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Review

Guantanamo: The United States in dispute with international law

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After the Second World War, to establish a modern, lawful and world wide system in relation to the chaotic and tense world of postwar, the United States led a new challenge for protection of human rights and free trade. Now, in reality, the question is why does the United States pursue the violation of those laws that had been established by itself in a period of time? The matter of utmost significance, in this article is Guantanamo, the military camp in Cuba and the lamentable situations of the captives, moved there mainly from Afghanistan and also from the other places in the world. In fact, the question is that, is the world at the threshold of a modern system that powerful governments could violate the vested rights of the other nations and how do the recent actions of the United States in relation to Guantanamo have imperiled the international justice, and what hazards will entail in the future?

Key words: Guantanamo, United States, Pakistan, violation of the international law, modern worldwide system.

INTRODUCTION

Although there was a fresh determination to create a front line to lead a battle against terrorism, many Arab estates and above all the Pakistan government found themselves in a situation that demanded a complete cooperation with the US government without making any objection or obstacles on the new task called Global War on Terrorism and the emerging of Guantanamo is based on such a cooperation to make the US feel free to do whatever they want to stop terrorism after 9/11, but there is a gulf between the main aims and the final achievement.

To this end, the combination of efforts to defeat the terror wings located in the north provinces of Pakistan was considered in the promises given by the highest authorities of Pakistan government but as the time progressed, there were little signs of any effective result from the activities of joint forces of the US and Pakistan.

Four years after President George Bush announced that key Al Qaeda terrorists had been successfully neutralized due to security measures led by president Musharaf, they had to largely revise this statement in 2007 simply because the Al Qaeda network was live and operational and all the billions of dollars poured into the hands of Pakistan government did not end any where near a convincing attitude that the war on terrorism in Pakistan is in fact blocking the air tube of terror bases in Pakistan. So, however Pakistan agreed to join forces with United States as an ally in the Global War on terror, condemned terrorism, permitted U.S. military support operations and paved the US-Pakistan joint counterterrorism efforts in military and law enforcement but Al Qaeda gathered strength and support in Pakistan's tribal areas which created the idea that the more situation is tightening in Pakistan against AL Qaeda the more complication arises on war on terrorism in Pakistan (Tellis, 2008).

In January 2002, some alarming pictures were shown on TV screens and the first page of the newspapers throughout the world. Some pictures showed bound men, rigged in their orange uniform, knelt and inclined in the face of the armed guard in an incommodious area surrounded by barbed wires. Others showed some men clothed in orange, bounding and wearing sack on their heads and smoked glasses on their eyes in an airport stowage. These pictures were the first view related to the captives of the war on terror, followed the terrorism attacks of 11 September, and considered as a response of the United States' military and its military allied against the terrorists.

These pictures that imbued the sense of fear and represented the collapse of the human traits, were confirmed by messages that frequently reflected and

affirmed on the statements of the heads of the United States; as an example, President George Bush obviously condemned these numbers to the villainy and that these people belong to a group of the most picked villain groups who devoted themselves killing millions of people in the United States, and in a high probability, they hold some information that the United States will need to pursue the war on terror (Ranter and Ray, 2004).

Soon, it is determined that upon requests of George Bush, the detention of these so – called wicked people will remain in force, as long as a definite decision has not been made about them. The reason for selecting Guantanamo Bay; however, as a concentration camp for these group was that the internees were excluded from the jurisdiction of the United States venues in this area, and the administration of the United States believed that this geographical situation could absolve any responsibility for providing legislative protection from the United States government (Rose, 2004).

In fact, these people have entangled into a legal dungeon, and thus they have been lapsed any claim of objection and any access to the court or venue. Also, it is possible that without realizing the reasons of their charge, they remain in apprehension and be the subject of many inquiries by the United States government unlimitedly until the end of the war against terrorism and forever, if necessary; or even, after the government takes the military policies, they may be sentenced to the death penalty before appearing in the court. They have, in other words, no authorized privileges and rights originated from the international law. Particularly, these people are deprived of the privileges of Geneva Conventions (ratified in 1949), that the cause of confirmation was to consider the least rights of humans in the armed animosities, to protect of the combatants and the civilians against the events due to the military conflict (Rose, 2004: 28-29, 96).

However, any claim for summoning and inquiring of the detainees in a court is one of the main rules of the international law; those rules had been codified by the stimulation of US and UK to respond to the terror of the treaties and the Second World War (Rose, 2004: 28-29, 96). As a result, any states, unless the verdict of a law court, never could deprive the liberty of any human, and this is the base that is always irrevocable for any civilian in any states.

INTERNATIONAL LAW AND BUSH ADMINISTRATION' LEGAL REASONS FOR VIOLATING IT

The rules and regulations of the international law, also enforceable to the internees of Guantanamo, are presented in two separate, but dependent groups of treaties, that before the event of Guantanamo, the United States had played a main role for proclaiming the global protection of these two groups. These two groups of the treaties include some indispensable rules related to the International Law and some regulations that are not dissolved by the occurrence of any event. The first collected rules included in the International Agreements are those rules that constrain to direct a war, particularly, to explain a demarche for the hostility parties and or the interned civilians. These rules are known as the International Humanitarian Law, codified in the mid-nineteenth century; though, they have very long historic background. The second and more recent collected rules are to guarantee the fundamentals of human rights, and their stabilization returns to 1940s, that is, after the Second World War. By adducing three reasons, although, Bush administration entitled itself to depart from the International Law in conflict with the internees of Guantanamo (Brownlie, 2003).

First, owing to the fact that the internees of Guantanamo are regarded as the guerrilla by the previous president of the United States, they are not eligible for the human rights and the international humanitarian law. It was said that the internees of Al-Qaeda were a part of an underground organization, that could not be imputed as a state or a party, so its members were not considered as the internees; similarly, as the detainees of Taliban do not have the characteristics of the western soldieries, specifically, some certain and known badges, like the Al-Qaeda members, they are deprived from the rights of an internee. In other words, none of the members of these groups are eligible for possessing the rights and privileges stated in the 1949 Geneva Convention or any other treaty (Sanda, 2004).

On the basis of the second reason, since these detainees are out of the United States and through a leasehold of Cuba (Guantanamo), they are not eligible for the irrevocable human rights and international humanitarian law, and according to the United States Solicitor General in the Supreme Court, that could not exhaust this subject in more details, it is impossible to execute the international treaty related to political and civil law beyond the subordinated country of the United States (Sanda, 2004: 246).

According to the third reason, none of the issued treaties, such as the 1984 Geneva Convention against terrorism could impose the other obligations, except those obligations already included in the United States constitution, to the government of the USA. Hence, an obligation included in the United States constitution certainly, is applicable for this government, and because the aforementioned reasons accorded completely with the constitution of the USA during the detention of these people, the subject of the international law was put under no consideration (Sanda, 2004: 248).

In fact, according to the aforementioned reasons, the representatives of Bush administration had designed a plan that put the United States beyond the limitations of the international law. Thus, either the international law

was not applied, or if so, there was no applicable law for the internees; that is, the USA could freely and completely deal with them according to its own will.

EVALUATING THE OPERATION OF BUSH ADMINISTRATION FROM THE POINT OF VIEW OF THE INTERNATIONAL LAW

The International Humanitarian Law has been systematically cited by the United States during the capturing of its troops, and has been executed by the agreement of this country. Therefore, the military advocates of other countries are not as well-informed as the United States military advocates about the included rights in the standards of the International Humanitarian Law (Saber, 1999).

The date related to the codifying of the rules of the international humanitarian law into the recent form is 1868, when the representatives of 16 countries have attended the St Petersburg session, and by representing a declaration, they prohibited the use of weapons with a small caliber during the war (Documents on the Laws of War, 2000).

Later in 1899, a conference, called the International peace conference, was convened by the creativeness of Nicolas (II), the Russian czar, in Hague of Netherlands. As this conference was to constitute the standards and necessities in respect of the demarche with the prisoners and dissociating the combatants from noncombatants, it was incomparable in its own nature. On the basis of this convention, the demarche with the combatants and some other people, known as martial prisoners, could not have been inhuman and unconscionable, and its purpose was solely to drive out these prisoners from the battlefield. This people could be interned and coerced to work, but instead, the detaining governments, with extrapolating the quantitative and qualitative conditions of their subordinated powers, bound to supply food, clothes and domicile to them. With respect to these standards, further, if one of the martial prisoners is subjected for interrogation, he will be obligated to tell his identity and rank, and if avoiding, he will be divested from all privileges allocated to his fellow internees (Documents on the Laws of War, 2000. Article 9).

Implicitly, according to this international act, the power of the detainer was severely confined in interrogating the combatants and the convention assumed that the war and the detention time are to be confined; moreover, after gaining peace and ending the war, the detainees should go back to their homeland, as soon as possible. Later in 1947, the court-martial of Nuremberg asserted that the bondage in the wartime is neither the vengeance nor penalty, but also it simply is a detention for protection and its purpose is to prevent the detainees from more attending in the war (Sands, 2003).

Following the tough experiences of the Second World War, the standards of this convention were reviewed and readjusted, and the International Committee of Red Cross (ICRC) represented new plans, such as the International protection for Humanitarian Law.

In 1949, a political conference confirmed four new Conventions in Geneva, including the Third Geneva Convention (GCIII) for the demarche with the internees. This Convention chiefly increased the scope of supports and the related details. Owing to the clause (III) of this convention that was repeated in each four conventions in 1949, it was known as Third Common Clause. This clause determined some minimum standards for any person involved in no armed struggles, some of which are as follows: preventing to assign punishments and to conduct them, without prior hearing in a court where convened regularly and provided all essential juridical warranties for any person; fair dealing with prisoners and protecting them against rankly and violent actions, as well as the curses and public inspection of beliefs.

Clause (IV) of the convention was related to the determination of a variety of prisoners, who are known as the internees. Clause (V) represented a process, considered when the position of the prisoner was unknown, and when there was some doubt about whether the prisoners belong to the mentioned groups or not, they were protected by the mentioned convention, until their situation was determined by a judicial court.

This requirement is the pivot of a struggle, propounded in relation to the demarche with the detainees of Guantanamo. According to the reasoning of Bush administration, as there was no doubt that the captives were detainees, it was impossible to provide them with a judicial and neutral court for determining their situations. Surprisingly, this claim directly contrasted with military laws of the United States, in which if a detainee involved in the hostile actions, he may lay claim to be eligible for having the conditions of an internee (The Taliban, Al-Qaeda, and the Determination of Illegal Combatants, 2002). Because of this evident transgression, many United States' military advocates and State Department are really bothered about adducing this issue against the United States had been irritated. With this demarche and the unilateral resolution without any doubt, the United States government tried to legitimately ignore the existed warranties in the Third Geneva Convention. So, those rules, determining how to lead an interrogation or established the detention conditions, had been considered irreconcilable.

Furthermore, when the laws of the 1949 convention had been reviewed later, one of the two protocols added to the 1949 Geneva Convention had been allocated to support the victims of the armed conflicts internationally and the other to support them against those internal conflicts. According to the protocol (I), as those militaries without the conditions related to the prisoners of the war had been punished for their committed crimes, they had also been eligible for receiving corresponding protections

or the benefits of the 1949 Geneva Convention related to the internees. According to a common hypothesis postulated in this protocol, individuals should not be deprived of the least legal protections. This obligation also provided the necessary warranties for the members of Al- Qaeda and Taliban, whether the terrorist or the illegal combatant, their rights could not be influenced by the individuals' nationality. It also prohibited any violence, including a variety of torments and/or any menace, as well as any outrage, such as obscene or scornful acts and any reprehensible curses. In addition, the detained person must be aware of the causes of his detainment as soon as possible and he must be released as quickly as possible unless he had committed some crimes, and if there is a punitive interrogation, the detainee must benefit from the privileges of well-known principles related to the trial (Eisner, 2005).

On the other hand, the United States was one of the members of the Hague Convention (IV) and even it assigned the Geneva protocol (I). Accordingly, when President Bush called the detainees "the assassin or terrorist", in fact, it was the International Law that had been disregarded. Not only these declarations made it impossible to have a fair trial for the detained people, but could decline the probable consideration of above standards for the United States during the detention of its citizens.

The instrumental issue, though, propounded in relation to the international terrorism was that whether the proceedings were under the occurrence of a military action – and the necessity of enforcing the humanitarian law – or not. If the answer was negative and the conflict with the International Terrorism was not regarded as a military action, the issue of the rules in the criminal law, including the human right may be considered as a more recent affair in the international arena.

There had been no broad principles in the purview of the International Law until 1945 so that the authority of governments over their nations could be generally confined to the decisions of their judicial court. After the world war (II), the allied countries under the leadership of the USA and UK planned for a system, including the minimum rules related to the human rights, to take the immense steps to impregnate the existed hiatus in the laws that were supposed to be followed universally. With codifying the Atlantic Charter, the then administrators of two states, USA and UK, had bound the allied to a tenet that all human beings should live without any fear and terror in all countries (Brinkley, 1994).

Later in June 1945, the United Nations Charter has changed the tenet by putting more emphasis on believing the fundamental human rights. The Charter has declared and explained one of the fundamental goals of the United Nation Organization as the increase in the respect for the human rights and the basic freedoms free from any racism, gender policy, language and religious preference. The United Nations Charter had been ratified within a year and its members had established a commission with respect to Human Rights (United Nations Treaty Series, 2003/2005).

Two years later, the members of the United Nations General Assembly (UNGA) had ratified the public announcement of the human rights unanimously (Mertus, 2005). This announcement emphasized on the right of living, freedom and the security of all human beings, and prohibited the arbitrary arrest, and specified that any detained person, for accessing his rights and to know about his obligations and any criminal claim against him, is authorized to attend a judicial and dependent court and fair and public trial (Mertus, 2005: Article 10).

The announcement has also asserted on the right of having the necessary warranties to negotiate the processes of punitive interrogation, and has expressed the basic and fundamental laws at international level (Mertus, 2005: Article 11).

These laws were considered as the basic laws of all human beings in the world, and they were not a grant, denoted or withdrawn by vagary or desire of someone. The approval of a global treaty as it provokes commitment legally, had been continued for 20 years, and finally, the International Convention of civil and political law had been completed in December 1966, after accepting and incorporating enough countries, it became irrevocable since 1976. In 1992 during the presidency of George Bush, Senior, the United States joined the society of signatories of the aforementioned treaty. This treaty was about the issues related to the detainees, and generally followed and involved approach in the public announcement of the human rights. United Nations Commission on Human Rights as a supervisory reference had asserted that the effecting domain of the treaty was not only limited to the actions occurred in the territory of a state (Kampfiner, 2003).

As a result, the position of Bush administration about Guantanamo had been misevaluated wholly, and as Guantanamo Bay has been exclusively subdued by the United States and situated on the jurisdiction domain of this country, there is no doubt about using the necessities of the convention for it.

MODERN LEGAL REGIME AND THE UNITED STATES ACTIONS

Today, whatever had been revealed due to the disclosure of a series of the domestic views is that after September 11, 2001 event; few numbers of the state attorneys had concentrated on which a modern legal regime could be similar to. To decline the stresses imposed on the US government due to continuing war on terror, the political authorities of the US government had asked their attorneys to deliberate and represent a specific policy.

One of these had included the right for deducing the utmost possible information from the detainees. To do so,

it was necessary to constrain or even to suspend those international laws which limited the interrogation techniques. In December 2001 and January 2002, there were severe discussions between the State Department and the Justice Department of the United States; the former, obviously sought for considering the international law, if possible, and the latter, wanted to constrain them. Finally the mainstream of the Justice Department and Rumsfeld could overcome to that of the State Department, and the reasoning of the foreign minister of The USA, Colin Powell, for essentially trying of Al-Qaeda and Taliban troops had been denied (Lieven, 2005).

Finally, on February 7, 2002, Bush accepted the education of the Justice Department and firmly resolved about not considering the detainees of Al- Qaeda and Taliban as the prisoners of the war (internees). Indeed, omitting the United States from the world justice system was not the direction that immediately adopted after the 9/11 event. On September 12, 2001, the United States appeared in the United Nations Security Council (UNSC), then the Council approved a resolution unanimously in which while condemning the terrorist attacks, the international community has been addressed to increase its efforts to anticipate and stop the attacks of terrorism. The purpose of referring the word “terrorism” to these attacks was to obviously surrender the criminals to the criminal law process of international community related to conflict with terrorism but the resolution 1386 of the Security Council overstepped and recognized the fundamental rights of defense for individuals and groups. By some explanations, this matter caused to entitle the United States to use power according to the rules of International Law, and of course, it was not accidental to split the resolution which finally let the United States to use its military forces in Afghanistan (Blix, 2004).

One of the immediate results of Afghanistan war was to arrest a mass number of the civilians who were suspected of helping Taliban government and or Al-Qaeda network. But what would be happening to the detainees, so-called terrorists or assassins? Would they be either considered as the prisoners of the war or as the normal criminals that are going to be judged by the courts in the USA?

Some commissions had been formed under the command of Bush in which they had the responsibility for primarily investigating the affairs of those foreigners suspected to infringe the rules-governed on war. The military commissions, however, were those that had been led secretly and the legal prosecution had been probably settled by confidential evidences. The venue of the military commission included laws that were related to terrorism and crime and had not been regarded as a part of the humanitarian laws or war laws. The culprits had been deprived of the access to the courts of the other countries or any other international courts and they could not choose their intended lawyers. Furthermore, the relation between them and their own lawyers had been limited (Lieven, 2005: 156).

The necessary conditions were provided for prevention of applying the Geneva Conventions. The remaining problem was to determine a location for keeping the detainees, where the risk of legal tensions could be totally under control. The state attorneys, in this respect, had cited to one of the acts of the United States Supreme Court in 1950, in which the cases of the non – American captives and detainees outside the United States domain had been considered unreferable to the federal courts of the USA. This way of judgment would evidently provide the necessary solutions; in other words, seizing the detainees outside the USA could prevent the legal proceedings of the United States from hazardous effects, and so allow taking a more arbitrary approach for the interrogation methods.

The naval base of Guantanamo Bay was the oldest military base of the United States outside its domain. This base was located in the southeast corner of Cuba and in a distance of 400 mile of Miami in Florida, the first date it was leased returns to December 1903, when a lease related to 45 square miles of Guantanamo Bay had been concluded for constructing a coal loading station. The lease had been renewed in 1934 and extended in the course of time. After converting it into a camp for Haitian refugees in 1990s, the efficiency of this place declined. Because of a very faraway interval between the United States and Guantanamo, it completely allowed the intelligent officers to fly over to the camp to gather information from the detainees. So, it seemed that Guantanamo was the best choice. It appeared foolish, but United States depended on an old contract with Cuba to justify its actions for withdrawing its obligations under other agreements, it was a logic encouraged by the new conservatives and the counsellorship elements for the Departments of Defense (DoD) and Justice (DoJ) of Bush administration.

GUANTANAMO DESCRIBED BY RELEASED PRISONERS AND THE RED CROSS STANDS

In January 2002, the British Foreign Office verified that three detainees have had the British citizenship (BBC, 2002). Two other people from the UK, called Moazam Beig and Firooz Abbassi, had been arrested in Afghanistan and were the first detainees of Guantanamo Bay. The Pentagon did not represent any information about them and they did not receive any legal assistance or proceeding until December 2004.

The reporters had never been allowed to have conversation with the prisoners in Guantanamo, but after elapsing just several months it had been possible to gain a description of Guantanamo from the point of view of the detainees. They had no access to the lawyers, and it took several months for them to correspond with their families, their letters were also censored. The International

Committee of Red Cross, of course, had reported its worries about the mental health of the detainees in Guantanamo. In a meeting on September 9, 2002 between the Red Cross Deputy, Daniel Cowley, and Rick Becas who later would engage to command the Camp Delta in Guantanamo, it had been said that about 53 detainees had received the mental health consultation. Cowley had requested Becas to decrease the stress degree of the detainees by gathering them together but his request had not been accepted. One year after his visit, the international Red Cross has informed the media of their worries about the situation in Guantanamo. Their spokesman declared that the Red Cross had observed the cases indicating the terrible tensity of the detainees' mental health. The Red Cross was bothered about the aggravation of the existed conditions (Saar, 2005).

Five British detainees were released in March 2004. Three of them - Shafigh Rasool, Rooh-Al-Ahmad, and Asef Eghbal- asserted that while there was no evidence denoted that they took any weapon and also the fact that they had not been captured in the war field, but they had been interrogated soon after arriving at Guantanamo. In summer 2003, the inspectors of Guantanamo attempted to prove that they were the members of an instructive terrorist camp related to Al-Qaeda and they cooperated with Osama bin Laden and Mohammad Ata, the leader of hijackers in 9/11 event. But eventually, the intelligent service of Britain could documentarily confirm that the claims were unfounded. According to their statements, the hearing had continued for several hours and they had received more than 200 interrogations during their detainment in Cuba (BBC, 2002*)*.

The other liberated detainee of England, called Taregh Dergol, explained his experience in May 2004. He was sent to Guantanamo after the primary detention in Bagram of Qandahar, he claimed that for capturing him, the American forces had paid to the devoted forces of the North Alliance about $5000. He had also claimed that he had tolerated the solitary confinement and a hard interrogation.

Following the direct echelon of English government about the conditions of English detainees in September 2003 and Bush's formal visit to Britain in the next month, finally the United States Supreme Court took its first vital steps to confine what had been called " the unlimited enforcement of executive power", and had given its judgment, upon an obvious turnabout, about the lawsuit of some prior detainees in Guantanamo as well as the right for examining the legitimacy of the unlimited detention had been allotted to the federal courts of the United States. The English lawyers had obdurately involved in a juridical war more than two years ago to convince the federal courts of the United States to revise about the detainment of these two persons. Finally, three detainees along with Dergol and the other British detainee had returned to England on March 9, 2004. They retrieved their freedom without any charge and simply by mediating the political settlements, following the interrogations of about hundred hours, it had been determined that they had not been terrorists and they had not been basically considered as a threat for the society (Levinson, 2004).

Indeed, the detainees of Guantanamo had not been from a country engaged in a war against the United States and they had denied committing any violation or crime. Mainly, their charge had not been apprehended and they never had accessed to any administrative tribunal, most of all, they had been detained in an area located in the administrative jurisdiction and under the management of the United States.

According to the statement of some American judicatures, if the detainees had been captured within a military area, the military necessity might have explained their detention without any minutes for sometimes, but the increase in the detainment period for several months and years, in other words, the endless detainment due to the military necessities had been turned into a poor and baseless excuse (Levinson, 2004). This method of judgment had a scathing impact for the totality of the legal strategy of Bush administration.

CONCLUSION

The demarche, undoubtedly, for the detainees of Guantanamo had breached the Geneva Conventions and its Protocol (1), and had clearly contrasted with the standards of the human rights. The United States ignored the least rights that the international law had considered for the prisoners of war. This was the same logic sense that included in the same new legal regime of the political authorities for government of the United States, that had caused to justify the detention of prisoners in a camp within the offshore of Guantanamo Bay and was a base for the government reasoning about the inefficiency of the Geneva Convention and the other international laws.

Guantanamo should not have existed at least in its recent form, so the Pentagon had asserted that it would be possible to use all alternatives, even to move the detainees into the United States. Evidently, the groups of detainees gradually were released, whose biography could be seen through many books and articles that demonstrated the tragedy of Guantanamo.

Guantanamo has fatefully influenced the life of many detainees and their relatives. Certainly, the unlimited detainment of these people under unknown conditions and without applying any legal proceedings had been contrasted with the most fundamental principles of justice. In all over of the Middle East, it became the image of a new form of injustice. Guantanamo had an essential negative effect on the modern world. The opinion that Guantanamo is dubious and arguable legally and morally has frequently been heard around the world.

Although nearly all the international organizations such

as the United Nations, Amnesty International, Non Governmental Organizations, Human Rights Organization, Human Rights Watch, European Union, and many of the world states objected to the US Government and demanded the US loyalty to the Human Rights and Geneva Convention for immediate closure of Guantanamo Camp and despite the President Obama's promise in 2008 to close the camp, but the camp still exist.

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