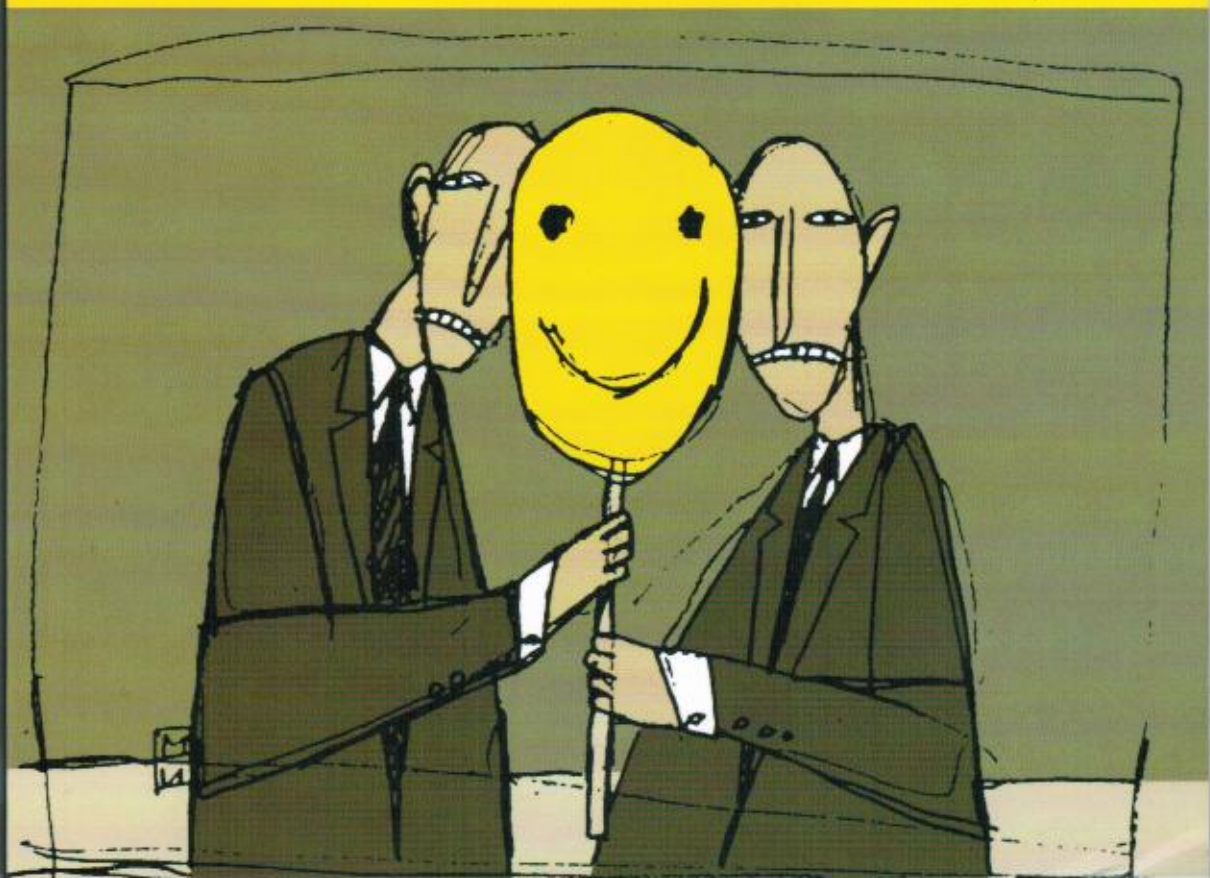
RECIPROCITY

GREEK AND TURKISH MINORITIES
LAW, RELIGION AND POLITICS

EDITED BY **Samim Akgönül**

İSTANBUL BİLGİ UNIVERSITY PRESS



Contents

2

Reciprocity in Turco-Greek Relations: The Case of Minorities

BASKIN ORAN

From a legal perspective, the principle of reciprocity, or "tit for tat",[1] emerged as a very important and useful institution of International Law in a Hobbesian environment where there was no hierarchical authority or centralized enforcement and when the only international actors were states. As such, it was a natural outcome of the principle of "sovereign equality" and it still is a fundamental principle among equal and sovereign states.

It was also entirely consistent with the principles of sovereignty and self-help which characterised such a setting, and was probably the most effective, if not the only, means of ensuring that the principle of *pacta sunt servanta* was honored, i.e., ensuring that anarchy did not prevail.

In sociological terms, reciprocity between states represented a reflection on the international field of the very logic of the Blood Feud principle between individuals: It was meant to prevent killings with

1 Terminology of Robert Axelrod, as mentioned in: Francesco Parisi and Nita Ghei, "The Role of Reciprocity in International Law", Cornell International Law Journal, Volume 36, Issue 1, 2003. (http://organizations.lawschool.cornell.edu/ilj/36-1.htm)

the threat that it would set off a chain of killings.

In both fields, reciprocity had an inherent weakness: It returned ill for ill as well as good for good. In other words, it degenerated first into retaliation and then into reprisal; and hence, once violated, quickly yielded the exact opposite of that for which it was intended. So much so that, in time, it became practically impossible to know "who started it in the first place". Mark Twain, in his *Adventures of Huckleberry Finn*, describes only too well this diabolic process of blood feud between the Grangerfords and the Shepherdsons once a killing was committed:

> "What was the trouble about, Buck? – Land?
>
> "I reckon maybe – I don't know."
>
> "Well, who done the shooting? Was it a Grangerford or a Shepherdson?"
>
> "Laws, how do I know? It was so long ago"
>
> "Don't anybody know?"
>
> "Oh yes, pa knows, I reckon, and some of the other old people, but they don't know now what the row was about in the first place."[2]

In time, international society developed, and with it went hand in hand the development of International Law. The latter evolved into International Public Law and other actors emerged on the scene as subjects of this law, the Individual being among them. Consequently, a very important branch of this law began to protect the Individual, who became a key element in this International Public Law. By the same token, the principle of reciprocity lost its most important characteristic; that of being applied between states. This was also a gateway to two important exceptions to the principle of reciprocity:

One terminal point of this process concerning human rights was the 1950 European Convention on Human Rights. The very mo-

2 Mentioned in: Keohane R. O., "Reciprocity in International Relations", *International Organization*, Vol. 40, no.1 (Winter 1986), p.10.

ment reciprocity is applied, the Convention is doomed to wither away. We may very well include also the field of humanitarian law: A state could no longer declare "You did not abide by the Geneva Conventions protecting the rights of the prisoners of war, so neither will I".

Another terminal point concerning the law of treaties is Article 60/5 of the 1969 Vienna Convention on the Law of Treaties: Reciprocity does "not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties." Ratified by 108 countries as of May 2007, this Article 60/5 can now be said to represent an "objective statute" as well as customary law.

Greek-Turkish relations in the field of minorities is a very important case in this process because, from the very beginning, reciprocity was understood and applied in its most negative sense.

It is true that until the end of WW II, reciprocity was also a key principle of minority treaties. This was so keenly felt that, even today, some segments of these minorities, imbued with the sprit of nationalism, have internalized this principle which all but destroyed them; it hardly seems credible that they demand its stricter and wider implementation in their lack of understanding that their well-being depends solely on the well-being of their counterparts in the other country.

Happily enough, these are very much a minority within a minority. Since the mid-1990s circumstances have changed for the good, more than likely brought about by the European Union, which throws punches at Turkey across the table while aiming its boot at Greece under it. However, it must also be said that the judiciary of both parties resists this positive process with great "success", as shown by the closure of *Iskece Turk Birligi* (Xhanty Turkish Union Association, founded in 1927) in Greece and the still unresolved problems of non-Muslim foundations in Turkey.

Contrary to what many still believe, Article 45 of Lausanne ("The rights conferred by the provisions of the present Section on the

non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.") is not about reciprocity. It is about what Turgut Tarhanlı describes as "parallel obligations";[3] i.e., Turkey will apply the provisions of Section III to her non-Muslim minorities and Greece will do the same to her Muslim minorities. These obligations are in no way dependent on the practice of the other but are to be applied by the two respective states individually and independently.

What's more, Section III of Lausanne is not only a document on the Protection of Minorities, although its subtitle suggests this. It is also a document on Human Rights, but not labeled as such because the term Human Rights did not exist in international law at that time; it was an invention of the post-WW II period.

In fact, there are four categories whose rights are protected by Articles 38-44, of which minorities (non-Muslims in Turkey and Muslims in Greece) are only one: 1) All inhabitants of Turkey; 2) Citizens speaking a language other than Turkish, 3) All citizens of Turkey, and 4) Non-Muslim citizens of Turkey).[4]

This interpretation can in no way be challenged in international law, especially in view of the post-WW II developments briefly described above. Neither can they be challenged under national law, a situation which exists precisely because reciprocity in Greco-Turkish relations on minority issues resulted in a truly tragi-comic situation that concerns the national laws of both countries: Both parties not only penalise individuals for things they have not done, but in trying to penalise the other State through penalising this other State's coreligionists, they in fact penalise their own citizens.

---

3 See his intervention at the conference on minority foundations organized by the İstanbul Bar Association: *Cemaat Vakıfları - Bugünkü Sorunları ve Çözüm Önerileri*, İstanbul, 2002, pp.36-37.

4 See Oran B. *Minorities in Turkey. Concepts, theory, Lausanne, Legislation, Jurisprudence*, Istanbul, İletişim Publishers, 2004, 253p. (in Turkish).