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Article:	Corporate Complicity for Peace development & International Humanitarian Law: A Case Study of Pakistan
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ABSTRACT

Corporate complicity is an old and acknowledged reality in the context of violation of human rights, requiring greater attention from the International Humanitarian Law (IHL). History shows that every big corporation, from Subcontinent to Africa, whenever had an opportunity to exploit humanity for the sake of their individual business interests, they did it without any fear of conviction. Indeed, in armed conflict situations, the possibility of violation of human rights on the part of big corporations even becomes more likely, due to lack of an effective system or mechanism to scrutinize their activities. Pakistan, a developing country, is not an exception, fitting in this general pattern. Particularly, due to lack of an effective domestic mechanism to fully implement the IHL, exploitation of human rights at the hands of business giants are recorded in the country. It is argued that China Pakistan Economic Corridor (CPEC), a mega project, will likely make an increase in number of violations of human rights by large companies in Pakistan. Considering so, this paper will primarily focus on how this issue can be addressed, in order to control or minimize infringement of human rights by big corporations in Pakistan. In doing so, the proposed paper will suggest a domestic mechanism that could effectively implement the IHL, restricting foreign corporations, that operate inside Pakistan, from violating basic rights of its citizens.

Keywords: Corporate Complicity, IHL, ICRC, IAC, NIAC, Geneva Conventions, Additional Protocols, Rome Statute, CPEC, OBOR, National IHL Committee

Introduction:

Corporate complicity is phenomena which defines a situation in which corporations are involved in gross human rights violations by direct participation or by aiding or abetting those who are directly involved in those violations which are usually states or non-state actors i.e. rebel forces, terrorist groups, armed forces etc. during an international armed conflict (IAC) or non-international armed conflict (NIAC).(Pereira, 2016) According to a report by International Commission of Jurists, the word corporate complicity is defined as,

“Frequently, the term is not used in the legal sense denoting the position of the criminal accomplice, but rather a rich and multi-layered colloquial manner to convey the connotation that someone has become caught up and implicated in something that is negative and unacceptable. Such use of the term has become commonplace in the context of work on business and human rights, and it has provided a tool to capture and explain in some simple terms the fact that companies can become involved in human rights abuses in a manner that incurs responsibility and blame.”(“Corporate Complicity & Legal Accountability," 2008)

Corporate complicity can be done in different forms such as joint criminal enterprise, conspiracy, instigation, and procurement.(Maassarani, 2006) Corporations are involved in violations of human rights through all these forms not only in peace time but also in situations of armed conflicts throughout the history of modern civilization.

1.1.History

Corporate complicity is not a modern concept, and its roots can be found in the emergence and expansion of modern corporations. History shows that every big corporation whenever had an opportunity to exploit humanity for the sake of their individual business interests, they did it without any fear of conviction. There are a lot of examples which shows the involvement of corporations in violations of human rights either directly or by aiding or abetting.

1.2.East India Company

Throughout its glorious rule over the subcontinent and other territories, the giant East India Company was involved in the violations of different civil and human rights.(Sahni, 2013) East India Company was not only involved in illegal activities such as corruption and bribery but also in cross human rights violation throughout its timespan in the subcontinent particularly during the Indian Rebellion of 1857.(Robins, 2002)

1.3.Holocaust

Adolf Hitler is known for one of the most gross human rights violations of notorious Holocaust. It was not possible that much smoothly without the helping hand of the business giant IBM as it was not only involve directly but also through its subsidiaries for the purpose of aiding and abetting the Nazis in efficient asset confiscation, ghettoization, deportation, enslaved labor, and eventually, annihilation.(Black, 2012) IBM in order to generate enormous amount of revenue provided its services to Nazis’ for collecting data of Jews by providing

Hollerith punch card technology which was the best possible technology available before the computer to achieve that purpose.(Black, 2012)

1.4.Modern Times

As the market for corporations grow with the passage of time, the demand also grows which results in increase of human rights violations by big corporations to generate maximum profit and comply with their increasing demand. Corporations in the recent past are no exception to those gross violations.

1.5.Guatemala

The United Fruit Company, a US based Corporation in 1950s was involved in gross violations in Guatemala.(Sundell, 2011) It not only along with CIA overthrew a democratic government but was also involved in support of the dictatorship to suppress the civil rights of the people and most importantly their gross human rights violations.(Kinzer, 1999).

1.6.Colombia

In 90s, Big Oil Corporations were involved in gross human rights violations by aiding and abetting the armed forces in armed conflict within the territories of Colombia.(Pearce, 2004) According to a Human Rights Watch's report, oil companies were responsible for generating main revenue for the government in the form of taxes which was eventually used in the armed conflicts resulting in the gross human rights violations.("Colombia: Human Rights Concerns Raised by the Security Arrangements of Transnational Oil Companies," 1998)

1.7.Angola

In Angola, oil companies like BP—Amoco, Elf, Total and Exxon and the diamond traders like de Beers were involved in aiding and abetting the Angolan Government's gross human rights violations and its military expenditures.(Reynolds, 1992) The Government was aided and abetted by the oil companies while in opposition to that the rebel group UNITA was aided and abetted by the diamond traders as they were in the control of diamond extracting areas. Both the Government and UNITA were involved in gross human rights violations such as "torture, disappearance, summary executions, indiscriminate killing of civilians, pillaging, arbitrary recruitment into the military, forced displacement, use of indiscriminate weapons such as antipersonnel landmines, harassment of the political opposition, and restrictions on the press" by the Government and "summary executions, torture, mutilations, abductions of women and children, hostage-taking, and restricting the movements of civilians" by UNITA.("The Oil Diagnostic in Angola: An Update," 2001)

1.8.Burma

In Burma, Unocal Corporation along with the military government of Burma known as SLORC (State Peace and Development Council) while building a natural gas pipeline across that country's southern panhandle was involved in the gross human rights violations as per reports of different human rights organizations.(Lawrence & Tolley Jr, 2003) According to their reports the Government while agreed to provide security to the company was involved in

the use of force against civilians surrounding the pipeline areas, threatening them and for purpose of building new roads evacuated the villages by terrorizing them.(Lawrence & Tolley Jr, 2003)

1.9.Pakistan

According to the report by Democracy Reporting International, Pakistan is no exception to this general pattern and on daily basis both reported and unreported cases of human rights violations by the business entities happened in both rural and urban areas.(McPhail & Adams, 2016) Companies particularly security companies are involved in those violations especially in the armed conflict areas of ex-FATA (now part of Khyber Pakhtunkhwa province) and Baluchistan.(Grare, 2013) It will likely to increase with mega project of CPEC as Chinese companies have also a history of involvement in human rights violations particularly in armed conflict areas of Africa and since the route of the project is mainly through conflicted areas of Baluchistan(Saleem, 2017) and also some parts of ex-FATA(Shulin, 2014), the chances of human rights violations in those areas by the big corporations are higher.

1.10. Chinese Corporations

Chinese corporations are also involved in the gross human violations either directly or by aiding or abetting the main violators. They were involved in such violations mainly in Africa where for maximizing their profits and availing cheap labors, they exploit the civil and human rights of the civilians.

1.11. Sudan

China National Petroleum Corporation (CNPC) along with PetroChina was involved in serious human rights violations by aiding and abetting as a main revenue generator for the Government of Sudan which initiated genocide against one of the tribes of the country.(Taskforce, 2007) These corporations helped the government to expend its military expenditures which cause in the mass human rights violations and international crimes.(Taskforce, 2007)

1.12. Zambia

Chinese mining firms, such as China Non-Ferrous Metals were involved directly in the mass violations of international labor and humanitarian laws in the copper mining industry of Zambia.(Norley, 2013)

2. International Humanitarian Law

International Humanitarian Law (IHL) is a set of rules which governs the armed conflicts.(ICRC) It is also known as law of war or law of armed conflict.(ICRC) One of the purpose of IHL during an armed conflict is to protect those persons which are either not part of an armed conflict or no longer taking part in the armed conflicts.(ICRC) It is meant to reduce the effects of armed conflicts.(Goldstone, Smith, & Smith, 2009) It is developed through customary practices of militaries throughout the history of warfare.(Henckaerts, 2005) International Committee of the Red Cross (ICRC) played an important role in the development

of the IHL by laying foundations to the development of different conventions of IHL, most importantly of Geneva Conventions.(Henckaerts, 2005) It is applicable to both International Armed Conflicts (IACs) and Non-International Armed Conflicts (NIACs).(Pejic, 2011)

2.1.International Armed Conflict

According to the Article 2 of Geneva Conventions of 1949, IAC is an armed conflict between two states.(Demeyere, Henckaerts, Hiemstra, & Nohle, 2018) The definition will apply even on those situations where a state just show the possibility of using armed force against another state.(Demeyere et al., 2018) The presence of possibility is more important than the reasons and intensity behind that armed conflict.(Cross, 2008) There are situations in which it may be an IAC even without recognition of it by the parties to the conflict as IAC.(Cross, 2008) In addition to that Additional Protocol-I also includes fight against external invasion, against racist regime for national liberation and against colonial domination in the scope of IAC.(Schindler & Toman, 2004)

Whenever a state opts for use of armed force against other state it will amount as an armed conflict.(v Tadic, 1995) This principal definition was laid down by the International Criminal Tribunal for the former Yugoslavia (ICTY) in Tadic Case.(v Tadic, 1995)

2.2.Non-International Armed Conflict

Non-International Armed Conflict according to the common Article 3 of the Geneva Conventions, is an armed conflict going on in one of the State Parties to the Conventions which is not of international nature.(Bassiouni, 2001) It can be between the State and non-state actors and also can be between two non-state actors.(Chifflet, 2006) But supplementary to that, the definition prescribed in Article 1(2) of the Additional Protocol-II which excludes internal insurgencies from the definition of NIAC and required control over territory by a non-state actor, as a requirement for an armed conflict to be qualified as NIAC.(Schindler & Toman, 2004)

If we follow this definition, then it excludes the conflicts going on in Baluchistan and ex-FATA from category of NIAC and made it to be treated as an internal insurgency. But it should be kept in mind that the definition in Additional Protocol-II is only developing and supplementary to the definition in common Article 3 of Geneva Convention of 1949 without tend to modify it.(Schindler & Toman, 2004) In addition to that, Article 8, para. 2 (f) of the Rome Statute also confirms the existence of NIAC without fulfilling the criteria set by the Additional Protocol-II.(Cullen, 2007) ICTY also in the Tadic Case reconfirm the definition of common Article 3 of the Geneva Conventions.(v Tadic, 1995)

In the light of the above discussion, it can be established that the armed conflicts going on in the areas of Baluchistan and ex-FATA can be treated as NIAC.

3. China-Pakistan Economic Corridor PEC

China Pakistan Economic Corridor (CPEC) as a part of ambitious Chinese plan of the One Belt One Road (OBOR) initiative, is a major economic and strategic development collaboration

between China and Pakistan.(Xiguang, 2016) It was initiated with the goals to not only take an active part in the global economic governance but also to utilize the strategic importance of the locations such as Gwadar Port.(Xiguang, 2016) China and Pakistan are known in the international community for their friendship and utmost support for each other in all the aspects whether it is economically or strategically throughout the history.(Khan & Khan, 2019) With this project they will bring this relation to new peaks by a major strategic shift towards bilateral trade and its expansion and promotion.(Khan & Khan, 2019) The project is of huge importance to both countries as Pakistan will gain benefits in the shape of infrastructural and economic developments while China will utilize it not only for the development of its one of the most underdeveloped province i.e. Xinjiang but it will also help China to have larger strategic impact on the region.(Irshad, 2015) The project will also likely to open flood gate of opportunities to the Chinese companies to not only invest in Pakistan but also establish industries in Pakistan.

3.1.Companies' Arrival and Potential Risks

China has being planning in accordance with the master plan known as 'Made in China 2025' to made itself one of the giant of manufacturing powerhouses.(Wübbeke, Meissner, Zenglein, Ives, & Conrad, 2016) China is planning to shift its policy towards the development, modernization and growth of the industries.(Wübbeke et al., 2016) But on the other hand China is also concerned about the climate and other damages that this developments will bring which will result in the shift in its policy and also to abandoned the existing practices, equipment and infrastructures.(Pkistan, 2018) The answer to these concerns is not to let the industries closed but to shift those industries to developing countries such as Pakistan and CPEC will provide this opportunity.(Pkistan, 2018) This will mark a new possibility of arrival of Chinese companies in Pakistan and to establish their industries.

Keeping in mind the route of CPEC and the possible locations of industries majority of which is in the conflicted areas of Baluchistan and ex-FATA and also the history of abuses of Chinese companies in conflicted areas, the possibility of violations by Chinese companies in those areas is very much present. In order to prevent those violations from happening Pakistan need to work properly on the existing laws and also design a proper framework. Possible way-out for Pakistan might be;

- The threat of violations in the armed conflicts' area is always greater because of the absence of any proper system of check and balance. The solution to this problem is better implementation of IHL.
- Pakistan can protect basic human rights of civilians of those armed conflicts areas not only from the parties to the conflict but also from the big corporations which will likely to expend their operations to those areas due to CPEC.

3.2.IHL Conventions

Pakistan rectified the Geneva Conventions of 1949 but rectification of Additional Protocols and statutes like Rome Statute which mainly deals with NIAC is still not done.(ICRC) Pakistan needs to rectify these conventions/treaties for the better implementation of IHL as well as for the introduction of proper framework to eradicate already going on violations and the chances

of increase in its number due to the corporations' arrival to these armed conflicted areas.(Harland, 2006)

3.3.National IHL Committee

Different countries to minimize the effects of armed conflicts and for the better implementation of IHL, established National IHL Committees.(Betancourt) Sri Lanka, for instance, established its National IHL Committee in 2000 and result of the efforts of the said committee along with the support of other organizations, Sri Lanka is now party to the Geneva Conventions of 1949, the Convention on the Rights of the Child and its Optional Protocol, the Hague Convention on the Protection of Cultural Property, Conventions banning Biological Weapons and Chemical Weapons and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its first four protocols.(Andersen, Poudyal, Abeypala, Uriarte, & Rossi, 2020) Pakistan needs to follow footsteps of other developing countries to establish a National IHL Committee which will not only help it in the better implementation of IHL but it will also deal with the potential threats from the corporations of violations of human rights in the armed conflicted areas.

4. Conclusion

Corporate Complicity is a reality which cannot be denied especially in the context of violations of human rights in armed conflict areas. There are several armed conflicts going on in different areas of Pakistan and there are reported human rights' violations in those areas by both state and non-state actors. CPEC which will result in the arrival of big corporations in Pakistan and particularly in those armed conflict areas will likely to have increase the potential threat of human rights violations in those areas. In order to tackle those threats, a better implementation plan through a body of National IHL Committee will likely have results in a greater benefit of the country.

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