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Theoretical View over the Conflict between the Extra Territorial Power and Public Opinion

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ABSTRACT

Extraterritorial sovereignty is followed in various conditions and situations as the nations and the states are in a position and interest to annex and get privileges through unconventional methods. Though the international law states the activity as a legitimate one subject to the restriction of the law imposed, the researchers and scholars call it a strategic method of escapism from liability from the acts. The act of extraterritorial privilege also needs certain procedural movements and situations to be made before using the whole of the sovereign power. The act of extraterritorial power can cause conflicts and consequences in which the state as the lead actor will try to have an upper hand to promote its national interest. The act of extraterritorial usage has its veracity even before the proper formation and recognition of states as a political regime. And the extraterritorial power is well defined in each of the cases about the treaties and agreements signed and the national interest of the particular nation comes with a peculiar specification in each case of signing a treaty. In some cases, the benefactor or high-rise countries will try to impose their extraterritorial power with the help of the other state actors.

These non-state actors will assist the nation-states in creating a new order of governance and colonialization. The aftermath of the treaty was always considered to be a conflict that will induce a rise in tension between the sovereign actors. The methods and time period of the use of the extraterritorial sovereign power are important when it comes to controlling the other nations. The history as always proves and gives various instances about the leader's psychological profile and their modus operandi in trying to expand their territorial sovereignty through extraterritorial means. The paper talks about the situation where the conflict between the extra territorial power and public opinion is weighed in different periods of time. The main aim is to emphasis on the public interest where the sovereign is considered to be an important state element due to its subjectivity to the people and government. Such sovereign power is gambled and under influenced behind the curtain of the public democracy.

Keywords: *extra territorial power, extra territorial sovereignty, unequal treaties, public interest, power player nations, extra territorial sovereign*

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I. THE RULE OF EXTRA TERRITORIAL SOVEREIGNTY

Every country wants to establish itself in alien soil without any damage occurring to them. They are in an attempt to use extraterritorial power by various means and methods to capture the power and prestige in another country. Extraterritoriality is the state where another state or an entity is exempted from the clutches of the jurisdiction of local municipal law. The exercise of extraterritorial power was undertaken through wars and trade and colonization. The safest and one of the possible ways is through the signing of treaties and negotiations. The benefit will depend on the negotiations which will result in a favorable achievement on the one side leaving the other silent.

So many questions are rising in the minds as:

1) Is there is a method for approaching and using the extraterritorial method?

The concept of extraterritoriality was in fact in use even before the age of ideological governance of the nation-states. As always, the prime way to achieve the favorable means of political advantage is through the means of signing the treaties with the other nations proposing a means and target for them to convince. In the earlier periods, the treaties were mostly signed in the face of some conflict between nations. The 18th and 19th Century states had always sorted out the problems through the way of signing pacts and treaties. The ultimate conflicts such as war, famine, and other areas human damage factors were the reasons which were taken into account for the treaties. The unequal treaties were always based on the survival capacities of the nations that the nations who are in the position of aiding will try to penetrate the country by the way of debt traps and other means of attacking them. The methods for exercising the extraterritorial methods can be varied in various ways. The extraterritorial approach is a risky and one-way path where a country cannot fall back once it was deep-rooted in its efforts.

The main point here to understand is that the use of extraterritorial methods by the state must not affect its own country. The extraterritorial methods must be more diplomatic and should be more effective in attacking the basic structure of the other country's code and regulations². The methods of extraterritorial power must be protected and must not bring any harm to the power player nation's economic growth. The methods must be effective as to raise the image of the assaulting country as a superpower in the world. Economic and social control is the main perspective in the exercise of extraterritorial power. The power player nation in while attempting to assert its global power dominance must ensure that the economic and social

² A modern analysis about the state actors and non-state actors, Theories of International politics

control remains stable.

The method used by the American leaders to showcase their political hegemony was by interfering with the functioning of the economic and social control of the nations. The extent of which is made through the treaties and other means of extraterritorial extensions made available to the third world countries and other colonial states.

2) How can a state find an opportunity to use extraterritorial power?

The use of extraterritorial power can be used in many ways as mentioned before. But, the opportunity and the time for using such an advantage over the other nation is really important. The successful colonialization of the Britain Empire is by the proper use of that strategy in the right opportunities and time. Many instances are given as examples that are put forth by historians and research scholars. One such fine example is the differentiation between the Asian and Western powers where both the powers have their prominence in two different ways. The Asian Colony for example has tried to exploit the Western powers in times of their upper hand position. This has resulted in them to force into unreasonable contracts. The Western influence on the other hand is more powerful in terms of their strategy and has imperialized many nations forcing them to enter into various free trade agreements. These free trade agreements contained many concealed many favorable clauses for the proposer country such as exemption from tariffs and taxes etc.

The unequal treaties play an important role in indulging a state to come under the watch of a supra nation by inserting the most favorable clauses in the treaties and forcing the state to comply with that treaty. The HARRIS Treaty is a perfect example that is portrayed as one of the important incidents³.

3) Is there is an example for the states in using extraterritorial power?

The probable example for the exercise of extraterritorial power was mentioned by many well-known in the opium wars. The opium wars served the British Empire an amicable chance to distribute opium and other drugs from India to China. The result of such trade ends in mercantile exploitation and the trade still goes on due to the fact the proposer creates an artificial demand before the people and forces the people to rely upon such artificial demand created by them. The artificial or fictitious demand is achieved by limiting the supply of the goods which the subjects of such a particular receiver nation consider important over some time. The latest or the modernist version of exercising the colonial rule is done by affecting

³ Extra territorial Sovereignty and Extra territorial privilege, https://link.springer.com/chapter/10.1007%2F978-1-137-56777-2_3

the trade and the commodities which will, in turn, affect the prices. This way of imposing the behavior of extraterritorial sovereign power is done by both the capitalist colony and the state-supported or international organizations.

The other example can be shown in the area of Gulf wars which happened in Kuwait. The Iraq Leader Saddam Hussein was the prodigy and the central player who asserted the rights of his ownership over Kuwait. Kuwait at that time was prosperous as the country was flourishing in selling oil products to foreign establishments and nations. Unfortunately, his army was defeated. For a nation, the attempt to achieve or exercise its extraterritorial power may even end up getting disastrous. And Iraq is one example of that. And the other example which can be taken into account is the Vietnam War which was fought by America to support the capitalists is one of the examples where the particular group agenda or national interest was projected through the war. The American Government was sending troops to attack North Vietnam to hold the capitalist perspective nation and the same was done in the open field through sacrificing its soldiers and making them fight without clearing and projecting a proper vision and mission of the war.

4) What is the prima facie for such exploitation?

There are many instances where both the socialist and the capitalist nation-states have tried to assert their national interest and their countries image by the way of exercising extraterritorial power in other nations. The prima facie of that exploitation was mainly to plunder the wealth and the economic resources of the country. The economic resources of one country were exploited and were used to build others. Even the receiver country was forced to be treated as a second-generation country. The term was used due to the nature that the used technologies and the lifestyles of the proposer country or the powerful player pass it to the developing country and the underdeveloped countries.

The one way of asserting the national interest was by supporting the multi factual agendas in the developing countries. The power players will attempt to create tension in the air of one particular group agendas and will support them. Eventually, that support will be transformed into tyranny and oppression as the colonialists or the power players controls through political deceit. The fine examples for the above-mentioned prima facie of exercising the extraterritorial power in the Vietnam War where the American leaders conducted the war even after they predicted the aftermath of the war and post-war period.

5) What are the other factors which play an important role in executing the operation of extraterritorial power in other countries?

There are various other factors in which a nation-state plays the role of a power player. The list has various fields such as sports, military, technology, cultural recognition, strong political and social interest, and other recognized field of interest. The intrinsic period of the 20th Century was filled with more and more field attacks where the periodical shifts happened in many areas such as collateral hit of the Stock market and the inflation due to the war. The Defense Industrial Complex was the main actor a.k.a. proponent who supported the war at a large scale by distributing and selling their weapons to indicate their dominance. The main aim of the military-industrial complex is to influence the national governments for increased military spending to survive in the market. The term “military-industrial complex” was first introduced by President Eisenhower in his speech. US President D. Eisenhower in his farewell speech on 17th January 1961, stated that

“guard against the acquisition of unwarranted influence...by the military-industrial complex,⁴”

The essence of this term is to indicate the efforts of the national governments to provide more funding to the private military contractors who supply weapons to the American Armed Forces. There are various other examples in which the actors play an important role in the war and exercise of extraterritorial sovereignty. For example, the cause of the second world war is the unequal treaties signed during the period of post-World War One. The unequal treaties created a surge among the world leaders to showcase their power through the League of Nations was formed to keep a check on the functioning of the nations. The main failure of the League of Nations was that its propaganda had a prospective effect which led it as a supporting actor for the advent of World War Two.

II. THEORETICAL PERSPECTIVE OF EXTRA TERRITORIAL SOVEREIGNTY

A theory in the field of political science is judged and tested based on empirical or explanatory, interpretive or predictive, prescriptive or ethical assessment. The concept of extraterritorial sovereignty falls into all three classifications to have proper academic jurisdiction. The extraterritorial sovereignty in most cases applies only if the third world or underdeveloped country presumes to be unharmed from the legislative clutches and the common municipal law of the benefactor country. The extraterritoriality concept is slightly different from that of territorial jurisdiction. The territorial jurisdiction focuses only upon the elevation of the protection of the state’s territory from the attack of the enemies in terms of conventional and unconventional methods. But the extraterritoriality is based on the power of

⁴ <https://www.britannica.com/topic/military-industrial-complex>

the influence exercised by the supplying country to the benefactor country through treaties and agreements without even entering into their territory.

The extraterritorial sovereign power is considered to be far more superior to any concept in international law. The extraterritorial sovereign has been exercised in a country where the law is organized and there is a dispute regarding the framing of the rules and the regulations. All the other attempts have been considered to be vain due to various lack of procedures. The extraterritorial sovereign may sometimes even lead to the level of war between the countries over holding the resources. The extraterritorial privilege is a temporary effect on the powerful states which can wear off during emergency periods.

III. NECESSARY REQUIREMENTS TO MOVE FORWARD WITH THE EXTRATERRITORIAL SOVEREIGN APPROACHMENT

If the power of extraterritorial sovereignty is exemplary, then the state actors will try to accomplish it and use it to meet its ends. But some states fail in the attempts due to the lack of procedural requirements in building a perfect phase for practicing extraterritorial privilege. The extraterritorial privilege in detail needs some requirements to be exercised.

1) The state must be a beneficiary

As it puts the country exercising the extraterritorial privilege, must find a beneficiary country that has a shortage of financial and material resources. The beneficiary country must be ready to accept any kind of terms and conditions to get benefitted. The economic growth of the country must have a blockage that can be cleared out with the help of external resources.

2) The state which extends the political offer must have an upper hand in terms of economic and political power

The donor state which is going to get its privilege exercised by the way of treaties and agreements must have a strong backup for future concerns. The state must discuss the nature and the reaction of the beneficiary state after being used as an extraterritorial sovereign power.

3) The local municipal laws of the states must allow such practice

As mentioned above, the local municipal laws of the state must be in conflict or incomplete which will be useful for the international powers to occupy the throne. The extraterritoriality principle primarily applies to individuals, as jurisdiction was usually claimed on peoples rather than on lands. The reason is simple. The laws of the land are governing the people on the land and not the land itself.

Incidents in the pages of history where the countries were exercising their extraterritorial sovereignty

1) PL-480 Agreement

After independence, India depended upon the food grain supplies from the United States government. Both India and the United States created an agreement called Public Law 480 (PL-480) agreement against rupee payments. Later, the agreement was considered to be a folly.

The agreement was made by the US to promote its food aid scheme. The scope of the scheme was mainly to help hunger states to achieve sustainable survival and to thrive for development. Many countries and international organizations welcomed the generosity and social discipline of the United States. However, the US began to use this policy as an instrument for exercising its influence over the poor countries and to reorganize for its strategic interest. The reason was American domestic politics. By the mid-'60s, it had become more evident that the food aid strategy is an extremely powerful tool for reorganizing the country's foreign policy.

The scheme was later on discovered by India in midst of the agreement period. When the US stopped its supply of the required quantity of food, the backdoor criminal trait of the US political motive was revealed. India realized the flaw in its economic policy made with the US government and the problem with the agreement. The agreement was discontinued in the middle before the expiration.

Agriculture Secretary of the United States, Orville Freeman, was convinced that the Indian Government had to be forced, if necessary, to re-orient its economic thinking, and channel more investment into agriculture. The potential for direct commercial sales to India as well as direct two-way commerce between an agriculturally strong India and the US was enormous. PL-480 was to become the lever to redirect Indian economic planning. Henceforth, PL-480 food agreements with India would come with strings tied to them.

2) British Imperial Rule

The advent of extraterritoriality in the nineteenth century is the period where many leaders served as an example and laid the ground for the reconstruction of territorial sovereignty. And, the British Imperial Rule played the perfect power factor in analyzing the extraterritorial sovereignty in various countries. The countries can be listed such as America, Africa, India, and China where the extraterritorial sovereign power was established by the Britain soil using the treaties and strategic policies for diplomatic reasons.

Yet in many countries, where the particularly extensive extraterritorial sovereign practice emerged in the mid-century, the expansion of European jurisdiction underneath national sovereignty became entrenched with the creation of international mixed courts in the 1870s. The result is considered to be a favorable complex compromise between European empires, which upheld different conceptions of extraterritoriality, and the government of Colonial countries. While Britain refashioned its extraterritorial judicial system as a means of promoting legal reforms in the Ottoman world, France aggressively pursued the expansion of extraterritorial rights as an instrument of informal domination and economic exploitation. The advent of an international type of jurisdiction, was less susceptible to French political pressures but applying French system of law, proved acceptable to all parties. Although the impact severely constrained Colonial sovereignty from within, even after Britain took over the reins of government in 1882. Extraterritoriality was not merely a transitional effort. But the original feature of the global legal order, arising out of modern imperialism and imperial rivalry and yet conducive and even more diplomatic to the forging of new instruments of international law and ethical governance of a state in the name of national interest.

3) Japan Agreement with the US for westernization (HARRIS TREATY)

To the leaders of the Tokugawa regime, the sight of Perry's coal-powered steamships, which they later referred to as the black ships, made a powerful impression and became a symbol of Western technological progress.

The treaty of Kanagawa was not a commercial treaty since there were initially no strong intentions for commerce. The treaty provided for the opening of two ports in Shimoda and Hakadote secured supplies of coal and guaranteed Japanese assistance to ship-wrecked US crews. However, an important aspect of the treaty, and why it has later been named one of the unequal treaties, is that it included a unilateral most-favored-nation (MFN) clause. In particular, Article 9 of the Kanagawa Treaty made the following provision:

"It is agreed, that if at any future day the government of Japan shall grant to any other nation or nations privileges and advantages which are not herein granted to the United States and the citizens thereof, that these same privileges and advantages shall be granted likewise to the United States and citizens thereof, without any consultation or delay."

The significance of Article 9 is that the MFN clause was unilateral in operation, unlimited in scope, and unconditional in operation. Since the still existing seclusion laws prohibited the Japanese from going abroad; the unilateral aspect of the treaty did not raise any concerns on the Japanese side. However, allowing the US to claim any benefits granted to third states put

the Japanese into an unfavorable bargaining position in the decades to come.

International legal positivists emphasized treaties as international agreements grounded in the state's authority to establish and enforce the law based on its capacity as a sovereign power. The unfair treaties that Japan signed between 1858 and 1869 offered Japan the opportunity to develop an expertise in treaty law—specially to maintain its territorial integrity and to assert sovereignty over its territory. As the Japanese government successfully argued in the 1870s, Japan may have granted judicial jurisdiction to foreign consuls, but it retained legislative jurisdiction, and foreigners in Japanese territory were bound to obey the laws of Japan. An analysis of the foreign residents' claims to rights to travel and to hunt in Japan demonstrates that command of international law was the key to Japanese control of Japanese territory.

4) Vietnam War Situation

The Vietnam War is one of the most confusing situations where the global powers played an important open role in the field of warfare. America's role play was distinguished and determined by the bold actions taken by the Presidents of the United States. Each country leader played an important role where the scholars were able to test the country's national interest by their state and non-state actors. The political hegemony of the Presidents shook the economy of the country and created chaos among people. The main aim of America was to instill its concept of laissez-faire policy in Vietnam even after the death of North Vietnam's leader Ho Chi Minh.

Moreover, the American Presidents were in line to cover the continuous assaults which were said to be made for the glory of American soil to support the annihilation of communism and to promote free state. But the background politics were very strong in lobbying the soldiers and other authorities both national and international to promote the political hegemony and national interest of American government. The War situation escalated into a tension as a controversial conflict started between the public and the government. The public interest and public opinion weren't taken into consideration as the lives of the American soldiers were put into stake by the ultimate commander in chief of the United States government.

IV. CONCLUSION

The state of extraterritoriality is indeed proved to be the modern imperialism and imperial rivalry and yet conducive and even more diplomatic to the forging of new instruments of international law and ethical governance of a state in the name of national interest. But the extraterritorial power was used in an open ground of population where the sovereign used all kinds of forces to unleash their so-called political power in the name of multilateral

international coherence by influencing the other countries to be one of the parties in the treaties. Whenever there is an instance of exercising the extra territorial sovereignty, the public opinion and economic and social interest of the nation state. The basis of the extra territorial powers also includes the areas where the unequal treaties and diplomatic political hegemony comes into the picture.
