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ULUSLARARASI KAMU HUKUKU

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ULUSLARARASI KAMU HUKUKU

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İTHAF

Sayın Okuyucu,

Uluslararası hukukun normatif yapısını inşa eden teamül, antlaşma ve hukukun genel ilkeleri gibi kaynaklar, yalnızca devletlerin ortak iradesinin değil, aynı zamanda insanlığın adalet ve düzen arayışının kolektif hafızasının da ürünüdür. Bu hafıza ve arayış, kuşaktan kuşağa aktarılan entelektüel ve ahlaki bir mirastır. Bu eser, söz konusu evrensel hukuk mirasının anlaşılmasına yönelik mütevazı bir katkı olarak, kendi yaşamsal mirasımın en kıymetli temsilcim “oğlum Mert’e” adanmıştır.

Baba ile oğul arasındaki bağ, tıpkı uluslararası hukuk düzeninin dayandığı antlaşmalar gibi, derin bir sorumluluk, karşılıklı güven ve geleceğe yönelik ortak bir tasavvur üzerine kuruludur. Bu kitabın sayfalarında tartışılan egemen eşitlik, antlaşmalara bağlılık ve insan onurunun korunması gibi temel ilkeler, aslında ona bırakmayı arzuladığımız dünyanın, daha adil, diyaloga açık ve hukukla yönetilen bir dünyanın, temel parametreleridir.

Akademik bir çalışmanın katı nesnelliği ile bir babanın duygusal öznelliği, bu satırlarda buluşmaktadır. Bu buluşma, entelektüel gayretin nihayetinde insani değerleri korumak ve gelecek nesillere daha iyi bir entelektüel ve ahlaki zemin hazırlamak amacına hizmet ettiği inancının bir tezahürüdür.

Bu nedenle, bu metin, sadece uluslararası hukuk öğrencilerine ve uygulayıcılarına değil, en başta, umutlarımızın mimarı olan oğluma ve onun kuşağına ithafen kaleme alınmıştır. Amacım, ona, karmaşık bir dünyada yolunu bulmasına yardımcı olacak bir harita değil, o haritayı okumayı ve gerektiğinde yeniden çizmeyi öğretecek bir pusula bırakabilmektir.

Sevgili oğlum Mert,

Bu akademik yolculuk, seninle paylaştığımız en değerli bilgi ve sevgi keşfinin, bir ürünüdür.

Saygı ve sevgiyle.

Prof. Dr. Abdülmecit NUREDİN
Gostivar, 03.11.2025

ÖNSÖZ

Küresel sistemin, devletlerin egemen eşitliği, kuvvet kullanma yasağı ve antlaşmalara bağlılık gibi temel prensipler etrafında şekillendiği çağdaş uluslararası ilişkiler düzeninde, devletler ile diğer uluslararası hukuk kişilerinin hak ve yükümlülüklerini tayin eden normatif çerçeveyi sistematik bir biçimde kavramak akademik ve pratik bir zorunluluk arz etmektedir. *Uluslararası Kamu Hukuku* başlıklı bu eser, söz konusu normatif düzeni, teorik temellerinden pratik uygulamalarına kadar bütüncül bir perspektifle ele almayı ve bu alandaki literatüre kapsamlı bir katkı sunmayı hedeflemektedir. Eserin metodolojik yapısı, uluslararası hukukun kodifikasyon ve gelişim sürecini yansıtacak şekilde dört ana kısım üzerine inşa edilmiştir.

Birinci Bölüm, uluslararası hukukun temel teorik ve kaynakstal alt yapısını tesis etmektedir. Uluslararası hukukun tarihsel evrimi ve normatif niteliğine ilişkin analizle başlayan bölüm, uluslararası hukuk ile iç hukuk düzenleri arasındaki ilişkiye dair monist ve düalist teorileri mukayeseli olarak incelemektedir. Akabinde, Uluslararası Adalet Divanı Statüsü'nün 38. maddesi başta olmak üzere, uluslararası hukukun kaynaklarına, örf ve adet hukukunun oluşum şartlarına ve hukukun genel ilkelerinin rolüne detaylı bir şekilde değinilmektedir. Kodifikasyon çabalarının ve uluslararası hukuk komisyonunun işlevinin ele alınmasının ardından, bölüm, 1969 Viyana Antlaşmalar Hukuku Sözleşmesi hükümleri ışığında antlaşmaların akdedilmesi, geçerliliği, yorumlanması, uygulanması ve sona ermesi rejimini kapsamlı bir şekilde tahlil etmektedir.

İkinci Bölüm, uluslararası hukukun birincil öznesi olan devletin hukuki statüsü, yetkisi ve sorumluluğunu merkeze almaktadır. Uluslararası hukuk kişiliği kavramının teorik çerçevesi ile başlayan bölüm, devletlerin ve hükümetlerin tanınmasına ilişkin beyanî ve kurucu teorileri ve bu sürecin hukuki sonuçlarını analiz etmektedir. Devletin egemenliğinin en somut tezahürü olan ülke üzerindeki yetkisi, kazanma yöntemleri ve sınırlar bağlamında irdelenmekte; ardından devletin yargı yetkisinin uluslararası hukuk çerçevesindeki temelleri (ülke, şahıs, koruma ve evrensellik ilkeleri) detaylandırılmaktadır.

Devletin yargı yetkisinden mutlak ve nispi bağısıklıkları, ilgili uluslararası sözleşmeler ve içtihatlar ışığında incelenmekte; bölüm, 2001 Devletlerin Uluslararası Sorumluluğuna İlişkin Maddeleri ekseninde, uluslararası hukuka aykırı fiilin unsurları, hukuka aykırılığı ortadan kaldıran haller ve sorumluluğun sonuçlarına ilişkin kapsamlı bir analiz ile son bulmaktadır.

Üçüncü Bölüm, uluslararası hukukun birey ve halklar merkezli gelişen koruma rejimlerine odaklanmaktadır. Uluslararası insan hakları hukukunun normatif kaynakları, temel ilkeleri ve bölgesel-küresel koruma mekanizmalarının incelenmesiyle başlayan bölüm, Birleşmiş Milletler Şartı ve ilgili içtihatlar ışığında halkların kendi kaderini tayin hakkının içeriğini, dışsal ve içsel boyutlarını hukuki bir perspektifle tartışmaktadır. Nihayet, silahlı çatışma hukuku olarak da bilinen uluslararası insancıl hukukun temel prensipleri, Cenevre Hukuku ve Lahey Hukuku ayrımı, çatışma türlerine göre uygulanan rejimler ve ciddi ihlallerin yaptırımları sistematik olarak ele alınmaktadır.

Dördüncü Bölüm, uluslararası barış ve güvenliğin hukuki temellerine ayrılmıştır. Devletler arası uyuşmazlıkların diplomatik (müzakere, arabuluculuk, soruşturma, uzlaştırma) ve yargısal (tahkim, adli çözüm) barışçıl çözüm yolları, ilgili kurumsal yapılar ve usuller çerçevesinde incelenmektedir. Bunu, Birleşmiş Milletler Şartı'nın 2(4). maddesinde somutlaşan kuvvet kullanma yasağı, 51. madde kapsamındaki meşru müdafaa hakkının koşulları ve bu konudaki uluslararası içtihatların detaylı bir değerlendirmesi takip etmektedir. Eser, Birleşmiş Milletler Güvenlik Konseyi'nin yetkileri, karar alma mekanizmaları ve zorlayıcı tedbirlere başvurmasını da kapsayan kolektif güvenlik sisteminin hukuki çerçevesinin analizi ile sonuçlanmaktadır.

Bu çalışma, lisans ve lisansüstü hukuk müfredatlarının yanı sıra, uluslararası ilişkiler ve siyaset bilimi disiplinlerinde akademik araştırma yapanlar ile diplomasi ve dış politika uygulayıcıları için müracaat edilebilecek kapsamlı bir kaynak olarak tasarlanmıştır. Metin içerisinde teorik yaklaşımlar, Uluslararası Adalet Divanı ve diğer yargı/tahkim organlarının kurucu nitelikteki kararları, temel sözleşme metinleri ve güncel hukuki tartışmalarla desteklenmiştir.

Uluslararası hukuk, devletlerin müşterek iradeleri ve teamüllerle sürekli bir oluşum ve dönüşüm halinde olan canlı bir hukuk dalıdır. Bu eserin, söz konusu dinamik normatif süreci anlamaya ve eleştirel bir hukuki analiz yapmaya yönelik sağlam bir temel teşkil etmesi en temel dileğimizdir.

Bu çalışmanın esas amacı, uluslararası hukuk literatürüne, Türkçenin Türkiye dışında da akademik bir dil olarak etkinliğini sürdürmesine ve küresel adalet özlemini bilimsel bir perspektifle dillendiren bir köprü işlevi görmesine katkıda bulunmaktır.

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