

Research Article

International Migration In Terms Of the International Society Approach

Serdar SARI*

Abstract

International society is a historical process and it has reached its present form by undergoing transformations. In this historical process, state sovereignty and human rights are two concepts that both support and conflict with each other. With the end of the Cold War and the effect of globalization, there has been an increase in human mobility in the international scene. The inability of the international society to intervene in civil wars and conflicts in a timely and effective manner has also cause mandatory human mobility. In general, it is possible to talk about the existence of a consensus, even if there are some objections, about the responsibilities of a state towards its citizens within its borders. However, the responsibility of a state towards foreigners who live outside its borders and do not have citizenship connection is obviously disputed. In the context of the rights and obligations that foreigners have in the sovereignty of a country, there are also some norms that limit state sovereignty. Therefore, in this study, the phenomenon of international migration has been tried to be handled with a holistic approach and the responsibility of the international community has been questioned.

Keywords: *International Society, International Migration, Sovereignty of States, Human Rights*

* Postgraduate, Akdeniz Üniversitesi, 8serdar8ari@gmail.com

ORCID: 0000-0003-3478-3800

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Uluslararası Toplum Yaklaşımı Açısından Uluslararası Göç

Serdar SARI*

Öz

Uluslararası toplum tarihsel bir süreçtir ve bugünkü görünümüne tarihsel süreç içerisinde dönüşümler geçirerek ulaşmıştır. Bu tarihsel süreç içerisinde devlet egemenliği ve insan hakları kimi zaman birbirlerini destekleyen kimi zaman da birbirleri ile çatışma içerisinde olan iki kavramdır. Soğuk Savaş'ın sona ermesi ve küreselleşmenin de etkisiyle uluslararası anlamda insan hareketliliğinde de bir artış yaşanmıştır. İç savaşlar ve çatışmalara uluslararası toplumun vaktinde ve etkili bir şekilde müdahale edememesi, ulusal sınırlar içinde ve uluslararası anlamda insan hareketliliğini zorunlu bir hale getirmiştir. Genel anlamda bir devletin kendi egemenlik sınırları içindeki vatandaşlarına yönelik sorumlulukları konusunda tartışmalı da olsa bir uzlaşmanın varlığından bahsetmek mümkündür. Fakat bir devletin kendi sınırları dışında yaşayan ve vatandaşlık bağı bulunmayan yabancılara yönelik sorumluluğu konusunda uluslararası aktörlerin üzerinde anlaşabilecekleri norm ve ilkeler henüz mevcut değildir. Yabancıların bir ülkenin egemenlik alanlarında sahip oldukları hak ve yükümlülükler bağlamında, devlet egemenliğini sınırlandırıcı birtakım normların varlığı mevcuttur. Bu nedenle bu çalışmada uluslararası göç olgusu bütüncül bir yaklaşımla ele alınmaya çalışılmış ve bu alanda uluslararası toplumun sorumluluğu sorgulanmıştır.

Anahtar Kelimeler: *Uluslararası Toplum, Uluslararası Göç, Devlet Egemenliği, İnsan Hakları*

* Doktora Öğrencisi, Akdeniz Üniversitesi, Serdar8ari@gmail.com

ORCID: 0000-0003-3478-3800

Introduction

According to the international society approach, states are the most important actors in the international system. Thanks to diplomatic relations and negotiations between states, they have succeeded in establishing common values and norms at the international level. Consequently, states can maintain their positions in the emerging social structure as the most important actors in the international system. This social structure is extremely dynamic and affects the international system according to the nature of the relations between states, and is shaped periodically by this dynamic. In this respect, it would not be enough to approach inter-state relations solely with competition or cooperation, as in neorealism or neoliberalism, which try to explain the nature of international relations with a mechanical functioning. Social relations emerged with the mutual interactions established between states. Over time, they strengthened the belief that states have rules and norms are binding them.

Within the historical process, the borders of the country were established by accepting the immunity of the lands owned by the rulers. Legal rules based on mutual rights and obligations have emerged between the society and the administrators living within the territory of the country and thus the relationship between the state and the citizen has been formed. With this understanding, the priority of a state, which has sovereign powers within a certain territory is obliged to ensure the security of its locals, as citizens. In addition, the state must offer at least minimum political and social rights to its citizens. Often, the basic foundation and founding element of this relationship is a constitution or conventions similar to the constitution. Over time, with the acceptance of the existence of human rights on a universal scale, the relationship established between the state and the citizen has imposed various responsibilities on the states for non-citizen foreigners. States have wanted to impose various restrictions on foreigners within their borders, with concepts such as national security and public order in the context of sovereign rights. In such cases, conflicts with universal norms and public order and public security based on state sovereignty have occurred.

According to the international society approach, states are obliged to ensure the safety and peace of their society, whether citizens or not, and this is expressed as a responsible sovereign power. For states, the scope of this responsibility becomes ambiguous when it comes to people who are not their citizens. In addition to obligations that rather limit state sovereignty in front of the individual as refugee law, the understanding legitimizes cross-border operations against human rights violations and international relations formed within the framework of it, which also shapes and determines the structure of the international society. The 2016 New York Declaration and its successor documents, Global Compact on Migration and Global Compact on Refugees, sought to establish safe, orderly and regular global migration commitments to which international stakeholders take apart. On the one hand, while trying to establish the normative basis of a human-oriented global consensus, on the other hand, it has been witnessed that an effort has emerged to increase border security in the context of sovereign rights of states and to control the passage of immigrants.

In this study, we have tried to examine the conflict between state sovereignty and individual fundamental rights when citizens and foreigners come up with a topic of discussion. In the last decade, international society has witnessed enormous population movement because of the instability and human suffering in countries such as Syria, Venezuela, Afghanistan, Myanmar, etc... On the other hand, xenophobia is on the rise and has gained solid ground in hosting countries. A state who has sovereign power is accepted as a foremost actor in international relations. Here, the sovereignty issue has opened the discussion in context with principles of “responsibility to protect” and “sovereign responsibility”. While trying to present a new perspective and cooperative efforts toward immigrants through global principles and norms, on the other hand, states want to close their doors to foreigners in the context of sovereign powers, or they want to manage international migration management hiding their own sovereign borders. The absence of a fair burden sharing mechanism, especially in cases where geographical proximity is in question, makes it difficult to manage international migration across sovereign borders. In this context, it becomes possible to talk about the existence of a tension between the

establishment of a consensus ground for the establishment of an effective and fair migration governance mechanism by all stakeholders, especially the states, and the externalization of migration behind traditional state sovereignty. So, how should international migration, which has become a global reality, be managed? This study consists of three chapters. With this understanding, the English School approach has been examined in the first chapter, and a summary of the approach is presented to provide a basis for the subject. In the second section, international migration has been historically discussed and a theoretical perspective has been tried to reflect. In the final chapter, migration has been evaluated in the context of human rights, the quest for global cooperation and state sovereignty.

The Approach About International Society

The concept of international society came to the fore with the work of academics such as Martin Wight (Wight, 1960; Wight, 1987), Hedley Bull (Bull, 2012), John Vincent (Vincent, 1978), and Adam Watson (Watson, 1982; Watson, 1992), who were named as the English School in the 1970s and gained popularity. The post-1990 work of Barry Buzan (Buzan, 2004), Richard Little (Little, 1989), Andrew Hurrell (Hurrell, 2007; Hurrell, 2014), and other UK academics have achieved remarkable success as an original approach. The most basic claim of the English School academics is sovereign states have succeeded in creating a society as equal actors in the international environment. It has been argued that in the absence of high coercive authority, a reasonable level of the order has been achieved and the tendency to resort to violence between states is relatively low (Linklater, 2013, p.88). Although the existence of violence, insecurity, and power relations between states in the international system is accepted, these elements alone cannot explain the systematic functioning in defining the international society, as in the realist approach.

While some of the English School writers, especially the first generation, put forward views close to the realist approach, some scholars, especially the second generation writers, advocate views close to the idealist / liberal approach. Scholars who are close to the realist view accept the hypothesis that states pursue power and interests and therefore must rely

on their military capacity in inter-state relations where there is no superior authority. Despite they oppose the assumption that the international system is just the anarchic and argue that the international society can be a more organized and civilized social structure open to inter-state cooperation. By increasing the effectiveness of international institutions and creating inter-dependence; scholars who are close to the idealist/liberal approach defend the hypothesis that peace and cooperation are possible. Nevertheless, they generally take a critical attitude toward the views claimed by idealist/liberal writers such as Kant, that the establishment of eternal peace and violence can be eliminated (Wight, 1960, p. 44). Likewise, it is not realistic to expect states to withdraw from the international arena in favour of a world state to be established by transferring their sovereign powers to a higher authority and to speak of world citizenship in this direction. In this context, there is a strong emphasis on states, which are accepted as the most prominent actors of the international system, that the sovereign powers of states are respected in compacts. States that have a monopoly on violence will not want to give up sovereign powers so easily (Linklater, 2013, p.90; Watson, 1982, p:38).¹ Hedley Bull describes the international society as being fully aware of common interests and common values between states, with the perception that they are bound by certain rules in their relations with each other, and that they create a social structure with the belief of working under common institutions/organizations. Acknowledging common interests and values, respecting mutual independence and sovereignty rights between states, adhering to agreements and obligations to which they are a party, and complying with certain restrictions in bilateral and multilateral relations lead states to a certain set of behaviour patterns. Thus, states can operate diplomacy under the common roof of international institutions and organizations and contribute to the formation and development of international law (Bull, 2012, p.13; Wight, 1987, p. 223; Palabıyık, 2017, p. 90). It is difficult to talk about the existence of an international order due to the absence of a definition of common interest in cooperation on migration, but that states have had to act jointly on the issue of migration, which has become a global reality with its nature that transcends state borders.

¹ According to Watson, a state can in fact be judged not only by a court of international law but also be judged by its peers. With this understanding, diplomacy as an instrument is so important to creating an international society among sovereign states.

It is claimed that the international society has a deeper and more cultural dimension than the international system. On the other hand, the existence of a maximum relationship between the actors is deemed sufficient to speak of the existence of an international or a lower-scale system. According to Bull, the international system is the ability of two or more states to develop a suitable communication environment among themselves and they influence each other's decisions and maintain a relationship together and as parts of a whole at a certain scale. For example, before Christopher Columbus, there was such a contact-based relationship between the natives of the Americans. However, it is not possible to talk about an international system in which there are cultural, religious, and legal obligations among the actors as in the European continent (Bull,2012, p.9). It is argued that in Europe, there is a social organization and the structures, brought together by this organization have an interaction, albeit at a low level, and this interaction gains a legal dimension by creating common values between the parties. In this regard, it could be said that the higher the interaction among states, the higher positive results would be taken in the case of international migration.

Hedley Bull emphasizes the concept of international order and accentuates the continuity of order. Bull argues that all societies, regardless of the national or international level, have three primary goals. These are "limiting the violence", "protecting property rights" and finally "ensuring that contracts and obligations are fulfilled". In this regard, an important distinction emerges with the realist approach, which defends that states only pursue a policy of interest and power. According to Bull, states consider the continuity of order beneficial for their security and are inclined to make concessions to compromise their sovereign rights. These three objectives, which are needed for the establishment of order, represent the common interests of the states and alleviate the security concerns of the states. For this reason, the existence and continuity of order will create a perception of common interest among states and support the need for an international society, even if there is no commonality among states (Linklater, 2013, p. 95). As Bull mentioned, compacts submit an opportunity for diplomacy based on the order in case of new challenges. It appears that hiding the

sovereign borders (seems) cannot solve the problem through a non-myopic approach.

The international system has a dynamic structure. The current society of modern states has been formed in the historical process and has reached its present form by transforming. It is always possible for the international society to evolve into a more primitive or more developed social structure within the framework of inter-state interest and cooperation relations. For this reason, the strengthening of modern diplomatic practices, especially human rights, is considered important by the second-generation authors for the sustainability and development of the international society. This solidarity approach brings the understanding of international society closer to the idealist / liberal view. According to Wight, who adopts a pluralist approach, basic political obligations provide security or order with the development of law, justice, and welfare. For this reason, order and stability are the most important concepts for the functioning and continuity of the international society for Wight. Contrary to this view, Dunne, and Wheeler, second-generation English School scholars, openly support military operations such as humanitarian intervention by prioritizing human rights (Linklater, p. 92). This attitude, which can undermine established international principles such as state sovereignty and non-interference in internal affairs, causes the values, beliefs, and rules to be discussed with its international dimension and divides the approach of the international society into two separate poles.

International Migration

From 200.000 years ago to nowadays fossil and DNA findings sign that human history started in Africa and so far migration has been an integral part of human history. Approximately 100 thousand years ago, humankind was able to reach the Asian and European continents and then to Australia and the American continents (Pontzer, 2012). Humans had transitioned from a hunter-gatherer lifestyle to a settled life based on agriculture. Thus, they had sought stability in meeting their need for nutrition and ensuring their safety in the face of natural conditions, by providing the necessary organization for an agricultural social transformation from a hunter

and gatherer life (Curry, 2017). Migration movements have been a source of cultural and literary reference in the creation of human civilization, as a source of many mythological, religious and historical events and stories. The phenomenon of migration also found its place among the provisions of the Kadesh Treaty, which was made between the XIX. Dynasty Pharaoh Ramses II and the Hittite King Hattusil III in 1278 B.C, which is accepted as the first written treaty of history. The condition of returning all political refugees, whether they are noble or not, has been accepted by the parties with a special clause. The same article also stipulated that the refugees and their property and slaves should be returned mutually and that no harm should be done to their descendants and retinues. According to the provision of the article (Bakrusin, Efimov, Mintz ve Kosminsky, 2009, p. 20):

If a person escapes from Egypt and comes to the Hittite country, the Hittite King will not keep him in his country and return it to Ramses' country (...) One or two or three or, etc. if the man flees from Egypt, he will be returned to Ramses's country (...) They will not be killed and their eyes, mouth, and feet will not be touched.

International migration goes beyond national borders, and there is a transition from the jurisdiction of one sovereign state to the jurisdiction of another sovereign state. The state, with its sovereign powers and within a defined boundary, is a modern concept. About the emergence of today's understanding of the state, the Westphalian Treaty of 1648 and the international order that emerged afterward are referred (Kissinger, 2014, pp. 35 – 53; Watson, 1992, p. 186). Weberian definition of the state which is monopoly of legitimate violence within determined territory allows distinguishing domestic and international levels of politics binary (Lebow, 2008, p. 2). In terms of international law, Article 1 of the Montevideo Convention on the Rights and Obligations of States dated 1933 set forth the conditions of acceptance as a state in international law (Shaw, 2018, p. 153). According to the convention, it is accepted that the state as an international personality should have the following qualifications: permanent population as a citizen, a defined piece of land, the government, and the capacity to establish relationships with other states (Montevideo Convention, 1933). The state, which is shaped around these qualities, continues its existence as the most important factor in the international system, despite the increas-

ing number of actors and participants. Consequently, this situation necessitates a state-centred perspective as a source of solution and insolvency in regional and international problems. Entry into, staying and exiting from the sovereignty area of a state with no citizenship ties and foreigner status from the sovereign area of a state to which they are bound by citizenship or legally reside constitute the elements of international migration (Perrucoud and Redpath, 2011).²

Under the discipline of international relations, the phenomenon of migration is generally discussed under four main headings with the dimensions of securitization, human rights, development-migration relation, and trade agenda (Lahov and Lavanex, 2013, p.748). After the Second World War, until the 1980s, the issue of immigration formed the low policy agenda with the effect of realism and was not given as much importance as military and security issues (Guzzini, 2013, p. 240). Especially the issue of migration has been considered a domestic policy matter in the traditional sense in the field of application and has not occupied a prominent place on the international agenda (Lahov and Lavanex, 2013, p. 746). Western European states such as France, Switzerland, Germany, the Netherlands, and Belgium opened their doors to refugees and guest workers in the 1950s, but only in the 1970s did immigration manage to attract the attention of academics. It is possible to say that international migration movements were mainly approached sociologically and economically in that period. In their 1973 study, *Immigrant Workers and Class Structure in Western Europe*, Stephan Castles and Gadula Kosack assessed that immigrants play a very important role in the existence of developed capitalist societies because they provide labour supply for industrial production. Garry Freeman and Mark Miller later conducted studies on immigration through racial and ethnic policies (Hollifield and Wong, 2017, p. 228).

² These sovereign areas consist of the territory of the state, inland waters, territorial waters, and airspace and are briefly named the country. The country from which the people departure is named as the country of origin or sending country; the country to which people arrive is named as the destination country, host country, or accepting country. If legal procedures are followed by foreigners during the entry into the country, their stay in the country, and their exit from the country, regular migration occurs, if legal procedures are not followed by foreigners, irregular migration occurs. See., Perrucoud and Redpath, 2011.

Some researchers focusing on economics and population growth have dealt with the issue of migration with a Malthusian terminology and stated that even the most developed economies have limited capacity in terms of production factors such as land and capital. Due to the increase in population and the limited land available for agriculture, people migrate from rural areas to cities and the city infrastructure cannot meet the overcrowding and becomes inoperable. In addition, this situation forces cities to expand horizontally and vertically and often invites environmental disasters due to insufficient infrastructure conditions and concreting. The increase in the labour supply in the city leads to a decrease in wages and this situation puts the people, who are below the social strata, in danger of starvation. The emigration of these people to more developed countries in order to earn enough wage results in an increase in social and public costs for host countries and a decrease in wages in labour-intensive activities. In the face of this negative approach to international migration movements due to demographic increase, there are also opinions claiming that migrants add economic dynamism to the countries they have settled in. Proponents of this viewpoint out that 40 % of the top 500 companies announced in Fortune magazine in 2011 were founded by immigrants or those from immigrant families (Hollifield and Wong, 2017, p. 231). According to this approach, immigrants contribute to a healthy market economy by bringing innovation and competition to the economy of the country they arrived. For demographically weak countries, international migration increases the labor supply and provides an economic contribution to host countries (Duncan, 2010, p. 7) .

According to James F. Hollifield, international migration should be evaluated with a more holistic approach in terms of economic forces, social networks, and rights offered in the context of the *demand-pull* and *supply-push* models. Hollifield argues that the historical transformation of international migration can be explained by economic terms. After the Second World War, North-South worker migration movements were mostly under the influence of demand-pull forces. Western states, which are defined as developed industrial democracies, experienced labour shortages between 1940 and 1960 and opened their gates to foreign workers in or-

der to solve that problem. Western states have made arrangements in their national legislation to facilitate migration to their own countries so those migrant workers can come to their countries and work. The United States of America (USA) has encouraged international migration to increase the labour supply, especially in the agricultural sector. With the 1973 oil embargo turning into a global crisis, the demand for foreign immigrant workers decreased and the supply-push factor gradually came into play from that period. In particular, developing and underdeveloped countries which are the source countries of this crisis, have been affected more seriously and have been insufficient to produce solutions in the face of increasing demographic pressures. Rich Western hosting countries were perceived as solution centres in the face of economic stagnation. However, during this period, host countries wanted to prevent the flow of immigrants. Nevertheless, due to the social communication networks established between individuals in the source and destination countries, international migration movements have continued to increase in the context of migrant workers and individual-oriented rights such as family reunification and refugee migration (Hollifield and Wong, 2017, p. 231).

While international migration was handled with an economic approach in the middle of the 20th century, despite the restrictive measures taken by the host countries, it is now more discussed in the context of rights. Especially today, under the title of human rights, the fundamental rights and freedoms of individuals have eliminated the distinction between citizens and foreigners in some areas of a state. Apart from the citizenship bound in the host country, an individual as a foreigner, regardless of his status, has fundamental rights and freedoms stemming from being human and severely restricting the sovereign powers of the state, as required by today's positive and natural law understanding. Regarding the protection of these rights and freedoms, states are obliged not to interfere with individuals and to prevent unjust and unlawful interventions by other actors towards these rights and freedoms of individuals. In this respect, it is possible to say that the relationship between the individual and the state has transformed by going beyond the relation of nationality (Hollifield and Wong, 2017, p.228). In the face of this view, it is still possible to talk about the existence of a conservative stance against migration movements in the

scope of the principles of sovereign rights of states.

It is thought that the protection of human dignity in the relationship of the individual with the state is the essence of human rights. In order to talk about the existence of this essence, it is necessary to focus on the integrity, freedom, and identity of the person. In this context, the physical and mental integrity of an individual should be respected by other actors, especially by the state. It is argued that all people should have their own private space and individual people should be assured by the state to protect this private space from unwanted interference. In this context, states have become a party to international and regional conventions that guarantee the fundamental rights and freedoms of people and restrict the sovereign powers of the states in the context of these rights and freedoms (Kjaerum, 2005, p. 53). Universal Declaration of Human Rights (UDHR, 1948), the Convention on the Punishment and Prevention of the Crime of Genocide (CPPCG, 1948), Convention on the Status of Refugees (Geneva Refugee Convention, 1951), International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), Convention Prohibiting Torture (UNCAT, 1984), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990 Convention) and Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol, 2000) are conventions or international regulations that can be considered prominent internationally. In addition, the European Convention on Human Rights (ECHR, 1950), American Convention on Human Rights (Costa Rica Convention, 1969), OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Addis Ababa Convention, 1969), European Convention on The Legal Status of Migrant Workers (1977 European Convention) African Charter on Human and Peoples' Rights (1981 Convention), European Union Temporary Protection Directive (Directive 2001/55) and Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw Convention, 2005) are samples of regional conventions or regulations. These agreements and commitments concluded under the roof of regional and

international institutions constituted the steps taken to create a more liberal international society in which states limited their sovereign powers against individuals as a result of diplomatic processes.

The steps taken towards the construction of a liberal international society could not prevent the humanitarian atrocities that took place in Somalia and Rwanda, the civil war that broke out in Yugoslavia in the post-Cold War period. With the increase in the global mobility of people in search of security, border security in the context of state sovereignty came to the fore again and steps were taken to limit this mobility. In order to prevent migration flows, visa applications have been tightened, sanctions against international carrier companies have been intensified and inspections in border controls have been increased. International areas have been established at the airports, and camps have been established where international protection applicants can be kept under control. In order to prevent the incursions in source countries, military bases were established in these regions and safe zones were tried to be created where international aid protected by security missions could be delivered (Kjaerum, 2005, p. 54) or by creating warehouse countries, tried to prevent the passage of immigrants to the target countries (Greenhill, 2022, p.160 – 161). On the one hand, the concept of human rights was glorified as the highest value judgment of the international society, on the other hand, the securitization approach to protecting state borders in the name of national security and state sovereignty came to the fore after the 9/11 attacks and a more protective tendency was observed to restrict international human movements (Boswell, 2007, p. 591). It should be underlined that while restricting international migration movements, low-scale securitization discourses such as public order and public security are adopted (Nabers, 2015, p. 62).³

Migration as a Context of Human Rights and State Sovereignty

States are the most important actors of today's international society; although other actors are also accepted, they are also the creators of the international society through the historical process. States have given

³ Particularly, in the post-September 11 period, the Bush administration had the opportunity to accomplish a previously formulated foreign policy agenda regarding the security measures against war on terror, which started with the Carter period.

an institutional view to their relations around common interests and values and have added depth to these relations by developing diplomatic mechanisms. In line with the interactions of states with each and other actors, the international society emerges experiences transformation, encounters crises, and tries to find solutions. With the effect of globalization and increasing technological possibilities, the movement of people from the sovereign domain of one state to another state and the factors of conflict and instability that caused these movements have put the state sovereignty on the top of the agenda (Duncan, 2020, p. 6). Within the framework of pluralist and solidarist approaches, the steps to be taken by the international society towards the solution of the humanitarian crises in some regions and the compulsory and/or irregular migration flows from the source countries to target countries will also serve the transformation of the international society as state or individual centred.

With the acceleration of globalization after the Cold War, the existence of state borders has been opened to discussion.⁴ With the removal of the obstacles to the international mobility of the factors of production, economic relations, especially international trade, have become one of the main agendas of international relations. This situation led to the losing ground of the realist approach that left its mark on the Cold War period and brought the topics that were attributed secondary importance to the agenda after the military and security issues. With globalization, there has been a noticeable increase in the existence and activity of non-state actors. States that needed foreign capital to develop and close their financial deficits had to compromise their sovereign powers in some areas. Globalization, together with its risks and advantages for states, has been one of the most discussed concepts after the Cold War (Czaika and De Haas, 2014, p. 285).

Although the existence of negative and positive obligations of states in the context of human rights in terms of fundamental rights and

⁴ After the dismantling of the Soviet Union and collapsing of ideological barriers, increased human mobilization around the world. With the decrease of ideological tension, liberal political and economic prescriptions were presented to the former Soviet republics, especially Russia, and their participation in the international society was tried to be increased. This period also led to the declaration of the historical victory of liberalism as the highest human value, as it means winning the struggle against communism. For more information, see; Fukuyama, F., (1992). *The End Of History and the Last Man*, New York: The Free Press.

freedoms is generally accepted by the international society in practice, in terms of the executive power of the state, this obligation is a bit ambiguous when it comes to foreigners (Linklater, 2007, p. 20). In the context of the modern understanding of the state in which the bond of citizenship is strong nation, citizenship, territory and state sovereignty are also considered as a whole. Thus, outside of the state-citizenship relation, the foreigner has more limited rights than the citizen or they can be taken out of a state's territory by using the sovereign power of states (Boucher – Grdemann, 2021, p. 243.) While there is no restriction on access to basic health facilities and education even in a place that has democratic practices, foreigners within the scope of regular immigration face limitations, regulations such as quotas and barriers in terms of social security, access to the labour market, private property, and participation in political life.

In 1990, it was thought that there were around 100 million legal international migrants, around 19 million people in need of international protection, and at least 10 million irregular migrants. This wave of migration was partly the result of the end of colonization, the emergence of new states, and the policies of state or non-state actors that forced or encouraged people to emigrate. In a positive or negative way, the global scale of modernization and technology is also one of the important reasons for the increase in international migration movements. Not just developments in the field of transportation, both facilitated the transportation from one point of the world to another and reduced the costs significantly but also developments in communication technology, information exchange between people living in the source and destination country has become easier (Huntington, 2008, p. 20). Thus, migration, both nationally and internationally, has gained an international dimension has turned a transformation into a form that feeds and reinforces itself as a process and includes illegal organizations in the face of obstacles and restrictions.

The transformation of migration into a multidimensional form and gaining appearance as nurturing and fostering itself has led to increasing tensions between migrants and host country citizens (Aradau, 2010, p. 116). Especially in cases of forced emigration, migrants try to preserve their traditional and cultural values in the countries they reach. Integration

policies offered to immigrants by the host country are resisted and considered as part of the assimilation strategy. With the increase of mass migration between countries, societies have become more heterogeneous, gained a multi-cultural, multi-faith, and multi-identity structure (Linklater, 2007, p. 95). This situation has led to the questioning of the nation-state notion, which claims to be a homogeneous society and a cultural whole.

Hosting local people perceive immigrants' willingness to try to protect their values, psychological boundaries, and beliefs as a direct attack on their identity and values, creating tension between citizens and immigrants (Suistola and Volkan, 2017, p. 51). With the acceleration of internationalization and globalization, the conditions of economic competition have also become tough. Immigrants, who are thought to penetrate the society by infiltrating national borders and customs walls, are viewed as a cheap supply of labour. Hence, the local population of the host country directly blames foreigners for the deteriorating factor of economic indicators. The local people of the host country worry that their jobs may be taken away by foreigners and feel that they will have to compete with foreigners to maintain their living conditions (Bigo, 2005, p. 65). It is observed that xenophobia is on the rise in the face of the worsening economic conditions, increasing competition and the social structure evolving into a cosmopolitan form, and the populist understanding of politics trying to gain votes from all these. On the other hand, foreigners become visible on the public scene, local people feel that their large-group identity is under attack (Volkan, 2017, p. 96). Thus, the psychological effects of stranger anxiety whose root causes are in infancy increase in the public sphere (Volkan, 2017, p. 86.) and cause the ontological security concerns of the society of the host country to rise (Bilgin, 2010, p. 87 – 88). With the populist movements gaining ground in the political arena, the need for national borders to be closed to immigrants and the need for a more closed social structure began to be expressed frequently. So, "Does a state have the authority to treat people as it wishes, whether foreigners or not in its own country, by asserting its sovereign powers?" is the main question.

The understanding that the state has unlimited powers within the borders of the country ended with the Nuremberg Doctrine. Although it is

accepted that the state has a monopoly on the use of violence, the responsible state administrators were punished by the international society for crimes against peace and humanity in case of the genocide of people for ethnic and political reasons. With this understanding, by going beyond traditional concepts such as citizenship and state borders, it has been accepted that human rights are violated (Linklater, 2007, p. 102). With the decision of the United Nations Security Council (UNSC), ad hoc international criminal courts were established in the former Yugoslavia and Rwanda; the second time after the Nuremberg and Tokyo courts, the international society had tried individual state leaders for human rights violations. With the Rome Statute in 1998, the International Criminal Court (ICC) was established and turned into a permanent court to adjudicate genocide, a war crime, crime against humanity, and aggression. Failure to prevent the massacres in Bosnia and Herzegovina and Rwanda due to the inaction of the international society, with the concern that a similar process may occur in the Kosovo issue, led NATO to military intervention without the UNSC decision and this situation was considered as an illegal but legitimate act.⁵ Following this intervention in 1999, two separate independent reports were published by the United Nations (UN). In the first report, the systematic massacres of eight thousand (8000) Bosnian Muslims in Srebrenica, which was declared by the UN as a safe zone in 1995; and in the second report, eight hundred thousand (800.000) Tutsi and moderate Hutus in Rwanda in 1994 were discussed in the other report. Both reports highlighted the responsibility of the international society for the humanitarian tragedies that have been inactive in the face of the massacres. It was argued that UN members should not remain neutral against human rights violations and that permanent members of the UNSC should not hinder the process by using their veto powers (Teitt, 2017, p. 339). In this regard, it was seen that

⁵ This situation also deserves to argue about what is legal and legitimate under the approach of international society. States create a society, and it reveals itself as a result of some process. This process needs some instruments such as diplomacy and law. International institutions play an important role for the realization of these processes. In this respect, The United Nations, as the most prominent international institution, is becoming the platform that emerges as the discussion ground of the legitimacy debates of the international society. Although power relations between states are the main determining factor in foreign policy, it is extremely essential for an action to be considered legitimate in order to gain the consent of the international actors. See, Watson, 1992, p. 301.

attempts were made to act with an understanding of solidarity in international society in cases of humanitarian crises were in question.

During the period of Boutros Boutros-Ghali, who served as the UN Secretary-General between 1992 – 1996, Francis Deng was appointed as the special representative in order to seek ways to protect internally displaced people on a legitimate basis and to deliver international aid to these people. Deng has developed the principle of *responsible sovereignty* for this purpose. According to this principle, in order to provide protection and security to internally displaced people, joint action will be made with the competent government units of the addressee state. In the event that the security of people cannot be ensured due to the disturbance of public order or the public security in the whole or a certain region of the country is in danger, the relevant state units shall seek assistance from the international society in accordance with the principle of responsible sovereignty. Thus, any operation conducted by the international society will not mean intervention in the internal affairs of the relevant state (Teitt, 2017, p. 337).

The principle of *responsible sovereignty*, developed in accordance with Deng's principle of intervention in internal affairs is based on the assumption that the persecution is committed by a non-state actor. The principle of *responsible sovereignty* cannot solve if the state is itself an actor of persecution and attacks people within its borders or is unwilling to act as a responsible sovereign. The International Commission on State Sovereignty and Intervention (ICSSI) developed the principle of *responsibility to protect* in 2001. According to the principle, it is advocated that international intervention can be carried out to ensure the safety of communities attacked by their governments and confront with human rights violations. The primary responsibility of every state is to protect its society from aggression and persecution is generally accepted in case of emergency. According to the principle of international *responsibility to protect*, if the state is incapable or reluctant to ensure the security of its society, it will be legitimate for the international society to use military force when necessary to protect people and ensure their safety (Teitt, 2017, p. 341). The principle of *responsibility to protect* was discussed at the 2005 UN Summit and in a report prepared by the UN Secretary-General in 2009, it was reminded that each state has

a *responsibility to protect* its society from genocide, war crimes, ethnic cleansing, and crimes against humanity. Within the scope of the principle, it was mentioned that the international society has a responsibility to assist the states concerned in the prevention of crimes of aggression. However, in a peaceful, diplomatic and humanitarian sense where the states have failed to protect their society; it has been argued that international society has the responsibility to take action in a timely and decisive manner by using forceful methods when it is necessary.⁶

It was argued that the state has a responsibility to act. In addition to preparing the ground for the military operation in Libya in 2011, in the account of more than forty decisions taken by the General Assembly and the Security Council until 2015, state officials were reminded of the responsibility of the protection principle (Teitt, 2017, p. 342). According to Tim Dunne, it is a fundamental right that people as an individual can claim to be protected from all kinds of attacks and persecution. Humanitarian intervention within the scope of the principle of *responsibility to protect* imposes incumbency to states on the rescue and protection of people outside their territories from persecution, within the framework of a human-oriented approach regardless of citizenship affiliation. Beyond the borders of the country, there are rights that are guaranteed and can be enjoyed in the context of fundamental rights regardless of race, religion, nationality, or gender (Dunne, 2018, p. 35). These rights are also valid for foreigners who apply for international protection within the national borders of a state, other than the citizens of their own country.

⁶ BC Chimni, referring to the impact of international interventions on the increase in today's international migration, drew attention to the fact that the humanitarian crises in Afghanistan, Iraq, Libya and Syria, which were the subject of international intervention or at least in which international actors were involved, caused international irregular migration. See, Chimni, 2018, p. 630. Interventions to humanitarian crises need to be people-oriented and not politically motivated. Otherwise, military interventions turn into protracted conflicts and indiscriminate demonstrations, leading to massive population movements. In this regard, the need for the international community to work on a just mechanism arises. As a result, the balance between state interests and global needs should be negotiated by states and some powers should be given to international stakeholders. In this context, international migration corresponds exactly to the efforts to create a social norm by negotiating state interests and international needs pointed out by the English School. Thus, it will be possible to talk about the existence of an accepted harmony between states, organizations and individuals. Otherwise, the incompatibility between the actors will continue to strengthen the perception of an anarchic international system, as predicted by the realist paradigm.

According to Vincent, when the ruler as an individual became subject to the laws of nature in terms of rights and obligations like an ordinary individual, the obligation of the ruler is to secure the rights of his/her people is accepted as a universal moral rule (Vincent, 1978, p. 26). Thus, it became possible to talk about an international society from individual rulers to modern state structures. As Watson refers, current international society with its Eurocentric origin is a historical process of diplomacy and negotiation (Watson, 1992, p.300) and humanitarian issues are part of this process. UNSC as an international institution was created to achieve security through law and diplomacy and still represents post-1945 order (Duncombe & Dunne, 2018, p. 32). During the Post-Cold War period in the face of emerging risks that cause global human mobility, such as environmental degradation and climate change are insufficient to sustain global order. The 2016 New York Declaration on Refugees and Migrants (New York Declaration, 2016) has been a call under the UN umbrella, which is not legally binding on states, but invites the international community to take action, including non-state actors, which brings a human-oriented perspective to the global migration crisis to honour, security and shared responsibility for emerging crises. Later on, this initiative became two separate texts as the Global Compact on Refugees (GCR, 2018), with a content that interpreted the 1951 Geneva Convention provisions on a larger scale, and the Global Compact for Safe, Orderly and Regular Migration (GCM, 2019), with an understanding that gave wider rights to immigrants in the context of human rights. Therefore, with these effects, non-binding international order about migration issues is trying to be reached.

Popular movements in the Middle East and North Africa region of 2011, known as the Arab Spring, turned into domestic conflicts in the long term and millions of people were forced to emigrate. Thousands of people lost their lives as a result of the instabilities and conflicts in Syria,⁷ Iraq, and Yemen. Millions of people have been displaced, and the international

7 After the outbreak of the public demonstration, Middle East countries drag into turmoil and especially with the involvement of international, regional, national and subnational actors organized around different interests in the civil war in Syria, conflict and stalemate have gained continuity. With this appearance, Syria also symbolizes the post-American world order. For more information, C. Duncombe & T. Dunne, After liberal world order, *International Affairs* 94: 1 (2018) 25-42.

society has failed to provide security to these people. Since the international community could not reach a global agreement on the resolution of this humanitarian crisis, a migration crisis has been experienced since 2015, which also engulfed the Global North. According to the Global Trends Forced Displacement in 2019 report of the United Nations High Commissioner for Refugees (UNHCR), by the end of 2019, 79.5 million people worldwide had to leave their homes due to persecution, conflict, violence, human rights violations, or serious events that disrupted public order and were forced to emigrate within the country or internationally. 73% of these people took refuge in neighbouring countries. Respectively, while the Syrian Arab Republic, Venezuela, Afghanistan, South Sudan, and Myanmar are the top five source countries due to instabilities; Turkey, Colombia, Pakistan, Uganda, and Germany were the top five countries hosting the most asylum seekers or refugees.

Geographical proximity is seen to be the most important factor in asylum applications. Such a situation puts heavy social and economic burdens on neighbouring countries and necessitates a regulation at the point of fair burden-sharing for the international society (UNHCR, 2020, p.2; İneli Cığır, 2015).⁸ For example, according to nominal national product figures, the five richest countries in 2019 are the United States of America, the People's Republic of China, Japan, Germany, and the United Kingdom (The World Bank, 2022; IMF, 2022). Among these countries, only Germany is among the top five countries that open their doors to immigrants running from persecution. In this regard, it can be said that developed Global North Countries have been tried to create a refugee-free neighbourhood through readmission agreements, externalization policies and so countries of origin are subject to regional containment due to geographical proximity, and keep the people in "offshore camps" or "the regions of origin" (Hyndman & Reynolds, 2020, p. 67 – 69) are created for migration (Garlick, 2021).

Humanitarian conditions are worsened by the impact of climate change because even if it is not considered within the scope of refugee cri-

⁸ Considering the statistics in recent years and the economic size of the countries, it is seen that there are problems regarding burden-sharing between countries in asylum applications. In this respect, the geographic proximity factor stands out as the most important factor. Such a situation creates heavy social and economic burdens for neighbouring countries. It should be one of the most urgent issues that the international society needs to find solutions in the upcoming period.

teria, it aggravates existing inequality and bad conditions and an important driver for people to be displaced (Türk, 2019, p.65; Türk & Garlick, 2019, p.390) or pave the way to disturb public order (Garlick & Michal, 2022, p.59). According to Türk, the Global Compact on refugees was adopted in the context of migration and refugee rights provides a starting point in order to identify the root causes of the problems that displace people in the face of evolving realities and new challenges, and to put appropriate measures in place and timely by the international community. In order for these compacts to be successful, the active participation of international organizations, especially the states, and all stakeholders, including the private sector, is extremely important. In this respect, “responsibility sharing” is the most important concept. States must stop hiding behind their sovereign powers and the private sector look for job-creating for immigrants. (Türk, 2018, p.576 – 578).

Under the 1951 convention, if a person has a well-founded fear of being persecuted because of his/her race, religion, nationality, membership of a certain social group or political opinion, who should be allowed to stay in the country until the final decision is made under the principle of non-refoulement (1951 Convention).. In general, international refugee law has three main purposes. First of all, states can operate a status determination process for foreigners who enter their sovereignty areas illegally. Secondly, applicants are not considered within the scope of irregular immigration until their status is completed, and cannot be sent to their countries where they are likely to be persecuted under the principle of non-refoulment. Finally, if the applicant obtains refugee status, will be able to stay legally in the host country and will not be subject to any penalty even if there is an illegal entry (Davies, 2008, p. 354). Similarly, the application of temporary protection that allows foreigners fleeing from the mass influx and indiscriminate acts of violence to stay in the host country until stability is restored in their country is also a regulation that started to be implemented outside the 1951 convention (Fitzpatrick, 2000). In order for a person to apply for international protection and temporary protection, the most basic problem is to reach the country in which the application could be conducted. In this context, the global compact on refugees and migration is not

legally binding; but with its “norm-creating role” (Gammeltoft-Hansen, 2018, p.607), it aims to design the phenomenon of migration as a basic human right that aims to solve the forced migration at its source by moving the phenomenon beyond the borders of the state and relates the phenomenon of migration with sustainable global development (Oelgemöller, 2020, p.198). The sensitivity to be shown by the stakeholders of the international community, especially the states, will require the redefinition of global migration movements and the relationship between security and freedom in the context of human rights. The 2016 New York Declaration and its successor documents aim to create a balance between international order and justice as a normative sense. These efforts carried out in the presence of international organizations constitute a good example of the effort to make diplomacy functional and to shape the international community through diplomacy.

Instead of Conclusion

Refugee law provides an individual a transboundary right against state sovereignty within the scope of the principle of non-refoulement and status determination processes to access these rights, an asylum seeker must reach the territory of the country where (s)he can access this right from the country where (s)he is persecuted. Under the principle of sovereign responsibility, every sovereign state should ensure the security of individuals within its borders. If this is not possible, it has recently been suggested that the international society may intervene within the scope of protection responsibility. In terms of the approach of the international society, it is seen that there are still ambiguities about the concepts of state sovereignty - human rights and citizen – foreigner in practice. This situation causes a distorted and baseless understanding called an illegal but legitimate act. The international society is giving a test in the context of the principles of sovereignty and responsibility against the regular and irregular migration movements that have gained momentum recently. The rights of the individual, the state, the international society and their responsibilities towards the non-citizen are not clear because of the existing international order. In the context of international order, the balance of power is not a mechanism that can be easily overthrown by states. For this reason, diplomacy has become

one of the most basic mechanisms for the existence of the international society. Responsible sovereignty and responsibility to protect are concepts that emerge as a result of diplomatic mechanisms; however, when it comes to national interests, inaction or indirect intervention methods become the main tools for states and there is no timely and appropriate response to humanitarian crises.

State sovereignty is on the verge of transformation, as is the divergence between the pluralist and solidarist understanding of international society. The evolution of international society forces international actors to choose to act as responsible or not. The fact that states do not participate in burden-sharing by hiding behind their sovereign powers, especially in cases of humanitarian crises, damages the fabric of the international social structure, pushes displaced people to much more difficult conditions and pushes them into the arms of criminal organizations. In cases of conflict, natural disaster, etc. where transboundary problems are in question, states are insufficient to solve problems in the context of their sovereign powers. The inability to solve the problems by the international society feeds instability and exposes people to the threat of persecution. As a result, individual people and masses are condemned to forced migration. In the face of the erosion of an order that can be agreed upon, the international society has to find a solution in the face of humanitarian crises. In the context of the principle of non-intervention at the point of intervening in humanitarian crises, the balance between justice and order works in favour of justice for the sustainability of the order. This situation causes international law to be questioned at all times, even if there are generally accepted principles.

Peoples living within the borders of the receiving state are multi-cultural, multi-ethnic, and multi-religious, etc. evolves into societies. As societies gain a heterogeneous appearance, tensions between people with different cultural affiliations escalate. Country borders, which are claimed to be weakened by globalization, are being tried to be revived due to the reaction to the heterogeneous social structure. In this context, there has been an increase in the discourse of protectionist policies toward immigration policies and their expression in the public sphere. The increasing emphasis on the other, brings to the surface local and national values along

with intolerance of differences. At the discursive level, it has become another security concern. Forced immigrants who have been able to reach a receiving country are welcomed by the local people to the extent that they are close to the cultural values of the country they reach. As cultural differences increase, “othering” comes into play and international migration turns into a security issue.

Global Compacts on Migration and Refuge issue propose to approach the phenomenon of migration as a right, regardless of whether it is regular or irregular, and in this context, invites the international community to take responsibility in order to cope with the evolving new realities and challenges caused by the climate crisis and environmental degradation with the participation of all stakeholders of the international community. Thus, compacts declare the role of establishing a harmony between order and justice, described by the English School as opposing forces, from a norm-creating perspective. Hiding behind sovereign power poses serious risks not only for the solidarity of international society view but also for a structure of pluralist international society. The reconciliation steps to be taken by the states based on human rights would reduce the suffering of people to some extent, contribute to international stability and order and alleviate xenophobia in countries. The upcoming period necessitates finding new ground for consensus. In this respect, diplomacy, which English School academics see as the most important instrument for the functioning of the international society, needs to be carried out on bilateral, multilateral, and institutional grounds. As Antonio Gramsci’s words, “The old is dying and the new cannot be born” (Fraser, 2019, p. 29) points out, as the world is experiencing the birth pangs of a new international order, it could only be achieved through diplomacy in process.

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