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SIGNIFICANCE OF EQUITY PRINCIPLE IN A GLOBALIZED WORLD

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ABSTRACT

International peace and security, friendly relations among the nations with equal rights, and international co-operations are some significant purposes on which the United Nations gathered its foundation. Among several principles under Article 2 of the UN Charter, all nations retain equal status in the world. Since the world has stepped towards globalization, equal contribution of all the nations is a revolutionary step. However, the meaning of the words Internationalization and Globalization seems to be faded, as the war of power has begun which created a chaos. This chaos or the war for power started long back when the Great Britain tried to acquire the land of China, India which were the developing countries at that time. Japan taking over the control of Korea, Britain taking over part of China in the 1870s are some perfect examples of violation of equity principle ensured under UN Charter. This power struggle continues, with the USA exerting influence over Israel and Palestine, China fighting for taking control over Hong Kong and Taiwan, and Russia ending several lives of Ukrainian citizens, creating injustice to the developing nations. There is 'tyranny of majority', and majority herein refer to developed nations like the USA, UK, Russia, and China ruling over the developing nations. This paper will try to find the answer whether the tyranny of minority, instead of tyranny of majority can solve the problem of violation of the equity principle. While trying to answer the problem of significance of equity principle in the globalized world, what will be solution for the injustice suffered by the developing countries in the hands of developed nations? Even if solution is discovered, what will be achieved in the future, and whether international law or international treaties can provide any feasible solution to the problem.

Keywords: *Equity, Globalization, Injustice, Tyranny of Majority, War for Power.*

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1. INTRODUCTION

Globalization includes the interdependence of nations on each other for factors like production, welfare, security, technology, culture.[1] It is important for all the nations to fulfil the needs of each other, so that all nations have all requirements at equal note. Therefore, it is important for all nations to have equality in a globalized world. However, it is not possible as long as there are great power rivalries where one nation has good resources and other have great security. Stronger nations in the times of war or conflict emerge victorious, and weaker nations always follow the stronger to get all the resources, therefore, the equality principle does not remain in a globalized world. The war for power, or stronger ruling over weaker is going on for several decades dating back to 1839 where the power to take over the sovereignty of China by the British, and 1874, where there is war of seizing territory by the Japan from the China, after China surrender some parts of its territory under the control of Britain.[2] Japan took over the control of Korea after defeating the Chinese military, and did not stop there and took control of several provinces of China under its control.[3] The recent struggle of China to maintain its control over Hong Kong and Taiwan highlights the reality of the globalized world, where stronger nations like the USA, Russia, China, Japan, Italy, and France continue to violate principles of equity. Indeed, economic globalization is important for the world economy, but sovereign equality is the most important factor for the participation of all countries in a globalized world, as without it, the contribution of poor countries will be zero, and it will lead to violation of equity principle. Therefore, it is significant to discuss the matter of sovereign equality first, if we were to achieve the goal of globalism.

2. PROBLEM RESULTING IN INJUSTICE

When we say globalized world, we directly connect ourselves with the facts that globalization is achieved through interconnectedness and interdependence on each other.[4] These two factors are prevalent to achieve this goal of globalism, where all the nations are

1 Jon Aart Scholte, *Globalization: A Critical Introduction* (Palgrave Macmillan, New York, 2nd edn., 2005).

2 Michael Beckley, *The Power of Nations: Measuring What Matters*, *International Security* (2018) 43 (2): 7–44, (November 01, 2018), *available at:* https://direct.mit.edu/isec/article/43/2/7/12211/The-Power-of-Nations-Measuring-What-%20Matters. (last visited on February 03, 2024)

3 *Ibid.*

4 Stanely Fischer, *Globalization and Its Challenges*, Revised Ely Lecture presented at American Economic Association Meeting in Washington DC, (January 3, 2003), *available at:* https://economics.mit.edu/sites/default/files/2023-05/fischer_globalization.pdf. (last visited on February 03, 2024)

participating equally in terms of trade, security, welfare. The word 'equality' or equity has not been defined with respect to nations or countries in the global world, but means equal opportunity, equal chance to be developed or to stand at par with other powerful nations like USA, Russia, China, Germany, and Japan.

The Globalization or globalized world includes many factors, such as economic, political, technology and cultural, however, it is mostly about the economic factor that is more important. There is the *Heckscher-Ohlin model* which suggests that globalization will benefit the poor nations to develop and reduce the inequalities in poor countries. It will also benefit developing countries the most. According to this model, in order to achieve the goal of a globalized world, there needs to be a significant gap between very rich and very poor countries, as trade tends to decrease in poorer nations.[5]

The Article 2 of United Nations contains some important principles within its ambit, especially Principe 1: "*The organization is based on the principle of the sovereign equality of all its Members*."[6] The principle is very similar to the principle of sovereign equality under the UN Charter 1945, which states that "*all the states are equal before international law no matter the size of their territory, population, economy, or military*". To question the validity of this principle, an example of Taiwan's present condition is sufficient, as Taiwan, officially known as the Republic of China, is a separate entity that is fighting for its independence. On the other side, China, who has big military forces and economic capability, continuously makes efforts to include Taiwan in its territory as a province. Not only China, but also the US is making full efforts for Taiwan to get its independence from China, so that they can overpower China in the global world, and become the most powerful nation. It has been speculated that taking over Taiwan by China has the potential to draw a war between the United States and China.

This power war between China and the US has affected Taiwan and its 23 million population inexplicably. What about the principle of sovereign equality, as governed by Article 1 of the UN Charter, when Taiwan is caught between the US and China? Indeed, Taiwan is not a member of the United Nations and such a rule is not applicable to them, but what about the US and China who are members of the UN, and its Security Council must refrain from injuring Taiwan. Taiwan was barred by WHO during COVID-19 to fulfill China's demands, not only this, but this war has affected the relations of Taiwan with other nations. Recently, Hondurans have backed out from having relations with Taiwan,

5 *Ibid.*

6 The United Nations Charter, 1948, Principle 1, Article 2, *available at:* https://www.un.org/en/about-us/un-charter/full-text (last visited on February 03, 2024)

rather maintained relations with China, and as of now only 13 states have maintained official diplomatic ties with Taiwan.[7] Cyber-attack, military pressure, trade barriers with other countries, restricting tourism, etc., are some of the crimes which China has been committing against Taiwan for the past years.[8] This clearly answers that this problem of power war is creating injustice to poor countries, who have less resources, defence mechanisms, and makes them the victim in this globalized world. Most significantly, the United Nations is not doing anything to prevent this war, or in upholding the principles of Article 1 and Article 2 of the UN Charter i.e., the sovereign equality to Taiwan, Ukraine, and Palestine.

3. PROPOSED SOLUTION TO THE ISSUE

Sovereign equality, though recognized by the United Nations in its Article 2, however, it also symbolizes that each State member will be treated equally irrespective of their size, population, economic and financial status, and military power on an international level. However, since the mid-1970s, when the developing states have urged to bring the change in economic order to reduce the tyranny of the majority, the power of the United Nations has been stripped off. The principle of One Country, One Vote has no relevance now, as the decisions, resolutions, and declarations by the United Nations to promote development and globalization, have the reflection of rule of powerful nations and only to fulfil their interest. Indeed, the powerful nations have more capabilities than the weaker nations, but the age of globalization can change the phrase 'tyranny of majority' into 'tyranny of minority', which still does not represent true equality in the globalized world.[9]

The goal to achieve equality was agreed by all the members, when the United Nations authority was formed. They all agreed to develop together to achieve this goal of globalization for future generations. To achieve this greater equality in the society or globalized world, the world needs an authority which can enforce measures to reach the point of globalism. Unfortunately, the United Nations does not possess much power to ensure equality and justice between States. Other organizations like the International

7 Lindsay Maizland, *Why China-Taiwan Relations are so Tense,* Council on Foreign Relations, (April 18, 2023), *available at:* https://www.cfr.org/backgrounder/china-taiwan-relations-tension-us-policy-biden#:~:text=But%20President%20Joe%20Biden%20has,to%20decide%20how%20to%20respond. (last visited on February 03, 2024)

8 *Ibid.*

9 Department of Economic and Social Affairs, The United Nations, *Social Justice in an Open World: The Role of Unites Nations*, International Forum for Social Development, 2006, *available at:* https://www.un.org/esa/socdev/documents/ifsd/SocialJustice.pdf. (last visited on February 03, 2024)

Monetary Fund, World Trade Organization, and World Bank, are not sufficient to achieve this goal, as they only work in a separate aim of globalization, which is to bring economic globalization by open economy and transaction.[10] The economic development is not enough to bring all the States at par with each other. Another solution to achieve the greater equality in the globalized world is that States should bring various policies on national level, such as changes in tax systems, increase production in which the State is good at, such as Taiwan in semiconductors, Ukraine in nuclear power, India in rice and wheat, etc., so that they have enough influence in the global world. As the inequalities between States, mostly developed and developing countries is a long-term problem of growth and development, it causes hindrance in achieving the goal of globalism.

Global inequality is not a problem for the poor countries only, rather it is a problem for all, including rich countries.[11] To resolve such issues, we need to eliminate discriminatory laws and policies on the national level. Additionally, these States must have proper representation on the international level for global issues like climate change, poverty, economic issues, or migration. To reduce inequality, we need extreme efforts so that everyone gets to live with dignity.[12]

The solution to the international problem of encroaching the territory of poor nations by the powerful nations, is that the offender (the powerful nations with great power in terms of military, economy, and resources) must be subjected to jurisdiction of ICC under Article 12 of the Rome Statute. Under Article 12, the state party member can bring the matter to ICC to initiate the investigation for crime committed by another member.[13] However, where the crime is committed on the territory of that state which is not party to the Statute, in that case "if alleged state is willing to submit to the jurisdiction of the ICC or if the case referred to the Chief Prosecutor by the UN Security Council under Article 13(b) of the Statute, the ICC may exercise its jurisdiction."[14]

When the Rohingyas fled to Bangladesh in need to find shelter, after the violence broke out in Myanmar, the United Nations Human Right Commission came to rescue them.

10 *Id.* at 8, pp.28-31.

11 *Goal 10: Reduce inequality within and among countries*, Sustainable Development Goals, The United Nations, *available at:* https://www.un.org/sustainabledevelopment/inequality/. (last visited on February 03, 2024)

12 *Ibid.*

13 The Rome Statute of the International Criminal Court, 2002, art. 12.

14 Utkarsh Dubey, *Jurisdiction of the International Criminal Court over Non-Party States: Legitimate or Ultra Vires?*, Jurist, (May 19, 2021), *available at:* https://www.jurist.org/commentary/2021/05/utkarsh-dubey-icc-jurisdiction-over-nonparty-states/. (last visited on February 03, 2024)

"*They burnt our house and drove us out by shooting. We walked for three days through the jungle*".[15] A statement given by one of tribes' member. The matter was referred to ICC to have its jurisdiction over the non-party state, Myanmar for the crime of deportation and crime of forced persecution, under Article 12(2(a) of the Rome Statute.[16]

Another matter where the ICC must expand its jurisdiction is Palestine, which has been affected by conflicts involving the United States and Afghanistan. "Palestine has agreed to subject itself to terms of the ICC and has the right to be treated as any other State party for the matter related to the implementation of the Statute". Pre-Trial Chamber I noted that the General Assembly of the United Nations in Resolution 67/19 "*reaffirmed the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967.*"[17] The ICC prosecutor takes initiative after the matter goes beyond the capability of the UN, that has been the agreement signed by the ICC and UNSC to achieve the goal of maintaining international peace and security. Another example of the combined power of the ICC and the UNSC is the Afghanistan issue, where the situation extended beyond the UNSC's jurisdiction. The ICC Prosecutor requested authorization to open an investigation into crimes committed on the territory of Afghanistan since May 1, 2003. The request confirmed that the prosecutor intended to investigate Afghan government forces, Taliban affiliates and members of the US armed forces and CIA for war crimes and crimes against humanity in connection with the situation in Afghanistan. While Pre-trial Chamber II overturned this decision to authorize the investigation in 2019,[18] the Appeal Chamber overturned this decision in 2020 and the Prosecutor was authorized to proceed with an investigation.[19] The situation in Afghanistan provides an interesting example of competing jurisdictional arrangements, multiple territories, and mix of nationalities; including from a powerful non-State Party that at one point described ICC jurisdiction over its nationals as unacceptable threatening to American sovereignty and US National security interest.[20]

15 UNHRC, *Rohingyas Emergency, available at:* https://www.unhcr.org/in/emergencies/rohingya-emergency. (last visited on February 03, 2024)

16 ICC-RoC46(3)-01/18.

17 Pre- Trial Chamber III, ICC-01/19, 124 (14 November 2019).

18 G Rona, *More on What's Wrong with the ICCs' Decision on Afghanistan*, Opinio Juris, (April, 15, 2019), *available at:* https://opiniojuris.org/2019/04/15/more-on-whats-wrong-with-the-iccs-decision-on-afghanistan/. (last visited on February 03, 2024)

19 ICC-02/17 OA4 (March 05, 2020).

20 "Full Text of John Bolton's Speech to the Federalist Society", *Al Jazeera*, (September 11, 2018), *available at:*https://www.aljazeera.com/news/2018/9/10/full-text-of-john-boltons-speech-to-the-federalist society#:~:text=Today%2C%20on%20the%20eve%20of,not%20cooperate%20with%20the%20ICC. (last visited on February 03, 2024)

The legislations like the Rome Statute of the International Criminal Court and United Nations Charter, contains some formal words to provide equality between nations, but it does not work in reality, as we can see through examples of Russia, China continuously attacking Ukraine and Taiwan respectively to include them in their territory. However, we can see that United Nations Security Council has referred several matters to the ICC to initiate investigation of the war crimes committed against weak countries by the stronger countries. The ICC or Pre-Trial Chamber have decided several matters like the Palestine issue or Afghanistan issue or Myanmar issue, where the Court has supported the combined power of ICC and UNSC to bring peace and security in a globalized world.

4. INTERNATIONAL LAW OR INTERNATIONAL TREATY: CREATING THE ISSUE OR RESOLVING THE ISSUE

The problem of war and the influence of powerful nations can be addressed if the ICC's jurisdiction is expanded universally, allowing it to take action against both State Parties and non-State Parties.[21] The perfect example for this would be Ukraine who, not being the state member or party to the ICC accepted its jurisdiction when Russia openly started the war against its territory. Russia, not being a State Party to the Rome Statute, has no obligation to cooperate with the ICC Court, however, it initiated the impartial investigation, to fulfil the UN Charter principle of maintaining international peace and security.[22] The UN and ICC has also brought the matter for negotiation to achieve the goal of international peace and security.

The ICC and UN have worked before to resolve the matter of Palestine, where the Office of the Prosecutor stated that "T*he office could in the future consider allegations of crime committed in Palestine, should competent organs of the United Nations or eventually the Assembly of State Parties resolve the legal issue relevant to an assessment of Article 12 or should the Security Council, in accordance with the Article 13(b), make a referral providing jurisdiction.*"[23] Therefore, the agreement and cooperation between the United Nation and ICC will help resolve the problem of inequalities in a globalized world. The Appeal Chamber in 2009 decision in the *Omar Al Bashir case* stated that ICC perceives its jurisdictional basis as *ius puniendi* when it asserted that the Court exercise its jurisdiction

21 The Rome Statute of the International Criminal Court, 2002, art. 12.

22 Marina Reira, "Ukraine: Countries Request ICC War Crimes Inquiry", *Human Rights Watch*, (March 02, 2022), *available at:* https://www.hrw.org/news/2022/03/02/ukraine-countries-request-icc-war-crimes-inquiry. (last visited on February 03, 2024)

23 OTP, Decision on the Situation in Palestine, pp.6 (April 3, 2012).

in no other circumstances than on behalf of the international community.[24] However, the situation is that powerful nations have such influence on the global world, they do not submit to these authorities like the UN and ICC, but still these authorities together can make or restrict these countries to violate the principle of equality.

5. WHAT WILL BE ACHIEVED, IF THIS ISSUE IS RESOLVED

The question still remains the same, even if this issue of war for power is resolved by providing the equal status to all countries, what will be achieved? Then the answer will be that global justice will be achieved. The goal of globalism and globalization, is to have interconnection and interdependence on each other, without violating sovereignty, territory, or unity of other nations. If the war of power or to have all the resources under its control is resolved, then this goal of a globalized world will be achieved in true sense. States like Taiwan, who is the world's largest producing country in terms of semiconductors, and Ukraine, which is the nuclear power station of the world, are included within the globalized world, without applying force, then their contribution to the world economy would be inexplicable. They will support the United Nations to achieve the goal of maintaining international peace and security, and if this cooperation between Taiwan and Ukraine is achieved then it will solve the issues like economic, social, cultural, or humanitarian international problems, and remove the threat to international peace. The cooperation of the UN Charter and Rome Statute of the International Criminal Court have potential to resolve this matter, where the UN Security Council and ICC will resolve the issue of inequalities in a globalized world. The ICC's expansive jurisdiction to prosecute countries like the US, China, and Russia, will show its support to poor countries like Palestine, Ukraine, and Taiwan, who are victims of the crime of inequality. Indeed, providing the victim compensation is not enough but also releasing the warrant against the perpetrator and punishing the same is important. These steps are required for the global world to achieve globalism, which will take us to our ultimate goal i.e., global law.

6. CONCLUSION

Sovereignty, Integrity, and Unity are three important pillars for the foundation of any newly independent nation and of any developing nations. Violation of any of these principles will question the significance of equity principle in the globalized world. It should be considered that the interests of the developed countries are no longer isolated

24 *Prosecutor v. Al Bashir*, ICC/02/05-01/09, Joint Concurring Opinion of Judges Eboe-Osuji, Morrison, Hofmanski and Bossa, 54 (May 06, 2019).

from those of the developing countries. Developing countries demands equal status in the globalized world by equal sharing of the profits. In the globalized world, the equal status to every nations is a significant step, which can be achieved through the contribution of the United Nations and ICC. The UN strict action plan and strategy, and expansion of ICC's jurisdiction can provide a system of sanctioning the violation of global law. The global law is the ultimate goal, which can provide sanctions for the violation of principles of global law i.e., equality, therefore equity principle is the most significant part of globalized world.