

The OSCE Human Rights Norms and The Decision-Making Process of Foreign Policy with A Human Rights Objective: The Case of Turkey

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ABSTRACT

This article is concerned with international norms factor influencing foreign policy of a state. It examined specifically the determination of the extent to which the OSCE human rights norms influence foreign policy. In doing so, it has also aimed to establish whether there exists a contingent relationship between the OSCE human rights norms and foreign policy.

Methodologically, the behavioural perspective has been used in the research. The questionnaire survey was carried out for the data collection in Turkey. The definition of the terms has been made in the related section. Besides, as far as the types of norms are concerned, the division of the OSCE human rights norms have been made, as the new way of approach, by the author into *substantive* and *non-substantive ones*. The following conceptual hypothesis has been constructed: *non-substantive human rights provisions of the OSCE documents have more influence than substantive ones on foreign policy with a human rights objective*. As far as the findings are concerned, of 40 operational hypotheses, 30 were tested. All the tested operational hypotheses except one were supported as being in the expected direction. Of these, 13 were statistically significant, and 17 were not. The results show that of the 30 operational hypotheses tested, 13 were supported and 17 were not supported statistically at the .10 level. 2 of the operational hypotheses supported were confirmed by the chi-square test results.

In conclusion, the research has shown that the OSCE human rights norms guide the decision-making process of foreign policy with a human rights objective. It has also shown that non-substantive human rights provisions of the OSCE documents guide the decision-making process of foreign policy with a human rights objective more than substantive human rights provisions. The influence of the OSCE human rights norms is beyond the generic functions of norms. They influence foreign policy of states for various reasons such as providing legal and political advantages, having legal, political, cultural and ethical values, and legal condition of a country. Why norms with different characteristics have a different influence on foreign policy of states lies in the nature of "law" and "politics". Therefore, non-substantive human rights provisions are more influential than substantive ones to the decision-making process of foreign policy if: foreign policy is concerned with more procedural and abstract matters; decision-makers think that general norms and expressions include specific ones, and that they and their state might be put in danger; decision-makers want to save appearances leading to concrete situations being overlooked; and decision-makers do not want to articulate specific obligations.

There exists a general view that the findings are generalisable. It is, however, important to comment on whether the use of the data from Turkey affects the results. In this regard, Turkey's legal and political situations affect the extent of the influence of the OSCE human rights norms rather than the hypothetical results about the decision-making process of the foreign policy with a human rights objective. Specifically, the fact that Turkey has human rights problems, and is in the way of becoming Europeanised, has affected the extent of guidance or consideration of the OSCE human rights norms in foreign policy with a human rights objective.

Key words: The OSCE, Human Rights, Decision-Making Process, Foreign Policy, Turkey.

Introduction

This article is about international law or norms factor influencing foreign policy of a state. Although there are also political, social, and economic factors, the international law and relations has a significant place in a study about the environmental factors influencing foreign policy or the behaviour states. Studies in this area have been conducted from different perspectives including behavioural, policy sciences,

functionalist, and case study. All perspectives except behavioural one are concerned with studying international law in its political and social settings including perceptions, interests, values, and objectives of participants in the international arena as well as the impact of such variables on the nature and character of law and its development.

This study follows behavioural perspective, which is mainly concerned with the relationship between international law and national behaviour. In this context, the article has endeavoured to resolve whether there exists a contingent relationship between the OSCE human rights norms and foreign policy of individual member states.¹ The related terms have been defined in the specific project and methodology section below. As far as the types of norms are concerned, the OSCE human rights norms have been divided by the present writer into *substantive human rights norms and non-substantive human rights norms* so that the resolution of the identified problem can be facilitated by the split of such norms. They could have been separated as *substantive* and *procedural rights norms* according to the usual separation of rights in the literature. However, it seems more reasonable to make the division in this way because the definition of non-substantive human rights provisions, on the one hand, do not exclude procedural norms, whilst on the other hand, include various human rights principles not falling into either substantive or procedural human rights norms. Such separation is also useful and necessary for the examination of the practical application of such documents², and the perception of functions of human rights norms on foreign policy.³

Although there exists a contingent relationship between the types of norms and the types of situations in international relations, which has been reviewed in the literature section, few have been directly concerned with such a relationship. It is thus necessary to do research on this issue to make an assessment of the role of norms in international life. Moreover, analytical tools on the behaviour of states, and thus theories of international relations, cannot be developed unless this area is studied.

The Literature

In the literature, factors influencing foreign policy or the behaviour of states are well studied: with regard to the cognitive process, which is viewed as an integral aspect of the decision-making process, the works by, among others, M.G. Hermann, S. Chan, and A.L. George showed individual personality characteristics, roles, belief systems, and

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¹ The OSCE stands for the Organisation for Security and Cooperation in Europe. It was formerly the Conference on Security and Cooperation in Europe until the Budapest Summit held in 1994. The change in name became effective on 1 January 1995. The OSCE is a relatively new phenomenon: its approach is co-operative and programmatic rather than a treaty based one. It is based on the implementation of the international standards rather than standard setting. Its procedure for dealing with violations of human rights is based on the Human Dimension Mechanism. However, its documents, from 1975 Helsinki Final Act to 1999 İstanbul Charter for European Security, includes many substantive human rights norms as well as non-substantive ones. Although the İstanbul Charter has not put forward any norms for the Human Dimension Mechanism, it has for the first time made the commitments of the participating States about the promotion of the development of independent judicial systems.

² Interview with Rüçhan Işık, Professor Dr., Director of International Labour Organisation (ILO) Ankara Office, 8/7/1996, 11:20-12:00.

³ Interview with Ali Karaosmanoğlu, Professor Dr., Head of the Department of International Relations, the University of Bilkent, 9/7/1996, 11:10-12:00.

situational factors.⁴ With regard to the collective process, decision regimes, national role conceptions, and a group of actors as ultimate decision units are remarkable examples.⁵ As far as domestic factors are concerned, domestic politics, regimes and cultural factors were studied respectively by J.D. Hagan and M.W. Sampson III.⁶ With regard to international factors, M. P. Karns and K.A. Mingst discuss international organisations, which is the specific aspect of the environment.⁷

Recent studies have also indicated the normative factors influencing the foreign policy or behaviour of states in the formally anarchic international system; such as J. Mueller's and J.L. Ray's discussion of changes in norms relating to slavery and to the use of force,⁸ C.W. Kegley and G.A. Raymond's discussion of norms with regard to alliance behaviour⁹, Starr's investigation of norms regarding the diffusion of democracy in the international system¹⁰, G. Goertz and P.F Diehl's and D. Strang's analysis of norms of decolonisation¹¹. With regard to the legal or normative factor, M.S. McDougal has used the policy science perspective.¹² Such perspective provides an assessment of the effectiveness of international law in both factual events in international processes and the important role of the national decision-maker in the foreign policy decision making and implementation processes. In addition, the functionalist perspective, used by Corbett, Stone, Friedman, and Jenks in the study of international law, presents the idea that the effectiveness of international law could be improved and its domain extended if the development and study of law and the attainment of non-political goals in the international system or the satisfaction of certain socio-economic needs were closely correlated. Further, the case study perspective, used mainly by B. Currie, R.A. Falk, and

⁴ See M. G. Hermann, "Explaining Foreign Policy Behaviour Using Personal Characteristics of Political Leaders", *International Studies Quarterly*, Vol. 24, 1980, pp. 7-46; Steve Chan, "Rationality, Bureaucratics, and Belief Systems: Explaining the Chinese Policy Debate, 1964-1966", *Journal of Peace Research*, vol. 16, 1979, pp. 333-347; and Alexander L. George, *Presidential Decision-Making in Foreign Policy: The Effective Use of Information and Advice*, Boulder Colo, Westview Press, 1980.

⁵ See Charles N. Kegley, Jr., "Decision Regimes and the Comparative Study of Foreign Policy", in Charles F. Hermann, Charles W. Kegley, Jr., and James N. Rosenau (eds.), *New Directions in the Study of Foreign Policy*, London, Harper Collins Academic, 1991; and Kalevi J. Holsti, 'National Role Conceptions in the Study of Foreign Policy', *International Studies Quarterly*, Vol. 14, 1970, pp. 233-309.

⁶ Joe D. Hagan, "Regimes, Political Opposition, and Comparative Analysis of Foreign Policy"; and Martin W. Sampson III, 'Cultural Influences on Foreign Policy', both in Hermann, Kegley Jr., and Rosenau (eds.), *New Directions in the Study of Foreign Policy*.

⁷ Margaret P. Karns and Karen A. Mingst, "International Organisations and Foreign Policy: Influence and Instrumentality", in Hermann, Kegley Jr., and Rosenau (eds.), *New Directions in the Study of Foreign Policy*.

⁸ See J. Mueller, *Retreat from Doomsday*, New York, Basic Books, 1989; and J. L. Ray, 'The Abolition of Slavery and the End of International War', *International Organisation*, vol. 43, Summer 1989, pp.405-439.

⁹ C. W. Kegley, Jr. and G. A. Raymond, *When Trust Breaks Down: Alliance Norms and World Politics*, Columbia, University of South Carolina Press, 1990.

¹⁰H. Starr, "Democratic Dominoes: Diffusion Approaches to the Spread of Democracy in the International System", *Journal of Conflict Resolution*, vol. 35, June 1991, pp. 356-381.

¹¹See G. Goertz and P. F. Diehl, "Toward a Theory of International Norms", *Journal of Conflict Resolution*, Vol.36, December 1992, pp. 634-664; and D. Strang, 'Global Patterns of Decolonization, 1500-1987', *International Studies Quarterly*, Vol.35, December 1991, pp.429-459.

¹²M. S. McDougal, *Studies in World Public Order*, New Haven, Yale University Press, 1960.

L. Scheinman and D. Wilkenson¹³ provides in-depth analysis of single cases, relates its findings to the broader structure of international law.

Moreover, various approaches have been developed utilising behavioural perspective in the study of the law-politics relationship. The systems approach, which has already been applied in international relations by M.A. Kaplan, C.A. McClelland, A.M. Scott, K.W. Deutsch, J.D. Singer, and J.N. Rosenau¹⁴ was first suggested in the study of international law by Kaplan, along with Katzenbach.¹⁵ In such an approach, "the international system" can be regarded as the fundamental concept by which the systemic data relevant to the role of international law in world affairs could be organised, and the future role of international law could be predicted on the basis of such data. Since then, the works of various scholars have shown the usefulness of the systems-approach as an analytical tool in the understanding of the law-politics relationship. In this respect, S. Hoffman has applied it to international law in the context of historical sociology and attempted to correlate the conflictive patterns of the past with the prevailing social structures operating in the international society to ascertain the place of international law in politics.¹⁶ Falk and Mendlovitz, on the other hand, have looked into future international conflicts and the present social structures to appraise empirically the work of law in the present and near future.¹⁷ Their studies were based on the data that should be organised to emphasise the prospects of law in the present and immediate future.

The communication approach was also used by Coplin to explain that international law is regarded as an important instrument of communication, including diplomacy.¹⁸ Starr further sees such a communication function as a precondition for the facilitative function, "as the set of expectations to be communicated includes the rules necessary for the simple co-ordination of behaviour required to get things done".¹⁹ As international law has the co-ordinating function in the search for solutions to common problems, methods of communication research in the social sciences can be used for the functions of international law.

As there is the contingent relationship between the types of norms and situations, it is worth examining such types. As far as the norms types are concerned, various types are seen in the literature. One of them is the *legal* and *non-legal* norms type. Although the coercive characters of the attached sanctions or the logical pedigree within a legal

¹³See B. Currie, *Selected Essays on the Conflict of Laws*, Durham, Duke University Press, 1963; R. A. Falk, *The Role of Domestic Courts in the International Legal Order*, Syracuse, Syracuse University Press, 1964; and L. Scheinman and D. Wilkenson, *International Law and Political Crisis: An Analytic Casebook*, Boston, Little Brown, 1968.

¹⁴See C. A. McClelland, *Theory and International Systems*, New York, Macmillan, 1966; K. W. Deutsch, *The Analysis of International Relations*, Englewood Cliffs, N.J., Prentice-Hall, 1968; and J. D. Singer (ed.), *Quantitative International Politics*, New York, The Free Press, 1968.

¹⁵M. A. Kaplan, and N. de B. Katzenbach, *The Political Foundations of International Law*, New York, Wiley, 1961.

¹⁶S. Hoffman, "International Systems and International Law", in Klaus Knorr and Sidney Verba (eds.), *The International System*, Princeton, Princeton University Press, 1961, pp. 205-237.

¹⁷R. A. Falk and S. Mendlovitz, *The Strategy of World Order: Vol.1, Toward a Theory of War Prevention; Vol.2, International law; Vol.3, The United Nations; Vol.4, Disarmament and Economic Development*, New York, World Law Fund, 1966.

¹⁸W. Coplin, *The Functions of International Law*, Chicago, Rand McNally, 1966.

¹⁹H. Starr, "International Law and International Order", in Charles W. Kegley, Jr., *Controversies in International Relations Theory: Realism and the Neoliberal Challenge*, New York, St. Martin's Press, 1995.

system are, as Kratochwill explains²⁰, regarded as the distinguishing characteristics of legal prescriptions from non-legal norms, there is not a clear demarcation criterion of law because of the ambiguity of the concept of law. On the other hand, if one makes social order dependent upon law, he/she understands the international arena largely negatively, i.e., in terms of the "lack" of binding legal norms, of central institutions, of a sovereign will, etc. In addition, there are some norm-types that do not clearly fall into the traditional conceptualisations of law; such as the thinking of "soft law", an example of which is the OSCE documents.

Although there is not a clear demarcation criterion of legal norms from non-legal ones, in the view of Cohen, the shared feature of the regulatory principles (including general norms of behaviour, aspects of international law and rules that are created by formal and informal understanding or are contained in the "spirit" of agreements, verbal gentlemen's agreements and tacit agreements) is that they guide the conduct of states in their relations with each other.²¹ Thereby, they prevent or, at least, mitigate conflict and facilitate co-operation. Although there are differences in scope, formulation, generality and solemnity between such rules, they are looked upon as a single genus. Thus, the results of their infringements can be described as uniform. Such rules are called rules of the game. The function of rules of the game for international society is like that of norms in domestic society. They show the limits on permissible conduct, thereby permitting conflict to be contained, and act as guidelines for desirable behaviour, thereby facilitating active co-operation. Moreover, as the concept of "rules of the game" is wider than law, provisions of international law are not excluded.

Besides, Kratochwill maintains that norms have three generic functions.²² First, they are guidance devices that are designed to simplify choices and convey "rationality" to situations by drawing the factors that a decision-maker has to take into account. Here, they have functions to reduce the complexity of the choice-situations in which the actors find themselves. Secondly, they are the means that allow people to pursue goals, share meanings, communicate with each other, criticise assertions, and justify actions. Finally, they are also influential to the processes of deliberation and interpretation because norms influence choices through the reasoning process. More importantly, norms play roles not only in the international but also domestic arena. Hence, law is seen a matter of "degree" of influence that various norms have upon decision making.

Again according to Kratochwill,²³ *practice-type norms* and *precepts* are regarded as the norm types that are designed to overcome the disjunction between the individually and collectively desirable state of affairs. Whereas the former usually concern performances and thus specify the conditions under which a given action shall be held valid, the latter are prescriptions of the highest generality that try to overcome the dilemmas between self-interest and socially desirable actions.

Norms are also categorised as *tacit* or *explicit* norms. The emergence of the former is derived from the mutual expectations of two actors. Such rules are based on the

²⁰Friedrich V. Kratochwill, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and domestic Affairs*, Cambridge, Cambridge University Press, 1991.

²¹Raymond Cohen, "Rules of the Game in International Politics", *International Studies Quarterly*, Vol.24, March 1980.

²²Kratochwill, *Rules, Norms and Decisions*, p.10

²³*Ibid.*, p.91.

situations in which each actor works out for his/her beliefs about the world. The latter are formulated in cases in which a common history or culture are not shared by the interacting parties; tacit rules are imprecise; there exists a deadlock among various equilibrium points and thus the emergence of a settled practice cannot be awaited; the solution is likely to engender further debate. Moreover, directives, customary norms, and rights are counted as co-ordination norms resolving the co-ordination and interference problems.²⁴

As far as foreign policy defined as the *type of situation* is concerned, given the view of Luard about foreign policy and human rights²⁵, foreign policy decisions are about: firstly, keeping human rights on the international agenda; secondly, the improvement of the human rights norms (standard-setting); thirdly, the improvement of the human rights mechanism; and lastly, the direct influence on other governments. In essence, they are made *unilaterally*, and where such behaviour should be displayed in particular circumstances.

Furthermore situations, in which foreign policy decisions with a human rights objective are made, are not ones that claims and counterclaims are made towards whether fundamental human rights are violated or not. This is the case even if when making decisions with direct influence on other governments. Such decisions are either based on the assumption that human rights in a country concerned are violated, or have demanding characters towards receiving information about the human rights situation in the country concerned. In these situations, presumably, norms with the general character, and procedural norms help and guide decision-makers primarily in moulding their decisions.

The Specific Project and Methodology

The aim of this research is to determine the extent of the influence of the human rights norms of the OSCE documents have on member states' foreign policies. More specifically, it aims to establish whether or not *non-substantive human rights provisions* of the OSCE documents have more influence than *substantive human rights provisions* on *foreign policy with a human rights objective*. Even in the instance where there is a relative lack of research in the area, it is possible to project a conceptual hypothesis as follows: *non-substantive human rights provisions* of the OSCE documents have more influence than *substantive ones* on *foreign policy with a human rights objective*.

As far as the definition of the terms are concerned, *non-substantive human rights provisions of the OSCE Documents* are defined as norms that are not directly concerned with fundamental human rights themselves. Rather, they may be called precepts that are prescriptions of the highest generality. They include general principles and procedural rules. Hence, they have a general character and had a significant place in the formation of the rights system of the OSCE. The followings are the example of such norms: *Respect for Human Rights* (1975 Helsinki Final Act HFA);²⁶ *Issues relating to human dimension including human rights will be considered by the OSCE Council of Foreign Ministers* (Prague Document of 1992); *The establishment of the Human Dimension*

²⁴Ibid., p.81.

²⁵Evan Luard, *Human Rights and Foreign Policy*, Oxford-New York, Pergaman Press, 1981.

²⁶*Helsinki Final Act of August 1, 1975*, 14 ILM 1292

Mechanism (Concluding Document of Vienna of 1989);²⁷ *The protection of human rights is the first responsibility of government* (Paris Charter of 1990).²⁸

Substantive human rights provisions of the OSCE Documents are defined as norms that directly specify fundamental human rights themselves. Thus, they are concerned with substantive rights, and have a specific character. The examples of such norms are: *The right of the individual to know and act upon his rights* (HFA of 1975); *Respect for the rights of minorities* (Charter of Paris of 1990); *No one will be subjected to arbitrary arrest, detention or exile*, (Concluding Document of Vienna of 1989); *All individuals in detention will be treated with humanity* (Concluding Document of Vienna of 1989); *Everyone has freedom of expression* (Charter of Paris of 1990); *Respect for freedom of thought, conscience and religion* (HFA of 1975).

As far as the term of foreign policy is concerned, the aspect of the *decision-making process of foreign policy with a human rights objective* has been selected. The reason for this is the assumption that the study of foreign policy involves its environment as well as the process, the decisions and their implementation. According to Snyder, the environmental perspective is very much a decision making approach to the study of foreign policy.²⁹ The term of *decision-making process of foreign policy with a human rights objective* has also been operationally defined as: *decisions* of a foreign minister (FM) about foreign policy with a human rights objective, *advice* of bureaucrats to the FM to give a decision on foreign policy with a human rights objective, *comments* of senior editors of newspapers about foreign policy with a human rights objective, and *declarations* of leaders and deputy leaders of opposition political parties about foreign policy with a human rights objective. *Legislative body* and *interest groups* are excluded from the operational definition of the term. The reason is that the involvement of the former in the decision-making is very limited in parliamentary democracies, and the impact of the latter on the decision-making is extremely limited even in democratic polities because they have no authoritative position in the foreign policy process.

The conceptual hypothesis has thus been reformulated as 4 sub-hypotheses and 40 operational hypotheses. Sub-hypotheses are as follows:

1. Non-substantive human rights provisions of the OSCE documents have more influence than substantive human rights provisions on the decisions of a foreign minister about foreign policy with a human rights objective.
2. Non-substantive human rights provisions of the OSCE documents have more influence than substantive human rights provisions on the advice of bureaucrats to a foreign minister upon foreign policy with a human rights objective.
3. Non-substantive human rights provisions of the OSCE documents have more influence than substantive human rights provisions on the declarations of leaders and deputy leaders of opposition parties about foreign policy with a human rights objective.
4. Non-substantive human rights provisions of the OSCE documents have more influence than substantive human rights provisions on the comments of senior editors of newspapers upon foreign policy with a human rights objective.

²⁷Vienna Concluding Document of January 15, 1989, 28 ILM (1989) 531.

²⁸Charter of Paris for a New Europe of November 21, 1990, 30 ILM (1991) 190.

²⁹R. C. Snyder, H. W. Bruck, B. Sapin, "Decision-Making as an Approach to the Study of International Politics", in Richard C. Snyder, H. W. Bruck, Burton Sapin, (eds.), *Foreign Policy Decision Making: An approach to the Study of International Politics*, New York, The Free Press of Glencoe, 1962.

The data was collected, by using a questionnaire survey conducted in the period February-April 1995 in Turkey, from the elites such as the Foreign Minister; 11 bureaucrats, 16 leaders and deputy leaders of opposition political parties, 10 senior editors of newspapers. In the questionnaire, a 30-item *nominal* scale (Yes=1, No=2) was used to measure whether the respondents were involved in the decision-making process of foreign policy with a human rights objective. Moreover, a 60-item *ordinal* scale (All the time=5, Often=4, Sometimes=3, Rarely=2, Never=1) was used to measure the extent of the influence (guidance) of *substantive and non-substantive human rights provisions* of the OSCE documents on the *decision-making process* of foreign policy with a human rights objective. Of the 38, 16 questionnaire forms including that of the FM were not returned; the 22 were returned, giving an average response rate of 58 per cent.

Descriptive (frequency, mean) and inferential statistics (Pearson's Chi-square, t test) were used in analysing the findings. The .10 level of significance was selected so that the null hypothesis is to be rejected if the sample outcome is among the results that would have occurred no more than 10 per cent of the time. The Statistical Package for the Social Sciences (SPSS) for WINDOWS Release 6.0 programme was used for the computer analysis.

The major assumptions underlying the study, particularly those on which the hypotheses are based, are as follows: actors who are involved in the decision-making process in foreign policy with a human rights objective are identifiable, and conceive a given country as one in which there exists fundamental human rights violations or problems. Elites' responses were sought on the assumption that they would be aware, and therefore the rest of the population, of the links between the variables. Being elites, it is also assumed that they themselves might have some influence on the behaviour of the state. Moreover, foreign policy decisions with a human rights objective are not concerned with crisis situations. The importance of this assumption lies in the fact that, during a crisis situation, actors are limited to those such as prime minister, interior and foreign ministers, and so on. As far as behaviour is concerned, it is observable, measurable, and characterised by the involvement of actors in various decision-making situations. The influence of norms is measurable according to the time sequence. In a mail survey, non-response is a refusal unless informed otherwise.

The Findings and Discussion

Generally, guidance levels of the OSCE human rights norms occurred as expected in the decision making process of foreign policy with a human rights objective: The guidance *frequency distributions* of *non-substantive human rights provisions (NSHRPs)* and *substantive human rights provisions (SHRPs)* clustered towards the *high* and *low* ends respectively on the advice of bureaucrats to the Foreign Minister (ABFM), declarations of leaders and deputy leaders of opposition parties (DLDOP), comments of senior editors of newspapers (CSEN). The mean guidance values of non-substantive human rights provisions were higher than that of substantive human rights provisions on the ABFM, DLDOP, and CSEN (see Table). However, unexpectedly, the mean guidance value of the provision of *respect for human rights (1975 HFA)* (4.600) was not higher than that of *the right of the individual to know and act upon his rights (1975 Helsinki Final Act)* (4.800) on the CSEN upon the declaration in the OSCE meetings that the government has respect for human rights.

TABLE
Mean Guidance Values of the OSCE Human Rights Norms on Decision-Making Process of Foreign Policy with a Human Rights Objective (Hypothetical data)

OSCE Human Rights Norms	Decision-Making Process of Foreign Policy with Human Rights Objective		
	ABFM	DLDOP	CSEN
NSHRPs	3.733	4.446	4.447
SHRPs	2.423	3.463	3.915

Source: Fatih Karaosmanoğlu, *Human Rights Norms in CSCE and the Behaviour of a State: Perceptions of Elites in Turkey*, PhD Thesis, Surrey University, UK, 1996, pp.180-186.

As far as the relationship between the guidance levels of the OSCE human rights norms in the decision-making process of foreign policy with a human rights objective is concerned, the data shows that regarding:

- The ABFM; the 10 pairs of variables could be independent because the chi-square values lead to acceptance of the null hypotheses.
- The DLDOP; of the 10 pairs of variables, only 3 could not be independent because their chi-square values lead to rejection of the null hypotheses; 7 could be independent because their chi-square values lead to acceptance of the null hypotheses.
- The CSEN; of the 10 pairs of variables, 5 could not be independent because their chi-square values lead to rejection of the null hypotheses; 4 could be independent because their chi-square values lead to acceptance of the null hypotheses; 1 pair of variables cannot be examined because the number of non-empty rows or columns is one. Consequently, where the pairs of variables could be independent, the guidance levels of substantive human rights provisions were not determined by that of non-substantive human rights provisions on the decision-making process. Where the pairs of variables could not be independent, the guidance levels of substantive human rights provisions were determined by that of non-substantive human rights provisions on the decision-making process.

As far as the differences between the mean values of variables are concerned, of the 10 pairs of variables about the ABFM, in the 6 pairs of variables, the mean guidance values of non-substantive human rights provisions were statistically higher than that of substantive human rights provisions, whilst, in the 4 pairs of variables, the mean guidance values of non-substantive human rights provisions were not statistically higher than that of substantive human rights provisions. Of the 10 pairs of variables about the DLDOP, in the 7 pairs of variables, the mean guidance values of non-substantive human rights provisions were statistically higher than that of substantive human rights provisions, whilst, in the 3 pairs of variables, the mean guidance values of non-substantive human rights provisions were not statistically higher than that of substantive

human rights provisions. In each of the 10 pairs of variables about the CSEN, the mean guidance values of non-substantive human rights provisions were not statistically higher than that of substantive human rights provisions. Of these, 1 pair of variables was also not as expected.

In the light of the findings, conclusions about the operational hypotheses are made as follows: of the 40 operational hypotheses, 30 were tested by using chi-square and t tests, and 10 were not tested because the questionnaire format were not responded to by the Foreign Minister. All the tested operational hypotheses except one were supported as being in the expected direction. Of these, 13 were statistically significant, and 17 were not. The results show that of the 30 operational hypotheses tested, 13 were supported and 17 were not supported statistically at the .10 level. 2 of the operational hypotheses supported were confirmed by the chi-square test results.

The findings from the fieldwork were then presented to knowledgeable people of senior political and administrative status in Turkey, with a view to exploring further explanatory variables. Regarding why the OSCE human rights norms guided or were considered in the decision-making process in foreign policy with a human rights objective, applied experts were responded as follows:

- Işık³⁰ suggested that Turkey had an established, active and experienced bureaucracy in foreign policy: “When foreign policy decisions with a human rights objective are made, all the international documents and commitments of Turkey are considered.” Moreover, everything in foreign policy including persons, verbal or written agreements, etc. forms the view of international relations. The aim of a contemporary, independent, modern state is to show that it is not acting against international relations. However, he was doubtful about the extent that media and opposition political parties influence the government because they approach matters superficially. They refer to norms to strengthen their messages.

- Özge³¹ argued that in foreign policy the OSCE human rights and the related norms are used as a means, not goals. Thus, when foreign policy decisions are taken towards human rights, provisions of agreements are not used as a framework, or not considered in such decision-making situations. Even when considered, which are only 5%, such norms are considered as having ethical, not legal, character. Moreover, the OSCE norms are important in the way of democratisation because "democracy" has a significant place in the OSCE process.

- Karaosmanoğlu³² argued that the OSCE documents are political rather than legal instruments. However, they are, to a significant extent, legally binding from the perspective of customary international law. Thus the following explanations can be made: firstly, states generally consider international law rules despite the existence of some exceptions. Such rules are consequently considered in foreign policy decision-making process as well. Secondly, Turkey has traditional diplomacy in complying with international law: when explaining its foreign policy, it feels the need to make reference to international law. He also argued that that Turkey has a European vocation in the form of the fact that "you are European but you should perform some obligations to be

³⁰Interview with Rüçhan Işık, Professor Dr., Director of ILO Ankara Office, 8/7/ 1996, 11:20-12:00.

³¹Interview with Oğuz Özge, Ambassador, Head of the Department for the OSCE, Ministry of Foreign Affairs, 3/7/1996, 14:30-15:50.

³² Interview with Ali Karaosmanoğlu, Professor Dr., Head of the Department of International Relations, Bilkent University, 9/7/1996, 11:10-12:00.

able to become more Europeanised". As a result of such a vocation, Turkey sees OSCE documents as instruments which their obligations should be fulfilled in the process of becoming Europeanised.

- Doğan³³ asserted that first of all, they are written documents made for the purpose of the achievement of security. Secondly, they comprise of common values: human beings consider values like this during history. Thirdly, individuals might consider such norms for various reasons such as legal, political, and ethical, in foreign policy. Lastly, Turkey's membership of the OSCE might lead to consideration of such documents and norms.
- Bağcı³⁴ argued that although the OSCE documents and norms do not have universal legal values, and their standardisation has not been finished, they are instruments, with regional legal values but not above the constitutional law, in which their fulfilment is desired.
- Şafak³⁵ claimed that the OSCE documents are important instruments in the protection of human rights because such documents arrived at with consensus are useful for humanity. Besides, they have priority over national constitutional instruments. They also reflect a more objective result for human rights issues because mankind carry their cultures into such documents.
- Tan³⁶ claims that in Turkey everybody, i.e. politicians, lawyers, and scientists, has the duty of becoming contemporary and westernised. It is thus necessary to have some criterion. The OSCE, in this sense, has the revised documents for becoming Europeanised. Besides, it provides Turkey, in appearance, with a framework that it acts according to such norms. Moreover, OSCE documents and norms help Turkey's pragmatism in the Customs Union entered into with Europe. From the point of view of foreign policy, it also provides the image that Turkish people are not behind Europeans, and have become contemporary and comply with such norms because all European countries signed them.
- Ensaroğlu³⁷ put the three reasons for the consideration of the OSCE norms: first, even if they are not legally binding, they are "agreements" and have legal elements: Thus, states consider such norms in the area of foreign policy. Secondly, the fact that they are kept on the agenda because of recent documents might lead to their consideration in some decision-making situations including foreign policy.
- According to Özer³⁸, on the one hand, such norms were considered because of the outcome of globalisation, whilst on the other hand, he believed that in the area of human rights there is a huge gap between the arrangement of the OSCE and the situation of Turkey. This is because some rights are, as it is believed, restricted due to the combat against terrorism. In Turkey, referring to and considering such norms in foreign policy fill such a gap.

³³Interview with Lütfi Doğan, MP, Welfare Party, 3/7/1996, 17:20-18:10.

³⁴Interview with Hüseyin Bağcı, Associate Professor, Department of International Relations, Middle East Technical University, 4/7/1996, 10:00-10:45.

³⁵Interview with Ali Şafak, Professor Dr., Police Academy, 28/6/1996, 14:40-15:50.

³⁶Interview with Ahmet Tan, MP, Democratic Left Party, 25/6/1996, 14:00-14:45.

³⁷Interview with Yılmaz Ensaroğlu, General Director of Mazlum-Der, Ankara, 3/7/1996, 10:15-11:55.

³⁸Interview with Yalçın Özer, Senior Editor, Türkiye Daily Newspaper, 4/7/1996, 17:15-18:15.

- Birdal³⁹ argued that this issue has two dimensions: firstly, NGOs and lawyers consider OSCE human rights norms, partly, because of the universality of human rights, and partly, because of being party to such agreements having legal values; secondly, the state considers such norms because of the legitimisation of its acts, e.g. the application to the Council of Europe and other international institutions, causing the double-standards.

- İnan⁴⁰, however, argued that he does not believe that the OSCE human rights norms are considered in foreign policy. Firstly, human rights concept is related with the economic level, in other words, it would not be the uniformity of criterion in the area of human rights; and secondly, the OSCE has lost its function. Moreover, the OSCE norms are confused with that of the Council of Europe.

Regarding the reasons why non-substantive human rights provisions of the OSCE documents guided or were considered more than substantive human rights provisions in decision making process of foreign policy with a human rights objective, following opinions were offered:

İşık argued that in foreign policy, political approach is related with more abstract things, while Özge claimed that in foreign policy, norms having a general character are referred to or considered because decision makers are not involved in specific matters, and not in a position of proving, and think that general norms or expressions include specific or subordinate ones. According to Karaosmanoğlu and Tan, substantive norms have a specific character. Thus, in foreign policy, norms with a specific character have a risk of putting decision-makers or the state in a difficult position. Thus they refer to or consider human rights norms with a general character. According to Şafak, on the other hand, the Turkish foreign policy reflects its society, which has considered important "procedural issues", since the *tanzimat*, which brings together double standards. Birdal argued that non-substantive norms are important for the state. Politicians consider or refer to such norms in their decision-making situations to save appearances leading to concrete situations being overlooked. Ensaroğlu said that norms with general character or procedural norms are able to be used easily in foreign policy because such norms are ambiguous, and thus, do not hold obligations.

As far as the generalisability of the findings is concerned, it is necessary to consider both the statistical and qualitative views as follows:

Even though all but one of the findings were in the expected direction some results were not statistically significant, so that some operational hypotheses were not supported. It is unlikely that failure for statistical support of some operational hypotheses was the result of a faulty theoretical framework, because it is well established and there is sufficient evidence from previous research about the impact of norms on behaviour of states mentioned in the preceding sections. It could be that either the sample size or the poor response rate has contributed to the uncertainty of findings in this area.

However, from a qualitative point of view, given that such operational hypotheses were supported on the basis of the data, the following arguments were made:

Özer claimed that such results could be generalised because they appeared plausible, while Karaosmanoğlu and Tan asserted that the findings relating the concept of foreign

³⁹Interview with Akın Birdal, General Director of Human Rights Association, Ankara, 4/7/1996, 17:30-18:30.

⁴⁰Interview with Kamran İnan, MP, Motherland Party, 25/6/1996, 13:30-14:10.

policy might not be generalised because different results might be expected according to the research methodology. Everdi agreed with the generalisation of the findings because of the different functions of substantive and non-substantive human rights norms in the area of foreign policy, while Bağcı agrees with the generalisation of the results because of the fact that no one would claim that we do not consider such norms. But İnan disagreed with the generalisation of such findings because he claims that 95% of Turkish people and 50% of MPs do not know of the OSCE.

As far as the findings are concerned, they were the same as and supported those of Kaplan and Katzenbach, Hofmann, Falk and Mendlovitz, Coplin, and Kegley and Raymond, in that both the existing findings and those of other researchers were about the behavioural perspective with different approaches studying the relationship between international law and national behaviour.⁴¹ However, the findings of McDougal, Corbet, and Falk, were about different perspectives studying international law in its political and social settings.⁴² The findings also support those of Kratochwill⁴³ because they showed that norms had generic functions and that law can be seen a matter of degree of influence of such norms upon decision-making. Moreover, the findings supported the idea of: Schachter⁴⁴ that the HF A is not outside the basic rule of "pacta sunt servanda" and that the participating states are not free to act as if there were no such instruments; Kiss and Dominick⁴⁵ that participants' acceptance that the individual has a right to know and act upon his rights is a contribution of fundamental importance to the definition and implementation of human rights; Cohen⁴⁶ that non-binding written agreements were, at least, politically binding, and of paramount importance because they are considered in policy making and in many decision-making situations.

Conclusions

The research has shown that the OSCE human rights norms guide the decision-making process of foreign policy with a human rights objective. It has also shown that non-substantive human rights provisions of the OSCE documents guide the decision-making process of foreign policy with a human rights objective more than substantive human rights provisions. This demonstrates that generally, environmental factors influence foreign policy, and that specifically, "international human rights norms", even legally non-binding, is seen as the specific aspect of such environmental factors. Not only human rights norms of the OSCE, but also that of Council of Europe (CE) are bound to have some influence on foreign policy of a state.

The split of the human rights norms into *non-substantive* and *substantive* has proven useful for analytical purpose, and has also shown that norms with different characteristics have influenced foreign policy of a state as an international actor in different ways. It has thus made a contribution to the body of knowledge as it offers a

⁴¹Kaplan and Katzenbach, *The Political Foundations*; Hofmann, *International Systems*; Falk and Mendlovitz, *The Strategy of World Order*; Coplin, *The Functions of International Law*; Kegley and Raymond, *When Trust Breaks Down*.

⁴²McDougal, *Studies in World Public Order*; Falk, *The Role of Domestic Courts*.

⁴³Friedrich V. Kratochwill, *Rules, Norms and Decisions*.

⁴⁴Schachter, "The Twilight Existence of Non-Binding Agreements", *American Journal of International Law*, Vol. 71, 1977.

⁴⁵Kiss and Dominick, "The International Legal Significance of the Human Rights Provisions of the Helsinki Final Act", *Vanderbilt Journal of Transnational Law*, Vol.13 (2/3), 1980.

⁴⁶R. Cohen, *Rules of the Game* in International Politics.

new normative model for the analysis and conceptualisation of human rights norms in the behaviour of a state.

The influence of human rights norms in the OSCE is beyond the generic functions of norms. They influence foreign policy of states for the following reasons: first, they are means, which provide legal and political advantages to the country concerned. In other words, consideration of such norms provides a country, in appearance, with a framework that it acts according to such norms; serves for a country's pragmatism; plays a significant role in the way of becoming Europeanised; and provides the image that people of the country concerned are not behind the European people. Generally, such reasons seem to be valid for countries that have not completed their development. Secondly, a legal condition of a country is a reason for the influence of such norms on the behaviour of states. For instance, a country in which fundamental rights are not guaranteed fully in its domestic law applies such norms. Lastly, they have legal, political, ethical, and cultural values. Why norms with different characteristics have a different influence on foreign policy of states lies in the nature of "law" and "politics".

As discussed in the previous section, there is a general view that the findings are generalisable. It is, however, important to comment on whether the use of the data from Turkey affects the results. In this regard, Turkey's legal and political situations affect the extent of the influence of the OSCE human rights norms rather than the hypothetical results about the decision-making process of the foreign policy with a human rights objective. Specifically, the fact that Turkey has human rights problems, and is in the way of becoming Europeanised, has affected the extent of guidance or consideration of the OSCE human rights norms in foreign policy with a human rights objective. Turkey, being a signatory of the OSCE, may not claim that findings in this project are not of relevance to the OSCE, even if they apply to only a handful of all signatories. The Turkish case, being that of change in the area of human rights, provides a credible field on which both the OSCE principles and the theoretical framework may be tested.

The findings seem to conform to the idealist tradition, emphasising that there exists a society of states bound by common rules, customs, and shared norms. They definitely support the view that international norms, whether legally binding or not, are important considerations in many decision-making situations; despite the informalities, they may have as much importance in policy-making as more formal instruments and, in some cases, even more. Furthermore, given that the OSCE human rights norms are the outcome of multilateral efforts, they support the belief that international problems require collective, or multilateral, rather than national efforts to address them. Even if it can be assumed that the OSCE human rights norms have a legal character, they also demonstrate that international law serves as an instrument of communication. However, they differ at the methodological level because, instead of the traditionalists' use of history and some concepts such as "state", the quantifiable study of observable "behaviour" was carried out in the investigation.

Furthermore, the findings seem also to conform to the realist tradition because, despite the greatest stress being put on armed power as an instrument of maintaining peace, law and diplomacy was not entirely denied in the work of a range of US-based writers, including Hans Morgenthau, Henry Kissinger, and Kenneth Waltz. In the work of a range of English-based writers, including Charles Manning, Martin Wight, Hedley Bull, and Fred Northedge, diplomacy and international law, as well as the role of the great powers and war (use of force), were seen as the elements of international society.

Methodologically, it toes the line of behaviouralism. In this sense, Karl Deutsch studied the growth of international communications; James Rosenau focused on informal interactions, "Transnational linkages" between societies that bypassed orthodox state-to-state relations; and Morton Kaplan developed more "scientific" theorisation of the international systems.

However, clearly, much more research is needed on firstly, why OSCE human rights norms influence foreign policy. To what extent and why legal, political, and ethical characters of the OSCE agreements are influential in foreign policy of states should be examined carefully. Secondly, the current research should be extended to include major foreign policy decisions. This may also give an indication about what type of behaviour a state has. Thirdly, the degree of influence of human rights norms of the OSCE documents on foreign policy has been scaled according to the frequency of functions of the norms, but it could also be scaled according to the quantity of functions of the norms. And finally, prospective researchers must also examine the extent to which the OSCE, as a system, rather than human rights norms, influences foreign policy.