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RECRUITMENT OF CHILD SOLDIERS BY REBELS IN AFGHANISTAN: THE ROLE OF PAKISTANI MADRASAS

GHULAM MOHAMMAD QANET*
MOHAMMAD NAQIB ISHAN JAN**

This study investigates the link between religious schools, called madrasas, in Pakistan and recruitment and use of child soldiers in the long-lasting armed conflict in Afghanistan. A great deal of existing research on this and related topics has pointed to Pakistani madrasas as primary recruitment sites for the underage soldiers fighting in the armed conflict in Afghanistan, yet the precise circumstances on how the militancy entered the madrasa are insufficiently presented. The study examines the topic from the international law perspective as well as national legislations of Afghanistan and Pakistan. The bulk of the research relies on the use of doctrinal method. The relevant treaties, and the laws of Afghanistan and Pakistan are analysed. Additionally, the research uses qualitative textual analysis of relevant non-legal sources for the study. Research findings indicate that national laws of Afghanistan and Pakistan are congruent with international provisions on child soldiering. As a result, the study establishes that more underage combatants have been recruited from the Pakistani madrasas during the period of Soviet invasion of Afghanistan and the civil war that resulted in the Taliban assuming power in Afghanistan than it has been the case in the post 9/11 stage of armed conflict in Afghanistan.

INTRODUCTION

The relationship between religious schools called *madrasas* and militancy involving child soldiers in Afghanistan and Pakistan has caught the attention of numerous researchers, lawyers and policy-makers in the past several decades. Since the four-decade-long armed conflict or series of conflicts in Afghanistan has uninterruptedly seen a large number of underage combatants, the

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issue at hand has become more pressing and in need of examination, explanation and proposed solutions. More than a millennium old tradition of Islamic schooling under the institution named after the Arabic word - *madrassa*, and adopted in the main languages of Afghanistan and Pakistan to mean a religious school or seminary had never been linked to militancy until the late 20th century. However, since the Soviets unleashed their military means to spread their influence and communist ideology into Afghanistan – a country where Islamic teaching and culture have been the essential elements of ethos for about 1,400 years, then it was only natural to mobilise all available means to resist the clearly alien ideology. Thus, during the Soviet invasion of Afghanistan, under the approval and sponsorship of some Muslim Gulf states and the United States of America (USA), some *madrasas* in Pakistan started to openly preach and teach militancy to their students. Few researchers, scholars and policy-makers from the region or even from any country worldwide did at time look into the future repercussions of such unthoughtful propagation of militancy. During the 1980s, when the United Nations (UN) and many other international organisations were shaped by the reality of the Cold War, the international law was certainly less direct and consequential with regard to child soldiering; as a result, virtually no international pressure was directed to either Pakistan or parties to the conflict in Afghanistan to contain recruitment and use of underage soldiers in hostilities.

In order to gain a better grasp of the phenomenon of child soldiering, it is necessary to clarify a number of key terms, primarily the concept and reality of recruitment of child soldiers and the use of children in combat. Before children take part in actual combat, they need to be brought into the armed force or armed group in the procedure known under the generic name of recruitment. There are a number of ways by which children or young persons are allowed or made to join an armed force or armed group. For the purpose of clear and systematic presentation, the multitudes of these ways are categorised into three groups: compulsory conscription, forced recruitment and voluntary

recruitment (Happold, 2005 and Bainomugisha, 2011). One of the most common methods that is in accordance with national laws is known as compulsory recruitment or conscription, whereby the recruit is under legal obligation to perform military service for a certain period (Islamic Republic of Afghanistan, Ministry of Justice, 2014). Second, in situations of forced recruitment a military unit uses crude force to compel children into its ranks. Hence, children do not virtually have any choice to evade forcible conscription as they get kidnapped from their homes or public places and thrown into military or militia ranks at gunpoint (Achvarina, 2010 and Ballesteros, 2010). Third, voluntary enlistment happens when underage persons choose to enlist without force or threats and in the absence of legal provisions requiring them join the armed force or militia. In other words, children decide to become soldiers of their own will (Achvarina, 2010 and Ballesteros, 2010).

However, as the armed conflict in Afghanistan and elsewhere around the world have attested, the decision by children to enlist is made under circumstances that strongly pull the child in this direction. Numerous other factors such as lack of education and employment opportunities, abject poverty, orphaning and separation of children from parents and other family members, joining a military unit in order to seek revenge, and enlisting to benefit from sexual services act as less obvious pulling forces towards full-fledged soldiering (Topa, 2007). Soon after the step of conscription or enlistment is finalised, child soldiers are ordered to serve on capacities as any other soldier. Thus, child soldiers are used as scouts, spies or intelligence gatherers, drummer boys, messengers, porters, servants, cooks and cook assistants. In the more recent conflicts, underage soldiers have started assuming similar roles to adult fighters, such as regular soldiers, guerrilla fighters, cooks and human shields (Bosch, 2015). Contemporary conflicts have also highlighted the roles of both young girls and boys as objects of to carry out terrorist and suicide attacks (Jones, 2015). This wide range of capacities for the use of child soldiers therefore warranted a clarification and explanation.

THE CONCEPT, HISTORY AND EVOLUTION OF MADRASAS

Madrasa types of schools are nearly as old as institutionalised dissemination of knowledge in Muslim world. In fact, in the early centuries of institutionalised Islamic learning, *madrasa* was the highest and the most elaborate college of learning, where initially Islamic law was studied, but it also included in its syllabus the other essential sciences of the Islamic learning, such as sciences of the Qur'an and hadith (Siddique, 2009). According to Makdisi, (Makdisi, 1981) *madrasa* colleges directly evolved from masjid learning circle and the establishment of *khan*, or dormitory for students who aspired to further their learning for another period of about four to eight years after initial four years of study spent in masjid school. In other words, *madrasa* emerged soon after the masjid form of education was accompanied by the building of lodging for the needs of full-time students. The continuous nature of education in mosques and the requirements of proper lodging required sustained financial backing, and this was provided by the Islamic philanthropists who donated substantial amount of their property to be used under the regulation of *waqf*, or Islamic endowment (Makdisi, 1981). Therefore, the students of *madrasa* in the early period of Islamic higher learning were sponsored and supported by the means acquired through the institution of *waqf*. These features of *madrasa*, its focus on religious courses with strong emphasis on Islamic law and the reliance on *waqf* patronage, have remained largely unchanged in many Muslim lands throughout centuries until the present day (Makdisi, 1981).

One of the first *madrasas* founded in Muslim world was recorded to the Fatimid *madrasa* in Egypt established in the beginning of the 11th century (Anzar, 2003). This *madrasa* contained the core courses on Islamic law and other fundamental Islamic sciences. Moreover, the sources on this *madrasa* reveal that there were many books on astronomy, architecture and philosophy on the shelves of its library (Ahmed, 1987). Many of these books were later taken to Baghdad, where Seljuk Vizier rulers established a famous *madrasa* of their own, known as Nizam-ul-Mulk *Madrasa* of

Baghdad (Ahmed, 1987). In the 12th century, *madrasa* were founded within the Mughal Empire in India. These *madrasas* utilised the syllabus with a wide range of religious and non-religious courses. When Muslim rulers of India were challenged and toppled by the British colonisers, *madrasa* schools were marginalised by the secular schools where the medium of instruction was English. This socio-historical change resulted in the almost exclusive focus on religious courses in the *madrasas* throughout South Asia. One of the most prominent *madrasas* from the colonial period has been the *madrasa* founded in Deoband in 1867 (Vestenskov, 2018). From its establishment until the present, this *madrasa* provided regular salaries to its teaching staff, a sizable library, a distinctly religious curriculum of courses, regular examinations and certifications awarded upon completion of the study. This *madrasa* has exerted a lasting impact on most other *madrasas* that have been established in India and other countries of South Asia until today (Bano, 2010).

The Historical Evolution of Madrasas in Pakistan

Madrasa education, or Islamic college-level learning, has been one of the most important institutions in the history of Islamic learning. Throughout the Muslim world there have been numerous *madrasa* schools until the present. In some populous Muslim countries, such as Pakistan, these schools have proliferated in number due to both, internal and external factors. (Ahmed, 2009). The number of Pakistani *madrasas* saw rapid expansion ever since the founding of Pakistan and in 1980s the number of *madrasas* skyrocketed (Ahmed, 2009). Following the dissolution of the British colonial rule in India and the emergence of Pakistan as an independent state in 1947, many scholars migrated from Deoband to the newly-established Pakistan and concerted their efforts towards founding Deobandi-style religious schools in their new homeland. Not long after, two *madrasas* emerged: Darul Uloom Haqqania in Akora Khattak and the other one Banori in Karachi (Ahmed, 2009). Presently, majority of *madrasas* in Pakistan can be classified under one of the five types whose orientation draws

on the intellectual and political differences among the present day Muslims of the region. The largest numbers of madrasas in Pakistan are affiliated with the Bareilvi *Sunnis*, whose syllabuses and teaching are bitterly opposed to the literalist interpretation of Islam favoured by the Saudis. In addition to Bareilvi and Deoband *madrasas*, there are also Ahle Hadith or Salafi and Shi'ah *madrasas*. The more obvious and minute differences between these *madrasas* go far beyond the scope of this paper and they cannot be covered here (Siddique, 2009).

In the decades after the establishment of Pakistan, there was steady increase in the number of *madrasa* seminaries. One of the reasons for this development is certainly related to the rapid growth of the population whereas the other causes have to do with overall increased presence of Islam in the public life of Pakistan. With all the causes put together, the upward trend has maintained its pace until today (Ashraf, 2009 and Saleem, 2017). The rapid increase in the number of *madrasas* for purpose of *jihad* in the 1980s was followed by the rise of religious extremism that was directly affected by the armed conflict against the Soviet invasion in neighbouring Afghanistan, and to a lesser extent, to contain the influence of the *Shiah* teachings from the neighbouring Iran (Hussain, 2006). During this period, many countries, including the USA and Saudi Arabia, extended their aid to Afghan Mujaheddin fighters through Pakistani security services (Butt, Tahir M and Zahid Y, 2011). In their rush to deal a blow to the Soviets in Afghanistan, the US and Pakistani governments tolerated and oftentimes fuelled religious extremism in *madrasas* to spread as they expected the armed conflict against Soviets to take long time and require many recruits (Butt, Tahir M and Zahid Y, 2011 and International Crisis Group, Asia Report N°36).

In spite of the fact that these religious schools saw rapid rise in number, particularly in the last two decades of the 20th century, *madrasas* in Pakistan were not studied systematically in the period up to the 9/11 terrorist attacks. Ever since the 9/11 attacks many researchers and analysts have focused their interest on Pakistani *madrasas* and the link these schools may have had with the rise of

Al Qaeda and Taliban militancy (Blanchard, 2007, January). Some of these early post-9/11 studies have reached the conclusion that *madrasas* in Pakistan were breeding grounds for the militants taking part in the armed conflict in Afghanistan. These studies largely ignored the differences in intellectual and ideological outlook that existed in these *madrasas* thus levelling blanket accusation of propagation of religious extremism and intolerance against all Pakistani *madrasas* (Blanchard, 2007, January).

The overall number of *madrasas* and students studying in these schools started to increase rapidly during the period of Soviet invasion of Afghanistan. Prior to 1982, the number of *madrasas* in Pakistan stood at 13,000 whereas the figure of active students was nearly 1.7 million. Regarding the age of *madrasa* students, the largest portion of these students were between the age of five and eighteen, with a smaller section of those who pursued higher levels being older than eighteen. In the six-year period from 1982 to the end of the Soviet invasion of Afghanistan in 1988, about 1,000 new *madrasas* were added to the above-cited figure (Hussain, 2006). These *madrasas* were mostly located in the provinces bordering with Afghanistan, in North West Frontier Province and in Balochistan. These newly-established *madrasas* were controlled by two movements affiliated with hardline *Sunni* groups of Jamiate-e-Ulema Islam (JUI) and Jamaat-i-Islami (JI) (Hussain, 2006). These two movements collaborated with the Pakistani ruling party of the time as well as with the armed groups of Afghanistan who fought against the Soviet invaders and their local allies. Due to the proximity of these *madrasas* to the territory of Afghanistan, cultural and linguistic similarities between the Afghans and Pakistanis living in the vicinity, and the fact that there were millions of Afghan refugees sheltered in this area, many of the students enrolling in them were Afghan refugee children (Hussain, 2006). The commanders of the armed groups in Afghanistan needed large number of recruits to engage in combat against the technically superior Soviet invaders. Thus, they turned to these *madrasas* in Pakistan for recruitment of boys under eighteen for the use in armed conflict in Afghanistan. According to Lys out of more than

10,000 *madrasas* in Pakistan, 15% were found to be preaching and teaching extremist syllabus, and some of them even provided military training to students (Lys, 2007). Thus, *madrasa* graduates who had been exposed to continual preaching of extremism and intolerance towards all people, non-Muslims and even Muslims who did not approve of narrow and literalist interpretation of certain sources of Islamic learning, were relatively easily persuaded to join the ranks of the Afghan armed groups (Kronstadt, 2004, December).

The number of *madrasa* seminaries continued to increase rapidly even after the Soviet-Afghan armed conflict and the ensuing armed struggle for power among the armed groups of Afghanistan. By 2016, there were around 32,000 *madrasa* schools issuing certificates to various levels of students, and the number of students was 2.26 million. This number is considered to be accurate as it was arrived at after careful census conducted by Pakistani provincial governments as part of the National Action Plan adopted in 2015 to aid in the fight against extremism and terrorism (Vestenskov, 2018). At present, five religious groups control and organise the bulk of the Pakistani *madrasas* with approval by the Pakistani government. These are: Deobandi, Brailvi, Ahl-e-Hadith, Shi'ah, and Jamat-e-Islami/Neutral (Fair, 2014). Not all *madrasas* in Pakistan are affiliated with one of these five groups. A smaller number of recognised *madrasas* are run by other religious organisations deemed independent are also part of the approved network of Islamic schools in Pakistan (Vestenskov, 2018).

Definition, Curriculum and Socio-Economic Factors of Madrasas

Etymologically, the word *madrassa* is derived from the Arabic noun *m-d-r-s* to convey twofold meaning, (Moosa, 2015) and as such it has been adopted and used in many languages, including Farsi, Pashto and Urdu. A more general meaning of the word is “school”, whereas its technical denotation conveys the meaning of an Islamic college or seminary where all major Islamic sciences were taught, and these include the sciences and the study of the Qur'an, the cluster of sciences around the larger field of knowledge called the

Sunnah or the traditions of the Messenger Muhammad (*s.a.w.*), Islamic jurisprudence and law and others (Makdisi, 1981). In some Arab countries, such as Egypt and Lebanon, the term *madrassa* is used to denote any kind of school be it private or public, religious or secular. However, in Afghanistan, Bangladesh and Pakistan the name *madrassa* refers specifically to Islamic school (Blanchard, 2007, January). Regarding the curriculum, contemporary Pakistani madrasa still emphasises the core traditional Islamic courses of the Holy Qur'an and Hadith, Islamic jurisprudence, and History of Islamic lands and societies. Modern natural and social sciences and European languages such as English are grossly neglected. This type of learning makes it hard for *madrassa* graduates to seek any other employment except the jobs related to overseeing and performing religious rites for the community. Some researchers have also noted that rote learning of the Islamic texts and the exclusion of modern rational sciences have made *madrassa* students more susceptible to persuasion from militant groups to enlist and take part in armed conflict (Lys, 2007).

Contemporary *madrasas* in Pakistan are financed in many ways that can all be categorised as internal funding and external financial support. Apart from the previously-mentioned age-old funding through the institution of *waqf* and *zakat*, *madrassa* officials and students receive financial backing from governmental and non-governmental organisations, from their own assets (land and commercial premises owned by the *madrassa*), and individuals. Government and political groups support *madrasas* as these schools educate and train individuals to carry out essential religious duties in a society, and to gain support for their activities, particularly in pre-election campaigns (Vestenskov, 2018). Individual donors from Pakistan mostly contribute their means through specific appeals for donations during congregational prayers on Friday and religious holidays, particularly during the month of Ramadan when majority of Muslims intensify their charitable acts. In addition to these, significant portions of finances for the Pakistani *madrasas* come from the sizeable Pakistani diasporas (Vestenskov, 2018). This type

of funding is either banked in to the accounts of *madrasa* officials, or it is handed in-person during the visits of relatives by the wealthier Pakistanis who live and work abroad. Furthermore, some *madrasas* own significant areas of agricultural land and commercial property the use or rent of which provides a portion of the total revenue. Some *madrasas* have largely depended on the donations by foreign non-governmental organisations, however, this has significantly decreased in the post-9/11 era in the wake of Pakistani government's attempt to curtail the influence of foreign organisations on local Islamic schools (Vestenskov, 2018).

The Connection between Madrasas and Militancy

The link between *madrasa* and militancy was not known until the Soviet invasion of Afghanistan. It was in the eighties that there emerged first studies linking this religious school to the recruitment of mostly underage students for armed conflict against the Soviet invaders of Afghanistan. Additionally, from the same period, there are plenty of sources indicating the spread of militant teaching imbued with some Islamic tradition to motivate the students to take up arms against the foreign invasion in Afghanistan. This spread of militant teaching was tolerated and even openly supported by the American political, intelligence and military establishment as well as the governments of some European countries, Pakistan and a group of Arab Gulf countries (Hussain, 2006). At the time of the Soviet invasion there was not much awareness nor consideration as to what consequences this open-handed support of militancy through the vast network of Afghan and Pakistani *madrasa* might have in the future. The financial and logistic backers of the project only realised that the whole issue had spun out of control in the nineties, when these schools had given rise to radical movements some of which are later to be put on the list of terrorist groups with influence far beyond the region of South and Central Asia (Blanchard, 2007, January).

Pakistan as a state and its officials have ample times been linked with extremism by the international community as well as the Afghan authorities. More specifically, the army of Pakistan and

the powerful Inter-Services Intelligence (ISI) have been identified as institutions supporting the *madrasas* and even overt or covert backing of extremism. This link was more evident during the Soviet invasion of Afghanistan and this collusion between Pakistani state authorities and extremists has been amply supported by research (Hayes, 2009). The issue here is why has this backing of radicals in Afghanistan continued after the 9/11 despite the denials by high-ranking Pakistani officials? One of the possible explanations for this is that at least some of the active officers of the army and the ISI are *madrasa* graduates and they are unwilling to carry out orders of their superiors that would harm their alma mater (Singer, 2001). Another important reason is that Afghan Taliban are believed to provide assurance and buffer against the influence of Pakistan's archenemy, India, in the region (Mohanty, 2013). Pakistani officials are also frequently accused of playing 'double game' by verbally supporting the efforts of the US administration and Afghan government in their fight against armed groups and terrorists, and at the same time, colluding with the Taliban and the *Haqqanis* Network (Mohanty, 2013). Therefore, as alluded before, any action against the numerous *madrasas* in Pakistan would pitch the state security forces against a wide array of Islamic-oriented parties, organisations, educationists and intellectuals that could seriously undermine the secular roots of the country (Mohanty, 2013 and Krondtadt, 2004, December).

Apart from the Taliban and the *Haqqani* Network influence in the Pakistani provinces bordering with Afghanistan, other groups, such as *Hizb-e-Islami* and even Al Qaeda have been reported to partly perform their recruitment from the *madrasas* in the region. On top of that, there have also been myriad reports that these armed groups receive significant support from the armed forces and the ISI of Pakistan in their training of suicide bombers and cross-border raids. Although these allegations have been rejected but the Pakistani officials, the UN report of 2007 clearly named the Pakistani officials as providers of various types of aid for the armed groups in the Afghan war (Fair, 2007 and Coalition to Stop the Use of Child Soldiers, 2008). Recruitment of suicide

bombers is mostly done in Pakistani *madrasas* even though this claim has been disputed by many terrorism scholars and commentators. The Taliban themselves have been the product of *madrasas*, hence their name, and they have long been filling their ranks with underage recruits from the *madrasas*.

During the war against the Soviets, *madrasa* drafting was encouraged and even openly supported by the American and Pakistani officials. In the decade prior to the 9/11 attacks the issue was not considered news-worthy as it was only a regional problem. However, when the long-lasting practice continued after the 9/11, there followed an outcry of the international community about the global threat of terrorist and suicide bombers drafted from the *madrasas* (Wilkey, 2014). In a recent exchange between US and Pakistani ambassadors to the UN, the former accused the latter of being hypocritical and playing ‘double game’ and helping very little in containing terrorism in Afghanistan in spite of receiving US\$33 billion in military aid over the last decade and a half. This accusation was met by flat denial and claims that Pakistan has done more than any other country in counter-terrorism operations (Haley 3 January 2018). The practice of recruitment and use of child soldiers from *madrasas* in Pakistan is covered in more detail in one of the sections below.

THE LEGAL POSITION ON CHILD SOLDIERS

Legal stance on child soldiers in the context of this paper is twofold. On the one hand there is the position of the three branches of international law: International Humanitarian Law International Human Rights Law (IHL), International Human Rights Law (IHRL) and Rome Statute of the International Criminal Court (Rome Statute of the ICC) (Rome Statute of the International Criminal Court); on the other hand, the position of the legal systems of Afghanistan and Pakistan requires a closer analysis. As for the international law, based on the relevant treaties that are treated in more detail below, all the three branches prohibit recruitment and use of child soldiers below the age of fifteen. In recent decades there have been certain attempts to lift this age limit to eighteen,

however, to date all these initiatives have been unsuccessful. National laws of Afghanistan and Pakistan have clear stance regarding child soldiering: no persons below the age of eighteen is allowed to take part in hostilities, even though, in case of Pakistan, the enlistment of persons over the age of sixteen can be allowed for the purpose of attending military academies.

International Law and Child Recruitment

Regarding the specific branches of international law, IHL's fundamental treaties, such as the four 1949 Geneva Conventions (GCs). (Geneva Convention I, Geneva Convention II Geneva Convention III, and Geneva Convention IV) These treaties do not offer any provisions regarding child soldiering due to the fact that children are only deemed as subgroup of civilian population. However, the presence of numerous child soldiers in the worldwide armed conflicts in the decades following the entry into force of GCs clearly called for a more adequate stance of international treaties on child soldiers. As a result of the perceived need for provisions dealing with child soldiers, the Additional Protocols (APs) (Additional Protocol I and Additional Protocol II) to the GCs were drafted and adopted in 1977. These conventions forbid the recruitment of children under the age of fifteen and their use in combat, or what they phrase as direct participation in hostilities (Additional Protocol I, Article 77 and Additional Protocol II, Article 4 (3)). Apart from the major IHL treaties, the landmark treaties of IHRL, the Convention on the Rights of the Child (CRC) (Convention on the Rights of the Child) prohibits the recruitment of children under the age of fifteen into the armed forces (Convention on the Rights of the Child, Article 38). This prohibition was criticised by many because the Article 1 of the convention emphasises that child is any person below the age of eighteen, and the prohibition only applies to those child soldiers younger than fifteen. In other words, the prohibition does not cover all children, but solely the younger ones (Convention on the Rights of the Child, Article 1). Moreover, The Optional Protocol to the Convention on the Rights of the Child on the

Involvement of Children in armed conflict (OP-CRC) (Optional Protocol) pegs the prohibition up to the age of eighteen albeit with somewhat weaker wording that states parties to the conflict should adopt all feasible measures to prevent persons younger than eighteen from taking direct part in hostilities. In addition to this, the OP-CRC stipulates that armed forces and armed groups should ensure that no persons younger than eighteen are forcibly recruited or allowed to take direct part in hostilities. Moreover, the OP-CRC prohibits recruiting voluntary children below age of fifteen in military drill (Optional Protocol, Article 1 to 4). In a similar vein, the Rome Statute of the ICC proscribes the recruitment and use in hostilities of child soldiers under the age of fifteen by categorising this act as a war crime (Rome Statute of the ICC, Article 8(2)(b)(xxvi) and (2)(e)(vii)). Therefore, all international treaties offer clear prohibition of child soldiering for the individuals younger than fifteen, whereas, in spite of numerous attempts to peg the prohibition up to the age of eighteen, these conventions have permissive stance vis-à-vis recruitment and use in armed conflict of persons above fifteen.

Afghan Law and Child Recruitment

The Constitution of the Islamic Republic of Afghanistan clearly prohibits all forms of forced labour, particularly forced labour of children. However, the article that contains the said prohibition is somewhat ambiguous, and it calls for a closer analysis. The general prohibition of forced labour is found in Article 49 of the Afghanistan Constitution which states: "Forced labour shall be forbidden. Active participation in times of war, disaster and other situations that threaten public life and comfort shall be among the national duties of every Afghan. Forced labour on children shall not be allowed" (Islamic Republic of Afghanistan, Article 49). The article contains three unnumbered sentences in its official version in Pashto and Dari. Contrary to its text in local languages, the translated English version of this article is numbered. What can be seen as confusing is the fact that if the second sentence of this article is viewed in isolation from the other two, it can be

interpreted as making active participation in war, disaster and other circumstances endangering public life and well-being an obligation to every citizen of Afghanistan. More specifically, this sentence could be taken as justification of recruitment of children for armed conflict, and this possibility of interpretation has been duly noticed by some commentators (Ehler, R. L., et al., 2015). Bearing in mind that the government of Afghanistan has signed all major international treaties concerning child soldiers, this cannot be the intent of the drafters. On the other hand, if 49(2) is seen as modifying 49(1), then forced labour on children would be strictly forbidden as well as participation of children in armed conflict, disaster rescue missions and other emergencies requiring the mobilisation of citizens. Therefore, taking the totality of the Constitution of Afghanistan into consideration, it can be concluded that the second interpretation is closer to the original intention of the drafters. Yet, this intention could and should have been more directly and unambiguously put into words (Ehler, R. L., et al., 2015).

In 2014, the Government of Afghanistan drafted a specific law prohibiting recruitment and use of child soldiers in armed conflict. This law is titled as Law on Prohibition of Juveniles Recruitment in Military Units (Islamic Republic of Afghanistan, 2014). Article 2(1) of this law defines a child as any person below the age of eighteen. In accordance with this definition of the child, the law forbids recruitment and use of any person younger than eighteen in combat. Since this prohibition sets even stricter criteria of recruitment than IHL and IHRL documents, it was welcomed by many Afghan government officials, national and international observers and commentators (Islamic Republic of Afghanistan, 2014, Article 2(1)). Furthermore, Article 2(2) specifies that the term armed forces or units comprises the following organisations: Ministries of National Defence and Interior Affairs, National Directorate of Security (ANDS) and other armed agencies that are required to carry out military, security or support activities in accordance with legal provisions. Moreover, in Article 3, the law unequivocally prohibits conscription and use of children into armed

forces in any capacity (Islamic Republic of Afghanistan, 2014, Article 3). In the following, Article 4, it recommends criminal prosecution and a sentence to one year of any military officer involved in recruiting children into the armed forces of the country (Islamic Republic of Afghanistan, 2014, Article 4). In addition to this, Article 5 provides that any person who resorts to falsification of documents, such as birth certificates and other similar proofs of age is to be prosecuted under the relevant provisions of the law. This article was seen as a necessary addition to the law due to widespread reports of forgery of official documents so as to enlist a person younger than eighteen into the armed forces (Islamic Republic of Afghanistan, 2014, Article 5).

In addition to the national laws forbidding illegal methods of warfare and child soldiering, the Government of Afghanistan has firmly committed itself to the observance of international laws and standards. To this end, the Government reiterated its obligation to abide by all major treaties that aim to regulate conduct of hostilities and recruitment and use of underage combatants. For instance, the Government of Afghanistan signed the GCs on 26 September 1956 (International Committee Red Cross, Treaties). The Four GCs do not refer to child soldiers; rather, these conventions contain a set of agreed upon rules of legally acceptable methods of warfare. A specific reference to children in armed conflict is found in the APs to the GCs I and II, which were drafted in 1977. The APs I and II were signed and ratified by the Afghanistan government on 10 November, 2009 (ICRC, Afghanistan as party of Additional Protocols). Similarly, as for the treaties of IHRL, of which CRC is oft-cited example, the Government of Afghanistan ratified it on 28 March, 1994 (United Nations Treaty Collection). Moreover, OP-CRC was signed and ratified by the Afghanistan government on 24 September, 2003 (ICRC, Treaties, States Parties and Commentaries). Finally, Rome Statute of the ICC that was drafted in 1998, the government of Afghanistan signed and ratified it on 10 February, 2003 (Rome Statute of the ICC). With the exception of the Four GCs, all of the aforesaid international treaties clearly prohibit recruitment and

use of persons below the age of fifteen into armed conflict. Therefore, by signing these international treaties the Government of Afghanistan has directly shown its readiness not to violate the international standards on child soldiering.

Pakistan Law and Child Recruitment

Regarding the position of the state of Pakistan on the relevant international treaties it is important to emphasise that Pakistani government ratified the CRC on December 12, 1990 (Convention on the Rights of the Child, 20 November 1989). Moreover, the Pakistani officials have signed the OP-CRC on the involvement of children in armed conflict, but this signature has not been ratified until the present. Furthermore, Pakistani government ratified International Covenant on Economic, Social and Cultural Rights (ICECPR) in 2008 (International Covenant on Economic, 16 December 1966) and the International Covenant on Civil and Political Rights (ICCPR) in 2010 (International Covenant on Civil and Political Rights, 16 December 1966). On the other hand, Pakistan has not signed nor ratified the Rome Statute of the ICC until the present day (Child Soldiers International NGO Report, July 2015). As for the national legislation on child recruits, the Pakistan National Service Ordinance 1970 stipulates the age of enlistment in the armed forces is 18 years, whereas the training for various branches of the army could legally start from the age of sixteen (Coalition to Stop the Use of Child Soldiers, 2002). According to the national laws and act, Pakistan does not have compulsory national service. However, the national legislation prohibits persons younger than eighteen from active participation in hostilities (National Commission for Child Welfare and Development, 2003).

Additionally, despite its ratification of the CRC, there is no uniformly applicable definition of the child as a person younger than eighteen that would be in harmony with Article One of the CRC (Convention on the Rights of the Child, Article 1). In regard to the Pakistani legislation on the issue of child soldiers an important amendment to the constitution of Pakistan was passed

in 2010 (Committee on the Rights of the Child, 2 October 2009), in which the matters concerning legislation, administration and finances were devolved to the provincial authorities. In line with this, charting out and application of the protection services is the responsibility of the provincial social welfare departments. Yet, the authorities in the provinces where the cases of child recruitment from *madrasas* have been most prevalent, such as Khyber-Pakhtunkhwa, Balochistan and the Federally Administered Tribal Areas have not developed adequate legal mechanisms to prevent child conscription (Tribune, 1 June 2015). As a result of this gap and the pressure of international community on the government of Pakistan, the federal authorities founded the National Committee on Children in December 2015 (Mohtasib, 31 December 2014), an independent commission that works under the office of the Federal Ombudsman where United Nations International Children's Emergency Fund (UNICEF) personnel are allowed to serve as observers (Child Soldiers International NGO Report, July 2015). As a conclusion, although the national legislation of Pakistan contains laws against recruitment and use in armed conflict of underage soldiers, and though this is clearly against the international legal provisions, the practice has continued unabated and, as evidence indicates, even encouraged by the Pakistani officials for their own objectives.

RECRUITMENT OF CHILD SOLDIERS BY REBELS IN AFGHANISTAN THROUGH PAKISTANI MADRASAS

Due to the nature of the Afghan society and perceived requirements of armed resistance against the Soviet invaders, a number of armed groups that emerged out of the main anti-Soviet group called Mujaheddin heavily relied upon the use of some religious teachings to motivate underage soldiers to enlist into their ranks (Cohn, I., 1994). These groups are, namely, *Hezb-e-Islam*, Taliban, Al Qaeda, and *Haqqani* Network. All of these groups have been proven to wield influence over certain *madrasas* in Pakistan. As a result, these armed groups have welcomed underage *madrasa* students into their ranks, and some of the armed groups have even used underage

soldiers to carry out acts of terrorism and suicide bombing (Aftanas, 2014, and Rosen, 2015). *Madrasa* seminaries are more popular in Pakistan's North West, near the border with Afghanistan, than anywhere else across the country (Javaid, 2011). Throughout the period of Soviet invasion (Rashid, 2000) and the civil war between the Taliban and Northern Alliance other contenders for power, the *madrasas* from the north-west of Pakistan sent their students into the ranks of either Taliban or *Hezb-e-Islam* (Child Soldiers International, 2001). The number of underage soldiers recruited in these *madrasas* and sent into combat in Afghanistan was measured in thousands (de Berry, 2009). These students were recruited and used in combat by the Mujaheddin as *jihad* fighters. The support of various armed groups in Afghanistan by the Pakistani officials dating back to the Mujaheddin era, continued through the last decade of the 20th century. In 1996, the recruitment of thousands of *madrasa* students was one of the decisive factors in the Taliban offensive that enabled this group to seize control of Kabul and the bulk of the territory of Afghanistan (Hussain, 2009).

The organisation known as *Hezb-e-Islami* recruited far more underage soldiers in the period before the 9/11 attacks (Bhatia, 2008). These child soldiers mainly hailed from the refugee camps and *madrasas* in Pakistan (Aftanas, 2014). Although this armed group did not cease to conscript and use children armed conflict even after the 9/11 terrorist attacks, the number of child soldiers in the ranks of this group decreased significantly. Due to the overall vital role of Gulbudin Hekmatyar in the establishment and leading of *Hezb-e-Islami*, this group is referred to by some researchers as *Hezb-e-Islami* Gulbudin (HIG) (European Union: European Asylum Support Office, 10 July 2012). As for Al Qaeda, this terrorist organisation has not relied heavily on child soldiers as *Hezb-e-Islami* and Taliban have. However, some prominent cases of child soldiers within the ranks of Al Qaeda did attract a great deal of attention by researchers. One such case was a child soldiers by the name of Omar Khadr, a Canadian citizen whose father had decided to enlist himself and his fifteen-year-old son Omar into Al Qaeda. Omar was injured in combat against the US forces. He

was arrested and taken to court as an unlawful combatant (Singer, Peter Warren, 2006).

Child soldiers were also recruited in large numbers by the *Haqqani* Network, however, the precise numbers of underage combatants in this armed group are hard to determine (Rosen, 2015). A significant portion of the underage soldiers in *Haqqani* Network came from the *madrasas* in Pakistan. Some researchers have put forward that *Haqqani* Network is notorious for the use of *madrasa* students for suicide bombing missions (Hussain, 2008). The commanders of *Haqqani* Network have even recruited children as young as seven or eight years old. The *Haqqani* Network recruiters have targeted children whose piety and lack of ability to make decisions on their own and subjected them to persuasion and training to carry out suicide bombing (European Union: European Asylum Support Office, September 2016). Child soldiers recruited by the *Haqqani* Network were persuaded by allegations that foreign soldiers had desecrated the copies of the Holy Qur'an. These children were promised rewards in the Hereafter, and in some cases, the child soldiers were told they will survive suicide missions unharmed (European Union: European Asylum Support Office, September 2016). A significant number of child soldiers hailed from the families whose fathers or other close relative had fought alongside the founders of the *Haqqani* against the Soviet invaders (Dressler, 2010).

Taliban have relied on large-scale child recruitment and use in combat from the mid-1990s. Each family living in the territory controlled by the Taliban, including the refugee families in Pakistan was expected to send one young male for training and later for combat. The families were also required to contribute USD 500 for the expenses incurred by Taliban cause. Young recruits underwent a two-month-long participation in armed conflict upon brief training (Human Rights Watch, 2003). In some exceptional cases families were allowed to pay USD 200-300 penalty for not sending their underage members into Taliban ranks. In spite of this pressure, Taliban recruitment of underage soldiers was mostly voluntary, however, during major military campaigns, some

recruits were compelled to join this armed group (Danish Immigration Service, 1 July 1998). Some *madrasa* officials reported that most of their students were recruited and used into armed conflict by Taliban (Child Soldiers International, 2001). These *madrasa* officials and Taliban recruiters cited *jihad* as a religious duty and integral part of Islamic education to motivate the students to take part in combat (Singh, 2007). Taliban commanders were aware of the international criticism of their recruitment and use of child soldiers. In an attempt to rebuff these allegations, Taliban commanders resorted to the use of child soldiers in the period of major offensives, whereas the rest of the time they used to assign policing duties away from the combat zone to their underage soldiers (Singh, 2007).

During the major offensive in the vicinity of Kabul in July 1999, there were reports that between 3,000 and 5,000 Pakistani recruits from various organisations with Islamic orientation were sent the Taliban forces north of the capital (Fonseka, 2001). Some of these recruits were reportedly war veterans from the conflict in Kashmir, while others were students from *madrasas*. Although these recruits were meant to reinforce Taliban in their offensive against the opposing armed groups, some reports cite that these forces did not fall under Taliban chain of command, instead, these soldiers were channelled to Usama Bin Laden and his Al Qaeda network (UN General Assembly Security Council, 7 July 1999). In the same period, a Taliban delegation toured all major *madrasas* in the Pakistani North-West Province, which is mostly inhabited by ethnic Pashtuns and where the most of Afghan refugees were sheltered, requesting the school authorities to persuade students to enlist into the Taliban forces in the war in Afghanistan. About 5,000 students responded positively and joined the Taliban on this occasion. The UN sources cited the age of these recruits was between 15 and 35 (Galpin, 21 August 1999).

Recruitment of children within Pakistani *madrasas* for armed conflict in Afghanistan has particularly been prevalent among the students and orphans. According to multiple sources, majority of draftees were between the age of eleven and fifteen, whereas some

of the recruits were as young as the age of five. The interviewed recruiters cited their understanding of the fight for higher religious cause as the reason for conscription (Benotman, 2016). Some of the child recruits were chosen for suicide bombing missions. According to a Pakistani analyst of militancy and *madrassa* schools, child suicide bombers make up to 90% of perpetrators in Afghanistan and Pakistan (Benotman, 2016). The recruiters used a variety of techniques to persuade the children to carry out suicide bombings. Some of the methods referred to the culturally esteemed issues of honour and revenge, while others drew on the religious theme of martyrdom or even promises that the child will survive the mission unhurt and be able to claim monetary prize (Fraser, 2017). A survey of captured underage Taliban fighters, such as the case of a twelve-year-old boy from Peshawar, revealed that they had been subjected to a long training to carry out suicide bombing attacks. The Afghan officials involved in handling the captured underage Taliban soldiers confirmed that the vast majority, or 90% of them had been trained using intricate deceptive methods and brainwashing by their instructors on the territory of Pakistan. In addition to these, some reports have also pointed to *madrasas* in the Taliban controlled parts of Afghanistan as recruitment facilities for underage soldiers (European Union: European Asylum Support Office, September 2016). As had been confirmed before, Taliban continued to deceive their thoroughly brainwashed child suicide bombers, lying to them that “the mission was as simple as touching two wires together” and promising to them they would remain unharmed upon the completion of the gruesome terrorist act (Ben, 13 Jan 2012).

Taliban continued with their recruitment of underage soldiers after they had been deposed from power in late 2001. A BBC report of 2007 claimed that Taliban used in combat 120 recruits from government schools and *madrasas* in the town of Tank, northern Pakistan. The report alleged these underage soldiers to have been between the age of eleven and fifteen. To persuade them to join the ranks of the armed group there were elements of compulsion as the families who hesitated to send their children in

combat suffered intense fear of retribution by the Taliban (Syed, 12 Jan 2007). In 2010, out of more than 400 Taliban soldiers taken prisoners, 57% of them replied that they had decided to enlist due to poverty. Other sources highlighted that about 70% of the young Taliban fighters had enlisted and taken part in combat because of the monetary rewards, not for any other reasons (European Union: European Asylum Support Office, 10 July 2012). The recruitment and use of child soldiers by Taliban has been continuously confirmed by multiple sources. These cases were also verified by recent UN reports, such as the report of 2016 highlighting the total 115 cases of child soldiers in Afghanistan, 48 of which were verified. Out of these cases, the largest number or twenty children were recruited by the Taliban, whereas fifteen underage combatants were recruited by other armed groups, and the remaining child soldiers by other parties to the conflict. This report reiterated concerns over allegations of recruitment of children from the *madrasas* in Pakistan, most of who were drafted by the Taliban while the portion of them were also recruited and used in combat by other armed groups (UN General Assembly Security Council, 2016).

CONCLUSION

On a concluding note, international law does not permit recruitment and use of any persons below the age of fifteen. Rome Statute of ICC best summarises the move to conscript children under the age of fifteen by qualifying it as a war crime. The qualification sums up the position of fundamental treaties of IHL and IHRL. The desire to push the age limit from fifteen to eighteen is clearly noticeable in the drafting process and relevant commentaries of major international treaties, yet this desire has not come to fruition until the present. The laws of Afghanistan, starting from the constitution to specific acts and laws has never permitted recruitment and use of persons below the age of eighteen on any capacity in military units. A similar position on child soldiering is found in the laws of Pakistan, with an exception that persons over the age of sixteen can be enrolled into military schools

for the purpose of education and training to be future officers in the Pakistani armed forces. This legal stance, both international and national ones have been constantly violated throughout the forty-year armed conflict in Afghanistan.

The massive conscription and use of underage persons in combat from *madrasas* started soon after the Soviets invaded Afghanistan. The urgent need to resist the foreign invader with potent anti-religious ideology was a good pretext for many sides, including the USA administration and a number of Gulf States to finance and promote *jihad* through *madrasas* in Pakistan. During this stage of the conflict, this type of preaching and teaching was not seen as potential menace, rather, it was perceived as a powerful mobilising force to convince masses of underage *madrasa* students to enlist and take part in hostilities. Since the laws of both countries, Afghanistan, and Pakistan alike, did not permit conscription and use in combat of persons under eighteen, the recruitment was carried out by armed groups, the most prominent being the Mujaheddin of Afghanistan. The term Mujaheddin itself incorporates the word *jihad*, but such designation did not invoke any negative image in the eyes and minds of US officials or other who had backed the armed group. Quite contrary, the Mujaheddin were widely seen as freedom fighters and liberating force defending their homes from foreign invasion. However, this wide backing and positive image of the Mujaheddin did not last long.

Once the Soviets were forced to withdraw from Afghanistan, and the Mujaheddin split into many factions each fighting to wrestle control over Afghanistan, the reality of hasty support and promotion of *jihad* and tolerating the illicit recruitment and use of children in combat dawned on many international and national factors. Towards the end of the 20th century and in almost two decades of this century child soldiers have been constant presence in the armed conflict of Afghanistan. All parties to the conflict have recruited and used them although the armed groups have done so on a much larger scale. The armed groups have also used children to perform terrorist acts and suicide bombing claiming the lives of thousands of soldiers and civilians. To persuade their

child bombers to execute the attacks, a great deal of brainwashing *madras* students is involved. Susceptible children are driven into suicide missions by brainwashing techniques that make the enemy appear as infidel force that must be resisted by all means. When news and reports of these methods appeared, the practice was universally criticised and condemned. Using lies and deception to arouse strong emotion and belief they would be unharmed in children, some of them younger than ten, is viewed equally unacceptable by Islamic legal scholars as well as experts in international law. Suicide bombing with child soldiers as perpetrators has mostly been carried out by Taliban, Al Qaeda, *Haqqani* Network and *Hezb-e-Islami* armed groups. These groups have repeatedly denied the practice, but the ongoing incidence and evidence have strongly proven their involvement and culpability.

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