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Nation States and their Allegiance to Global Collective Security: A Research on Comparative Constitutional Law

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Abstract:

It was only during the Second World War that systematic reference started to be made to global collective security in constitutional and human rights contexts. There was a growing necessity to develop the concept of global collective security in the legal context, due to devastation, destruction, refugee crisis, and war crimes that perpetrated against humanity during the Second World War. Since then, global collective security has been gradually incorporated into legal contexts across the globe. But this process has been extremely slow, and therefore, nation states have considerably failed to realise and exercise their allegiance to global collective security. Today global collective security is central to the constitution of every nation state. For instance, global collective security is still not a part of our legal structures, and the analysis of global collective security as a legal and constitutional concept is in its relative infancy. The United Kingdom's security jurisprudence is one of the most advanced in the world, but courts, legal stakeholders, scholars, and academic writers still struggle to give meaning to the concept of global collective security. This intensifies frequent legal complications and worsens inconsistencies when it comes to the practical implementation of the concept of global collective security.

Keywords: Global Collective Security; Human Rights; International Law; Refugee Crisis; Second World War; United Kingdom.

1. Introduction:

In the past global collective security was largely confined to nationalistic and somewhat isolationist political thought. Global collective security has been manipulated into a variety of meanings and has often been disproportionately employed on both sides of a dispute. This is perhaps not surprising, as global collective security still has to go a long way to be regarded as a supreme political goal and an objective legal norm.

For the correct implementation of the concept of global collective security, every nation state must adhere to the fact that it has the power to make any laws as long as it can viably prove that it serves to protect human rights and human dignity. A dormant role of the state would often violate

the individual and personal freedom of citizens. One of the dangers of regarding global collective security as a supreme political goal is that it can be wrongly used to support the idea of a dormant role for the state.

As a result, global collective security is often seen in opposition to individual freedom. In my view, this notion is unhealthy for the peaceful coexistence of nation states, because collective security and individual freedom complement each other only when individual freedom is enhanced by global collective security. Thus, a robust global legal framework is a prerequisite for not only determining the correct relationship between individual freedom and global collective security, but also for safeguarding this relationship in the future.

It has also been argued that not only individual freedom but also the degree of sovereignty of nation states may be constrained for the pursuit of global collective security. This raises a fundamental question, namely whether nation states have the freedom to consent to their allegiance to global collective security. Conversely, what kind of collective security jurisprudence is necessary for nation states which have a legitimate interest in legalizing their allegiance to global collective security? These questions have not been answered satisfactorily in the literature.

Three feasible approaches have emerged from legal writing. The first approach affirms the fact that every nation state must enjoy equal freedom of consent when it comes to exercising their allegiance to global collective security. Biased treatment should not be allowed under any circumstances. The second approach affirms that where the nation state fails to fulfil the economic, political, legal, social and security needs of its citizens, the latter cannot be prohibited from consenting to its allegiance to global collective security in exchange for compensation to fulfil its needs by itself. The third approach calls for the reified implementation of the legal philosophy in which citizens are allowed to consent to their degree of allegiance to global collective security. These three approaches will be critically examined in this research paper, with a view of determining the characteristics of the global legal framework that strengthens the relationship of every nation state with global collective security. These discussions will be preceded by a wide-ranging deliberation of the philosophical, legal and political foundations, meaning and status of global collective security, comparative constitutional law, and sovereignty of nation states, as well as the relationship among the three.

This research also highlights the importance of an unbiased division of legislative, executive, and judiciary powers to be exercised by separate institutions of government. Such a robust, unbiased division must be given due recognition consistently in democratic political systems all over the world. The argument presented by this research is that over-centralisation of power can lead to corrupt regimes, which in turn, can threaten the diplomatic balance between individual freedom and global collective security. Thus, the legal framework for safeguarding the allegiance of every nation

towards global collective security must be constructed in a way that separates different classes of legislative, executive and judiciary powers, and vests each separate class of power in the supervision of a specialized organ of the global security jurisprudence.

Such a global legal framework must also be capable of affording protection to each and every nation state irrespective of the fact that the nation state is a super power or not. It is imperative for the global security jurisprudence to support every nation state in developing its own checks and balances system to curtail the undue exercise of various classes of powers. The rationale for such checks and balances is to safeguard individual freedom and strengthen global collective security at the same time by preventing any class of power from being exercised in an unrestrained or objectionable manner by a particular institution of the central government.

One category of power that may act as a serious threat to global collective security, if it is exercised in an unconstrained manner, is executive power. Executive power is the power to execute or administer the laws made by the legislative organ of the government. This involves the comprehensive implementation of administrative programs that have been established within various legislative frameworks, but not legal frameworks. For administrative programs to be more comprehensive to successfully embrace every aspect of global collective security, nation states must ensure that the legislative organ of their governments must effectively cooperate with the judiciary. However, in reality, in many modern representative democracies it is only the executive machinery of government that finalizes the substantial governmental decisions and designs new governmental programs as bills which are then presented to the legislature for further consideration. The situation is worse where a single political party system is in operation, and the members of the executive are drawn from that particular party. In that case, not only is the judiciary bound to exhibit its dormant role in the state machinery, but also is the legislature forced to only have the power to initiate and not carry out any governmental scheme. This is also because the executive exercises its powers in an uncontrolled manner and manipulates the parliament to enact its desired programs into law.

2. Research Objective:

The research objective of this research paper is to develop a robust global legal framework that strengthens the allegiance of every nation state to global collective security. To achieve this, the research resolves to compare the feasible characteristics determining the degree of allegiance of that particular constitution to global collective security. It also intends to develop productive synergies of collaboration and cooperation among the constitutional laws of various constitutions. The aim of this research is to not only establish the correct and productive relationship among individual freedom, sovereignty of nation states, and global collective security, but also to develop the required global legal framework that acts as a prerequisite for safeguarding this productive relationship in the future.

The research also intends to categorize some of the checks and balances that exist within modern comparative constitutional law and political practice. An attempt will then be made to critically examine the practical effectiveness of the operation of these state machineries as effective checks on the overuse and misuse of power by one organ of government, predominantly in situations where power may be exercised in a manner which could be looked upon as inequitable, undemocratic, and high handed. This research will also offer pragmatic and productive suggestions regarding the key domains in which the functioning of some of these mechanisms could be reified, extended or improved to better accomplish the aims for which they have been developed over time. Lastly, due emphasis will be given to the finest method for implementation of these prerequisite changes into comparative constitutional practice.

3. Research Questions:

The following defines the types of fundamental questions likely to be discussed in the research paper:

- i. What kind of economic, political, legal, and social characteristics should be incorporated in the global legal framework that legalizes the allegiance of every nation state towards global collective security?
- ii. How does authoritarianism and the accumulation of legislative and / or executive powers hinder the progress of a nation state towards realizing its collective security goals?
- iii. How to develop global sequential limits on the growth of authoritarianism and the accumulation of legislative and / or executive powers; for example, fixed term appointments for parliamentarians and presidents?
- iv. How to establish effective and productive synergies among the constitutions of every nation state?
- v. How to establish effective and productive synergies among the legislative, executive, and judiciary machineries of every nation state?
- vi. How to strengthen the relationship among the three core ideas of individual sovereignty, individual freedom, and global collective security?
- vii. Under what economic, political, legal, and social climate do individual sovereignty, individual freedom, and global collective security complement each other?
- viii. How to increase the chances of creating such a feasible economic, political, legal, and social climate?
- ix. How does the doctrine of allegiance operate smoothly in collaboration with the doctrine of responsible government in modern representative democracies and also in authoritative regimes?
- x. What kind of judicial review needs to be offered for executive decisions on the legalization of allegiance to global collective security?

- xi. What kind of judicial review needs to be offered for legislative procedures on the legalization of allegiance to global collective security?
- xii. How to identify the judicial features of collective security rights enlisted in the constitutions of the 195 nation states which may impact the way in which certain political, economic, legal and social practices are conducted (for example, conduct of federal elections)?
- xiii. What is the role of the Head of a State when it comes to imposing sequential limits on the accumulation and misuse of executive and / or legislative powers?

Having evaluated the comparative constitutional laws and collective security practices that have developed since the Second World War in relation to the above, the research seeks to identify where there is room for further development in this area. Recommendations would then be offered for ways in which the legal instruments of allegiance towards global collective security might operate more effectually. Furthermore, recommendations and suggestions would also be offered for the pragmatic incorporation of additional checks and balances.

4. Methodology and Methods:

Since international law is a discipline of social science, the two dominant research methodologies used in this research are quantitative research and qualitative research. Although there are several schools of thought in international law, this research presents and utilizes the feasible synergies between realism and idealism, the two philosophical approaches that are crucial for research in international law. Accordingly, this research has also been centred around its own unique methodology which fits the research topic, and this approach has demonstrated considerable degree of originality and inventiveness.

4.1. Research Philosophy:

International legal scholars usually adhere to the psychological assumption that nation states follow international law for non-instrumental reasons, because its procedures are morally binding to be acceptable for international consent. Although this viewpoint does not negate the fact that nation states may pursue their own national interests, it has insufficiently highlighted the expected ability of common global ethics framework and global legal regulations to control the behaviour of states. In other words, the traditional literature on international law vests too much confidence in individual sovereignty of nation states, which indicates that nation states are more likely to follow international law when they can easily exploit it to fulfil their own national interests in a comparatively idealistic critique. Unfortunately, the effectiveness and the practicality of this assumption have rather severe pre-conditions. The pre-conditions include the globalization of international law, and the weakening of private desire when it comes to enhancing universal morality and global collective security.

Consequently, with respect to this research topic, which analyses both the core national interests of individual nation states and the enforcement of a global collective security law, the

unremitting use of the traditional legal philosophy is unsuitable. This is also because the traditional legal philosophy has failed to offer an original perspective for this research paper, and implementing it would risk embedding an inappropriate representation of the practical behaviour of nation states when it comes to the enactment of global collective security laws. In contrast, as the conflicting legal philosophy to this traditional legal approach, the legal philosophy of realism can correctly match this research paper.

Firstly, realists are known for their recurrent and profound criticisms of the intrinsic deficits of the international legal framework, and they even deny to reckon the universal existence of an international legal system in the contemporary world. Pragmatically speaking, the stance of a realist approach which deals with matters practically and not theoretically is very appropriate to be used as a research methodology to analyse those practical legal philosophies which may contain both successful as well as unsuccessful cases regarding the global implementation of collective security laws.

Secondly, realistic legal philosophies prioritize the fulfilment of national interests, and this principally challenges the ideal values of the robust global legal system which offers the highest priority to global collective security. Thus, this research makes use of the realistic school of thought only as an alternative to the traditional idealistic school of thought. Quantitatively speaking, this research tends to present facts in a practical, straightforward and honest manner, and hence, does not use the realist methodology blindly to fit all legal, economic, political and social scenarios.

Thirdly, realists typically choose to superficially explain, rather than present recommendations on what should be the ideal global behaviour of the contemporary international legal framework. Nevertheless, in contrast with the idealistic legal philosophers and political scholars, the realistic scholars focus only on the instrumental factors that impact the decision-making and detailed policy-making of nation states. The superficial nature of these approaches refrains scholars from devising more instrumental solutions for the proper legal enactment of the right to global collective security. Thus, this approach is also not selected to suitably study those controversial issues which prove the existence of a separable gap between expectation and enactment.

From the above discussion, it is clear that the feasible synergies between realism and idealism are a good fit with the topic of this research paper. Adopting a legal philosophy that pragmatically explores the synergies between realism and idealism will allow a critical analysis of the application of the right to global collective security within the constitutional framework of every nation state. Moreover, such an approach will also contribute in formulating the appropriate global collective security laws with better inclusiveness, neutrality and inventiveness. In fact, when familiarizing with the political and other interdisciplinary elements in collective security and international law research, this approach can also be moderately implemented by several other international legal scholars.

4.2. Research Methods:

The introductory chapters will examine academic literature and try to redefine the core ideas of global collective security, individual sovereignty of nation states, individual freedom and comparative constitutional law. The practical methods by which national and international jurisprudence have engaged with these concepts will also be considered. The research will use a comparative study of the constitutional laws of 195 nation states in order to interpret these core concepts and their relationship with one another. The political, legal, economic, social, religious, philosophical and historical synergies will also be devised and analysed to comprehensively understand these core concepts, especially with regard to the legalization of the allegiance of every nation state towards global collective security. Substantive case laws will also be considered when determining whether a residual right to global collective security exists in the constitution of every nation state.

I will make use of an experimental data analysis to examine the three possible approaches pertaining to the establishment of the jurisprudence that is necessary for nation states which have a legitimate interest in legalizing their allegiance to global collective security. Collective security laws in particular will be studied in connection with whether global collective security is a universal political right. I will also add a philosophical dimension throughout these chapters, the focal point being on the comparative legal philosophy of the constitutional laws of the 195 nation states. A secondary data analysis of legal philosophies will also be undertaken.

As mentioned above, conventional research methods in contemporary international legal studies can be categorized into quantitative research methods and qualitative research methods. Given the exhaustive range of feasible capabilities of these methods, in addition to a few other explanations below, this research will apply both the qualitative and the quantitative literary cum experiment-based study method which chiefly depend on the interrelated literature, legal decrees and also case reports.

Firstly, I aim to collect first-hand primary resources for conscripting the fundamental constituents of this research paper. Global collective security, comparative constitutional law, and individual sovereignty of nation states are three core issues which exhibit strong interdisciplinarity and practicality. Thus, the most suitable and authentic research method should be the collection of first-hand primary resources on the spot, and then empirically examining them through the trial-and-error method. I also aim to conduct secondary data analysis by making use of the appropriate books and academic resources from libraries which have exhaustive collections of academic resources, although these may consist of first-hand accounts, chronicles and archives collected earlier by scholars.

Secondly, the inference of this research paper cannot be reached through mathematical

calculation. Historically speaking, the authentication of research inference and conclusion achieved by means of mathematical calculation is a research method of natural science, and was implemented by disciplines of social science later. To be reasonable, the preciseness of mathematical calculation has to be approved, although there is a reason behind the absence of this research method in contemporary research on international law. The global status and worth of international law are not questions that can be mathematically calculated. Although the degree of socio-cultural validity of international law in individual nation states, and the degree of implementation of international law in individual nation states are questions that can be quantitatively estimated, the quantitative estimation also depends on whether the lawbreakers would bend to law or the victims would regard law as a subjective matter which abounds in mathematical uncertainty. For instance, the five permanent members of the United Nations Security Council (UNSC) have never unreceptively adhered to the rules and regulations of international law in history, although there are instances in which non-permanent members have sued one or more permanent members. For example, the case in which Philippines sued China. Therefore, owing to the quasi-subjective and quasi-objective nature of this research paper, the usage of the research method of mathematical calculation is conditional depending on the degree of qualitative and quantitative inference that can be drawn from the relevant observations.

Thirdly, the topic of this research paper is a question of the degree of preparedness of individual nation states towards realizing their global collective security goals. As mentioned above, the cohesive and interconnected study of the three core philosophies of global collective security, comparative constitutional law, and the individual sovereignty of nation states is still a research gap in the discipline of the contemporary international legal academia. The universal features of the idea of global collective security still have to be implemented in solving humanitarian conflicts, territorial disputes, and other conflicts that may worsen to war. Therefore, as the background conditions of this cohesive and interconnected study are comparatively ripe in the present-day scenarios of Ukraine-Russia war, Syrian refugee crisis, humanitarian conflict in Yemen, and the rise of terrorism in the world; as the author of this research paper, I have to leave much of the research space as objective and neutral for proposing hypothesis research paper and then establishing the corresponding interconnected models for formulating the desired solutions.

In summary, this research will be a cohesive and interconnected doctoral project that is completed by implementing the research philosophies of realism and idealism along with the specific research method of 'qualitative and quantitative literary cum experiment-based study'. Such a framework will enable the researcher to assess the research topic with a cohesive and interconnected approach, and to focus particularly on interdisciplinary aspects of international legal studies. In the interim, the qualitative literary-based research method will confirm that the researcher will not

deviate unnecessarily from the standard research paradigm of international legal studies.

Besides, it should be noted that according to the conclusions and inferences drawn from the literature review, there is an insufficiency of specialised literature which cooperatively examines issues on global collective security, comparative constitutional law, and individual sovereignty of nation states. Therefore, it is true that the general articles, books, and other academic resources on the entire exhaustive pack of global collective security studies, comparative constitutional law, and individual sovereignty of nation states written by distinguished scholars, need to be carefully analysed for reference. However, the over dependence on the research method of positively criticizing the exhaustive range of viewpoints expressed in these academic resources, would limit the chances of a focused and specialised approach that needs to be implemented in this research on the application of a global legal collective security mechanism in every individual nation state. Contrastingly speaking, the alternative realistic research methodology which focuses on trial-and-error method to validate the drawbacks and the advantages of the related legal mechanisms, the boundaries of the related legal philosophies, and the results of the related legal practices with the help of the specialised literature, is undeniably worthy to be implemented by the researcher.

5. Literature Review:

Recent scholarship on international law suggests that the era which ensued after the Second World War witnessed the development of a strong foothold for the Western world in the broad domain of international legal studies, international law, and international relations. Contemporary scholarship also indicates the consolidation of intercontinental efforts for the wide-ranging regional, geopolitical, and economic integration of the developed nation states in the continents of North America, South America, Asia and Europe. Owing to the predominant geopolitical shifts in the contemporary dynamics of international relations and international law, the number of traditional provincial disputes unswervingly related to the Western world had suggestively declined after the Second World War. Accordingly, the research into collective security and international law began to change in focus, and the accomplishments of the academic world of international security and international legal studies had drawn considerable attention from the entire world.

Firstly, some collective security scholars followed a research approach that codified the prevailing and past international security disputes as direct outcomes of regional politics, and not as outcomes of the absence of a robust global collective security framework, such as the research approach followed in *Border and Territorial Disputes* written by Day and Bell. On the contrary, some other international legal studies scholars, including a few collective security scholars, conducted distinct case studies on the causes of the existing arguments on international law and collective security. Their research was chiefly concerned with individual cases which occurred between former socialist states, but was not directed towards the realization of the right to global

collective security as the instinctive right of every individual nation state.

Secondly, in terms of the specialised research conducted by the Western legal academia, the key focal points of research on the synergies between the interdependent elements of collective security and international law had been directed towards the study of new types of disputes on collective security and international law, such as maritime delimitation and territorial disputes (e.g., the research on definite disputes over the EEZ by Smith and Thomas). Their attitude, standpoints and academic carriage of the topics tended to be considerably wide-ranging and yet neutral.

Thirdly, numerous international legal scholars, such as Sharma, had also concentrated their research on the dominant role played by individual nation states in strengthening collective security. Such scholars have not recognised global collective security as the instinctive right of every individual nation state. Nevertheless, monographs written by scholars such as Jennings primarily elucidated how international disputes of the Western world were progressively being settled and marginalized after the Second World War, however, these rarely presented ground-breaking solutions and innovations to settle such disputes.

6. Research Gap and Originality of the Research Paper:

From the above discussion it is clear that although the international research on collective security and international law is wide-ranging, it is certainly not completely perfect because it has hardly explored the possible synergies between international law and collective security. Consequently, in order to demarcate the space for the original research work, this research paper is also an attempt to authentically complete and fill the exhaustive range of research gaps present in the existing knowledge and scholarship on international law and collective security.

Firstly, the existing literature chiefly focuses on the feasibility of diplomatic measures for the settlement of contemporary transnational humanitarian conflicts, disputes on international law, and threats to collective security. It rarely highlights the importance of the observance of global collective security as an instinctive right of every individual nation state.

Secondly, the literature typically denies to unambiguously review the application of the right to global collective security in humanitarian conflicts, wars, and international disputes.

Thirdly, the literature hardly throws light on those specific cases in which the conditions involve the interference of the five permanent members of the UNSC. This research paper not only presents original answers to all of these questions, but also comprehensively investigates the problems and prospects for the enactment of the right to global collective security in the constitutional law of every individual nation state.

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