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THE GLOBAL JUSTICE DREAM RELATED TO INTERNATIONAL LAW

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ULUSLARARASI HUKUKLA İLİŞKİLİ KÜRESEL ADALET HAYALI

Abstract

It is understood that peace and security in the international community are threatened at all times, and therefore reaching global peace is a myth. However, effective application of international law rules and international legitimacy in the actions of international organizations and states are important to ensure a non-conflicted environment in international relations. In international law, in a society composed of states that are the creators of the rules, the fact that a state is not bound by the rules that it puts and the will to apply these rules causes the function of the law to be questioned. The law must have a certain impulse against its creator so that global justice can be talked about. In this study, international political attenuating policies of the governments of international states and especially of the strong states of the international community are put forward, and the question is how to find a reliable, democratic and just form of the insecure international environment which is the result of these policies. By way of example, international law-abusing practices will be exemplified, and in the context of these examples, opinions and concrete practices on the establishment and strengthening of global justice in the theoretical-practical level will be explained.

Keywords: Global Justice, International Obligations, Use of Force, United Nations.

Öz

Uluslararası toplumda barış ve güvenliğin her dönemde tehdit edildiği, dolayısıyla küresel barışa ulaşılmasının bir mit olduğu anlaşılmaktadır. Oysa uluslararası ilişkilerde çatışmasız bir ortamı temin etmekte, uluslararası hukuk kurallarının etkin uygulanması ve uluslararası örgütlerin ve devletlerin eylemlerinde uluslararası meşruiyeti aramaları önemli noktalardır. Uluslararası hukuk bakımından, kuralların yaratıcısı konumundaki devletlerden oluşan bir toplumda, bir devletin koyduğu kurallar ile bağlanmama ve bu kuralları uygulamama iradesi, hukukun işlevinin de sorgulanmasına neden olur. Hukuk, onun yaratıcısına karşı da belli bir dayatma gücüne sahip olmalıdır ki küresel adaletten bahsedilebilsin. Bu çalışmada, uluslararası hukuk kurallarının muhatabı

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olan devletlerin ve özellikle de uluslararası toplumun güçlü devletlerinin uluslararası hukuku zayıflatan politikaları ortaya konmakta ve bu politikaların sonucu olan güvensiz uluslararası ortamın nasıl güvenilir, demokratik ve adaletli bir forma sokulabileceği sorusuna cevap aranmaktadır. Yöntemsel olarak, uluslararası hukuku aşındıran uygulamalar örneklenecek, bu örnekler bağlamında teorik-pratik düzlemde küresel adaletin oturması ve güçlenmesine ilişkin görüşler ve somut uygulamalar açıklanacaktır.

Anahtar Kelimeler: Küresel Adalet, Uluslararası Yükümlülük, Kuvvet Kullanımı, Birleşmiş Milletler.

1. Introduction

In the relations between states, by bringing political, economic and military inequalities to the forefront, some states have tried to gain superiority over others, leading to the obscurity of relations based on justice. The existence and relevance of international organizations and the penetration of international law into the network of relations between states are important to ensure the relations based on justice globally. Thus, it can be assumed that the international community will maintain its relations on a more democratic ground. The pretense that the achievement of the global democracy goal will reduce the unequal relations between the states has also elevated the demands for achieving this goal in recent times. In today's world, most of the problems complicating international relations stem from the interest-oriented approach of the states towards these issues. This approach further enhances the conflict and polarization between states.

In this study, it is analyzed through various case studies of how dominant forces, especially the United States, formulate, interpret and apply the principles of international law in their own interests, making it difficult to achieve the global justice ideal. The study also examines what constitutes equitable relations between states and the means by which the rule of law can be made dominant, and gives explanations from the works of relevant experts.

2. Relationship between Global Democracy and International Law

Could “what is meant by global democracy” be that democracy would be globalized through democratization of countries? Was it meant by this way that it would be ensured that discourses and actions of international organizations where individual countries are represented within would be democratized and administration of the world would be opened to civil society? Or, was it meant to enhance cooperation among countries,

international organizations and social networks by establishing participation in international relations at all levels?

In ensuring expansion of democracy in international relations, supremacy of law, effective practice of international law rules, international organizations' monitoring role in decisions and actions of countries for international legitimacy are considered important points (Keyman 2006: 13). Hence, the adoption of an approach that promotes dialogue among different cultures and civilizations, not the adoption of an approach that promotes the clash of civilizations, can ensure the existence of global justice.

On the other hand, while the group within the government has central authority, international society maintains its existence through the relations among nation states which do not recognize a superior power above them and which compete among themselves in terms of political, economic, military and even cultural aspects (Keyman 2006: 4). Therefore, while international law governs relations among countries organized at horizontal level, harmony within international society usually depends on compromise among countries comprising international society. From realist point of view, when international law is taken into consideration, governments' occasional violation of international law by acting to protect their self-security and self-interests could be excused since there is no central authority to assure application of codes of international law. Remarkable example cases for such occasional applications are the Reagan and the Bush Doctrines of the U.S. adopted during and after the Cold War period and Crimean invasion of Russian Federation in 2014.

The approach referred as the Reagan Doctrine represents afterwards of the beginning of 1980s that the U.S. have greater dominance over international relations of countries with greater effect in terms of politic and over direction of international law (Başeren 2003:6). Especially, in the period of 1980s when the Cold War revived, the U.S. and its neo-realist approach was that the prohibition of the use of force in the international law could be ignored by the U.S. against the anti-democratic regimes (Başeren 2003:13). Under the framework of the Reagan Doctrine, the U.S. claimed that regimes of countries such as Afghanistan, Nicaragua, Angola and Cambodia were supported by the Soviet Union and declared that introducing freedom and democracy to these countries is one of the basic missions of their foreign policy; and conducted an undercover fight against the regimes in these countries (Kedikli 2005:40-41). Yet, such an unilateral interpretation violating significant code of the international law is unacceptable situation in terms of the law in effect

since it could result in the circumstance that the U.S. is privileged with unilaterally interpret and execute law norms. Another example of the U.S. as an initiative for stretching the international law along its self-political attitude was the Bush Doctrine afterwards of the September 11 terror attacks. According to the Bush Doctrine, countries are required to be given pre-emptive right to use force when they face a close attack threat (Kedikli 2005:72). Based on this approach, the U.S. used force by violating codes of the international law against Iraq by relying on the allegation of a possible terror attack and the threat of the Saddam Husain Regime's production of Weapons of Mass Destruction in 2003; and some western countries accompanied to the U.S. in this invasion. These examples indicate that efforts of various countries to maintain and conserve their national interests and securities by violating international law are circumstances which threaten and weaken global peace and justice. However, there are also significant reactions from Russia and China against the US unipolarity that eroded international law in the post-Cold War era. For example, both states considered the US intervention in Afghanistan after 9/11 as American expansionism and actively used the Shanghai Cooperation Organization to put an end to the military presence of the United States in Central Asia. In the ongoing process, it had to close its military bases in the US, Tajikistan, Kyrgyzstan and Uzbekistan. This example also shows that a state that claims to be a hegemonic force in the international community can not pursue a foreign policy without seeking other states' consent and without developing cooperation mechanisms with them. (Alakel and Yıldırım 2014: 157-158) Another result that can be deduced from this example is; the political and military power of states that do not consult to the international law can be limited if regional organizations act effectively.

On the other hand, afterward the September 11 terror attacks, it was observed that rather than globalization of democracy, a new era in which countries are polarized under friend and enemy classifications and mission of introducing democracy to the countries without capacity of self-ruling are started to be undertaken has initiated. Unilateral unlawful usage of force under leadership of the U.S. and the Great Britain against Iraq in 2003 by ignoring the U.N. Security Council resulted in a serious distrust toward the Security Council, the core body of this organization. In the following period, controversial attitudes of the western countries toward civil commotions within the Arab Spring movements in the North Africa and Arab countries revealed difficulties associated with establishment of global justice. On the other hand, as the countries efficient in the world policy, especially the U.S., drift apart from international law and justice within the international relations in the

exchange of their safety and interests, they indeed provoked international inequalities, conflicts and terrorism; then they find themselves within the same bottleneck owing to the boomerang-effect; and they need to structure new policies to resolve further complicated issues.

At this point, international law could be considered as one of the tools that could be applied in resolution of global issues. Just as internal law is a tool to organize social life in a country, international law similarly is expected to regulate all phenomenon and incidents as a regulative tool in each subject which considers international society from economy to politics, and from environmental issues to security and human rights (Denk 2004: 1). Antonio Cassese states that the international community is at least at the normative level more integrated and the need to improve the international law in various areas is increasingly adopted by the international community. (Cited from Koskeniemi 2010: 198) From this point of view, degree of functionality of law is closely related with how healthy are relations within the society regulated by this law maintained and how carefully do social units obey these rules. When it is viewed from the aspect of our topic, initiative undertaking and fulfilling obligations introduced by the international law would enhance functionality of international law and facilitate actions of international actors in group form. Deviations from this status would eventually weaken the desire for establishing justice and international social order aimed to be created through code of international law.

If we should express common view of countries concerning the international law in Louis Henkin's words, "... almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time" (Henkin 1979: 47). The issue necessary to be discussed at this point is that whether international law is effective on international actors instead of that whether international law exist. Yet, it is difficult to establish global justice order through an international law with weak enforcement capacity.

Indeed, dominant powers are capable of reinventing foundations of the international law system (Byers 2008: 2). Furthermore, reciprocal dependency has progressively increased in the international society in terms of economic, political, environmental and cultural aspects. This increasing reciprocal dependency brought cooperation of international society into prominence as an irrevocable tool for survival of countries (Kwakwa 2008: 39). Especially, it can be considered that the effective use of interdependence relations by the states which want to develop and implement international law can restrain the dominant forces' foreign policy behavior deviating from the international law. Accordingly,

dominant powers, as designers of internal law even though they are not practitioners, need other countries to some extent. At this point, although there is global force competition among countries, it is fact that the most powerful country in terms of political, economic and military aspects is the U.S. within the international society. On the other hand, the U.S.'s current status attaches this country some responsibilities within the international society as well (Kwakwa 2008: 41). Following a policy strengthening cooperation in international society and international law is necessarily resulting of this responsibility. Additionally, from the point of this cooperation, it has been observed that while the U.S. tends to support mainly economic and political international organizations, which develop free-market and commercial relations among their members, such as World Bank, International Monetary Fund, and World Trade Organization, it has been reluctant to develop international political organizations (Kwakwa 2008: 45)

Richard Haas remarks and criticizes American policy makers' "à la carte multi-sidedness" about supporting the international law (Kwakwa 2008: 57). According to Haas, the U.S. evaluates all of the concrete international acts from its national interest point of view and make its decision whether they are acceptable, or not. Although the similar policy is adopted by other countries, when weight of the U.S. in the international society is taken into consideration, this attitude could have different significance. Indeed, the U.S. has been part of 63% of the acts brought in to the U.N. so far. On the other hand, while other countries are part of 76% of these acts on average; other G-8 members are part of 93% of these acts (Kirsch 2008: 174). This attitude of the U.S. could be explained by Hobbes's ideology on hegemon in a society: all other members of a society become a part of an act; and while they were surrendering their rights, the hegemon remains aside and manages the circumstance without accepting any obligation (Krisch 2008: 191).

On the other side, the U.S. uses its dominant power effectively during negotiations of international acts and preparation of the text in terms of reflecting its interests onto these acts. It is also possible to observe this situation in following examples: the Nuclear Test Ban Treaty in 1996, International Civilian Aviation Organization Agreement regarding signing plastic explosives, and Act of Encouragement of Conformity of Ships Fishing in High Seas to the International Protection and Management Measures in 1993 (Klein 2008: 405). One of the remarkable examples in this respect is seen in the XI Section of the 1982 United Nations Convention on the Law of the Sea as an American influence on the preparation of provisions of the executive act of 1994 concerning

exploration and utilization of Deep Sea-Bed. As a result of pressures of the U.S., it increased its weight in the institutional structure of the International Sea Bed Authority; ensured obligations of private mine businesses to transfer of technology to the institution and other developing countries to be removed; and additional rights were gained for the interests of the U.S. The U.S. becomes part of international acts after being sure that international obligations would have limited impact on their legal system when the U.S. was not able to manipulate act along with its national interests through drawbacks and unilateral declarations (Klein 2008: 411). This approach of the U.S. toward the international law provide significant protection to ensure maintain its hegemon position in the global politics (Mundis 2004: 5). In terms of the aforesaid importance in the international relations, the U.S.'s approach towards the international law has a negative influence on the contribution of other countries in developing and strengthening the international law to establish global justice.

Accordingly, the behavior of the U.S. to support enacting international law conflicting with its national interests or the one irrelevant with the U.S., or pushing other countries to respect these laws is considered unacceptable by the international society. Because, in international relations, a state which is assumed to have a hegemon power is expected to obey the international rules in whose creation it had actively participated and to adopt a policy which will make the other states confirm the legitimacy of these rules. (Alakel and Yıldırım 2014:147) Otherwise, other countries may have an impression of that they are guided in international relations through international law or they are kept under control. The common interest of the international community depends on ensuring the participation of as many states as possible in the international legal arrangements as well as the involvement of the important states that guide international relations. In other words, when it is thought from the reverse, for instance, the fact that the U.S. considers itself exempt from obligations introduced by international law during issuing and endorsement stages although it participates in the preparation of these laws would slow down or even hinder development of the international law.

On the other hand, it should not be concluded that international laws which do not include the will of dominant countries are inert or insignificant. Hence, international acts such as United Nations Convention on the Law of the Sea, 1982, Ottawa Mine Ban Treaty, 1997, the Kyoto Protocol concerning releasing harmful gases into the atmosphere in 1997 and the Roma Statute establishing status of the

International Criminal Court in 1998 were not included in the internal law of the U.S.; but more than a hundred countries were part of these acts and international cooperation in these fields are still developing although it is at slow pace. Even the U.S. is required to convince other international actors to realize the most important national interests (Toope 2008: 325)

Moreover, such approaches of countries like the U.S., which prioritize their national interests, complicate internationalized issues. For instance, 2014 Crimea invasion of Russia and its policies with the Chechnya, attitudes of Russia and China towards Syrian civil war in 2011, attitudes of India and Pakistan regarding Cashmere, ignorance approaches of Norway and Japan towards whale hunting and policies of Australia towards foreigner immigrants could be considered as examples of efforts to hinder development of international law, displayed by countries to protect their national interests (Ratner 2008: 121)

Demands, such as institutionalization of global justice and democracy in the international relations, fighting against poverty and hunger, and protection of human rights at the international scale, are indeed looking for answers to the question of “whether a different structure could be established in the current international relations?” It is necessary to consider the world not only from the point of interests of countries but also from the points of civil society and social movements remaining outside the government body (Keyman 2006: 12). Hence, the persistence of policies placing the government into the center is a significant obstacle before the acquisition of global justice. Therefore, the establishment of justice on a global level should be supported not only by adhering to the rules that respect the sovereignty of the states and territorial integrity, but also by the establishment of an individual-centered, egalitarian, and fair share of welfare that aims to achieve international social justice.(Ovali 2010: 924) Otherwise, the establishment of international justice is very difficult in an environment where international actors can not solve global problems such as poverty, hunger, epidemics, terrorism, internal conflicts and refugee movements.

3. Global Injustice over Sovereign Inequality

When the expression of Kant mentioned in his book titled “Perpetual Peace: A Philosophical Sketch” is accommodated to the international law, it could be deduced that if countries effective one on another are in search for being member of a civilized society, then, this society is required to rely on the law of nations in terms of the relations among them (Kant 1960: 18). Kant’s definition of democracy necessitates participation of all individuals comprising the society into the

administration (Kant 1960: 20). Although the international society seems democracy in terms of actors in the international domain, it has a structure in which while strong actors could behave independently and relatively weak ones could not stand against this circumstance from the executive point of view. Thus, it is only possible to say that there is discursive democracy in the international society.

The Charter of the United Nations and the organization established based on this Act have arisen as a “Peace Coalition” within the international society formed just after the World War II. In this order desired to be established under the peace coalition, the U.N. aimed not to repeat such great wars across the world by strengthening international peace and security. However, ineffectiveness of the Peace Coalition has been significantly felt since its foundation in the conflicted area of the world (Korean War, Arab – Israel Wars, Falkland War, intervention of the USSR in the Afghanistan and attack of the U.S. to Iraq and etc.) and serious human right violations (Cambodia - Pol Pot regime, Xinjiang Uyghur Autonomous Region – Chinese regime, Bosnia-Herzegovina – Serbian regime, Ruanda – massacre of Tutsis by Hutu, Palestinian Arabs – Israel regime and Syrian Civil War – Syrian Assad regime).

At this point, enhancing the effectiveness of international courts functioning at the regional scale is required to be taken into consideration in establishing global justice (Jallow 2010: 277). Highly effective regional courts could also contribute to economic and political cooperation of countries in the same territory. For example, expansion of jurisdiction of the courts of human rights functioning under bodies of organizations such as the European Court of Human Rights established within the body of the European Council, the Court of Justice of the Economic Community of the Western Africa States and the African Union and Organization of American States organizations as if they include international crimes and increasing their efficiency would facilitate governments’ efforts to increase their accountability.

According to Thomas Franck, the transformation of the international society into a regulated society depends on the effective maintenance of the international law (Franck 1990: 39). On the other hand, effective functioning of the international law requires equality of hegemon countries are required to be established while enacting a code in the international law or executing issued laws in real terms. Nevertheless, the occurrence of informal rulings among countries, which results in inequalities among countries and eventually weakens the foundation of the international law, has always been there since the ancient times. An example for this could be veto power of the five permanent members of

the United Nations Security Council. Veto power assigned to these countries provides an exemption to these five countries in the execution of international law through the U.N. and weaken supremacy of rule of law (Cosnard 2008: 138). It is also possible to present additional examples on this subject. Another example is that jurisdiction against these five countries is closed for the U.N. Security Council based on the allegations within the jurisdictional authority of the International Criminal Court (ICC) (Mundis 2004: 5). This situation is especially important since it displays the efforts of the U.S. to maintain its hegemony in the world politics. Especially, it introduces potential problems in terms of it constitutes an obstacle before the investigation of the claims against crimes alleged that they were committed by the citizens of the five permanent members of the Security Council by the ICC prosecutor. Based on these examples, it could be concluded that dominant countries could influence policies of weak countries and regulations in the international relations along with their national interests (Ronconi 2012: 584).

Furthermore, by issuing some codes dominating jurisdictional immunity against some actions, such as torture, maltreatment and terror, displayed by other countries, found in the by the countries such as the U.S., judging these countries and giving a verdict against them and convicting them indemnity are considered as development weakening equality of units in the international law (Krisch 2008: 164). Moreover, efforts of the U.S. to place some concepts not generally accepted and/or not institutionalized within the international law, are viewed as initiatives to stretch codes of the current international law. For example, afterwards of the September 11 terror attacks, the U.S. described the members of the Al-Qaeda terror organization who were captured during the military operations in the Afghanistan as “unlawful combatant” which was not regulated by the international law; excluded them from the protection of the Third Geneva Convention regulating the rules required to be applied during armed conflicts (1949); and attacked Iraq in 2003 based on “pre-emptive self – defense” have resulted in corrosion in the international law (Mundis 2004: 6).

French authority in the field of International Law, Michel Cosnard, claims that current status in the world is nothing but “oligarchy” in terms of the international law; and there is a structure in which some members of the international law are dominant than others (Cosnard 2008: 150). If stronger institutional structure and cooperation in terms of the international law are desired among countries, it is necessary to ensure that the equality claimed to be existing among the countries is required to

be absorbed by the bodies and decision-making processes of the organizations formed by countries (Krisch 2008: 171). Using open diplomacy rather than secret interest relations while the foundation of such a structure would contribute in the establishment of security in the international society as well. As it was stated by Kant, justice cannot be established without exposure; hence, justice could only be thought publicly. Otherwise, it is not possible to talk about rule of law. Law could not rule without justice (Kant 1960: 49). International law codes which arise in open relations would serve society to maintain its functional order.

According to Lauterpacht, maintenance of international law and peace has functionality in the preservation of human rights and decrease misuse of national sovereignty in a way of dominating the law (Reported by Ratner 1998:65). Accordingly, accommodating to the international law requires not acting against existing codes in the legal order and fulfilling obligations that arise in this order (Stoll 2008:505). Additionally, since there is no an international legislative body in terms of enacting these codes and there is no a central sanction body, ratifications of hegemon powers are required for creation and execution of these codes. Thus, countries are correspondents of international law in terms of both legislation and executive perspectives (Stoll 2008: 505).

4. The Hypocrisy of the States' Weakening the International Law

Could countries do everything to protect and pursue their interests including violating international law? When this is viewed from the internal structure of a country, it is not possible to talk about violation of the law against governors by governed group based on the same rationale as well as vice versa could not be acceptable based on the reasoning of law. Similarly, in terms of international law, in a society in which governor and governed qualities, in other words, creator and responder of these laws, combined with the same legal person, will power not be bound by codes or not to fulfill obligations of laws legislated by the government would result in questioning of function of the law in the existing order. Hence, the phenomenon called law is required to possess insisting strength on its creator to a certain extent. (Esgün 1999: 35)

For example, in spite of the code in the 4th article of the 2nd provision of the Charter of the U.N., which bans the use of force or threatening to use force, there have been using of force by the Great Britain and France in Suez in 1956; by the USSR in Afghanistan in 1979; by the U.S. in Grenada in 1983; and in Iraq in 2003; by the Russian Federation in

Crimea in 2014, which results in questioning of the U.N. Organization founded by these countries afterwards of the World War II and efficiency of codes of the international law regarding banning usage of force. Countries' initiatives disabling codes of a legal order founded by them is considered as a circumstance which discrediting applicability of those codes and reputation of these countries.

5. Conclusion

One of the factors reinforcing the existence of international society is necessity felt towards a group of codes which regulate relations in a society. This addresses a situation in which individual national interest of each country is degraded and interest of all group of countries are put in prominence (Denk 2001:55). If it is mentioned about the existence of international society, it is deliberate that there is an order of international law to ensure the functioning of society in an order. It is important for the main actors of the international community, especially the USA, to act in accordance with the provisions of the international law in their actions in order to ensure international legitimacy for their foreign policy attitudes. Consequently, it is necessary to accept issues encountered in the international relations as ordinary problems seen in the execution of the international law; and to take measures so as to increase the efficiency of rule of law. Failing to respect applicable rules of international law do not lead to abandoning or refusal of these rules. In fact, what is necessary to be done is to establish a legal structure minimizing violation of codes of the international law (Denk 2001: 56-57). In order to achieve this, the form of equality that exists between states in international law must be embedded into the decision-making processes of international organizations in which states are involved. Such a reform, especially in the organizational structure of the United Nations, will contribute positively to the development of the concept of global justice. Thus, it would only be possible to elude from unequal relations among countries and to have an international society ruled by justice. In addition, it would also reduce the risk of regional conflicts by making effective arrangements in disputes between international courts and states operating in different geographies of the world and operating at the regional level. The role of these courts in resolving disputes can also make an important contribution to the process of economic and political co-operation of states in the same region. In this way, however, unequal relations between states will be filed down, the risks of conflict can be reduced, and an international society in which justice will prevail, can be achieved.

The positive contribution of dominant powers into legislation and execution of codes of international law would strengthen the will of other countries complying with the international law. On the other side, armed conflicts in various locations of the world, hunger, poverty, human right violations and similar problems and counter policies of countries against these problems suggest that it is not that easy to accomplish global justice target. If justice is desired to penetrate in countries building up international society and all non-government layers, solutions are required to be introduced for ongoing poverty across the world, hunger issue, environmental disasters, and inequalities that arise in various domains and for government policies excessively oriented on security through international legal mechanisms and international organizing. As a result, in today's world, an appropriate understanding of global justice must include not only norms based on sovereignty and equality of states but also norms that also consider the social and economic well-being of the individual.

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