MANAS Sosyal Araştırmalar Dergisi 2021 Cilt: 10 Sayı: 1
MANAS Journal of Social Studies 2021 Volume: 10 No: 1
ISSN: 1694-7215
Review Paper / Derleme Makalesi

The Limits of Human Rights: International Law and Global Organizations

Marco BOSCHELE[1]

Abstract
Since the mid-20th Century "human rights" have played a central role in the rhetoric of international relations from the United Nations to other forms of international systems and organisations. The "power" of human rights refers to the claim that individuals "have rights only because they are human" and that these rights belong to all people, hence they are universal. However, the given degree of violence experienced in the 20th century, period, when the concept of human rights has become more dominant in international and national law, questions arise about effectiveness of international human rights protection. This lack of effectiveness gives rise to a certain degree of scepticism about the power of human rights, which may take different interpretations. The notion of human rights based on the principles of humanity and freedom and the assumption that political power must be subjected to "reason" and "law" can be questioned in its very foundations. The present paper analyses the traditional understanding of human rights as included in the Universal Declaration of Human Rights (UDHR) of 1948 and how human rights have been integrated in the law of worldwide organizations to promote integration and liberalisation of trade. This descriptive account will be evaluated against a critical understanding of natural right which involves a critique of reason and of history understood as a progressive thought.

Key Words: Human Rights, Global Organizations, International Law, Natural Law, Critique of Reason

İnsan Haklarının Sınırları: Uluslararası Hukuk ve Küresel Örgütler

Öz
"insan hakları", XX. yüzyılın ortalarından beri Birleşmiş Milletler' den diğer uluslararası sistem ve organizasyon biçimlerine kadar, uluslararası ilişkilerin retoriğinde merkezi bir rol oynamıştır. İnsan haklarının "gücü", bireylerin "yalnızca insan oldukları için haklara sahip oldukları" iddiasına ve bu hakların tüm insanlara ait oldukları, dolayısıyla evrensel oldukları manasına gelmektedir. Ancak, 20. yüzyılda yaşanan şiddetin derecesi, daha açıkçası faşist rejimlerin acımasızlığı ve savaşların veya diğer insani krizlerin sonucu olarak ortaya çıkan sayısız insan hakları ihlali göz önüne alındığında, uluslararası insan haklarının korunmasının etkinliği hakkında pek çok soru ortaya çıkmıştır. Bu durum, belirli bir ölçüde ve farklı biçimler alabilen bir şüpheciliği de beraberinde getirmiştir. İnsan hakları düşüncesi, insanlık ve özgürlük ilkeleri üzerine inşa edilmiştir. Bunun yanı sıra, insan haklarının üzerinde inşa edildiği bir diğer temel ise, siyasi gücün "akla" ve "hukuka" dayanması gerektiği varsayımıdır. Bu varsayımlardan yola çıkan bu yazıda, 1948'deli İnsan Hakları Evrensel Beyannamesi'ndeki geleneksel insan hakları anlayışı ve ticaretteki bütünleşme ve liberalleşmenin dünyadaki örgütlerin yasalarıyla nasıl bütünleştiği analiz edilecektir. Bu betimsel analiz, ilerici bir düşünce olarak aklın ve tarihin eleştirisini içeren doğal hakların eleştirilmesine karşı olarak değerlendirilecektir.

Anahtar Kelimeler: İnsan Hakları, Küresel Kuruluşlar, Uluslararası Hukuk, Doğa Hukuku, Dil, Aklın Eleştirisi

Atıf İçin / Please Cite As:

Boschele, M. (2021). The limits of human rights: International law and global organizations. *Manas Sosyal Araştırmalar Dergisi, 10*(1), 734-741.

Geliş Tarihi / Received Date: 07.02.2020 **Kabul Tarihi / Accepted Date:** 24.09.2020

[1] Dr. Öğr. - Üyesi Kocaeli Üniversitesi, İktisat ve İdari Bilimleri Fakültesi, marco.boschele@kocaeli.edu.tr
ORCID: 0000-0003-2498-0317

Introduction

Since the mid-20th Century "human rights" have played a central role in the rhetoric of international relations from the United Nations down to other forms of international systems and organisations becoming a dominant discourse and a global language in international affairs (Langford, 2018, p. 3). The "power" of human rights is based on the claims that individuals have rights "simply in virtue of being human" (Universal Declaration of Human Rights - UDHR), which means that they belong to all humans and they are, therefore, universal. Given the historical events which gave rise to the conception of human rights, such as, the experiences of the two World Wars and the process of decolonization, the idea of human rights generated a powerful moral vision and gained a positive momentum in international and national law. However, given the degree of violence experienced in the 20th century, namely the brutality of fascist regimes and numerous human rights abuses as the result of wars or other humanitarian crisis[2], questions have surfaced about the effectiveness of international human rights. This lack of effectiveness gives rise to a certain degree of scepticism about the idea of human rights, which may take different forms. As early as 1949, Hannah Arendt's expression,'the right to have rights', pointed out that individuals have rights only in theory, when viewed from the condition of statelessness or from the state of refugee. The fact that it is with the implementation of human rights in international and national law that we have witnessed the worse human rights record, this contradiction poses critical questions about the very nature of the idea of human rights, particularly, if the ratification of human rights treaties does not seem to improve the practices of nation states.

There are many studies that explore the link between human rights treaties and the improvement in people's lives. They analyse the link between ratification of human right treaties and the conditions of people in terms of civil rights violations and they have produced mixed results (Risse, 2009, p. 4; Posner, 2014, p. 70). The records of human rights practices of countries which have ratified human rights treaties are overall better, for instance Colombia and Japan ratified (CEDAW)[3], and subsequently passed legislation and constitutional amendments to implement the treaty provisions. However, nonconformity with human rights treaties seem to be commonplace. For example, child labour exists in countries that have ratified the treaty on the right of the child but Western countries trade with such countries abuser of human rights (Posner, 2014, p.71).Hathaway (2002) argues that if human rights treaties are just 'window-dressing' for the national interest of nations, there should not be coherent relationship between ratification and state performance. Moreover, if human rights treaties are effective, ratification of human rights treaties should be associated with better performance by democratic countries and should not be connected with bad performance. Nations with worse human rights performance may be more predisposed to ratify more treaties but we may know more about violations, making countries that ratify look worse than they are. However, few treaty ratifications are linked with better human right practices and many which appear to be associated with worse human rights practices (Hathaway, 2002, p. 1940). Therefore, in some cases, human rights treaties lead to worse human rights practices.

In this fashion, international treaties have a twofold nature: "instrumental" since they create law, which binds ratifying countries with the purpose of changing practices in particular ways and "expressive instruments" since they indicate to the international community the position of countries, which have ratified them. This is because, sometimes, countries are rewarded for position rather than effects and monitoring and enforcement are minimal (Hathaway, 2002, p. 1940-1).

As such, the most direct attack is related to the inconsistency between "theory and practice" of human rights (Douzinas, 2000, p. 2). The notion of human rights based on the principles of humanity and freedom and the assumption that political power must be subjected to "reason" and "law" can be questioned in its very foundations and the deficiency of 'sociological legitimacy' which means that the claim to universality makes human rights weak in the face of plurality of communities (Langford, 2018, p. 2). The problem of universalism was also pointed out during the drafting of the UDHR in 1948 by the American Anthropological Association because the declaration was not considered representative of all

[2] https://www.trtworld.com/americas/twelve-times-the-un-has-failed-the-world-21666
[3]TheConvention on theElimination of all Forms of DiscriminationAgainstWomen

the regions of the world (Langford, 2018, p. 4). Moreover, Charles Malik, a Lebanese diplomat and philosopher who actively contributed to the drafting of the UDHR, in his introductory speech, he insisted that "no regional philosophy or way of life was permitted to prevail" (Risse, 2009, p. 1)

Following these assumptions, in this paper, it will be analysed the traditional understanding of human rights as included in the UDHR of 1948 and how human rights have been integrated in the law of worldwide organizations also to promote integration and liberalisation of trade. This will be evaluated against a critical understanding of natural right which involves a critique of reason and of history understood as a progressive thought. According to Lyotard (1993, p. 14), the notion of human rights forms a 'figure', which is 'other' than a human being, and do not take into account what is excluded by a particular form of dialogue governed by economic, cultural and political power. This means to consider human rights as an arbitrary creation of language and therefore a problem with universalism in promoting human rights since it allows the appropriation of moral truth of one group over another. Thus, the presence of a universal subject like "humanity" could be embodied by one discourse excluding others (Burdman, 2020, p. 314) posing a significant setback to the universal and inclusive idea of human rights.

The Idea of Human Rights and Its Integration in Global Organizations

There is no agreement on when human rights first emerged, and the origins of human rights can be found in non-Western and Western sources. In fact, the idea of human rights comes before the human rights regime that was created with the UDHR of 1948 and the establishment of the United Nations in 1949. There are many sources from Eastern philosophy, religious thought, and cultural traditions containing the values of freedom, individual liberty and tolerance (Lauren, 2011, p. 9-10). There is, however, a generally accepted discourse that places the Western idea of human rights in the English Magna Carta (1215), the English Habeas Corpus Act (1679), the English Bill of Rights (1689), the United States Declaration of Independence (1776), Declaration of the Rights of Man and of the Citizen (1789), and the United States Bill of Rights (1789) (Mende, 2019, p. 3). These documents gave justifications why people could overthrow their governments because their rights had been violated (Posner, 2014, p. 11) based on the rights and freedoms, according to these documents, to which all humans were entitled. The first human rights movements at global level can be first seen in the anti-slavery movement in the late 18th century and the passing of the British Slavery Abolition Act in 1833, in the 19th century labour movement, and in the establishment of the International Committee of the Red Cross, with the battle of Solferino in Northern Italy in 1859. Also, important was the Women's emancipation movement in relation to Ibsen's paly *A Doll's House* which caused an international scandal by criticising the 19th century role of women in society(Risse,2009, p.4).

The League of Nations was established, after the 1919 Paris Conference, as the first supranational organization to ensure peace and security and the prevention of war. The concept of "self-determination of people" became an important aim of the conference. However, the Covenant of the League of Nations did not have much to say about individual rights and human rights in particular. Only in the case of mandated territories it guaranteed freedom of conscience and religion and the prohibition of slave trade, arms and liquor trafficking but there was not mentioning of political rights. The Covenant stated that the Mandatories powers should secure and maintain fair conditions for men, women, and children (Tomuschat, 2008, p. 17). However, racial inequality was not acknowledged and above all, the colonial system that characterised the world politics of the time was not questioned (Risse, 2009, p. 5).

However, it is in the 1940s with the Holocaust and the Nuremburg trials that the basis of international law take shape (Mende, 2019, p. 4). In the charter of the United Nations, it was quantified that its member would be committed to advance human rights, for instance in the preamble it was asserted commitment to "reaffirm faith in fundamental human rights" and in Article 13 "assisting in the realization of human rights". Few years later, the Universal Declaration of Human Rights, in 1948, provided a more comprehensive list of rights, containing the "negative" or "political" rights also included in the U.S. Constitution and "positive" or "social" rights, including the right to work which reflected European political theory. These rights were transformed into treaties with the International Covenant on Economic Social and Cultural Rights and the International Convention on Civil and Political Rights in 1966 (Posner, 2014, p.15,16,17). These standards formed a 'common human rights vocabulary' where it was intended that group or individual claims could be voiced because the ratification of human rights treaties meant that human rights agreements were widely spread values (Maiese, 2004) and part of

international law. Human rights then stand for the claims of the individual or groups and also for the responsibilities of the individual and the governments. These rights are regarded as 'natural', which means that we have them from birth and they cannot be denied on the basis of race, gender, religion and ethnicity. Although these rights are understood as legal rights and are protected by the rule of law, they are distinct and prior to the law and they are used as a model to criticise local and international law (Maiese, 2004).

Such concept of human rights formulated in the Universal Declaration of 1948 was established in the same period of the 1944 Bretton Woods Agreement, the General Agreement on Tariff and Trade of 1947 and the 1948 Havana Charter for an International Trade Organisation. These agreements were formulated with the intention of protecting liberty, non-discrimination, the rule of law, social welfare, and other human rights values through a "ruled based international order and specialised agencies" (Petersmann, 2002, p. 2).

Petersmann (2002) in showing how human rights were integrated in worldwide organisations, maintains that regional integration law has developed by linking economic integration to constitutional guarantees of human rights, democracy and fair competition. For example, the human rights clauses in the EU Treaty, in agreements between the EU and countries in Eastern Europe and in the Mediterranean, and in the EU's Cotonou Agreement with 77 African, Caribbean and Pacific countries make 'respect for human rights, democratic principles and the rule of law essential elements'. The Quebec Summit declaration of 2001 and the Inter-American Charter for Democracy 2001 adopted by more than 30 member states also link the plans for the Free Trade Area of the Americas to the strengthening of human rights and democracy. Furthermore, the WTO Ministerial Declaration of November 2001 predicting more WTO competition, health and environmental rules are examples which emphasise the importance of an international approach at worldwide level in order to promote a new type of 'global international law' based on human rights (Petersmann, 2002, p. 3).

European integration shows that the distribution of public goods is not politically possible without the inclusion of aids in case of economic sets back based on the principles of justice, particularly the "difference principle" developed by John Rawls in his theory of distributive justice. This is because less developed countries understand market competition as unfair because of the power of multinational companies. For this reason, in order to be acceptable, global integration law must seek not only 'economic efficiency' but also 'democratic legitimacy' and 'social justice' as defined in human rights. This included the human rights of education, basic health care and an adequate standard of living (Petersmann, 2002, p. 4).

The fact that human rights are universal and that they belong to all humans rather than the members of a particular state, race, religion, gender or other group give them a place of superiority in the context of international law. In this way the discourse of human rights has been appropriated by big corporations whose interest is not the 'wellbeing' of other countries but their interests and the growth of sectors of the global economy which have an autonomous agenda and have no concern for ethical issues. Since the 1970s market "fundamentalism" has prevailed together with a cosmopolitan and transnational understanding of human rights conforming to the political economy. Paradoxically, as the idea of global justice and global welfare has vanished with the demise of national welfare states, the "dependant relationship" between human rights and neoliberal economy played a central role in human rights politics as the neoliberal market strengthened globally (Moyon, 2018, p. 8).

The Ambiguous Power of Human Rights

The ideal of "human rights" unites politics, religion and secularism, the developing world and intellectual elites. Human rights are the 'principle of liberation from oppression' and they back radical politics but on the other hand the language of human rights has "infiltrated the world of consumerism in order to protect the users of goods and culture" (Douzinas, 2000, p. 1). The claims to universality of human rights are fulfilling the "project" of the Enlightenment of emancipation and self-realisation and generally speaking the recent experience of economic and political domination of Western countries is associated with the symbols of rights and humanity.

Indeed, originally, human rights were the ideological tools of class interests and of the raising bourgeoisie against despotic power but their fundamental principles, and that is the principle of human

equality and freedom, have become the main ideology of contemporary regimes. In fact, at the beginning of the modern era, it was recognised that the universal political value of human rights was in conflict with the nationalist approaches of nation building and therefore they were not a valid constitutional idea. For this reason, human rights became rights only for the protection of citizens of a country and not for foreigners (Posner, 2014, p.12). In the 20th century, however, their prejudice against authority had been transcended after the fall of communism, winning, according to Douzinas (2000, p.1), the 'ideological battle of modernity' at the end of ideologies and the 'end of history'.

For instance, in Poland, Czechoslovakia, East Germany, Romania and Russia the concept of human rights in the 1980s was associated with 'dissent', rebellion and reform'. Subsequently, with the fall of communism the force of human rights was taken away from the 'street' by politician and international lawyers (Douzinas, 2000, p.7). After the collapse of communism, the force of human rights has strengthened as the outcome of historical developments. The end of the Cold War and the related 'end of history' showed that liberalism, and with it the concept of human rights, would be the only type of regime and nation states around the world would accept the values of liberalism, democracy and human rights.

There is, nevertheless, a contrasting element. The record of human right violation since their declaration in 1948 has been quite impressive in a negative way. If the 20th century has been the predominance of human rights, it has also witnessed a violation of their principles to an extent which perhaps has never been seen before, if we take into consideration genocides and ethnic cleansing. Moreover, at no point in history the gap between the rich and the poor has been greater in the Western world and between the north and the south of the world with the subjugation of children, women and men. This is partly why statements about human rights by governments and international organizations are often treated with scepticism because of the conflict between the 'theory and practice' of human rights, putting doubts on the role of reason and law (Douzinas, 2000, p. 2) and questioning the values of the Enlightenment.

The principle that is central to human rights discourse is natural law. Natural law begins with Antigone's 'unwritten laws" and for the Stoics natural law represented the basic principle of justice which can be grasped only by reason. Cicero maintained that there is a "true law" based on reason which is in accordance with nature and Aquinas and Grotius went further to say that natural law is a universal requisite and human laws are valid only if they refer to it. The change of natural law into natural rights in the 17th takes place with John Lock (1632-1704) who is regarded as the precursor of the modern conception of rights based on natural law (Finnis, 2011, p. 207-208). In this way, human nature assumed by modern liberal philosophers is pre-moral, for instance, according to Immanuel Kant (1724-1804), the preconditions for the individual moral actions are related to an absolute moral duty detached from the experience of the earth and therefore autonomous and self-determining. The history of natural law and its relation to human rights ends with the Universal Declaration of Human Rights in 1948 and the change from natural rights to positive rights. For the first time "given laws" based on nature and reason had been recognised, legislated, and included into law, more precisely international law (Douzinas, 2000, p. 8-9).

Although the success of human rights was celebrated with the collapse of communism, it coincided with the critique of humanism manifested in the 1970s and early 1980s by social theory and philosophy. It is during this time that the thought of Marx, Nietzsche and Freud and their followers radically criticised the assumption of liberal humanism. For instance, Martin Heidegger and Michel Foucault diminished the claims of the Enlightenment values of "endless progress", "harmonious humanity" and knowledge as a universal human good (Douzinas, 2000, p. 16). But the announcement of the "death of man", meaning the end of humanism, however, has gone together with the most insistent claims to put the individual at the centre of the actual world with freedom, as a choice of autonomy and self-determination, as the main ideal of a legal and political system.

The term 'human rights', is a combined word which refers to "humanity" and "human nature" but "rights" refers to implication within the discipline of law. Philosophy and law came together with the writings of Thomas Hobbes, Locke and Rousseau, with the French Declaration of the Rights of Man and Citizen, and the American Declaration of Independence and Bill of Rights constituted political and legal modernity (Douzinas, 2000, p. 18). The introduction of human nature and rights in the legal discourse of the 18th century gave a new source for law and the legal institutions with their history tradition and logic had to accommodate the claims of this idea. The concept of human rights is driven towards a

contradiction. It is asked to form the principle of law and politics, the new source of law, to come before and make the law. People must be brought before the law in order to acquire rights, duties, powers and competences, which give the subject legality. The legal person is the creation of artefact and in the discourse of human rights must be transformed into the law's principle, "the subject who come to life on the stage of law must also come before the law and support its maker" (Douzinas, 2000, p. 19).

In the essay 'The Other's Right' (1993) Jean-Francoise Lyotard opens the discussion by referring to a sentence of Hannah Arendt from *The Origin of Totalitarianism*(1953) who maintained that human beings had lost the qualities which made them recognisable as fellow human beings and therefore a right is recognised 'only if he is other than a human being'. Lyotard interprets this as a misplacement of what 'human' means and how the formation of an 'other' is reproduced, by language, as a 'figure' to form a 'likeness that determines the concept of human rights' (Lyotard, 1993, p. 136). This emphasises the arbitrary function of language and the problem of universalism in promoting such values since it allows the appropriation of moral truth of one group over the other.

This function of language is a characteristic of human beings. An animal can differentiate itself from other species of animals through their systems of communication based on the five senses developing a sort of language, which places them in a community with rules for behaviour. Humans also have language but its role, according, to Lyotard is limited because, as opposed to animals, human language is not common to all the species since it is not a question of bodily signals but it functions by signs and these signs are arbitrary and are based on fixed structures which have the property to define the reality of objects, to attach signification and to address it. This for Lyotard is the formation of the 'figure' of the 'other' and it is governed by the 'pragmatic' function of human language (Lyotard, 1993, p. 142).

Lyotard argues that if this capacity, to speak to each other, which forms a human right, is prevented, an injustice is committed to the person who is prevented from talking. This sets this person outside the community of interlocutors to the extent that the figure of the other is not provided or is taken away, confined to silence. To recognise a human right means explicitly to restore the capacity to be an interlocutor and also represents the fundamental public law of democracies where legitimacy is confused between the capacity to speak and the legitimacy, which authorises speaking. This means that there are no natural rights, but the right derives from the fact that humans can speak. The function of language is to bring out 'the figure of the other' and it disguises the basic aspect of communication, which in way resists this abstraction and expresses itself in signals rather than the rules of interlocution. In ethical terms, as opposed to the Kantian ethics, which influenced the main concepts of justice behind human rights discourse, it becomes useful to consider the interpretation of Levinas because the responsibility which is required towards the 'Other' is prior to any ontological interpretation which is provided by language (Levinas 2006, p. 115). For this reason, it can be argued that consigning the justice of human rights to any theory which through the function of language extends the pragmatic aspect of political power means perpetuating a certain discourse that moves away from the very concept of human being.

Conclusion

The power of human rights rests on the claims that people have entitlements by virtue of being human but the fact that there have been more human rights violations since their implementation put doubts on their very conception. To investigate the source of human rights also means to investigate historically the developments of Western thought because of the implication of concepts such as "nature", "humanity", "freedom" and "right". The fact that a liberal understanding of such concepts developed with the Enlightenment entitles a degree of scepticism based on the excessive importance given to the autonomy of individuals and the role of reason affected by the thought of history as a progressive process. The triumph of human rights coincides with the triumph of Western liberalism as the sole ideology and basis for law and legitimacy resides within this tradition in an age where the supremacy of the West is challenged in the domain of ethics. This can be seen in the contradiction with the implementation of human rights in international law and at the same time their increasing violation due to the ineffectiveness of international institutions. Human rights institutions gain political power internationally only when they serve the needs of powerful states. The NATO led intervention in Libya in 2011 and failure in Syria are just recent examples.

Supranational institutions of international human rights law are no longer suitable to realize their purpose mainly because the justification of their existence is characterised by needs that are not met and because the universalism which underlies global human rights is no longer suitable in a rapidly and radically changing world. This is because Europe and the West, once the holders of this ideology, have exhausted their imperial political power. Moreover, the liberal norms that justify the supranational institutions are challenged by conservative populist and religious forces which means that the belief that global norms should be secular, universal and unchallengeable, is not no longer universally accepted.

Human rights were the tools of the oppressed against the authority of governments, but they have now become the main ideology of the existing establishment adding more controversy on their very nature. To question the validity of human rights can be associated to "evil" and "irrationality", however, if human rights have become the 'new myth' of our societies it is necessary to re-assess their promise away from the interest of the states and the politics of liberalism. The human rights movement followed and obeyed the transformation of political economy into a global outlook and although human rights do not promote the neoliberal market, they are too aspiring in theory and less successful in practice. There is the need to discover political strategies and moral principles which do not depend on the universality of the law but instead focus on the re-evaluation of concepts such as human rights which do not depend entirely on the values of a particular group. A shift in the world order and in the distribution of power from a unipolar American system to a multipolar order has shown how much human rights institutions rely on liberal state power. This perhaps is the challenge of international human right law and their institutions. An international law which can sustain the weight of universal claims and at the same time a power of human right which should entail Western countries to change their conduct, in the same way non-Western are required to change theirs.

Ethical Declaration

In the writing process of the study titled "*The Limits of International Law: Human Rights and Global Organizations*", there were followed the scientific, ethical and the citation rules; was not made any falsification on the collected data and this study was not sent to any other academic media for evaluation. Since the document is examined in this study, there is no requirement for an ethics committee decision.

References

Arendt, H. (1951). *The origins of totalitarianism.* New York: Harcourt, Brace, Jovanovich.

Burdman, J. (2020). Universality without consensus: Jean-François Lyotard on politics in postmodernity. *Philosophy and Social Criticism*, *46*(3), 302-322.

Douzinas, C. (2000). *The end of human rights.* Oxford: Hart Publishing.

Finnis, J. (2011). *Natural Law and Natural Rights.* Oxford, UK: Oxford University Press.

Hathaway, O. A.(2002). Do human rights treaties make a difference? *The Yale Law Journal, 111.* www.yalelawjournal.org/pdf/111-8/HathawayFINAL.pdf.

Langford, M. (2018). Critiques of human rights. *Annual Review of Law and Social Science, 14,* 69-89.

Lauren, P. G. (2011). *The evolution of international human rights: Visions seen.* Philadelphia, PA:University of Pennsylvania Press.

Levinas, E. (2006). *Otherwise than being or beyond essence.* Pennsylvania: Duquesne University Press.

Lyotard, J. F. (1993).The other's rights. In S. Shute & S. Hurley (Edt.). *On Human Rights* (pp. 135-147).New York:BasicBooks.

Maiese, M. (2004). Human rights protection. InG. Burgess& H. Burgess (Edt.) *Beyond intractability.* Colorado, USA: Conflict Research Consortium, University of Colorado, Boulder. http://www.beyondintractability.org/essay/human_rights_protect/

Mende, J. (2019). Are human rights western—And why does it matter? A perspective from international political theory. *Journal of International Political Theory*. March 2019. doi:10.1177/1755088219832992

Moyn, S. (2018). *Not Enough: Human Rights in an Unequal World.* Cambridge. Massachusetts London, England: Harvard University Press.

Petersmann, E. (2002). Time for a United Nations 'global compact' for integrating human rights into the law of worldwide organizations: Lessons from European integration.*European Journal of International Law, 13*(3), 621-650. https://academic.oup.com/ejil/article/13/3/621/467166

Posner, E. (2014). *The twilight of human rights law.* Oxford, UK: Oxford University Press.

Risse, M. (2009). Securing Human Rights Intellectually: Philosophical Inquiries about the Universal Declaration. HKS Faculty Research Working Paper Series RWP09-024, John F. Kennedy School of Government, HarvardUniversity.http://nrs.harvard.edu/urn-3:HUL.InstRepos:4449103

Taylor, C. (2006). *A secular age.*USA: Harvard University Press.

Tomuschat, C. (2008). *Human rights: Between idealism and realism*. Oxford, UK: Oxford University Press.

EXTENDED ABSTRACT

"İnsan hakları", XX. yüzyılın ortalarından beri Birleşmiş Milletler'den diğer uluslararası sistem ve organizasyon biçimlerine kadar, uluslararası ilişkilerin retoriğinde merkezi bir rol oynamıştır. İnsan haklarının "gücü", bireylerin "yalnızca insan oldukları için haklara sahip oldukları" iddiasına dayanmaktadır (Gewirth, 1982). Bu da, bu hakların tüm insanlara ait oldukları, dolayısıyla evrensel oldukları manasına gelmektedir. İnsan hakları konseptinin ortaya çıkışını ele alırken iki dünya savaşının deneyimleri ve dekolonizasyon dönemi gibi tarihsel olayları göz önünde bulundurmak gerekir. Bunların neticesinde, insan hakları fikri, güçlü bir ahlaki vizyon oluşturmuş, uluslararası ve ulusal hukukta olumlu bir ivme kazanmıştır.

Ancak, 20. yüzyılda yaşanan şiddetin derecesi, daha açıkçası faşist rejimlerin acımasızlığı ve savaşların veya diğer insani krizlerin [1] sonucu olarak ortaya çıkan sayısız insan hakları ihlali göz önüne alındığında, uluslararası insan haklarının etkinliği hakkında sorular su yüzüne çıkmıştır. Bu etkinliğin eksikliği, insan hakları hakkında, belirli bir ölçüde ve farklı biçimler alabilen bir şüpheciliği de beraberinde getirmiştir.

Bu nokta, HannahArendt'in ilk olarak 1949 tarihli bir makalesinde ve daha sonra *The Origins of Totalitarianism* (1951) (Totaliterliğin Kaynakları) kitabında kullandığı 'haklara sahip olma hakkı' ifadesiyle çok iyi açıklanmaktadır. Arendt, vatansızlık durumu ile bağlantılı olarak incelendiğinde, bireylerin haklarının sadece teoride var olduğunu belirtir. Böylelikle, insan haklarının, uluslararası ve ulusal hukukta uygulanmasıyla daha kötü insan hakları siciline tanık olduğumuz gerçeği, insan hakları fikrinin doğasına ilişkin soruları ve uluslararası onaylı anlaşmaların ulus devletlerce uygulamalarındaki çelişkileri ortaya sermektedir.

İnsan hakları sözleşmelerini onaylayan ülkelerin insan hakları performans kayıtları genel olarak onları onaylamayan ülkelerden daha iyi olsa da, insan haklarına uyulmaması daha yaygın seyretmektedir. İnsan hakları sözleşmeleri ulusların ulusal menfaatleri için sadece 'vitrin' ise, onaylama ile devlet performansı arasında tutarlı bir ilişki olmamalıdır. Bunun ötesinde, insan hakları antlaşmaları etkili ise, insan hakları sözleşmelerinin onaylanması, demokratik ülkeler tarafından daha iyi performansla ilişkilendirilmeli ve kötü performansla bağlantılı olmamalıdır.

Daha kötü insan hakları performansına sahip olan milletler, daha fazla anlaşmayı onaylamaya daha yatkın olabilir, fakat ihlaller hakkında daha çok şey biliyor olmamız, antlaşmayı onaylayan ülkeleri daha kötü bir pozisyonda göstermektedir. Fakat herhangi tek bir antlaşma onaylanmasının, daha iyi insan hakları uygulamaları ile bağlantılı olduğunu ve ayrıca birçok antlaşmanın daha kötü insan hakları uygulamaları ile ilişkilendirilebileceğini gösteren herhangi bir bulgu yoktur (Hathaway, 2002).

Bu nedenle, uluslararası antlaşmalar iki taraflı yapıya sahiptirler: "araçsal"dırlar çünkü hukuk oluşturarak, değişen uygulamaları hesaba katıp, bu anlaşmaları onaylayan ülkeleri birbirine bağlarlar. İkinci olarak, "ifade edici enstrümanlar"dır, çünkü kendilerini onaylayan ülkelerin uluslararası camiadaki yerlerini işaret ederler. Bunun sebebi, bazen ülkelerin sonuçlardan, alt düzeyde kalan izleme ve icraatlarından ziyade, pozisyonları için ödüllendirilmeleridir (Hathaway, 2002). Dolayısıyla, insan hakları düşüncesi, insanlık ve özgürlük ilkeleri üzerine inşa edilmiştir. Bunun yanı sıra, insan haklarının üzerinde inşa edildiği bir diğer temel ise, siyasi gücün "akla" ve "hukuka" dayanması gerektiği varsayımıdır. En doğrudan saldırı, insan haklarının "teori" ve "pratiği" arasındaki tutarsızlıkla (Douzinas, 2000, s. 2) ve kanun ile aklın rolü arasındaki ilişki üzerine olan şüpheler ilgilidir.

Bu çalışmada, 1948 İnsan Hakları Evrensel Beyannamesi'ndeki geleneksel insan hakları anlayışı ve ticaretteki bütünleşme ve liberalleşmenin dünyadaki örgütlerin yasalarıyla nasıl bütünleştiği analiz edilecektir. Bu betimsel analiz, ilerici bir düşünce olarak, aklın ve tarihin eleştirisini içeren doğal hakların eleştirilmesine karşı olarak değerlendirilecektir. Çünkü Lyotard'a (1993) göre, insan hakları kavramı bir insandan 'başka' bir 'figür' oluşturur ve ekonomik, kültürel ve siyasi bir güç tarafından yönetilen bir diyalogu dışladıklarını hesaba katmaz. Bu da, insan haklarının yapay bir dil yaratımı olduğunu akla getirirken, bir grubun ahlaki hakikatini bir diğerine mal etmesini ortaya çıkararak, insan haklarının evrensellik problemini de meydana çıkarır.