Modern Imperialism: a Legal Insight to North-South Dimension in Global Governance

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Abstract- This paper presents a critical reflection on institutional and governance structures of global governance in context of international legal framework. Reflecting a descriptive analysis of legal, political and historical approach in International Law making process, it illustrates the global political dimensions of North-South differences, which have been shaped by a sequence of historical events originating during the colonial period and extending up to the present. Global decision-making forums often deal with the unequal positions between the developed industrialised countries and the developing countries. However, when the institutional and structural basis of the contemporary international legal and political system was established in the 1940s, the creators of the present system did not consider North-South complexities to be a key consideration. Consequently, the South was not significantly represented in the establishment of post-World War Two governancestructures. A number of factors caused this omission including those Southern countries that had gained their independence were newcomers on the global scene and were still under the political and legal influence of their former colonial powers and the North was planning significant post-war economic and political reconstruction, hence,the priorities of its leaders had been to influence global governance structures and institutions to the greatest possible extent in their own favour. This paper argues that for all these reasons the current governing structures did not reflect Southern aspirations at the initial developmental stage. Since then, even though the South has made several attempts to voice its concerns, both individually and collectively, at the decision-making forums, a number of concerns are yet to be resolved. The findings of this paper are based primarily on a critical analysis of the literature, and the methodology embraces an interdisciplinary approach to International Law and international relations in order to establish a broader and more contemporary application of traditional international legal formats.

Keywords-Global Governance, North-South Conflict, International Legal Frameworks

I. INTRODUCTION

The complex nature of the global governance system often acts in contradiction to the idea expressed in the above statement – all states are equal. Several instances illustrate the doubts expressed by developing countries regarding the equality of all states in global governance. For example, why, in 1965, did developing countries stress the importance of the "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty" and, in 1970, of the"Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations"? These initiatives, which had been intended to ensure the principles of sovereign equality and non-intervention, had been taken because of the excessive influence that had been exercised by developed countries over developing countries during the colonial past. (Anghie, 2005)Global decision-making forums often deal with the unequal positions between the developed industrialised countries (which will be called, for the purposes of this thesis, the North) and the developing countries (which will be called the South). However, when the institutional and structural basis of the contemporary international legal and political system was established in the 1940s, the creators of the present system did not consider North-South complexities to be a key consideration. Consequently, the South was not significantly represented in the establishment of post-World War Two governance structures. (Anand R.P., 1987) A number of factors caused this omission: (i) many Southern states were still under European colonial control, therefore they could not participate as sovereign nations; (ii) those Southern countries that had gained their independence were newcomers on the global scene and were still under the political and legal influence of their former colonial powers; (iii) the Southern countries" decision-making experiences was minimal; and (iv) the North was planning significant post-war economic and political reconstruction, hence, the priorities of its leaders had been to influence global governance structures and institutions to the greatest possible extent in their own favour. (Anghie

A., 1999) For all these reasons the current governing structures did not reflect Southern aspirations at the initial developmental stage. Since then, even though the South has made several attempts to voice its concerns, both individually and collectively, at the decision-making forums, anumber of concerns are yet to be resolved. This paper outlines the political, historical and international legal background against which the North-South debate about international law and global governance has been framed. The broad aim of this chapter will be to analyse the effects on the North-Southdimension of the international system of governance of a chain of global landmarkevents. It will start with the colonisation of Africa, Asia and South America, known today as the „Third World" or the „Global South", which has played a major role in dividing the world into „haves" and „have nots". The colonisation process established a wide political, economic, military and social gap between developing and developed worlds. The era following World War Two, which saw the escalation of the decolonisation process, marked an important turning point in the international system in every aspect andn inspired critical debate about the North-South dimension. The central theme of this chapter, therefore, will be the many institutional changes in international law, global politics and economy that took place during this period, since they are still dominant in contemporary political discourse.

III. THE NORTH-SOUTH DIMENSION

The elements of the North-South dimension have been developed over a significant period of time as part of the development of the international system. This chapter is mainlyconcerned with two stages of the historical evolution – (a) the beginning stage, which started with the colonization, by several European countries, of certain states situated south of the equator; and (b) the stage that followed the Second World War, which signalled the end of colonization and the establishment of global institutions. The chapter will not explore the evaluation of the North-South dimension as it extends to more contemporary issues, or, especially, environmental issues, since these themes will be dealt with in the following chapter. Here, the main focus will be on how the North-South dimension has been differently determined, historically, socially, politically, culturally and economically, within the countries of the South, and how those factors

continue to influence their participation in global governance. This account, therefore, begins in these countries"

Colonial pasts. (Anand R., 2004)

E. *Creating the North and the South dimensions in the context of*

1) Colonialism

Signs of the division between the imperial North and colonized South became apparent with the European expansion during the fifteenth century. During this „Age of Empires", many critical events took place within the colonial territories that ultimately divided the world into the two divisions, recognised now in the international system as the „North" and the „South.[43] As Marian Miller states, "the South has been shaped by colonialism and imperialism" experiences which have left the South with distinctively different socio-economic characteristics from the North. (Miller M., 1995) Europeans took control of the other parts of the world in three different ways: (i) the occupation of vacant territory where no other state claimed authority, otherwise known as the *terra nullius* doctrine, which established the legitimate right to occupy a land through„discovery"; (ii) occupation by way of treaty between the colonial state and the local leaders[46], by which method many Asian and African states were brought under the European authority (Cassese A., 1986); and (iii) by war. Casper however, refers to Twiss"s reduction of these categories to two – „primitive" acquisitions, via discovery and settlement, and „derivative" acquisitions, via treaty or war. (Casper S., 2008).

Colonization is recognized as a major factor that has had a significant impact upon the partitioning the world into the „powerful" and the „powerless". Clive Ponting, quoting Letwein, the first German Governor, illustrates the nature of power dominance created in the context of colonialism: "Colonization is always inhumane. It must ultimately amount to an encroachment on the rights of the original inhabitants in favour of the intruders." He states further that the outcomes of colonialism were invisible, but that they heavily

influenced every aspect of the international system: „The Europeans also brought with them an innate sense of superiority, tinged with a strong degree of racism. Although some Europeans initiated some steps towards improving the life of the natives through medical and educational programmes, many undermined the local culture by forcing them to adopt European ways."

Throughout the colonisation process attempts were made to carve the western thoughts and civilization patterns into the so-called uncivilized peoples in the colonies. Anghie statesthat by 1914 virtually all the states in Asia, Africa and the Pacific became colonies under the authority of western nations, and that ultimately "these major European nations forced all these non-European peoples into a system of law that was fundamentally European and derived from European thoughts and experience". Anghie suggests that international law became a key tool for European colonial powers by way of, treaty, recognition,colonization, and special treaty – called a „protectorate agreement".

Another consequence of the colonial process that influenced the North-South dimension was an imbalance in political and social development. The historical process of takingpolitical and economic control over a large part of the world"s natural and human resourcesenabled the colonizing nations to firmly establish their positions in the international system. Thus the colonized Third World was forced to pay the price for First World achievements by continued poverty, lack of resources, lack of technology, lack of knowledge and, lack of recognition, and, most importantly, lack of power to influence the international system. It is within this broad context that the North-South dimension should be recognized today. During the colonial era six major factors can be recognised that have led to the North-South dimension.

2) Economic Empowerment
Before European expansion through colonisation, although different countries encountered similar problems in agriculture and trade, interactions between them was minimal due to the lack transportation and technology. With the development of industries and maritime technology, European states began to explore new world beyond their territories. The first concern of colonial nations, therefore, was strongly related to economic empowerment and the exploitation of their colonies" natural resources, where their immediate goal was to enrich their individual economies. Then, as these countries became more powerful, they created new patterns of development, from agricultural to the industrial, which led to the colonies becoming the main source of supply of raw materials and crops for the European market. (Ponting C., 1991)

B. The European Industrial Revolution
The European industrial revolution of the 17ᵗʰ and 18ᵗʰ centuries impacted powerfully ondecision-making patterns in the colonies. As Anand states, the needs and demands of thecolonial powers were largely responsible for the creation of their empires in Asia and Africa, leading to the critical situation whereby decision-making powers regarding economy and trade were denied to the local populace. Thereafter factories and plantation were developed, completely changing the way colonised countries had survived prior to their surrender; thus, most colonial economies were transformed into European-dependent Systems(Anand R.P., 1987)

C. Changes in Agricultural Practices
A particular example of how changes in agricultural practices affected a colonial country is Sri Lanka. When the British took power in 1796, the economy had been based on subsistence agriculture, which meant that the main source of agriculture was rice and grain.

However, under the British, the main focus of Sri Lankan agriculture changed from consumption to commercial production and trade, when coffee, tea and other commercial cultivation was introduced. Ultimately this rapidly cost Sri Lankan land, human resources and life styles, changes that have continued to this day, in that the export of tea is a key earner of foreign income. (Mazumdar, S. 1981)

Such wholesale transformations of agricultural sectors in the colonies created a dependency culture that continues to the present day, since, even after independence, developing countries have found it difficult to move ahead with their own agricultural systems, because such a large amount of their foreign income is based on supplying the European market. Consequently, the commercial agricultural system was developed at the expense of the South"s subsistence system. In this context, therefore, the agricultural patterns that emerged from the colonization process are further factors in the current North-South dimension of the international system. (Anand R.P.,1987)

D. Trade and Commerce
One of the key incentives for colonization was for colonial countries to enter other territories for trading and commercial purposes, a major part of which was managed by private companies, such as the British and Dutch East India Companies, which were vested with a great deal of power. As Anghie

explains, "Company charters granted them not merely the right to trade in particular areas, but also the right to make peace and war with natives and the power to coin money." The operation of international trade within theseThe territories, being beyond local control, meant that the general population of the colonies suffered from the absence of their own political and legal authority. The consequences ofmbecoming a colony, therefore, meant that native laws were no longer valid regarding trade and control of their own natural resources.

E. The introduction of European based administrative and legal systems

Another manifestation of the North-South divide was the introduction of European based administrative systems in colonised states. It is important to note that, up to the point of colonisation, some states already had civilised systems of governance, but as a result of colonisation, these native systems did not develop further. Also, by familiarising the locals to a European system of governance the rulers" task was made easier, since they could rule in a system familiar to them. The impact of this transference of powers is still visible in most former colonies. In some instances, though, formal government was totally alien, and these countries did not become states until after colonization. In such cases, rules were centralised to form administrative structures that were bound by European based legal formalities. (Lange M.K., 2004)

In general, the introduction of western style administrations, foreign to the native societies, completely changed the existing structures of governance, resulting in the implantation of Northern power structures in the political systems of their Southern colonies.

F. Religious and Cultural incursions

The impact of the colonial powers on colonies was not only confined to structures of governance. Religious and cultural changes played major roles in transforming the lives of the people living in the colonies. This process, which took place parallel to the introduction of a Christian/European education system, ultimately led to the growth of confusingly different cultural and religious identities within the various native communities. The whole structural and procedural changes within the administrative and education system established a Euro-based social and political structure within the colonial parts of the world.

As can be seen from the above, the whole structure of governance in the South has been designed according to European political and legal principles that have gradually changed the native governance system of those countries most affected by colonial regimes. Anghie observes this transformation thus: [the] sovereignty doctrine is understood as a stable and comprehensive set of ideas that was formulated in Europe and that extended inexorably and imperiously with empire into darkest Africa, the inscrutable Orient, and the far reaches of the Pacific, acquiring thecontrol over these territories and peoples and transforming them into European possession. The colonial era in world history highlights the power division between the developed and the developing world. The North-South debate is framed on the basis of the various differences created during the colonial times. The argument in this chapter, therefore, is that colonialism forged the world community into two main groups – colonial and colonising countries – which developed into the South and the North.

G. The importance of maintaining equity, fairness and justice in mitigating North-South inequalities in governance

This chapter has raised the argument about whether the global governance system guarantees both developed and developing states equal enjoyment based on principles of equity, fairness and justice. Its central argument has been that the global governancesystem cannot be considered to be a complete system of governance until it creates adequate mechanisms to ensure those principles in its decision making processes and procedures. Writing about the completeness of a legal system, Vaughan Lowe states,"[Only] when the elements of a legal system can be combined to build up a normative structure adequate for the needs of the society to which it applies, we may think of the legal system as being complete". Any governance system would not be complete unlessits subjects can enjoy both equal participation in decision-making *and* the fruits that the system generates.

Such an argument raises a critical question about the present global governance system, which is whether it has truly been able to provide adequate mechanisms and normative structures in order to safeguard the fundamental ideologies of equity, fairness and justice in practice. This thesis does not consider that an equal vote-casting system equates to equal participation, since equal representation in the decision making

process, as well as the outcome of a particular decision, should reflect every party"s interest in the subject in question.

In this respect the interlinked concepts of justice, fairness and equity contribute to enrich the argument of inequality of North and South parties at global decision making forums. Justice, fairness and equity concepts are integral to any normative and procedural aspects of environmental decision making forum. Anand further emphasises the linkage between these three concepts in terms of environmental decision making process at the global level: I contend that procedural aspects of international policy-making are closely related to justice issues. How decisions are made and what voting procedures and decision-making structuresare adopted to formulate international environmental policies are questions that are crucial to a "just, fair and equitable" treaty, policy or law at the international level.

The concept of justice involves discussion of two main areas: procedural justice and distributive justice. Distributive justice is about addressing the inequitable social, economic and political burdens faced by certain groups of people, which often result from thedifferent levels of their development. For example, in the climate change debate, the level of social, economic and political burden to comply with the international obligations is largely dependent on each party"s development capacity. The degree to which different states experience the effects of climate change or are able to carry out their obligations, depends on their level of development. Procedural justice is about addressing inequitable participation in the decision–making process as a result of different levels of development of different parties. For example, among some of the procedural injustices in the climate debate are the inability to conduct scientific research up to the level that of a developed country, and the inability to send the climate experts to the negotiation table due to lack of resources. Such procedural injustices prevent Southern states from participating as effectively as their Northern counterparts in the climate debate.

The concept of fairness involves considering on what grounds the rules of governance are formulated. Referring to Franck, Anand explains fairness is judged by two criteria. Firstly, fairness is decided by how rules distribute costs and benefits among its participants, and secondly, the process by which the rules are made and applied.

Concepts of equity are closely linked to the concepts of justice and fairness. Equitable decision making processes lead to laws and policies which distribute costs and benefits evenly among everybody affected by the decision making. In the climate debate, theeffects of the climate change are not evenly distributed among each state of the world.The ability to face the challenges created by climate change is also different according to the economic and political strength of each state.

As has been explained in the discussions about the North-South dimension in this chapter, principles of equity, fairness and justice should be considered in the wider context of equal recognition, capacities, distribution and participation of both North and South. If the final outcome of either a convention, a declaration or of any other regulation, does not represent the interests of every party concerned, then the whole system of governance will be destabilised. The heart of the argument of this thesis, therefore, is that the global governance agenda and global decision making process should represent the concerns of both North and South equally. The North-South debate regarding environmental negotiations provides many instances where decision-making powers have not been enjoyed equally by the world community. For instance, in the climate change debate, the South criticises the priority-setting that has given less importance to the South"s concerns than to the North"s. Theinequalities in science and research between the South and the North are a prime reason for the North"s dominance of the priorities agenda in climate change negotiations, and this has created unfairness at the highest level of climate negotiations. As a consequence of these failures – and others described earlier in this chapter – to meet the primary principles of global governance, the South has voiced the need for "new orders" to be incorporated into global governance structures.

The fundamental ideologies of equality, justice and fairness should be interwoven in any system of governance that determines equal treatment to all its subjects; these concepts have been developed in line with the justice theory of Rawls, whose "A Theory of Justice" equates justice with fairness, which, he argues, should be the social contract at the base of a well-ordered society. Rawls"s ideas on distributional justice also depend on a fair allocation of resources among diverse members of the society. (Kelly E., 2001), Many scholars later argued that defining justice solely on distributional principles is only a normative

approach to the concept, therefore, they have focused on addressing the process by identifying individual and social recognition as being key elements for attaining justice, since recognition, capabilities, distribution and participation are important points in any discussion about justice. (Schlosberg D., 2007)

Anand places justice issues into two categories: procedural justice and distributive justice. Procedural justice, which is the process adopted by the decision-making authority, assures the right to self-determination, equal participation, representation, respect and justice for all people regardless of their social, economic and political status. As Ebbesson explains,"the procedural element of justice is evident in the ways the global agreements are negotiated and debated", he further states that in order to achieve procedural justice it is necessary that all states can participate equally in the decision making process of international agreements. (Ebbesson J., 2009) Distributive justice, on the other hand, looks at the outcome of the decisions made, which includes all matters relating to inequitable distribution. In terms of environmental harm, distributive justice means the distribution of costs and measures for avoiding predicted harm. A good example of this was the interpretation of justice by both North and South during the several environmental negotiations leading to the "Montreal Protocol on Substances that Deplete the Ozone Layer" (Montreal Protocol), which acknowledged differentiated states" obligations to combat the depletion of ozone layer based on the principles of justice. (Mickelson K., 2009)

The concept of equality and justice in relation to rich and poor countries has failed to promote equality because it fails to narrow the gap between North and South, because, as Shelton states, the injustices of the past have proved disadvantageous to the South, especially in the area of trade. In the 1960s and „70s the concerns for equality and justice in global trading governance, Shelton goes on to say, "led newly independent and economically disadvantaged states to join in efforts to construct a „New International Economic Order", which would reconstruct international economic arrangements to achieve equitable distributions of global wealth." (Shelton D., 2009) She further explains that Article 29 of the "Charter of the Economic Rights and Duties of States", adopted by UNGA in 1974, states that the "seabed and its resources" are the common heritage of mankind, consequently provisions ought to be established to ensure that the natural global resources be equally shared by all states, with particular attention being given to the specific needs of developing countries.

The differences between the developing and the developed world are critical features in the debate about global governance. The assumption that „all states are equal" becomes dubious in light of the political and economic power gaps between North and South. For example, as Cassese points out, Article 27.3 of the UN Charter grants veto powers only to the permanent members of the Security Council, even though Article 2.1 proclaims sovereign equality for all members". Such power in the Security Council, therefore, explains the power politics currently underlying the global governance system that has created a major imbalance between North and South. Some authors argue that, given that only five states among nearly two hundred hold veto power in the Security Council the assertion that „all states are equal" is clearly untrue. Antonio Cassese"s view is that „the sovereign equality of all members of the United Nations, as a general guideline, is weakened by the veto power that has been specifically laid-down as a legal exception".

North-South debate explains many instances that these fundamental ideologies are not equally enjoyed by the world community. In the climate change debate the South criticises the priority setting of the Northern agenda that gives less importance to Southern immediate concerns over Northern climate concerns.[186] Inequality of the adequacy of science and research base between the South and the North is a main reason for this dominant authority in priority setting in climate change negotiations. This situation has created unfair position for the South at the highest level of climate negotiations. Unless the governing process and procedures follow equality, justice and fairness principles the international system remains imbalanced and incomplete.

III. CONCLUSION

The North-South dimension has played a key role in global decision-making processes and procedures during every period of the creation of the international governance system. A series of historical events have contributed to the North-South dimension that have affected how decisions have been made, on what principles they have been taken, how votes are recorded and who sits on the highest decision-making bodies. Southern countries have resisted, and

continue to resist, the global solutions presented with Northern agendas. The primary Southern demand is the genuine equality of states in political, economic, and social decision-making, which would ensure their right to be involved in global decision-making forums as equal partners to the North, thereby achieving the universal principles of equality, justice and fairness. As Najam states, "[…] „Southness" stems not just from a sense that the international system is ineffective in responding to Southern concerns, it grows out of the belief that the system is less than legitimate in terms of its commitment to Southern interests".

In conclusion, I quote Agarwal and Narain: "How can we visualize any kind of global management in a world so divided between the rich and the poor, the powerful and the powerless, which does not have a basic element of justice and equity?" The argument of this thesis is that this absence creates so many divisions between North and South that it has ultimately led to a serious imbalance in the system of global governance. This chapter has discussed the origination of the concept of the North-South dimension in context of global governance and how this has played a crucial role in the political, economic and social areas of the international system. It has explored how this concept takes on difference shapes, depending on changes to the overall global atmosphere at different times but notes however, that the actual problems that have been created as a result appear never to change. This thesis will show that, although they have been built into the structure of the global institutions, the principles of equality, justice and fairness, by their very absence have been very closely connected with divisions in the North-South dimension throughout the evolution of this divided system of world governance.

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