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GLOBAL SECURITY, HUMAN RIGHTS AND POSITIVE RESPONSIBILITY

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Introduction

In this study, I would like to approach the security/global security issue with the concepts of human rights and positive responsibility. After the 9/11 attack, the two issues have become the agenda of the world politics: global security and human rights. While the latter has been limited to because of being far away from the positive responsibility, the former has been set on the basis of fighting the war on global terrorism. In the world in which we live, the principle of the respect for human rights is still one of the fundamental principles of international relations. It is typical of a new stage of development in the international society that can largely be traced back to the Second World War. The general principle, prohibiting gross and large-scale violations of basic human rights and fundamental freedoms, has gradually emerged. During the Cold War, human rights were competing with the traditional principles such as the respect for the sovereignty, the equality of states and the non-interference in the domestic affairs. However especially, after the adoption of the global and regional legal systems and instruments, no state currently challenges the idea that human rights must be respected everywhere in the world. The imposition of this principle on states is clear: the duty to refrain from gross violations of the rights rather than simply abiding to by specific regulations on human rights. Such rights cover the right not to be subjected to torture, the right to a fair trial, the right to be free from arbitrary arrest, etc.

Global security and Human rights and Responsibility

First of all, let me explain here something: the concept of *positive responsibility* has been transferred from the field of international law and human rights to that of international relations. That is, I borrowed the concept of positive responsibility to use in political science. As it is known, the *negative responsibility* is the key to the first generation of human rights which are classic rights such as the right to life, freedom of expression, the prohibition of torture, the right to fair trial etc. Actually I reconceptualized the human rights in my previous studies leading to a new model which has been called the *Canim*. According to such model, the human rights has been defined as the individual's values protected legally, politically etc. The model also offers the following five human values as the foundation of human rights: life, intelligence, generation, belief, property, which are called the *superior values*. There are also their versions which are called the inferior values. In essence, the human rights protects both *superior and inferior values*. It is in fact unnecessary to give priority to civil and political rights over the social and economic rights, and vice versa. The philosophy behind this is that human is human with those values. Human rights should therefore be protected and promoted simultaneously and cumulatively.

In other words, in a democratic state the first generation rights are, in principle, guaranteed without intervention with such rights. However, such understanding in a democratic state needs to be with a positive responsibility of states as well. Although the positive responsibility has been pronounced by the the European Court of Human Rights (ECHR) in the following cases: In *Akkoç case*, the Court held that Turkey was to pay 89,000 sterling (UK) for the violation of Article 2 (right to life) of the European Convention Of Human Rights (ECHR) on account of the failure of authorities to take preventive operational measures to protect individuals whose life are at risk from the criminal acts of another individual. In *Satik case*, it was held that Turkey was to pay 55,000 sterling (UK) for the violation of Article 3 (prohibition of torture) of the ECHR in the absence of a plausible explanation where individuals are injured during the police custody and the detainment in a prison. Also, it considered as a reason that there should exist some form of independent monitoring of the action of the security forces to ensure accountability for the force used.

Such considerations suggest legally the importance of NGOs and the independent monitoring systems.

Having a global value, *positive responsibility* means that even if there exist first generation rights in a case, all states should take necessary steps in securing the individual's rights. For example, the detainee should be secured from the wound, the criminal investigations should be carried out properly, and the effective criminal legislation should be passed from the parliament etc. It must be born in mind that such *positive responsibility* is clear in the second and the third generation rights. Regarding the positive responsibility, the behaviour of law enforcement officials is significant in the context of homeland security as well. During the Mersin and Trabzon events which happened recently, the approach of the police has been appreciated in public opinion because the police used its discretionary power first by evacuating the suspects from the area of events. Otherwise, the suspects might have been lynched. That's the reason why, Kretschmer, the head of the European Commission's delegation to Turkey, said that "as a result, we are of the opinion that all officials here –the governor as well as the security forces- are aware of the standarts they need to meet".¹

Global Security and Institutions

Given that we live in the globalisation process, we must consider such positive responsibility in global security issues as well. As international actors, states and security institutions such as the UN, NATO, OSCE should act in that way. Otherwise, we would not be successful to win the war on global terrorism and the other threats. Among such institutions, becoming institutionalised more especially after the post cold war era, the OSCE can be more functional to play positive role expressed in the HFA. That is partly because of the features the OSCE has, partly because of its human dimension component, which will be mentioned below.

It is well known that the OSCE is one of the significant arenas for promotion of human rights through multilateral diplomacy. It marks a new stage towards the implementation of the human rights in the way of positive responsibility. Let us consider the features: it is a regional organisation operating under the Chapter 8 of the United Nations. A comprehensive security idea has been adopted. It is the only 'European Forum' where *all* important issues are *periodically* discussed because it has not a military doctrine². It has periodical arrangements and the non-treaty status of the documents including the HFA. Citizens have also been involved in the process. The decision -making is based on the consensus principle.

As far as the human dimension mechanism is concerned, it has been established first in the 1989 Vienna Meeting. It is one of the significant steps towards its institutionalisation. Such mechanism has been expanded in the 1990 Copenhagen and the 1991 Moscow meetings. It includes a multistage process of negotiations, mediation and fact-finding that involve bilateral and multilateral negotiations, missions of experts, and reporters. The above mentioned methods can be used in conjunction or independently. The negotiating process consists of the following four steps: *Exchange of Information, Bilateral Meeting; Notification of All OSCE States, Discussion of Issues*. Furthermore, *third-party mediation* and *fact finding* through the expert missions and reporters have been provided for. The role of the expert missions is 'to facilitate resolution of a particular question or problem relating to the human dimensions'.³ In

¹ Turkish Daily News, June 7, 2005.

² See: The *Final Recommendations* of the Helsinki Consultations called as the *blue book*, which is the constitution of the OSCE.

³ Paragraph 5 of the first section of the Concluding Document of Moscow.

this sense, good offices and mediation services can be provided to encourage co-operation and dialogue between the interested parties.

There are two ways in which such services can be applied by expert missions: firstly, a mission may be invited by any participating state 'to address or contribute to the resolution of questions in its territory relating to the human dimensions. Secondly, any participating state may file a request that the other state party to the negotiations be asked 'whether it would agree to invite a mission of experts to address a particular, clearly defined question on its territory relating to the human dimensions. Even if the request for the appointment of a mission of experts may be rejected because of the freedom of the participating state, the human dimension mechanism cannot necessarily be effected. The reason for this is that a reporter can be sent on a mission 'to address a particular, clearly defined question on its territory relating to the human dimension' whether the state concerned agrees to it or not. However, the following conditions must be complied with: firstly, it must be requested by a participating state that either considers that a mission of experts failed to resolve the problem or has tried unsuccessfully to get the other states to agree to the establishment of such missions. Secondly, this must be supported by at least five other participating states. There is also an 'emergency procedure for the human dimension'. In that procedure, when a participating state considers that there is a 'particularly serious threat to the fulfilment of the human dimension provisions', a reporter can be made active. However, the request needs the support of nine other States.

Global security and foreign policy

Human rights and positive responsibility should be articulated more by those who are responsible for both national and global security issues such as decision-makers, diplomats, and the other related bureaucrats in a foreign policy decision making process, despite their reluctance about human rights and thus positive responsibility. One of the reasons why they are reluctant lies in the relationship between human rights and foreign policy. Such relationship covers an inescapable tension because whereas the reference to human rights includes an implication of a global society, foreign policy is concerned with the world of states and governments. In other words, governments act for their states, not for humanity. However, in the world in which we live in, the human rights are not irrelevant to foreign policy. Global security actors as well as foreign policy decision makers are bound at least by international law to pay attention to what is happening on human rights internationally. It is also political and moral imperative to make the promotion of human rights a major goal of foreign policies of states.⁴

Another significant point, regarding the relevance of human rights to the foreign policy, is that the growth of international human rights law, which suggests that human rights now play a part in the decision about the legitimacy of a state, as well as other actors and institutions in international society. The recognition of a state or being a sovereign is not enough any more. The state should also, domestically, be the guarantor of basic human rights. Whilst the question of what these basic rights are may not yet be resolved in international law, this should not be understood that there are none.⁵ Here, how the real world of diplomacy is penetrated by the human rights concern is the key question. There are two levels: standard setting and standard keeping. The latter is more problematical than the former.

⁴ S. Hoffmann, "Reaching for the Most Difficult: Human Rights as a Foreign Policy Goal", *Daedalus*, vol. 112 (4), 1983, pp.19-49.

⁵ I. Brownlie, *Principles of International Law*, Oxford, Clarendon Press, third edition, 1979

Rustow expresses this problematic character of standard keeping by arguing that, while diplomats sought the codification of human rights for some decades, two major controversies arose from the effort: firstly, the definition of human rights, and secondly, the method of their global application.⁶ As members of the international society, all states engage in the process of standard setting. For various reasons, however, governments are quite ready to endorse these standards despite the absence of a will to comply with these standards.⁷ The following section will look at the consequences of non-compliance with the human rights by the states

3. Foreign Policy Constraints on Human Rights

If it is accepted that human rights is now part of the calculation of what is legitimate internationally, it might be expected that diplomats regard them in their policy making. The first function of diplomacy is communication among states;⁸ That is, all governments have to deal with almost every other government in the world on many diverse questions. Then, it may be argued that if human rights is dealt with, it becomes an obstacle to the fulfilment of such a function, especially if a state having an unsatisfactory human rights record is socially excluded from communication between states. As not only keeping relations, but also maintaining good relations with other states becomes the prime objective of diplomacy, there exist an inducement to play down the bad human rights records of certain states, especially if there are some special reasons why it is believed inadvisable to antagonise the other government concerned. In this regard, as Luard puts it, in some cases, other government may be considered important for strategic, commercial, reasons; it may be an important supplier of raw materials as South Africa has been to all Western countries.⁹

There is also the idea that free trade should have priority over human rights considerations. As the states have a mutual interest in trade, the mutuality of the interest would not be advanced by any opinion that an unsuccessful human rights performance ought to exclude other government from trade, or diminish its participation in it. According to the old fashioned liberal idea, trade also leads to peace as well as the transference of civilised values. This was the clear understanding for years among the Western countries in their "constructive engagement" with South Africa: "trade in the end will be good for human rights". However, in the meantime, it is generally accepted that the interruption of trade will highly unlikely bear any human rights fruit for the usual reasons that make sanctions prone to failure, which is also true for aid.¹⁰

Another connection of interest with human rights, apart from free trade, is security. This kind of national interest is most frequently played against human rights. Even where human rights has been put as an objective of foreign policy, the attention to human rights can be cancelled by extraordinary circumstances. To illustrate, the US Foreign Assistance Act, Section 502B, gave an exception to the rule that governments that engage in a consistent pattern of gross violations of international human rights should be deprived of military aid. This is the intervention of the national interest. During the Carter administration, the US gave military aid to Indonesia, Philippines, South Korea and Zaire, despite their poor human rights records. These states benefited either from their strategic position in the contest with the

⁶ D. A. Rustow, "Man or Citizen? Global Modernisation and Human Rights", in Paula R. Newberg, (Ed.), *The Politics of Human Rights*, New York and London, New York University Press, 1980, p.19.

⁷ R. A. Falk, "Theoretical Foundations of Human Rights", in Paula R. Newberg (Ed.), *The Politics of Human Rights*, New York and London, New York University Press, 1980, p.65.

⁸ A. James, "Diplomacy and International Society", *International Relations*, Vol. 6 (6), 1980.

⁹ E. Luard, *Human Rights and Foreign Policy*, Oxford-New York, Pergamon Press, 1981.

¹⁰ R. J. Vincent, *Human Rights and International Relations*, Cambridge, The Press Syndicate of the University of Cambridge, 1986, p.129.

Former USSR, or their natural resources, or both. This security argument applies to relations with adversaries as well as friends.¹¹

Attempts to undertake an active human rights policy may also be argued to be contrary to the rules of diplomatic intercourse. Traditionally, each state has a full sovereignty over its own territory. The prohibition of interference in such matters is said to reduce the danger of conflict among states.¹² This rule precludes any criticism of the actions of other governments within their own countries.

To sum up, the human rights might be favoured by the foreign policy decision-makers in principle, and are preferred as standard setting.¹³ Although practical cases of human rights violations have shrunk, the decision-makers normally prefer bilateral diplomacy and public debate tending towards issues of principle. On the other hand, private negotiation inclines towards compromise and understanding of the other persons' idea, they prefer quiet diplomacy when considering a particular case. Even if human rights is taken up reluctantly, they are not received as a solution but a problem, and they are seen in the way of ordinary diplomacy.¹⁴ The issue of human rights is normally expected to surface in two kinds of situations: when the interest of the state is plainly served, and when the attention of human rights does not damage the other interest of the state. This raises the problem of inconsistency or double standards.¹⁵

Those who are interested in human rights should not underestimate the arguments made under this sub-section. Although all of them may be challenged, they are not irrational altogether. The important point is that, whether or not they are true, they at least deter attempts by governments to pursue active human rights in their foreign policies.¹⁶

4. Degree of the Importance of Foreign Policy Constraints

Vincent suggests that human rights might get in the way of communication among states, even though governments are obliged to deal with each other all the time on a wide variety of issues, and most of these relations would continue whatever posture one government may adopt on human rights issues.¹⁷ Therefore, NGOs role in promoting human rights as a foreign policy dimension becomes important. Many human rights publications of NGOs, facilitated by the advanced communication system and questions asked about what foreign ministers are going to do about them, have rewarded their efforts. This is one way in which human rights has become a subject about which states have to communicate with each other.

There is little evidence, however, for the assumption that expressions of concern by one government on human rights will totally prejudice the conduct of normal business with the government criticised. It will depend partly on other factors governing the relationship between the two states, and even more on the manner in which the issue is raised.¹⁸ Thus, a relationship may be seriously damaged when:

¹¹ S. B. Cohen, "Conditioning US Assistance on Human Rights Practices", *American Journal of International Law*, Vol.76, 1982, p.270.

¹² Vincent, *Human Rights and International Relations*, p.132.

¹³ D. Owen, *Human Rights*, London, Cape, 1978, p.44,

¹⁴ A. Watson, *Diplomacy: The Dialogue Between States*, New York, McGraw-Hill, 1983, p.80.

¹⁵ R. J. Vincent, *Human Rights and International Relations*, Cambridge, The Press Syndicate of the University of Cambridge, 1986, p.129.

¹⁶ Luard, *Human Rights and Foreign Policy*, p.6.

¹⁷ Vincent, *Human Rights and International Relations*, p.129.

¹⁸ Luard, *Human Rights and Foreign Policy*, p.6.

- Complaints are aired in a polemical and highly political style, or, pursued obsessively. They should be made in reasonable terms and in the proper forum; and

- The charges made are vague and generalised rather than specific, factual, and backed by firm evidence. In other words, the charges made should not create the belief that they are inspired by malice or political prejudice.

Moreover, the danger that any expression of concern on such matters can be used by other governments as justification for breaking off or damaging relations has been reduced by the fact that human rights issues have already become one of the normal concerns of international politics. Not only Western countries, but also developing states, have become increasingly active over such issues and play a growing role in the international bodies responsible. Also, the growth of regional organisations has emphasised this trend, whom which no government can be insulated at the international level.

The attempt to claim domestic sovereignty over such issues is now rightly rejected by most states. It is now almost universally recognised that serious violations of human rights are a matter of concern to the international community. The diplomatic intercourse has also been changing quite dramatically for forty years in this regard; under the UN Charter, the discussion of human rights is possible in the Organisation and in other organs such as the Commission on Human Rights.¹⁹ Regional Organisations such as the European Court of Human Rights, Inter American Commission of Human Rights and the Helsinki Final Act (HFA) of the OSCE have also reinforced this change of diplomatic intercourse. The HFA incorporates the substance of all the main instruments of human rights diplomacy. Moreover, international law has never been a static and inflexible body of rules; the definition of what is "essentially within the domestic jurisdiction of state, as well as sovereign rights of states is continually evolving. It is therefore less and less likely that inter state relations will be fatally damaged" by taking up human rights issues in foreign policies.²⁰

One may also be sceptical about the argument for free trade when it is deployed against attention to human rights. "The cobdenite connection between trade, peace, and global solidarity is now confronted by the idea that trade can easily buttress uncivilised values as carry civilised ones".²¹ Furthermore, in the world in which the multiplication of contacts among societies has been allowed by technology, trade no longer bears the principal burden of communication among them. Thus, there is less reason to regard the free trade as untouchable.²² Even if the general argument that no attention to human rights in foreign policy should be paid in the interest of maintaining free trade was successful, this does not mean that trade should be manipulated at the drop of a political hat, but we should be doubtful about its universal claim to sovereignty.²³

Aid, on the other hand, is easier to manipulate because it is more firmly in the hands of governments. An example of this is that during the Carter Administration, there was an attempt in the US Congress to use the reduction of economic and military aid to discomfort repressive regimes. Despite the small impact of this, it however offered encouragement to domestic dissent.

¹⁹ Ibid., p.12.

²⁰ J. P. Salzberg, 'The Carter Administration and Human Rights', in David D. Newsom, (Ed.), *The Diplomacy of Human Rights*, Lanham/ New York/London, University Press Of America, 1986, p.24.

²¹ Vincent, *Human Rights and International Relations*, p.138.

²² Ibid., p.138.

²³ L. Shoultz, *Human Rights and United States Policy towards Latin America*, Princeton, Princeton University Press, 1981, p.66.

Regarding the issue of security, it is no doubt however that *raison d'état* should prevail in great emergencies. However, the tendency of the argument of security against human rights is to stretch implausibly the idea of emergency. As every totalitarian regime also requires its security to be defended, this devalues genuine security arguments. Even if there are genuine security arguments for attachment to a questionable regime, they should not be used merely to shore up the regime.

In the meantime, where the integration of human rights in foreign policy is domestically pushed, the rights of some individuals abroad might be taken up with more enthusiasms than others, which is called as 'double-standards' or 'inconsistency'. In the past, the Reagan Administration was criticised in the US for finding fault on human rights grounds, principally with communist 'enemies'. The main point about human rights is their equal application to friends and enemies. States should pay attention to consistency, but not in such a way as to allow anything to be done. Here it must be stressed that the Aristotelian consistency (i.e. since the world is imperfect, then foreign policy is justified in treating unequal cases unequally) is itself not a persuasive argument against implanting human rights into foreign policy.²⁴

Regarding the issue of the inclusion of human rights in foreign policy, it is true that the human rights are one more thing for diplomats to be unenthusiastic about. The reason is practical as well as doctrinal. Human rights in foreign policy are not merely about standard setting, public pronouncements or quiet words with the minister about particular cases; they are also matters that affect the great purposes of the state in securing and nourishing its citizens.

The argument that the inclusion of human rights by governments in their foreign policies is ineffective is also contrary to the facts. There have been many cases where international pressures, including public expressions of concern by other governments, have resulted in significant improvements in the human rights policies of particular states. On the other hand, it would be a misconception to hope that the government being criticised is suddenly going to reverse all its policies and become all at once a model of virtue. In the short term, little may happen. However, there might be a number of indirect effects: firstly, the government criticised may be gradually brought to realise that the type of policy being pursued has a significant external cost. At least, its foreign office, which is usually most aware of foreign criticisms, may become an influence within the government for a reform of policy. Secondly, New Hope and encouragement may be given to human rights campaigners within the country concerned. The international climate will be changed by expressions of concern on such matters. As the new forms of behaviour to be expected from civilised governments are established, and regional organisations become more active in the human rights area, the governments might become more responsive to such pressures.²⁵

5. Main Aims of Foreign Policy with a Human Rights Objective (FPHRO)

The FPHRO is concerned, partly, with the general recognition of the importance of human rights all over the world, as well as the definition of the rights that all governments should protect, and also with the prevention or deterrence of particular violations of rights in individual countries. Luard suggests four main aims of FPHRO;²⁶ first, to ensure that human rights concerns remain constantly at the top of the international agenda, secondly, to ensure that the minimum standards of human rights which civilised states expect to see observed are satisfactorily defined, thirdly, to improve the international machinery which at present exists for promoting and protecting such rights, finally, to bring direct influence on governments all

²⁴ Hill, 'Human Rights and Foreign Policy: Theoretical Foundations', p.19.

²⁵ Luard, *Human Rights and Foreign Policy*, p.13.

²⁶ *Ibid.*, p.15.

over the world so that the grave violations of human rights are less likely to occur. In other words, action must be taken by individual governments to cause improvements in the human rights situation elsewhere.

The achievement of the first aim is the easiest one, because every government in the world declares, in general terms, its concern for this issue. In this regard, what the US President Jimmy Carter did in this field was just to publicly demonstrate the importance that his government, as well as himself, attaches to the question of human rights, and that it had become an integral part of the US foreign policy. According to Luard²⁷, two types of rights (civil and political, and economic and social) are complementary. One does not have preference over the other. He also gives examples to prove his point on the basis of countries arguing that the standards should be those that are generally applied in the international community as a whole, he goes on to say that the assertion of the entitlement of the "Universal" Declaration of Human Rights was that the standards would be attained in any country regardless of the size or poverty of a country.

Vincent, on the other hand, argues that an international programme for the achievement of human rights might be laid down on the formulation of these basic rights.²⁸ His central thesis is that, as a project for international society, the acknowledgement of a universal right to subsistence as priority over other human rights is necessary. These rights are interrelated to the three generations of human rights. They form part of the right to life, which is the assertion of the first generation. They are also the central of social and economic rights, which is the second generation of human rights. Finally, they are essential to the emergent solidarity right to development, which is the third generation right. In his view, the place of basic rights in foreign policy is, however, not located by the decision on priorities among rights. Although a series of choices is involved in this, it is not easy.

International bodies, in the last forty years, have made progress over the second aim raised by Luard: the UDHR first included the essential minimum standards of human rights, which were amplified by the two UN Covenants of 1966. There emerged also specialised and regional instruments such as International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, European Convention on Human Rights of 1950, American Convention on Human Rights of 1969, African Charter on Human rights and Peoples' Rights of 1981. One of the continuing objectives of governments through such a policy is to clarify and amplify this code, particularly, by extending it in certain specialised areas. As the means regarding the second aim are well established, no revolutionary changes are needed. Concerning the human rights, any convention reflects the views of the international community, generally. Thus at present, it can only emerge from a process of international negotiation. However, there may be room for improving the procedures used for this purpose. Luard, on the other hand, argues that such international human rights bodies are not well equipped for this difficult and very important task.²⁹ According to him, it really requires a legal forum rather than a political one. Thus, he suggests the involvement of the International Law Commission (ILC) in the future process. Interestingly, ILC has not taken part in drafting conventions in the field of human rights. Therefore it is still vital that satisfactory texts should be achieved, which can significantly influence the behaviour of governments in these areas.

²⁷ Ibid., p.15

²⁸ Vincent, *Human Rights and International Relations*, p.142.

²⁹ Luard, *Human Rights and Foreign Policy*, p.13

With regard to the third aim, it is generally believed that the UN bodies responsible should move on from legislation to the process specified as implementation. However, because of the principle of sovereignty and non-interference in the domestic affairs, it is really difficult to improve this machinery. Globally, the main body that related to this issue is the UN Commission on Human Rights. Luard has the view that there has been a significant improvement in this area, though there exists criticism over the UN Commission.³⁰ On the other hand, the regional bodies can be more influential regarding to the third aim. For instance, already in America, the Inter-American Commission of Human Rights probably plays a more effective part in judging and deterring human rights violations than any UN body. Similarly, the European Court of Human Rights have been given much greater power than the UN Commission.

The fourth aim is the most difficult one as well as the most important to achieve, because it is also concerned with the security of the countries. To ensure their survival, the governments may feel that subversive forces in their countries should be prevented or suppressed. They also may feel that their repressive policies are the inevitable cost of maintaining power or bringing a disturbed situation under control. In such situations, the governments may also ignore the opinions of other countries about respecting basic human rights. They may, hence, appear impervious to any appeals of other countries on that issue. Nonetheless, whatever the attitudes of such governments, it is a main aim of the FPHRO to bring effective influence on governments. To be able to pursue this aim, what means are available to an individual government to influence a situation of other countries concerned? According to Luard, although the list is not exhaustive, the following, in ascending order of urgency, are the main types of response in dealing with such questions:³¹ a) Confidential representations to the government concerned; b) Joint representations made with other governments; c) Public statements of concern in parliament or elsewhere; d) Support for calls in international bodies for investigation of the situation; e) Direct initiation of such action in international bodies; f) Cancellation or postponement of ministerial visits; g) Restraints on cultural and sporting contacts; h) Embargoes on arms sales; i) Reduction in aid programmes; j) Withdrawal of an Ambassador; k) A cessation of all aid; l) The breaking of diplomatic relations; and m) Trading sanctions.

There are many states, which rarely, if ever, undertake any of these steps. Even governments in the West, having FPHRO, do not often proceed beyond the first two or three steps. For effective action along the above mentioned lines, the following conditions must be fulfilled:

- The pursuance of such a policy must be consistent, regardless of political prejudice or diplomatic convenience. Sometimes, difficult and unwelcome choices, both for governments and diplomats, will be involved in this. Diplomats abroad tend to become gradually committed to the existing regime, and are reluctant to take any steps, which may be unwelcome to them.

- Contacts should be made with a broad section of the population, including political opponents of the government. However, there is a corollary for this condition: The disadvantage in a total severing of relations. This, in practice, is the worst case scenario: not only the hope to influence the targeted regime is lost, but also an isolated regime often becomes more brutal than before. Newsom calls this situation “the high stakes”,³² which is

³⁰ Ibid., p.13

³¹ Ibid., p.13

³² D. D. Newsom, *The Diplomacy of Human Rights*, Lanham-New York-London, Universty Press of America, 1986, p.9.

one of the problems and limitations of human rights diplomacy. He shows that the fear of a threat to its own power becomes easily a reason for brutality for targeted regimes. Thus it has been generally agreed that the promotion of contacts provides at least a chance to influence the climate of opinion within other countries.

- Aid should be provided to the people directly, not to the government concerned. Luard also argues that, although small-scale assistance can be given, independently of the regime in power, to groups in the country concerned running projects in the field to help those most in need, it should go primarily to educational and agricultural projects or small scale co-operatives, which will make the biggest contribution in creating employment and meeting basic needs, rather than to large scale dams, roads or steel mills, which bring little direct benefit to most of the population.³³ Where aid is providing direct benefit to the people, there should be no cessation because of human rights violations, thereby penalising the people, in order to punish the sins of the rulers in the country concerned, except possibly in the most exceptional circumstances. Otherwise, it would be wrong and illogical.

- Military assistance, on the other hand, has a different position on the effective action on the above mentioned lines. Where human rights violations occur in the country concerned, arms supplies and other kinds of military assistance should be halted, as one of the first steps taken to prevent such assistance being directly used or possibly being used by the government concerned in its oppression of its population, and that it can therefore reasonably be claimed by the recipient government as a mark of friendship and approval. Therefore, the regular reappraisal of programmes regarding military assistance and arms supplies is needed to ensure that the human rights policy of the state concerned is satisfactory.

- Among the above-mentioned steps, the most serious one is the breaking off of trade relations. Thus, it will only be considered in the most extreme cases. Concerning this action, if a country has a bad human rights record, investment in such a country could be prevented and discouraged at earlier stages. The same is true for the breaking off of diplomatic relations. Where there is always some value in maintaining contacts, almost the best thing is to retain diplomatic representation in some form.

- The argument that the most drastic step is always the most influential is unacceptable because direct representations to the government concerned is sometimes the most influential one. The minister of the country concerned can be approached by the visiting ministers, even if they have arrived for other purposes, to make clear the concern caused in their own country by reports of serious human rights violations. Then, the influence of the minister approached within the government may be used to cause changes in policies. If representations on such matters derive from more than one government they carry far greater weight, as well as reducing the political costs of taking action and lessen the problem of *locus standi*, that is the right of governments to intervene in matters in which their own nationals are not directly concerned.

- The importance of the NGOs is clear. One of the most useful ways in which governments can influence the government concerned, at least indirectly, is to provide assistance to NGOs because they are indeed in some ways more effective on this subject than governments. Their concern on the subject can be spoken and published more freely. They are less likely to be accused of political bias. How they can be assisted is the important question. Usually financial support is unwelcome because it might be thought that their independence has been prejudiced. However, regular exchanges of information and ideas and a pooling of

³³ Luard, *Human Rights and Foreign Policy*, p..30.

knowledge about the situation in particular states, joint seminars or other activities to educate the public and co-operation in international human rights bodies can be envisioned.

- The availability of information about the situation that exists in different countries all over the world is necessary for both the public and the governments that will play a more effective role in preventing human rights violations elsewhere. Although most people, at present, learn vaguely about what is happening in other countries, it cannot be said that impressions are generally very clear. One reason for this is that they are largely based on occasional newspaper reports rather than reliable and systematically compiled evidence. Also, in practice, the degree of concern depends upon the agenda of the press and television. On the other hand, the information supplied by the governments should be *objective*. Governments usually only take action when their own public opinion is aroused. Thus, a better-informed public opinion would make a function more in stimulating more effective action by governments. In this regard, the most useful action by NGOs is the publication of an annual survey of the human rights situation in individual countries, with some indication of the gravity of the situation in each case.

Conclusion

The OSCE is a relatively new phenomenon: its approach is co-operative and programmatic rather than a treaty based one. It has worked well because, on the one hand, its human rights related documents are not subject to domestic legal and constitutional constraints, and on the other hand, it has been linked to security, human dimension, environmental, trade and other issues. Today, given that the treaty-making process is not sufficient to deal with contemporary issues such as human rights, the OSCE has avoided the treaty-making process. The first reason is that it is a very slow process, i.e. it takes a long time for a treaty to be drafted and adopted, and to enter into force. The second reason is that treaty provisions tend to be less susceptible to development, e.g. where the reservations take places, one cannot consider a healthy development by which internationalised problems are solved.

The OSCE's institutional framework is thus quite different from those which have been established by other international human rights instruments:

Firstly, its procedure for dealing with violations of human rights is based on the Human Dimension Mechanism (HDM). Although, from time to time, judicial or quasi-judicial institutions have been offered by some delegations, they have not been established for such a purpose. The 1999 Istanbul Charter has however included, for the first time, the promotion of the development of independent judicial systems. There are no permanent commissions with fact-finding functions and no reporting requirements. What is there is the third party involvement through OSCE experts missions and reporters. Although its obligatory fact-finding process marks a notable addition to the HDM, time will reveal how the new mediation and fact-finding system will work.

Secondly, as far as the human rights system is concerned, until now, the approach of the OSCE is based on the implementation of the international standards rather than standard setting. The rationale of this approach is that it is considered that there have already been notable universal and regional instruments establishing *substantive* human rights provisions. Thus, *non-substantive* human rights provisions have had a significant place in the formation of the rights system of the OSCE.

That does not mean, however, that it has not set human rights standards. Over time, the OSCE has expanded, amplified, and clarified its directory of human rights by using the so-called interpretative rule-making style, not only to describe the meaning and scope of earlier provisions but also to prevent

legal arguments that have been or might be put forward to excuse non-compliance. In fact, the OSCE's human rights provisions are mainly emerged under the flexible rule-making process, which can be seen as a main factor for the protection of human rights.

In this regard, the followings are some provisions which form the features of the OSCE: principle 9 with regard to the involvement of citizens in the OSCE process, principle 10 concerning the adoption of a comprehensive idea of security, and rule 65 of the so-called blue book in regard to the character of the negotiation form of the OSCE. Moreover, the *guiding principles* of the HFA have become significant for human rights since their adoption because they not only bear directly on the nature and scope of the human rights commitments of the participating States, but also affect the right of the participating States to require other states to observe these commitments. Of the guiding principles, principle 7 is the normative basis of the OSCE human rights system, and involves, *inter alia*, the respect for human rights, the recognition of the universal significance of human rights, and acting of states in conformity with the purposes and principles of the Charter of the UN.

Provisions that express the "follow-up mechanism" have been included in the last section of the HFA. Such mechanism has made the OSCE dynamic as well as an "on-going" process. There are two reasons for that: the first is the assessment of the implementation of the OSCE commitments, and the second is the negotiation of possibilities for the extension of co-operation between themselves. Moreover, provisions of the Vienna Concluding Document, the Copenhagen Concluding Document, and the Concluding Document of Moscow about the HDM are of significance for the procedural dimension of the OSCE. Further, the Copenhagen Concluding Document has some provisions, including: recognition that pluralistic democracy and rule of law are essential for ensuring respect for human rights, limits of human rights derogation during a state of public emergency, and values and institutions.

The implementation requirement of the OSCE has been broadened by the Paris Charter. The provisions on the part of *the new era of democracy* of the Charter of Paris have combined the human rights with the democratic pluralism and the rule of law. An important result of this is that the participating States are allowed to examine a state's human rights practise in its broader legal, political and constitutional context due to the concept of the rule-of-law including not only the relation between the individual and the state but also the structure of government, the political system, and the interaction between governmental institutions. From this perspective, theoretically, no domestic institution or norm is beyond the jurisdictional reach of the OSCE. The Paris Charter has also declared that human rights are the birthrights of all human beings, that the protection of human rights is the first responsibility of government, and that their observance and full exercise are the foundation of freedom, justice, and peace.

What the 1996 Lisbon Document has made is only to reiterate the previous OSCE commitments. Whereas it has not brought much about the development of the OSCE human rights system, the 1992 Helsinki, the 1994 Budapest Documents have also some provisions developing the institutional structure of the OSCE. In this regard;

The Helsinki Document has showed the ability of the OSCE to meet the challenges of post-cold war Europe because institutional and structural decisions, which is named as "Helsinki decisions", have been adopted in the document. The important of the Helsinki decisions on the human dimensions is the establishments of the Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCM). The Budapest Document has changed the name of the "Conference" into the "Organisation". Besides, operational framework of the OSCE will be broadened, e.g. the enhancement of the

role of the ODIHR and the fundamental decisions about the Ministerial, Senior and Permanent Councils to specify their work fields. Concerning this, the ODIHR, as the main institution of the human dimension, in consultation with the Chairman-in-Office, will, acting in an advisory capacity, participate in discussions of the Senior Council and the Permanent Council, by reporting at regular intervals on its activities and providing information on implementation issues.

As far as the Istanbul Charter of 1999 is concerned, it has not included the new formulations of substantive rights. But it has mainly reaffirmed the substantive rights and emphasised the promotion of legislation about them. Such rights are as follows: the freedom of thought, conscience and religion, the rights of minorities, the right to a nationality, freedom from torture and cruel, inhumane or degrading treatment or punishment, the right to seek asylum, women's rights, the rights of children, the right to free and fair elections.

However, the importance of the Istanbul Charter lies on the *system* dimension of the OSCE. Regarding this, the new steps, taken by the participating States for the development of the OSCE system, demonstrate that the institutionalisation of the OSCE will be carried out within the post-Istanbul summit period. As far as the OSCE human rights system is concerned, although it has not been basically contributed by the Istanbul Charter, e.g. nothing has done for the Human Dimension Mechanism, a new door is opened because the Istanbul Charter as an OSCE document has for the first time included the commitments of the participating States about the promotion of the development of independent judicial systems, which is significant in providing remedies for violations of human rights, and that about the OSCE's enhanced role in civilian police-related activities as an integral part of its efforts in conflict prevention, crisis management and post-conflict rehabilitation. These developments show that it is likely that the OSCE will be institutionalised in legal terms in the future.

Conclusion

This approach necessitates to revise to be a democratic state and to rewrite the societal contract which characterise the post cold war era. Such approach reflects, of course, soft security understanding rather than hard security. Bearing in mind that the US adopts the hard security with military operations towards global security issues especially after the 9/11, it has been criticised in the world and Europe because of leaving partly diplomacy, international law and human rights. Being far away from the hard security conception necessitates to behave with positive responsibility and democracy, not democratisation, in the world. Interestingly, while the US accepts the hard security, it also has the Extended Middle East Project which is basically in contradiction with the hard security understanding. Therefore, such project comprises essentially good will but gives message of the lack of confidence. This project can be practised by making modifications in that way. We should bear in mind that giving confidence for a project is significant for a project itself