. al.) (1970).

38. See generally, Horton, supra note 35; Dobkin, supra note 5.

In 1919, the Western Allies encouraged the landing of the Greek army under Eleutherios-Venizelos, into Smyrna. The Allies appeared to support the landing on the basis of human rights abuses by the Turks, only to declare in 1921 that the war was a separate one between Greece and Turkey. See, eg., Dobkin, supra note 5, at 65-71, 95. The Western Allies withdrew their support and declared that the Greek army should take on Turkey by itself. The war came to be known as the Greco-Turkish War. See, eg., Horton, supra note 35, at 41-59. Following the war, Mustafa Kemal (Ataturk) was able to implement his offensive upon the Christian peoples of the former Ottoman Empire, which culminated in the eradication of the city of Smyrna, and the effectuation of the Kemalist effort to rid Turkey of all minorities (principally Armenians and Greeks). See, eg., Dobkin, supra note 5, at 9, 155-167, 183-188, 235; Horton, supra note 35, at 112-116.

Turkish and many Western authorities officially denied that it was the Kemalist Turkish forces that set the city of Smyrna (particularly the Armenian and Greek quarters) on fire. Turkey in fact still denies it, and many of the atrocities that were implemented by Turkey during that period. In recent decades however, official and unofficial documents and testimonies that had been suppressed during that period have been uncovered, lending unambiguous support to the position that Turkey was indeed responsible for the fires and the atrocities both preceding and following the burning of Smyrna. Dobkin, supra note 5, at 6-19, 236-269; see generally, Horton, supra note 35; Morgenthau, I Was Sent to Athens, supra note 35.
The Greek Orthodox clergy and leadership were among those specially targeted by the Turkish government when the violence spilled over to Christian quarters of Asia Minor. 39

The 1923 Lausanne Treaty officially ended the war between the Allies and Turkey and called for what has come to be known as an "exchange of populations." 40 Under this exchange, Christians living in Turkey were sent to Greece, and Moslems in Greece were sent to Turkey. 41

Under the Lausanne Treaty, the Ecumenical Patriarchate was permitted to remain in Istanbul (Constantinople). The region which had thrived as a Christian center, was now reduced to a small community concentrated in Istanbul. 42

39. E.g., DOBKIN, supra note 5, at 133-134. Dobkin refers in particular to an invaluable account by a Turkish eyewitness, who observed atrocities against Greek Orthodox priests and bishops, and who criticized Turkey's burning of the great city of Smyrna. Id. at 13 (citing FALIH RIFKI ATAY, CHANKAYA, FROM ATATURK'S BIRTH UP TO HIS DEATH, Istanbul, n.p. 1980).

40. The Lausanne Treaty was signed in July 1923. Leaders in the Lausanne convention, however, had already planned for what has come to be known as an "exchange of populations" to be dealt with under a separate treaty between Greece and Turkey. DOBKIN, supra note 5, at 218-220. See generally, CONVENTION CONCERNING THE EXCHANGE OF GREEK AND TURKISH POPULATIONS, signed at Lausanne, January 30, 1923; see also, TREATY OF PEACE, July 24, 1923, between the British Empire-Fr.-Italy-Japan-Greece-Rom.-the Serb-Croat Slovene State and Turkey, 28 L.N.T.S. 11. Fethi Bey, Mustafa Kemal's Minister of the Interior, reportedly made the official offer to exchange the Christians of Asia Minor with the Moslems of Western Thrace, in September of 1922. "The Minister declared that the entire Christian population of Anatolia was to be expelled," DOBKIN, supra note 5, at 211. In a conference meeting between Turkish and Western representatives (Greek officials were left out), the decision was finalized – in addition, Turkey was "rewarded" the whole of Eastern Thrace. About 400,000 Greek Orthodox Christians from Eastern Thrace were forced to leave immediately in a mass exodus that left many dead or ill with disease. DOBKIN, supra note 5 at 211:

That perennial, 'unofficial' French emissary, M. Franklin-Bouillon ('Boiling Frankie' to the British), who had negotiated the secret deal between Kemal and the French and whose name spelled bad news for the minorities, appeared in Smyrna at the end of September. Within days Kemal had agreed to confer with the Allies, providing he would be guaranteed Eastern Thrace. He appointed as his government's representative to the conference Ismet Pasha, a trusted associate who had the added advantage of being deaf.

The Lausanne Treaty to this day governs the treatment of Non-Moslem minorities in Turkey, such as Greek/Eastern Orthodox and Armenian Christians, and Jews.

41. In effect, this policy devastated the Christian centers of Asia Minor that had existed for centuries, and was decidedly a Turkish victory. A total of 1,350,000 Christians (1,250,000 Greek Orthodox and 100,000 Armenian Christians) were forced out of their communities, and into Greece. About 390,000 Moslems living in Greece at the time migrated to Turkey as well. See DOBKIN, supra note 5, at 218-222; see also, CLOGG, supra note 5, at 120-121. The Christians of Constantinople (now Istanbul) and nearby regions and Moslems from Western Thrace were exempted, however. See CONVENTION CONCERNING THE EXCHANGE OF GREEK AND TURKISH POPULATIONS, supra note 40, at Art. 2; see also, WARE, supra note 5, at 127.

42. WARE, supra note 5, at 127; see generally, HORTON, supra note 35.
In 1923, the state of Turkey was founded. Subsequent riots over several decades in Constantinople reduced further the number of Eastern Orthodox Christians in Turkey to about three to four thousand (over 100,000 fled from persecution during the 1950s riots alone):

[O]n 6 September 1955, sixty out of the eighty Orthodox Churches in the city were sacked or gutted and incalculable damage was done to Christian property, with widespread raping and some loss of life. For several hours the Turkish authorities did little to intervene, allowing the rioters a virtually free hand.  

B. Modern Mistreatment.  

The modern mistreatment of the Ecumenical Patriarchate by the Turkish government includes direct and indirect practices.

1. Direct Mistreatment.

The Turkish government closed the only Greek/Eastern Orthodox Seminary in Turkey, the Theological School at Halki, in 1971. The Theological School at Halki, which opened in 1844 as a learning institution, served for decades as the training institution for members of the clergy as well as the role of Patriarch.

The Turkish government continues to mistreat the Ecumenical Patriarchate by refusing to allow the school to reopen. That refusal has left the Ecumenical Patriarchate without an adequate number of assistants to perform its daily functions. It effectively prevents the Patriarchate from training clergymen and potential successors to the position of

43. WARE, supra note 5, at 128; see also, HUMAN RIGHTS WATCH, DENYING HUMAN RIGHTS AND ETHNIC IDENTITY: THE GREEKS OF TURKEY 7-8 (Mar.1992).

44. The incidents and treatment described here are by example only, and not by limitation.

45. WARE, supra note 5, at 128. See also, S. Con. Res. 25, 104th Cong.1st Sess. (1995);"Whereas the Turkish Government arbitrarily closed the Halki Patriarchal School of Theology in 1971; Whereas the closing of the Halki School of Theology is a serious concern for the Ecumenical Patriarchate". The subject of this concurrent resolution had to do with the protection and continued viability of the Eastern Orthodox Ecumenical Patriarchate.

46. "The higher Clergy receive their education in a school on the Island of Chalki, in the Sea of Marmora not far from the Bosporus (since 1844) . . . ." STUDIES IN THE GREEK ORTHODOX CHURCH, supra note 9, at 20.

Ecumenical Patriarch because the Theological School is the only school for training the leadership of Orthodox Christianity. Helsinki Watch, a human rights organization, has characterized the closing of the school as an "extremely serious problem for the Patriarchate." 49

The Turkish government also imposes policies that collectively limit the pool of potential successors to the role of Patriarch. For example, the Turkish government requires that the Ecumenical Patriarch and his staff be Turkish citizens, and that faculty and students of the theological school be Turkish citizens as well.50 The Ecumenical Patriarch must be born in Turkey. The Turkish government claims to have the right to veto any Patriarch from among those chosen as candidates by the Holy Synod. 51 They also threaten the existence of the Patriarchate, by collectively limiting the number of eligible successors to the seat of the Ecumenical Patriarchate. There are only about 3,000 Greek Orthodox Christians left in Turkey, and most of those inhabitants are elderly.52 Very few Orthodox Christians are being born in Turkey, and thus, few potential successors to the seat of the patriarchate.

The Turkish government also severely restricts the publishing activities of the Ecumenical Patriarchate, which unduly inhibits free expression and the ability to communicate with the Orthodox leadership and laity around the world. The government shut down the Patriarchate printing facilities in 1964 and confiscated its printing press and other equipment.53 The Turkish government has also restricted freedom of

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48. Rossides, Prepared Statement, supra note 47; S. Con. Res. 25, 104th Cong., 1st Sess. (1995). Since the school was forced to close, the Church has had to depend on theological schools in other countries. See, WARE, supra note 5, at 128.

49. HUMAN RIGHTS WATCH, DENYING HUMAN RIGHTS AND ETHNIC IDENTITY: THE GREEKS OF TURKEY, supra note 43, at 19. See also, HUMAN RIGHTS WATCH, TURKEY'S FAILED POLICY TO AID THE FORCIBLY DISPLACED IN THE SOUTHEAST (June 1996). Despite the hostile treatment and the severity of the restrictions placed upon it by the Turkish government, the Ecumenical Patriarchate continues to function, and has no plans of being uprooted from its ancient seat.

50. S. Con. Res. 25, 104th Cong., 1st Sess. (1995) ("Whereas Turkish law requires that the Patriarch, as well as all the clergy, faculty, and students be citizens of Turkey, and the Halki School of Theology is the only educational institution for Orthodox Christian leadership . . . "); see also, HUMAN RIGHTS WATCH, DENYING HUMAN RIGHTS AND ETHNIC IDENTITY: THE GREEKS OF TURKEY, supra note 43, at 19.

51. For example, in the patriarchal election of 1972, the Turkish government had eliminated four of the possible candidates. HUMAN RIGHT WATCH, DENYING HUMAN RIGHTS AND ETHNIC IDENTITY: THE GREEKS OF TURKEY, supra note 43, at 18.

52. WARE, supra note 5, at 128.

53. WARE, supra note 5, at 128; see also, Andrew T. Kopan, Turkey and Human Rights, CHI. TRIB., Dec. 14, 1985 (Perspective), at 13. Turkey's practices were the subject of review in this commentary by Mr. Kopan (a member of the Chicago Helsinki committee and Professor at De Paul University) during the 37th anniversary of the adoption of the Universal Declaration of Human
movement by refusing passports to bishops of the Patriarchate which inhibit the ability of the Patriarchate to minister directly to its members outside Turkey.\textsuperscript{54} The Patriarchate has been restricted to such a degree that it was "compelled" to set up "alternative facilities in Geneva, as part of the World Council of Churches."\textsuperscript{55}

Another mistreatment of the Ecumenical Patriarchate is the current effort, supported by members of the Turkish government, to convert Hagia Sophia, an ancient Byzantine Orthodox Church now being used as a museum, to a mosque.\textsuperscript{56} Orthodox Christians consider Hagia Sophia to be one of the most sacred and ancient Churches of Christianity.\textsuperscript{57} The Turkish government also has regularly seized other church property and converted it to secular use,\textsuperscript{58} and has blocked the repair of existing church property.\textsuperscript{59}

2. Indirect Mistreatment.

Over recent decades the Ecumenical Patriarchate has become a regular target of physical violence and threats from various factions within Turkey. In many situations, the Turkish government either has done little to prevent such violence, or has in some way contributed to such occurrences. That indirect mistreatment has continued into the 1990s.

In July 1993, the Greek Orthodox cemetery in Yenikoy (near Rights (UDHR) by the United Nations. Mr. Kopan was critical of the government’s lack of adherence to the provisions of the declaration and other treaties to which Turkey was and is a party. The Helsinki Committee is one of several branches of the Helsinki Watch human rights organization, an arm of the Human Rights Watch.

\textsuperscript{54} Kopan, \textit{supra} note 53. The situation had improved somewhat in the 1980s, relatively speaking. \textit{Ware, supra} note 5, at 128.

\textsuperscript{55} Kopan, \textit{supra} note 53. (The Ecumenical Patriarchate might have participated in the World Council of Churches if it were not subject to Turkey’s restrictive practices).

\textsuperscript{56} "There has been a concerted effort throughout Turkey to convert the Church of Hagia (Saint) Sophia, one of the most sacred monuments of Greek Orthodox Christianity and currently used as a museum, into a mosque." S. Con. Res. 25, 104th Cong., 1st Sess. (1995); see text accompanying \textit{supra} note 21.


\textsuperscript{59} It was not until the 1980s that the Turkish government allowed the main building of the Patriarchate to be rebuilt. It had been burned down in 1941, and was not reopened until 1987. \textit{Ware, supra} note 5, at 128; \textit{see also, Human Rights Watch: Denying Human Rights and Ethnic Identity: The Greeks Of Turkey, supra} note 43, at 18.
Istanbul) was attacked. A month later, numerous graves in the same cemetery were desecrated. The government's failure to either prevent or condemn the violence gained the attention of the European Parliament, which held an emergency debate during the week of September 16, 1993 concerning these mistreatments. The European Parliament adopted three resolutions in which it expressed concern about the acts of profanity against the Christian cemetery of Neohorion in Yenikoy, and declared that the Turkish government must take measures to protect the Greek Orthodox community.

Several attacks and threats have been aimed directly at the place where the Ecumenical Patriarch resides. A 1993 report noted that the tossing of petrol bombs and stones at the Patriarchate's windows was occurring "almost daily". Graffiti messages that threatened the Patriarch's life and delivered messages of Islamic radicalism were also routinely found on the Patriarchate premises.

On March 30, 1994, a molotov bomb was thrown into the yard of the Ecumenical Patriarchate. On May 30, 1994, three powerful bombs were discovered in the building where the Ecumenical Patriarch dwells, and were defused just before they could explode. The organization

63. See, EC:EP Debates International Human Rights, supra note 62:
Parliament adopted three resolutions concerning Turkey in which it says it is concerned by acts of profanity against the Christian cemetery of Neohorion in Istanbul. Considering that the climate of insecurity and the flagrant violation of fundamental liberties among minorities "puts into question relations between the Community and Turkey," it calls on European Political Cooperation to intervene within the Turkish Government for it to take the necessary measures to protect the Greek Orthodox community.
64. Zaman, Greeks Attacked in Turkey, DAILY TELEGRAPH (London), Nov. 30, 1993. Graffiti promoting "Islamic radicalism" has also been directed at the Patriarchal grounds, along with messages like, "Patriarch, you will die." Id.
65. Id.
claiming responsibility for the bombs left a note threatening the life of the Ecumenical Patriarch. The Patriarch asked Turkish officials for some protection, but no government protective action was taken.

On September 29, 1996, a hand grenade exploded within the compound of the Ecumenical Patriarchate. In December 1997, a “cluster bomb thrown at a church in the patriarchate courtyard severely injured a priest and damaged numerous buildings.”

The Turkish government has not objected to threats against the Ecumenical Patriarchate by Turkish politicians and leaders of Turkish municipalities. For example, the mayor of Istanbul’s Fatih municipality has incited hatred and accusations against the Ecumenical Patriarch that have culminated in a widespread press campaign against the Patriarchate’s presence in Turkey.

III. THE ECUMENICAL PATRIARCHATE QUALIFIES AS AN INTERNATIONAL LEGAL PERSONALITY.

A. The Sui Generis Evolution and Current Status of the Authority of the Ecumenical Patriarchate.

The first Christian communities were established in the Mediterranean region in the first Century A.D. In 313, Constantine, the first

68. “The bombs had been accompanied by a note signed by an underground organization called ‘Islamic Raiders of the East,’ and threatened the Patriarch’s life”. 1995 U.S. Dep’t of State Country Human Rights Reports, Turkey Human Rights Practices, 1994; see also, Turkey: Three Bombs Found At Greek Orthodox Patriarchate In Istanbul, supra note 67.
69. Turkey: Three Bombs Found At Greek Orthodox Patriarchate In Istanbul, supra note 67.
70. Turkey Hand Grenade Damages Orthodox Christian Headquarters, DOW JONES COMMODITIES SERVICE, Sept. 29, 1996: “The grenade exploded in the compound of the Eastern Orthodox patriarchate, a police official said on condition of anonymity.” See also, Attack on Greek Orthodox Patriarchate in Istanbul, Deutsche Presse-Agantur, Sept. 30, 1996.
71. US Condemns Bomb Attack on Greek Orthodox Patriarchate, AGENCE FRANCE PRESSE, Dec. 3, 1997. A U.S. State Department spokesperson said, after condemning the act, that the U.S. “assume[s] that the Turkish government will take appropriate security measures for the protection of the Patriarch.” Id.
73. THOMAS E. FITZGERALD, THE ORTHODOX CHURCH 3 (1995). “These first communities became the bases from which other missionaries went forth to spread the gospel of Christ to the wide variety of peoples in Europe, Africa, and Asia.” Id. The history and development of the Church in these early and later centuries is obviously a rich one, and beyond the scope of this note. The reader is encouraged to pursue independent research into the early history and development of the Church. A brief historical account is provided infra pp. 115-120, for the purpose of giving the reader sufficient background in understanding the subject of this note, the Ecumenical Patriarchate of the Eastern Orthodox Church.
Roman Emperor to defend Christianity, moved the capital of the Roman Empire from Rome to the ancient Greek city of Byzantium (now Constantinople). Constantine subsequently encouraged a series of ecumenical councils, including the Council of Nicaea. Only decisions of an Ecumenical Council were binding on all of Christendom.

These councils determined the status and rank of the bishops of Rome, Constantinople, Alexandria, Antioch, and Jerusalem. The bishops were officially given the title “Patriarch.” The Patriarch of Rome was granted a “primacy of honor”, but had no jurisdictional authority over the other patriarchs. This ranking was not meant to

74. Fitzgerald, supra note 73, at 3. Christianity was especially persecuted during the period corresponding with the years after the last Apostle died (99 A.D.) to about 313 A.D., a period which has come to be known as the Age of Persecution. Studies in the Greek Orthodox Church, supra note 9, at 6. See generally, Father Marc Dunaway, What is the Orthodox Church: A Brief Overview of Orthodoxy (Conciliar Press 1995). During this “Age” or period, Christianity was declared an unlawful religion in the Roman Empire.

75. The Byzantium region had been used for seasonal fishing and shelling in the neolithic period, and was settled by Byzas and other Greeks from Argos and Megara around 657 B.C. See, David Dereksen, The Crescent and the Cross: The Fall of Byzantium: May 1453, at 15 (1964); Sharrard et. al., supra note 21, at 31 (1966). The site of Byzantium was particularly important from the Christian point of view, because the first church in this and the rest of the Asia Minor region is believed to have been established by Andrew the Apostle in 37 A.D.

76. See generally, WARE, supra note 5, at 22-30. (Constantine became sole Emperor of the united Empire in 324. See Dereksen, supra note 75, at 16).

77. Runciman, The Great Church in Captivity, supra note 5, at 22. This form of interaction, or Council, can be traced to the notions of an Apostolic Council, where local councils were convened to confront various movements considered to be heretical, and to deal with theological issues. Maximos, supra note 7, at 56. Historically as well as today, the various “sister churches” interacted with each other by sending bishops and other representatives to discuss issues and exchange views, and to take joint resolutions on issues that concerned the churches. Maximos, supra note 7, at 54.

78. Maximos, supra note 7, at 64-79; WARE, supra note 5, at 26: All five claimed Apostolic foundation. The four were the most important cities in the Roman Empire; the fifth was added because it was the place where Christ had suffered on the Cross and risen from the dead. The bishop in each of these cities received the title Patriarch. See also, Maximos, supra note 7, at 73-74:

On the other hand it should be stressed that the secular importance of the various cities was not the only factor which determined the position in the hierarchy of the future patriarchal sees. There were other reasons, the most important of which was the more general authority in the Church possessed by these particular Christian communities. This authority was partly the result of these churches' being of Apostolic foundation.

79. WARE, supra note 5, at 26.


81. See generally, Maximos, supra note 7, at 64-79.
establish a supremacy of power over Christendom. The Roman bishop exerted authority in the West (being the sole patriarch in the Western region), but he did not exercise similar authority in the East. The See of Constantinople was honored as second in rank to the Roman See, and became in practice the paramount authority for disputes that arose in the Eastern Churches which could not otherwise be solved. The See of Alexandria was honored as third in rank, the See of Antioch fourth, and the See of Jerusalem fifth.

The five Holy Sees each had exclusive jurisdiction over administrative matters in its own region, such as the election of church leaders and the administration of the church affairs within the Holy Sees.

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82. Ware, supra note 5, at 49-50; see also, Constantelos, Understanding the Greek Orthodox Church, supra note 7, at 92-93.

83. Constantelos, Understanding the Greek Orthodox Church, supra note 7, at 91; see also, Ware, supra note 5, at 47:

From the start there had been a certain difference of emphasis here between east and west. In the east there were many Churches whose foundation went back to the Apostles; there was a strong sense of the equality of all bishops, of the collegial and conciliar nature of the Church. The east acknowledged the [Roman bishop] as the first bishop in the Church, but saw him as the first among equals. In the west, on the other hand, there was only one great see claiming Apostolic foundation - Rome - so that Rome came to be regarded as the Apostolic see. The west, while it accepted the decisions of the Ecumenical Councils, did not play a very active part in the Councils themselves.

84. Constantelos, Understanding the Greek Orthodox Church, supra note 7, at 91: “Appeals to Rome from the clergy of the Eastern Church in disciplinary or theological matters were rare.” see also, “Great Saints, Two Councils, Led Wayward Church Back Towards Jesus the Reformer; Paul and Francis of Assisi, Councils of Constances and Second Vatican”, Nat’l Catholic Reporter, Dec. 8, 1995:

In the first millennium, the pope could not summon councils nor set their agendas; he had no veto power over them and attended none of them. Papal legates were invited, not because the pope alone could legitimate a council but because he was one of the five great patriarchs of the church expressing its structural unity: Jerusalem, Antioch, Alexandria, Rome and Constantinople.

85. Runciman, The Great Church in Captivity, supra note 5, at 21; Ware, supra note 5, at 23.

86. Constantelos, Understanding the Greek Orthodox Church, supra note 7, at 92.

87. Ware, supra note 5, at 22.

88. Runciman, The Great Church in Captivity, supra note 5, at 21; Ware, supra note 5, at 22. The city of Antioch came to be known not only as a commercial center, but also a Christian province until about the 7th Century, when Syria was taken by Arabs. Today, Antioch is known as Antakia, and is predominantly Arabic and Turkish. See generally, Norman Glanville Downey, Antioch in the Age of Theodosius the Great (1962); Norman Glanville Downey, Ancient Antioch (1963); Norman Glanville Downey, A History of Antioch in Syria: From Seleucus to the Arab Conquest (1961).

89. Runciman, The Great Church in Captivity, supra note 5, at 21; Ware, supra note 5, at 22.

90. Constantelos, Understanding the Greek Orthodox Church, supra note 7, at 91.
ical and doctrinal authority rested with the ecumenical council of bishops (Great Council) in which every bishop (not only the Patriarchs) of the Church could articulate views. The Church as thus constituted would generally remain united until the 11th Century.

In the ninth century, the gulf that had been developing between the Eastern and Western Sees widened when the Roman bishop claimed universal jurisdiction over all Christians. Germanic invasions and the rise of feudalism in Western Europe during the Middle Ages contributed to the division between the Eastern and Western Sees as Western nations sought the protection of the Bishop of Rome from northern invaders. The Church in the West developed a highly centralized structure in which the Bishop of Rome (the Pope), claimed and exercised primary authority.

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91. Runciman, The Great Church in Captivity, supra note 5, at 21-23.
92. Unity was not always easily achieved, however. For centuries, the Church would face numerous schisms, controversies and doctrinal movements which threatened the shared beliefs and traditions of the ancient Christian centers. The ancient Church survived in unity for centuries, however, as some of these movements subsided, while others were deemed to be heretical, and separated from the rest of Christianity. Among these movements were Monophysitism, Arianism, Nestorianism, Monotheletism, and Iconoclasm. See Studies in the Greek Orthodox Church, supra note 9, at 8.
93. Constantelos, Understanding the Greek Orthodox Church, supra note 7, at 91. Some of the differences that had been developing between the “East” (this included at the time the regions of Greece, Asia Minor, and the Middle East) and the “West” (i.e. Western Europe) had to do with doctrine or theology, as well as church administration. See generally, Dunaway, supra note 74, at 12. Cultural and linguistic differences also contributed to the resulting loss of communication between the Eastern and Western portions of the Roman Empire, since Latin became the predominant language in the West, and Greek in the East. See generally, Sir Steven Runciman, The Eastern Schism, A Study of the Papacy and the Eastern Church During the XI th and XII th Centuries (1955); Deno Jean Geanakoplos, Byzantine East and Latin West: Two Worlds of Christendom in Middle Ages and Renaissance: Studies in Ecclesiastical and Cultural History (1961).
94. Dunaway, supra note 74, at 12; see also, Studies in the Greek Orthodox Church, supra note 9, at 10:

The weakness of the Western Empire, its fall, the great migrations, and the flood of barbarous people gave cause enough for the relation of Church and State in the West to assume a different form, and for the Popes to take upon themselves the part of representatives and defenders of the Roman ideas in civilization and politics.
95. Dunaway, supra note 74, at 12.

[The bishop of Rome, the pope, began to assume a new and greater authority. Finally he declared that he alone was the universal head of the Church. But in the East the original spirit of “conciliarity” was maintained, because the patriarch of the capital city of Constantinople shared equal ranking with the patriarchs of three other ancient cities of the Church: Jerusalem, Antioch, and Alexandria.]
and administrative matters which further alienated the Eastern Christians.\textsuperscript{96} In 800 A.D., the Pope crowned Charles the Great "Roman Emperor Charlemagne"\textsuperscript{97} and thereafter claimed to have authoritative jurisdiction over all of Christendom, as the "Pontifex Maximus".\textsuperscript{98} That claim to primacy was rejected by Eastern Christendom.\textsuperscript{99} In 1054 A.D., a great schism arose between the Eastern and Western Churches,\textsuperscript{100} that resulted in the Orthodox Church in the East and the Roman Catholic Church in the West.\textsuperscript{101} The schism became complete in 1204.\textsuperscript{102} In
the East, the Patriarch of Constantinople, who had been second in the hierarchy of the prior unified Sees (in terms of honor), was now referred to as the "first among equals." The Patriarch of Constantinople was recognized as the Ecumenical Patriarch of Orthodox Christianity and continues to be recognized today as "first among equals" by independent and autocephalous churches that make up the Eastern Orthodox Christian body.

The Eastern Orthodox Ecumenical Patriarchate of Constantinople remains the center of Eastern Orthodox Christianity. It coordinates the means of communication among the other centers of Orthodox Christianity throughout the world. The Patriarchate exercises rights to perform religious functions that serve about 300 million people around the world, and it accepts related duties that define its purpose.

Structurally, the Ecumenical Patriarchate consists of several organs which include two governing bodies, the Holy Synod and the Mixed Council. The Holy Synod deals principally with matters of a spiritual nature, while the Council's activities are more secular, relating to civil practice of the Orthodox Christian faith is not confined to any particular region. W.M. CHANCEY, et. al., THE EASTERN ORTHODOX CHURCH IN THE WESTERN WORLD (AMS Press Inc. 1970) (1928).

102. In 1204, Constantinople was militarily attacked by Crusaders during the Fourth Crusade, and a Latin (Western) patriarch was enthroned in Hagia Sophia. Latin Patriarchs dominated Constantinople for half a century, from 1205 to 1261. "[The Church] suffered from the Seljuk Turks, and the same time from the Crusaders." STUDIES IN THE GREEK ORTHODOX CHURCH, supra note 9, at 12-13; See generally, GEOFFROI DE VILLEHARDOUIN & JEAN SIRE DE JOINVILLE, MEMOIRS OF THE CRUSADES (Sir Frank Marzials trans. 1957)(1908). Villehardouin participated in the Fourth Crusade, and died about 1213. Joinville also participated in a Crusade from 1248 to 1254. He died in 1317. Id. at Preface. See generally, ROBERT OF CLARI, THE CONQUEST OF CONSTANTINOPLE (Edgar Holmes McNeal trans. 1979). Robert of Clari was also a participant in the Crusade and chronicled the events as they occurred, or rather, as he understood them. See also, RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY, supra note 5, at 12; see generally, GEANAKOPOLOS, BYZANTINE EAST AND LATIN WEST, supra note 100; DUNAWAY, supra note 74.

103. FITZGERALD, supra note 73, at 8; see also, CONSTANTIELS, UNDERSTANDING THE GREEK ORTHODOX CHURCH, supra note 7, at 93-94.

104. The title "ecumenical" had been used to describe the See of Constantinople at a much earlier period, though not in the context of the "Orthodox Church", until after the schism. "The designations "Greek Orthodox" and "Roman Catholic" were unknown in the early and medieval church, and they took on their distinct meanings only after the eleventh century." CONSTANTIELS, UNDERSTANDING THE GREEK ORTHODOX CHURCH, supra note 7, at 87.

105. MAXIMOS, supra note 7, at 21:

[The Orthodox churches] act independently in arranging ecclesiastical affairs canonically and form a unique and indivisible body united in this centre, which undertakes to show concern and care for the other sister churches whenever extraordinary circumstances obstruct their ecclesiastical life.

106. STUDIES IN THE GREEK ORTHODOX CHURCH, supra note 9, at 19.
INTERNATIONAL LEGAL PERSONALITY

and economic matters. These civil and economic matters relate, for example, to "schools", "hospitals", and "looking after the Church finances".  

The Ecumenical Patriarch also has a large number of ancillary organs of administration, including the central ecclesiastical Epitropia, the pedagogic Epitropia, the Ecclesiastical Court of Justice, and other spiritual and secular officials (the Chief Archimandrite is one example of a spiritual official, and the Chief Logothete an example of the secular).  

Collectively, these organs perform the duties and functions of the Ecumenical Patriarchate in relation to the other Orthodox Christian centers around the world.

B. Legal Personality Under International Law.

1. International Legal Personality Defined.

International legal personality is a more dynamic and expansive concept under emerging international law than it has been in the past. International legal personality focuses both on the international law rights that an entity has and the correlative international law duties owed to it by others including states. An entity with international legal personality is a "subject of international law so as itself to enjoy rights, duties or powers established in international law, and, generally, the capacity to act on the international plane either directly, or indirectly through another state (as in the case of a protected state)."

According to the traditional international law view of international legal personality, the state alone was a proper subject of international law. In recent decades, however, that traditional view has slowly eroded and it is no longer valid to say that states are the only entities entitled to international legal personality. International legal personality has now been extended in varying degrees to both public and private organizations and institutions and to individuals. Entities that historically have been viewed only as objects of international law have achieved today the status as subjects of international law with international legal

107. Id.
108. Id. at 19-20.
109. Oppenheim's International Law, supra note 97, § 33, at pp. 119-120.
110. Id.
111. Lauterpacht, supra note 4, at 136-137.
112. Id., at 137-138.
personality. This expansion of personality is due in part to different perspectives that have developed on the relation of states towards individuals and organizations, and in part to the accelerating synergy of domestic and international law.

Today, attachment of international legal personality to an actor that seeks or asserts legal personality depends on the particular characteristics of that entity.\textsuperscript{1} For non-state entities, international law, for the most part, has no uniform \textit{formal} means to achieve international legal personality other than the express conferral of legal personality on state-created international organizations by treaty. That is, for the most part, there is no "administrative process" by which states acknowledge that certain entities possess international legal personality.\textsuperscript{2} Rather, attachment of international legal personality depends largely on the character of the relations that entities have with other international legal personalities, especially states.\textsuperscript{3} States understandably have been cautious in acknowledging the international legal personality of certain non-state entities especially where new rights may be asserted against states or new duties may be imposed on states, either of which may unacceptably diminish state sovereignty.

Attachment of international legal personality does not mean that an entity \textit{automatically} will enjoy any specific legal rights.\textsuperscript{4} Attainment of international legal personality does make assertion of specific rights or the imposition of specific duties on others possible. Actual assertion of those rights or imposition of duties does not appear to be essential in determining whether an entity has international legal personality. If an entity generally refrains from exercising its rights in a court of law (for example, if a corporation is concerned about costs or adverse publicity, or a religious institution, such as the Ecumenical Patriarchate, has valid

\textsuperscript{1} It is a matter for inquiry in each case whether - and if so, what - rights, powers and duties in international law are conferred upon any particular body." \textsuperscript{2} See, \textsuperscript{5} OPPENHEIM'S INTERNATIONAL LAW, \textit{supra} note 97, at 16.
\textsuperscript{2} OPPENHEIM'S INTERNATIONAL LAW, \textit{supra} note 97, at 16.
\textsuperscript{3} States are primarily, but not exclusively, the subjects of international law . . . States may treat individuals and other persons as endowed directly with international rights and duties and constitute them to that extent subjects of international law.
\textsuperscript{4} OPPENHEIM'S INTERNATIONAL LAW, \textit{supra} note 97, at 120.
theological reasons for avoiding lawsuits and chooses the less assertive path of discussion and dialogue), that does not automatically mean that such entity does not have either international legal personality or the legal standing to sue. Of course, the more that an entity claims rights and asserts correlative duties owed to it under international law, the stronger is the evidentiary case that may be made for international legal personality.

2. International Legal Personality May Attach In Limited Circumstances.

Once an entity achieves international legal personality, an important and related question is the scope of personality. That is, may an entity have a limited international legal personality? The answer seems to be that a non-state entity may indeed have a limited scope of international legal personality either for a specific purpose or event, or for a temporary period of time. Individuals, international organizations, non-governmental organizations (NGOs), and multinational (or transnational) corporations all have been acknowledged to possess a limited degree of international legal personality. While there is no consensus on the degree to which individuals possess international legal personality, it generally is accepted that individuals in some roles have a measure of legal personality. For example, during periods of wars among states, individuals in the roles of civilians or prisoners of war have international legal personality to the limited extent that states owe certain international law duties to them that they otherwise would not owe. In addition, individuals in their status as aliens are entitled to be treated by states in accordance with an international minimum standard. International legal personality may also attach in limited circumstances.

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117. LAUTERPACHT, supra note 4 at 136: "Individuals possess in a limited sphere international legal personality, not always corresponding procedural capacity, accorded to them expressly or by implication." See also, BROWNLE, supra note 4, at 58; OPPENHEIM'S INTERNATIONAL LAW, supra note 97, at 120.


119. "Facts with respect to equality of treatment of aliens and nationals may be important in determining the merits of a complaint of mistreatment of an alien. But such equality is not the ultimate test of the propriety of the acts of authorities in the light of international law. That test is, broadly speaking, whether aliens are treated in accordance with ordinary standards of Civilization."
organizations also have legal personality to the extent that they have “legal powers exercisable on the international plane” that are “not solely within the national systems of one or more states.” For example, the United Nations Organization was determined to have legal personality in the Reparations for Injury Advisory Opinion of the International Court of Justice and the European Union increasingly exercises varying degrees of international legal personality.

Non-governmental organizations (NGOs), especially in the areas of human rights and the environment, have international legal personality to the extent that states accept their growing participation in international fora, including the limited capacity to complain about state behavior in specific subject areas.

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120. BROWNLE, supra note 4, at 681-682.

121. See generally, Reparations For Injury, 1949 I.C.J. 174, 179:

[T]he Court has come to the conclusion that the Organization [United Nations] is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State... What it does mean is that it is a subject of international law and capable of assessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.

See also BROWNLE, supra note 4, at 680:

In the Reparations case the International Court was asked for an advisory opinion on the capacity of the United Nations, as an organization, to bring an international claim in respect of injury to its personnel, on the lines of diplomatic protection, and in respect of injury to the United Nations caused by the injury to its agents. The Charter did not contain any explicit provision on the legal personality of the Organization, but the Court drew on the implications of the Charter as a whole (citations omitted).

122. E.g., Government Assailed on Human Rights, Chi. Trib. Apr. 30, 1997, at 4:

A leading international human rights watchdog group Tuesday issued a scathing report on Mexico, grouping it with the Western Hemisphere’s worse human rights offenders... Human Rights Watch, through its Human Rights Watch/Americas arm, singled out President Ernesto Zedillo Ponce de Leon for a lack of progress on human rights during his term... .


124. NGOs are organizations or associations of individuals that typically have a common goal or purpose. See generally, Olz, supra note 123. The author correctly notes that: “the definition of "NGO" varies, depending on who is using the term in what context.” For example, the Council Committee of Non-Governmental Organizations, an ECOSOC Committee that considers NGO
Corporations, which traditionally have been considered to be subjects of municipal law, are increasingly accepted to have a measure of international legal personality. The global economy now operates primarily through multinational corporations manufacturing and trading through a worldwide web of subsidiaries and inter-corporate relationships. Multinational corporations increasingly are being subject to international law duties and consequently they also increasingly are asserting international law rights in such areas as international trade, international copyright, the environment and human rights.

Applications for consultative status, defines an organization as "international" if it has affiliates in three countries or more. Id. at 315 (citing Bruno Simma, The Charter of the United Nations—A Commentary, 906 (1995)).

125. Olz, supra note 123, at 322:
One could also contend that the role that TNC's (transnational corporations) and NGOs play in international affairs, de facto and de jure, is essential enough to merit international legal personality. This second view takes into consideration that "international legal personality is an evolving concept that depends on the state of international relations," [citing Are Indigenous Populations Entitled to International Juridical Personality?, 79 Am. Soc'y Int'l L. Proc. 189, 194-96 (1987)(remarks by Virginia Leary)] and that NGOs and TNCs have steadily increased their involvement in the international arena, including the legal sector (citations omitted).

See also, BROWNLEE, supra note 4, at 67-68:
[C]orporations of municipal law, whether private or public corporations, engage in economic activity in one or more states other than the state under the law of which they were 'incorporated' or in which they have their economic seat. The resources available to the individual corporation may be greater than those of the smaller states, and they may have powerful diplomatic backing from governments. Such corporations can make and do make agreements, including concession agreements, with foreign governments, and in this connection in particular, jurists have argued that the relations of states and foreign corporations as such should be treated on the international plane [footnote omitted] and not as an aspect of the normal rules governing the position of aliens and their assets on the territory of a state. In principle, corporations of municipal law do not have international legal personality. Thus a concession or contract between a state and a foreign corporation is not governed by the law of treaties [footnote omitted].


127. E.g., Sarah McAdams, It Is Not Business As Usual for Lawyers in China; Legal Restrictions Are Yet Another Barrier to U.S. Companies, CORPORATE LEGAL TIMES, Jan. 1995 (International), at 11 ("With the recent protests of Chinese laborers over alleged abused worker rights standards, U.S. corporations with operations in China have been forced to evaluate the practices of their contractors.")

See also, Charles E. Harrell, James L. Rice III & W. Robert Shearer, Securitization of Oil, Gas, and Other Natural Resource Assets: Emerging Financial Techniques, 52 A.B.A. BUS. L.W. 885 (May 1997). The authors note that concerns relating to consumer, environmental and technological change have affected market forces which have contributed to financial issues faced by energy companies:

Although somewhat novel, the $6 billion class-action suit filed by an Indonesian tribe leader against Freeport-McMoRan, which mines copper, gold, and silver in the mountains
C. The International Legal Personality of the Ecumenical Patriarchate.

1. The International Character of the Ecumenical Patriarchate.

By every significant measure, the Ecumenical Patriarchate has an international character, international functions, and international authority as an international religious institution. The Ecumenical Patriarchate is a religiously vital international institution for roughly 300 million people around the world. They view the Ecumenical Patriarchate as a primary source of stability and preservation of the beliefs and practices of the Church charged with specific responsibilities. The Ecumenical Patriarchate’s international legal personality exists by virtue of its status as “first among equals” in relation to Orthodox Christian Churches; that relationship is inherently international because the Church centers are outside the borders of Turkey. 128

The Ecumenical Patriarchate closely cooperates with all of the Eastern Orthodox Churches (those outside Turkey) and plays a key role in ensuring (and overseeing) that the traditions and doctrines of the historical Orthodox Christian Church are preserved in the local churches everywhere in the world. 129 As “first among equals”, the Ecumenical

of Irian Jaya, in mid-1996 is indicative of litigation risks that must now be evaluated by international companies which engage in the development and exploitation of natural resources. In addition to alleging environmental destruction of resources, the suit claims that “eco-terrorism,” “cultural genocide,” and corporate policies have led to human rights violations against Amunge tribal people [citing Stewart Yerton, Irianese Tribesman Sues Freeport, TIMES-PICAYUNE, Apr. 30, 1996, at C1]. Id. at n2.

128. Among the autocephalous churches of the Eastern Orthodox Christian Church (i.e., those that are “independent” when it comes to making administrative decisions), are the Patriarchates of Constantinople, Alexandria, Antioch, Jerusalem, Russia (Moscow), Serbia, Romania, Bulgaria and the Catholicate/Patriarchate of Georgia, the Churches of Cyprus, Greece, Poland, Albania, and the Church of the Czech Lands and Slovakia. FITZGERALD, supra note 73, at 8. It should be noted that the independence exercised by the Churches does not mean they do not interact with the other churches, and with the first among equals. “Orthodox Christianity can be, and is equally properly the Orthodox Church in that it is united in faith and doctrine, and Orthodox churches, in that it consists in full communion with each other, but nevertheless self-sufficient and independent (autocephalous).” MAXIMOS, supra note 7, at 17-18.

129. “[The Ecumenical Patriarchate] sees [the other Orthodox churches] as a call to humble service in a spirit of love, peace, mutual respect for the concerns, the glory and greatness of the Eastern Orthodox Church.” MAXIMOS, supra note 7, at 22. Orthodox Christian communities and churches exist throughout Europe, Asia, Africa and the Middle East, Australia, and North and South
Patriarchate has the final, albeit not the only, say on administrative matters, in an ecumenical synod.

The Ecumenical Patriarchate appoints successions (in a limited context), authorizes hierarchical positions, and acts as final arbiter for disputes that cannot be solved in the local Orthodox churches. Subject to certain specific restrictions, the Ecumenical Patriarchate also identifies the concerns of Orthodox Christian communities in different countries before international bodies, and communicates with the leaderships of Orthodox Christian congregations around the world.

The Ecumenical Patriarchate coordinates meetings, including international conferences and councils, among the various centers of the Orthodox Church. Indeed, historically, the Ecumenical Patriarchate has played a leading role in sponsoring and organizing Conferences, which are an essential vehicle for interaction among the world's Orthodox Christian churches. For example, from September 24 to October 1, 1961, the Ecumenical Patriarch of Constantinople (then Patriarch Anathagoras) called a meeting of the Orthodox Christian primates. During this meeting, the final agenda was drawn for the Holy and Great Council of the Orthodox Church, which is projected to take place at the end of the 20th Century. In 1995, a Panorthodox Conference was initiated by the current Ecumenical Patriarch of Constantinople. It dealt with environmental issues and was attended by religious and secular leaders,

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130. MAXIMOS, supra note 7, at 15: “It was convened on the initiative of the Oecumenical Patriarchate with the unanimous approval of the local Orthodox autocephalous churches.” See also, WARE, supra note 5, at 187. Most prelates were able to attend.

131. MAXIMOS, supra note 7, at 15; see also, WARE, supra note 5, at 187. Other examples of the leadership of the Ecumenical Patriarch of Constantinople with respect to initiating Conferences include three other pan-Orthodox Conferences, convened in 1961, 1963, and 1964, in Rhodes. MAXIMOS, supra note 7, at 313; see also, FITZGERALD, supra note 73, at 8; WARE, supra note 5, at 187. Metropolitan Maximos describes another Conference held in 1968 at the Orthodox Centre of the Oecumenical Patriarchate in Geneva. The conference examined among other things, how the Orthodox Church could make a fuller and more systematic contribution to the work of the World Council of Churches generally. MAXIMOS, supra note 7, at 313.

132. Joan Connell, Revelation Still Fascinates Christians 1900 Years Later, THE SALT LAKE TRIB., Sept. 30, 1995, at §D1; see also, Unified Patriarchy, THE RECORD, Sept. 24, 1995: “Heads of the Orthodox Church awaiting the arrival Saturday of the Ecumenical Patriarch Bartholomew I at Patmos Island, Greece, for celebrations commemorating the 1,900 years since St. John wrote the Book of Revelations.” Held in Patmos, Greece, the conference was actually a religious commemoration of the writing of the Book of Revelations by St. John, but concurrently dealt with issues on the environment, and was attended by various religious and secular leaders. The current Ecumenical Patriarch, Bartholomew I, was born Dimitrios Anachontonis on the island of Imbros (now Turkish), and is fluent in seven languages. He was unanimously elected by the Holy Synod on October 22, 1991. Eastern Orthodox Prelates Name Ecumenical Patriarchate, N.Y. TIMES, Oct. 24, 1991.
Orthodox Primates, and representatives of both the Roman Catholic and the Anglican Churches. The Ecumenical Patriarch has also arranged and participated in Eastern European conferences. In 1997 the Ecumenical Patriarchate participated in an environmental symposium in San Francisco, California.

The Ecumenical Patriarchate’s jurisdiction extends internationally, beyond the boundaries of Turkey, to select bishops in various regions. According to the canons, the Ecumenical Patriarchate identifies or “chooses” bishops in the See of Constantinople and other lands within its jurisdiction. The Church of Constantinople has direct ecclesiastical jurisdiction over local Churches of certain regions under Canon

133. Connell, supra note 132:
Ecumenical Patriarch Bartholomew of Istanbul, the “first among equals” in the Orthodox world, set sail for Patmos, leading a floating symposium of Orthodox, Catholic and Anglican theologians and scientists. An ardent environmentalist particularly concerned about the oceans, Bartholomew intends to draw lessons from the Book of Revelation about the deteriorating relationship of humankind with the earth.

134. Larry B. Stammer, HEADLINE: California and the West; Harming the Environment is Sinful, Prelate Says; Theology; Declaration by Bartholomew I, Orthodox Christian Leader, Is Believed to be a First by a Major Religious Figure, L. A. TIMES, Nov. 9, 1997, at A3:
Bartholomew, who has come to be known as the “green patriarch” has been especially outspoken on the issue. He has sponsored symposiums on pollution in the Black Sea, which borders a half-dozen countries in which Orthodox churches are active, and has designated the first day of September each year for an annual message on protecting creation.

See also, HEADLINE: USIA Foreign Press Center: State Dept. Briefing, FED INFO. SYSTEMS CORP., Dec. 17, 1996. Following his address during this State Department Briefing, the briefer, Timothy Wirth, Undersecretary of State for Global Affairs, addressed concerns raised by various members of the media, one of which related to the environment, and specifically, the area surrounding the Black Sea:

[T]he Ecumenical Patriarch of the Orthodox Church, who lives in Istanbul, as you know, has been instrumental in beginning to bring together the leadership of all the many Orthodox churches going up through that whole area to focus on issues of the environment and God’s creation, that man has an obligation in every way to think about that which was given to us and which we in fact are fouling significantly. There was a major program that the Ecumenical Patriarch did last year on this issue. He is launching, I understand, another seminar this summer on the question of the Black Sea, attempting to use his convening power to bring people together with a sense of urgency about what has to be done. It is a terrible problem and one that is going to take a long time to work on, but you all have to begin now.

135. Stammer, supra note 134. The symposium, which was attended by about 800 people, dealt with religion, science and the environment. Among other participants were Paul Gorman, the executive director of the National Religious Partnership for the Environment (made up of Protestant churches, Jewish denominations and Roman Catholics), Secretary of Interior Bruce Babbitt, and Carl Pope, executive director of the Sierra Club. Id.

136. MAXIMOS, supra note 7, at 213-214 (discussing canon twenty-eight).
Among the Churches that fall under the direct ecclesiastical jurisdiction of the Ecumenical Patriarchate are those in Turkey, Mt. Athos in Greece (the Orthodox Church of Greece is autocephalous, however), Crete and the Dodecanese, Finland, and other churches of the "diaspora" (dispersed Orthodox Christians in the so-called "new" lands), including Orthodox Churches in the United States, Canada, South America, Australia, Hong Kong, and Western Europe.

The Ecumenical Patriarchate also plays a significant international role in the recognition of the status of existing or newly established churches outside the domestic borders of Turkey. The question of the status of a church as autocephalous (or independent), typically brings local churches from around the world to the Ecumenical Patriarchate, to confirm their appropriate roles and relationships. For example, the Orthodox Churches in Finland, Estonia, Poland, Czechoslovakia, and Albania all have approached the Ecumenical Patriarchate to "legalize their canonical positions."

Finally, the Ecumenical Patriarchate exercises its international personality when it arbitrates ecclesiastical questions that arise involving Orthodox Churches. The Patriarch of Constantinople has authority to hear disputes among local churches and hierarchs, that could not otherwise be resolved.

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137. For a general discussion on Canon twenty-eight (28), see MAXIMOS, supra note 7, at 203-233. Of course, such authority is not without limitation. The canons set guidelines for the Patriarchal authority, counselling that Metropolitans (under the regions over whom the Patriarch had direct jurisdiction), should be chosen by the Patriarch after proper elections are followed, and made according to custom. See, MAXIMOS, supra note 7, at 213-214. One source accurately describes the organization of the Orthodox Church as follows:

The Orthodox Church is... a family of self-governing Churches. It is held together, not by a centralized organization, not by a single prelate wielding power over the whole body, but by the double bond of unity in the faith and communion in the sacraments. WARE, supra note 5, at 7. In all, there are nine Orthodox Patriarchs, of whom the Ecumenical Patriarchate of Constantinople is first in honor, and whom is ultimately responsible for overseeing the preservation of the faith. There are also numerous self-governing churches. See, Gustav Niebuhr, Patriarch's Visit Bolsters Orthodox Church, N.Y. TIMES, Oct. 19, 1997, at 16:

More than a dozen Orthodox churches in Eastern Europe, Russia and the Middle East are self-governing, with their own patriarchs or archbishops. But among Orthodox leaders, the Patriarch of Constantinople is considered first among equals.

138. WARE, supra note 5, at 127; see also, Niebuhr, supra note 137.
139. MAXIMOS, supra note 7, at 312.
140. CONSTANCELOS, UNDERSTANDING THE GREEK ORTHODOX CHURCH, supra note 7, at 92.
141. As a matter of practice, most would agree that the authority of the Ecumenical Patriarchate to hear disputes outside its own jurisdiction has been exercised in instances where local hierarchs were unable to solve a dispute. Such intervention, however, is always in cooperation with the local churches and hierarchs, and the Ecumenical Patriarch never acts unilaterally in the
2. The Ecumenical Patriarchate Is Sufficiently Similar to the Holy See To Support Claim Of International Legal Personality.

It is generally accepted that, of all the religious institutions operating internationally, no stronger case of international legal personality exists than that possessed by the Holy See of the Roman Catholic Church.\(^\text{142}\)

In addition to its \textit{sui generis} case for international legal personality, the Ecumenical Patriarchate is sufficiently similar to the Holy See to support a claim of international legal personality.

The international legal personality of the Holy See is intimately linked to Vatican City and the Roman Catholic Church. The source of its international legal personality is also substantially affected by its relationships with states (including diplomatic relations) and Italy in particular. The Lateran Treaty of February 11, 1929 between the Holy See and Italy explicitly acknowledges the sovereignty of the Holy See in international matters.\(^\text{143}\)

The current status of the international legal personality of the Holy See is probably best summarized as follows:

The Lateran Treaty marks the resumption of the formal membership, interrupted in 1871, of the Holy See in the society of states. Undoubtedly, the constituent elements of statehood are, in the case of the Vatican City, highly abnormal or reduced to a bare minimum. The territory of the Vatican City is only about 100 acres. Its population is about 1,000 inhabitants and is composed almost exclusively of persons residing therein by virtue of their office. Its independence as a government, while somewhat impaired by the close association with the Italian state, has a peculiar character by reason of the nature of the spiritual purpose for the treaty, it is not always easy to decide whether sovereign statehood in the field of international law is vested in the Holy See or in the Vatican Churches' internal matters. See MAXIMOS \textit{supra} note 7, at 203: "[The Ecumenical Patriarchate] only made use of this privilege when litigants addressed themselves to him at their own wish and explained their grievances."

\(^\text{142}\) \textit{See generally}, OPPENHEIM'S \textit{INTERNATIONAL LAW}, \textit{supra} note 97 at 325-9;

\(^\text{143}\) \textit{See} OPPENHEIM'S \textit{INTERNATIONAL LAW}, \textit{supra} note 97 at 326.
City. In fact there are writers who maintain that, far from there being one international person, there exist as the result of the Lateran Treaty two international persons - the Holy See and the Vatican City - the main point in dispute being whether these two persons are united by a personal or a real union.

The strict view ought probably to be that the Lateran Treaty created a new international state of the Vatican City, with the incumbent of the Holy See as its Head; but the practice of states does not always sharply distinguish between the two elements in that way. Nevertheless it is accepted that in one form or the other there exists a state possessing the formal requirements of statehood and constituting an international person recognized as such by other states.

Thus many states have diplomatic relations with it, it has participated in many major international conferences of states, is a party to some major multilateral treaties, and is a member of some international organizations. Its true significance in international law lies in the fact that international personality is here recognized to be vested in an entity pursuing objects essentially different from those inherent in nation states such as those which have hitherto composed the society of states. A way is thus opened for direct representation in the sphere of international law of spiritual, economic, and other interests lying on a plane different from the political interest of states. (footnotes omitted) 144

The Ecumenical Patriarchate's similarity to the Holy See, for purposes of international legal personality, in representing "spiritual" "interests lying on a plane different from the political interests of states", rests on the status of the Holy See as a "religious organ apart from its territorial base in the Vatican City." 145 This concept has been accepted both by scholars and states. 146 The Holy See's limited entitlement to international legal personality rests in the rights and correlative duties surrounding the international human right to freedom of religion and not to claims of statehood, recognition as a state, or to entitlement to formal diplomatic relations. In this limited sense the analogy between the

144. OPPENHEIM'S INTERNATIONAL LAW, supra note 97, at 327-9.
145. BROWNLEE, supra note 4, at 66.
146. Id.
The Ecumenical Patriarchate traces its origins to the same historical religious source as the Holy See. Both the Ecumenical Patriarchate and the Holy See are looked upon by state governments as well as by other entities, as the leaders of the two respective faiths. The Ecumenical Patriarch’s status as “first among equals” has permitted it to act as a primary “spokesperson” for the Orthodox Church, in some sense like the Pope acts as spokesperson for the Catholic Church, or for that matter like the Archbishop of Canterbury is spokesperson for the Anglican Church. The Ecumenical Patriarch has the specific responsibility of “coordinating the common witness” of the already existing sister churches and “overseeing the development of new regional churches.”

As the spiritual center of the Orthodox Church, representatives of the Patriarchate, including the Ecumenical Patriarch, engage in spiritual dialogues with the leaderships of the various Orthodox Churches, and leaderships of other faiths as well. Delegations of church leaders are sent from the Ecumenical Patriarchate to Orthodox Churches around the world to discuss spiritual matters with adherents of the Orthodox Church. The Holy See similarly sends representatives to meet with Catholic leadership, and to discuss spiritual matters with adherents of the Roman Catholic faith. The Ecumenical Patriarch, like the Vatican, interacts with governmental and secular leaderships from around the world, and participates directly in international conferences and meetings as the representative of the Orthodox Church. For example, the current Ecumenical Patriarch, Bartholomew, recently visited the United States, where he presided over liturgy services, met with clergy and congregants of the Orthodox Christian faith, and interacted with government officials and various leaders from numerous organizations and municipalities, as did the Pope during his U.S. visit in 1995.

Throughout Europe, the Patriarch is particularly...
well known, and is often invited to participate in conferences and similar gatherings.\textsuperscript{151} The Ecumenical Patriarch also deals with lawyers and other laypersons in matters relating to the organization and administration of local Churches.

During the U.N. Beijing Conference on Women, the Holy See was treated as an NGO and held observer status as a religious institution with limited legal personality.\textsuperscript{152} The Ecumenical Patriarchate has also participated in and led conferences dealing with issues not specifically related to church administration, including for example, environmental issues.\textsuperscript{153} It also regularly condemns the acts of violence that plague today's world.

Like the Holy See, the Ecumenical Patriarchate is capable of being a party to treaties and international agreements. The Ecumenical Patriarchate has entered into international agreements with states and ecclesiastical organs in matters pertaining to the worldwide Orthodox Church. For example, it entered into an agreement with the state of Hungary, which recognized the existence of the local Orthodox Church as an international legal personality. The Ecumenical Patriarchate has concluded agreements with other Patriarchates around the globe resolving ecclesiastical jurisdiction and other administrative matters.

Finally, both the Holy See and the Ecumenical Patriarchate actively support social institutions.\textsuperscript{154} For example, the Mixed Council of the Ecumenical Patriarchate deals with civil and economic matters, including, \textit{inter alia}, schools and hospitals.\textsuperscript{155} The Ecumenical Patriarchate has been responsible for initiating or overseeing international programs to provide people in need with food, shelter, and health and medical aid, for example in Asia, Africa and the Caribbean.

\textsuperscript{151} \textit{Eg.}, William Simbro, \textit{Bartholomew I Brings New Views}, \textit{Des Moines Register}, Nov. 1, 1997:

Bartholomew, 57, is known in Europe as the “Green Patriarch” for taking a leading role in the environmental movement, approaching the environment’s preservation as an expression of the doctrine of God’s creation. He has initiated seminars and dialogues promoting the need for mobilizing moral and spiritual clout to achieve harmony between humanity and nature.

\textsuperscript{152} \textit{See} Francis Kissling and Denise Shannon, \textit{A Nation Unto Himself}, \textit{N.Y. Times}, Sept. 9, 1995, at 19.

\textsuperscript{153} \textit{Supra}, pp. 126-127.

\textsuperscript{154} Notably, at least one source has said that the “first international NGOs were the Christian churches and their spiritual orders.” OIz, \textit{supra} note 123, at 315 n.14 (citing Herman H.K. Rechenberg, \textit{NON-GOVERNMENTAL ORGANIZATIONS}, in Encyclopedia of Public International Law, at 278).

\textsuperscript{155} \textit{Supra} pp. 119-120.
Thus, by every significant measure the Ecumenical Patriarchate ranks among those religious institutions that have "international legal personality" "vested" in them in the sense of "direct representation in the sphere of international law of spiritual . . . and other interests lying . . . on a plane different from the political interest of states." 156

IV. THE TURKISH GOVERNMENT'S MISTREATMENT OF THE ECUMENICAL PATRIARCHATE VIOLATES ITS RIGHTS AS AN INTERNATIONAL LEGAL PERSONALITY.

The Turkish Government's mistreatment of the Ecumenical Patriarchate may not legitimately be treated as a problem falling solely within the domestic jurisdiction of Turkey. That is, Turkey's mistreatment of the Ecumenical Patriarchate violates the duties owed to the Ecumenical Patriarchate as an international religious institution with international legal personality.157 As established above, the Ecumenical Patriarchate has the right and capacity, as an international legal personality, to minister unimpeded as a religious institution to its 300 million members around the world.158 The Turkish government's historical and current mistreatment—in closing theological schools, in placing restrictions on the succession to the Ecumenical Patriarchate, in interfering with the communication by the Ecumenical Patriarchate with churches and laity around the world, in impeding the global travel of the Ecumenical Patriarchate, and in acquiescing in violence committed against the Ecumenical Patriarchate and its property—all directly interferes both with the legal character and identity of the Ecumenical Patriarchate and its right to interact with its followers and churches around the world.

The Turkish Government's mistreatment of the Ecumenical Patriarchate not only violates "international legal personality law" but treaty law, customary international law principles, and international human rights law.

The 1923 treaty of Lausanne governing Turkey's treatment of non-Muslim minorities requires the Turkish government to protect the Ecumenical Patriarchate, its theological schools and the establishment of the Greek Orthodox Church. 159

156. Oppenheim's International Law, supra note 97, at 329.
158. Supra, pp. 124-128.
159. Supra, pp. 109-110; see also, Treaty of Peace (Lausanne Treaty), supra note 40, Arts. 37-45; Human Rights Watch, Denying Human Rights and Ethnic Identity, supra note 43, at 33,
One of the foundational principles and premises of customary international law upon which State responsibility rests is articulated in the maxim, *sic utere tuo ut alienum non laedas* (one must so use his own as not to do injury to another). 160 In the Corfu Channel Case, the International Court of Justice stated that international law obliges every State “not to allow knowingly its territory to be used for acts contrary to the rights of other States.” 161 The Turkish government's mistreatment of the Ecumenical Patriarchate inside Turkish territory effectively interferes and infringes upon the rights of members of Orthodox Churches in other countries to fully express religious freedoms. That mistreatment violates the letter and spirit of this fundamental principle of customary international law.

Finally, Turkey's mistreatment of the Ecumenical Patriarchate violates international human rights law inside and outside Turkey. A half century ago, the Universal Declaration of Human Rights articulated that “every one has the right to freedom of religion” and the right “to manifest his religion or belief in teaching, practice, worship, and observance.”162 That fundamental human right to practice religion is denied to the Orthodox faithful everywhere in the world to the extent that Turkey's mistreatment of the Ecumenical Patriarchate interferes with the full expression of Orthodoxy in schools, in churches, and in conduct.

V. CONCLUSION.

The Ecumenical Patriarchate of the Orthodox Church has international legal personality in the sense of having limited rights and correlative duties in international relations. Its international legal personality emanates from its *sui generis* authority “as first among equals” to minister to its 300 million members world-wide and to exercise certain international jurisdictional responsibilities among member churches. Its international legal personality also comes from its acceptance by states and non-state entities as an international legal personality. The existence of international legal personality for the Ecumenical Patriarchate is also consistent with the international legal personality of other religious institutions like the Holy See of the Roman Catholic

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51-54.

161. 1949 I.C.J. Reports 4, 22 (Apr. 9).
Church.

The Turkish Government currently and historically has mistreated the Ecumenical Patriarchate in a way that unacceptably limits the ability of the Ecumenical Patriarchate to exercise its international legal personality rights and to carry out its associated international duties. That mistreatment violates the Turkish Government’s duties under international law not to interfere with the exercise of freedom of religion of Orthodox Christians practicing their religion in other countries around the world.

The Turkish government's mistreatment of the Ecumenical Patriarchate also violates fundamental principles of the law of state responsibility. Turkey may not validly assert that its national sovereignty may be invoked as a bar to its responsibility for its direct and indirect mistreatment of the Ecumenical Patriarchate inside Turkey in a way that violates the international human rights of Orthodox Christians in other countries to fully exercise their religious freedoms.

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