



Terrorism, Counter-Terrorism and International Humanitarian Law: The Case of Insurgency in Nigeria

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ABSTRACT

International Humanitarian law focuses on minimizing disorder in any form of armed conflict and managing the resulting fall out of armed conflict. Terrorism is an aspect of armed conflict that exist both internationally and domestically (in form of insurgency sometimes) to disrupt the social, economic, legal development and wellbeing of the state and its citizens. It is generally agreed that terrorism is one of the most noteworthy threats to peace, security and stability as well as the enjoyment of human rights, social and economic development. Terrorism utilizes unlawful violence, weaponizing of fear and threat to compel state(s), government, society or social entity in furtherance of political, religious, economic, ideological goals. This work highlighted the international humanitarian law concepts of terrorism that encompasses insurgency, counter-terrorism means and mechanism, the issue of insurgency in Nigeria particularly Boko Haram and Biafra agitators' activities and find its causes to be poverty, illiteracy, unemployment, discrimination, political exclusion among others. This work recommended a sustained and continuous community-based dialogue and intelligent gathering, sustained, permanent social security programmes accessible to all; addressing the issue of poverty, education, unemployment etc. and collaboration between government, domestic and international agencies to proactively tackle the issue now and in the future among others.

Keywords: International Humanitarian Law, Insurgency, Terrorism, Counter-terrorism,

INTRODUCTION

The fundamental and rudimentary pro-occupation of international humanitarian law is the continuous study, analysis, conceptualization, postulation and re-evolution of means and measures of managing, reducing violence and its resultant consequences in arm conflict both domestic and internationally. The issue of terrorism and insurgency are types of armed conflict that occur domestically and internationally. It is generally agreed that terrorism is one of the most noteworthy threats to peace, security and stability as well as the enjoyment of human rights, social and economic development¹. Terrorism and Insurgency are identical twin that utilizes unlawful violence, weaponizing of fear and threat to compel state(s), government, society or social entity in furtherance of political, religious, economic, ideological goals. The Germane mechanisms evolved by international humanitarian law that is perpetually concerned with addressing the issue of terrorism and insurgency is counter-terrorism. Currently, the issue of insurgency and terrorism appear to be on the increase globally particularly in the Middle East and in Africa, with the Nigerian reality being a noteworthy example that raises high curiosity and in need of urgent comprehensive and holistic understudy and engagement to address same. This work shall highlight the international humanitarian law concepts of terrorism, insurgency and counter-terrorism, examine the issue of insurgency in Nigeria and suggest the possible counter-terrorism mechanism to address same.

¹ OSCE, 'Countering Terrorism' <www.osce.org> accessed 8 January, 2023.

Conceptual Framework

(a) **Terrorism:** The term originates from the Latin word ‘terrere’ that means ‘to frighten’. It acquired its contemporary form ‘terrorism’ during the Jacobin Reign of Terror in France from 1793 – 1794. However, the use of violence for the purpose of creating fear in a wider audience with the aim of stopping various parties from doing something, or, equally, to force them into a certain behavior, is much older than the French revolution. It has been a tool utilized by state and non-state actors over a long period of time². The US Department of Defense defined it as the calculated use of unlawful violence or the threat of violence to inculcate fear, intended to coerce or intimidate governments or societies in pursuit of goals that are generally political, religious or ideological³. Terrorism is the unlawful use of force or violence against persons or property to compel a government or its citizens to achieve certain political or social objectives. Law enforcement generally recognizes two types of terrorism being domestic and international⁴. Terrorism is the use or threat of violence to intimidate or cause panic especially as a means of affecting political conduct⁵.

(b) **Insurgency:** An insurgency is a violent attempt to oppose a country’s government carried out by citizens of the country⁶. Insurgency is a condition of revolt against a government that is less human organized revolution and that is not recognized as belligerency. Insurgencies fall into the category of irregular warfare since it normally do not have the organization of a revolution, despite the fact that it has the same aims. Insurgencies mostly start in out sketch and rural places where it gathers momentum gradually by gaining the trust and support of the residents. An insurgency may be based on ethnic or religious identity towards addressing a perceived economical or economic problem. Insurgencies mostly lack the capacity and ability to confront the national armed forces directly, as they utilizes such tactics of bombing, kidnapping, hostage taking and hijacking⁷. Insurgency is adjective of the noun insurgent which means a person who for political purposes engage in armed hostility against an established government⁸. An Insurgency is an armed conflict characterized by power contest between belligerent groups, with the weaker being the insurgent party and the stronger being the government⁹.

While denotatively, there exist slight difference between terrorism and insurgency. However, insurgency do not have an independent existence from terrorism under international humanitarian law. The scope and meaning of both concepts are captured in the meaning and definition of terrorism as will be stated in the international laws, regional and municipal law to be highlighted below. This work shall contextually address insurgency as type of terrorism.

(c) **Counter-terrorism:** It consists of the measures designed and activities that are intended to combat prevent or eliminate terrorism¹⁰. Counter-terrorism consists of actions or strategies focused at preventing terrorism from escalating, controlling the damage from terrorists attacks that do occur and ultimately seeking to eradicate terrorism in a given context. It is classified into four theoretical models namely; Defensive, Reconciliatory, Criminal Justice and war¹¹.

² Nonso Robert Altoh, ‘Legal Instruments Governing Terrorism and Response to Terrorism (Faculty of law, University of Nigeria, Nsukka, Enugu Campus).

³ US Department of Defence Dictionary of Military Terms, ‘Various Definition of Terrorism’ < www.dema.af.gov/> accessed 8 January, 2023.

⁴ ‘What is Terrorism?’ <www.austintaxes.gov/what-is-Terrorism/> accessed 8 January, 2023

⁵ Bryan A. Garner, ‘Black’s Law Dictionary (8th edn., West Publishing Co.) 1512

⁶ Collins English Dictionary, ‘Insurgency Definition and meaning’ <www.collinsdictionary.com/> accessed 9 January, 2023

⁷ Merriam Webster, ‘Insurgency’ <[www.merriam-webster.com.](http://www.merriam-webster.com/)> accessed 9 January, 2023

⁸ (n.5) 823.

⁹ (n.6)

¹⁰ Merriam-Webster, ‘Counter-terrorism’ <www.merriam-webster.com> accessed 8 January, 2023.

¹¹ Simon Pralt, ‘What is the difference between counter-insurgency and counter-terrorism?’ <[www.e-ir.info.](http://www.e-ir.info/)> accessed 8 January 2023

Legal Framework

Terrorism is defined by the EFCC (Establishment) Act to mean means; (a) any act which is a violation of the criminal code or the penal code and which may endanger the life, physical integrity or freedom of or cause serious injury or death to any person, any number or group of persons or causes or may cause damage to public or property, natural resources, environmental or cultural heritage and is calculated or intended to:

- i. Intimidate, put in fear, coerce or induce any government, body, institution, the general public or any segment thereof to do or abstain from doing any act or to adopt or abandon a particular stand point, or to act according to certain principles, or
 - ii. Disrupt any public service, the delivery of any essential services to the public or to create a public emergency, or
 - iii. Create general insurrection in a state;
- (b) any promotion, sponsorship of, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organization or procurement or any person, with the intent to commit any act¹².

Nigerian Terrorism Prevention Act defined Terrorism as “act of Terrorism” means an act which is deliberately done with malice afore thought and which:

- a) May seriously harm or damage a country or an international organization;
- b) Is intended or can reasonably be regarded as having been intended to :
 - i. Unduly compel a government or international organization to perform or abstain from performing any act;
 - ii. Seriously intimidate a population
 - iii. Seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization, or
 - iv. Otherwise influence such government or international organization by intimidation or coercion; and
- c) Involves or causes, as the case may be:
 - i. An attack upon a person’s life which may cause serious bodily harm or death
 - ii. Kidnapping of a person;
 - iii. Destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
 - iv. The seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b) (iv) of this subsection;
 - v. The manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons as well as research into and development of biological and chemical weapons without lawful authority;
 - vi. The release of dangerous substance or causing of fire, explosions or floods, the effect of which is to endanger human life;
 - vii. Interference with or disruption of the supply of water, power or any other fundamental natural resources, the effect of which is to endanger human life;
- d) An act or omission in or outside Nigeria which constitutes an offence within the scope of a (SIC) counter terrorism protocols and conventions duly ratified by Nigeria.
- e) An act which disrupts a service but is committed in pursuance of a protest¹³.

¹² Economic and Financial Crime Commission (EFCC) (Establishment) Act 2004 S. 46 (a) (i), (ii) and (iii) (b)

¹³ Terrorism prevention Act 2006 S.1.

Section 2-24 of the TPA provides conduct that constitute terrorism in Nigeria. The ratified counter terrorism protocols and conventions by Nigeria mentioned in S.1 (3) (d) is stated in S.19; both of the Act¹⁴. They are; convention for the suppression of unlawful seizure of Aircraft 1970, convention for the suppression of unlawful Acts against the safety of civil Aviation 1971, convention on the prevention and punishment of crimes against internationally protected persons; including Diplomatic Agents 1973, international convention against the Taking of Hostages 1979, convention on the physical protection of nuclear Materials 1980, protocol for the suppression of unlawful Acts of violence at Airports serving international Civil aviation, supplementary to the convention for the Suppression of unlawful Acts against the safety of civil Aviation 1988, convention for the suppression of unlawful Acts against the safety of Maritime Navigation 1988, protocol for the suppression of unlawful Acts against the safety of fixed platforms located on the continental shelf 1988. The international convention for the suppression of terrorist bombing 1997, The convention against Terrorist Financing, Convention on offences and certain other Acts committed or Board Aircraft and convention on the making of plastic explosives for the purpose of Detection.

The international legal frameworks against terrorism are established by the General Assembly Resolutions, Security Council Resolutions and the multilateral Conventions and Protocols related to terrorism. Both the resolutions of the General Assembly and Security Council of the United Nations are not binding, but constitute authoritative recommendations and a source of inspiration that birthed the binding multilateral conventions and protocols related to terrorism which are about 19. These instruments which began to be adopted in 1963 address terrorism from a sectoral perspective with each one focusing on a specific type or manifestation of terrorism without providing a holistic coverage of all aspect of terrorism, owing to the reality that the state parties have not been able to agree upon a single, universally binding instrument. Some of the multilateral protocols and instruments are; 2014 protocol amending the convention on offences and certain other Acts committed on Board Aircraft, 1963 convention on offences and certain other Acts committed on Board aircraft, 2010 convention on the suppression of Unlawful Acts Relating to International Civil aviation, 2010 protocol supplementary to the convention for the suppression of Unlawful seizure of Aircraft, 2005 International Convention for the suppression of Acts of Nuclear Terrorism, 2005 Protocol to convention for the suppression of Unlawful Acts against the safety of Maritime Navigation, 2005 Protocol for the suppression of Unlawful Acts against the Safety of Fixed platforms located on the continental shelf, 2005 Amendment to the Convention on the Physical protection of Nuclear material, added to the above list of protocols and conventions stated above that have been ratified by Nigeria..

The continent of Africa under the supervision of the African Union has legal instruments regulating terrorism. They include Resolution, Declarations, Plan of Action as well as the 1999 OAU convention. The Provisions of the convention are similar to the general contents of the Multilateral counter terrorism treaties. However, a noteworthy exception is provided by Article 3(1) of the above stated convention which provides thus “notwithstanding the Provisions of Article 1, the struggle waged by people in accordance with the principles of international law for their liberation or self-determination, aggression and domination by foreign forces shall not be considered as terrorist acts.”

This above stated Provision on one hand save to protect the interest of the African Continent due to our special circumstance in terms of culture, development, independence, religion etc. on the other hand, it creates a potent of veil that can be utilized to escape conduct of terrorism despite its devastating consequence of humanity; therein existing as one of the setbacks confronting the quest to come to an agreement on a universally acceptable definition of terrorism¹⁵.

¹⁴ TPA

¹⁵ (n.2)

Generally, the sanctions and punishment provided for conduct of terrorism both domestically and internationally depends on the relevant applicable law and the conduct itself. For international law, terrorism conduct attracts individual responsibility to its perpetrators, adjudicate by the International Criminal Court (ICC), which can impose the sanction of imprisonment terms only base on its statute depending on the act. Similar trend applies domestically as punishment of imprisonment terms and death applies depending on the conduct and the provision of the law¹⁶.

Institutional Framework

Globally, the United Nations Office of Counter-terrorism (UNOCT) leads and oversees the totality of United Nations system and methodology to prevent and counter terrorism and extreme violence. The UNOCT have the mandate to lead coordinate and build the capacity of member states as way of supporting them to implement UN Global Counter-Terrorism strategy and taking pro-active practical moves to stop and counter terrorism. Some of the strategy and practical moves utilities herein are as follows:

- a) Border security by implementing international standards and good practices of sound, modern integrated and cooperative border management which play a noteworthy role in preventing terrorist and illegal trafficking flows.
- b) It provides international collaboration to prosecute, rehabilitate and reintegrate foreign terrorist fighters and their dependents especially those returning and or relocating.
- c) It provides the template for the prevention of violent extremism through multidimensional cooperation between member states, civil society and international and regional organizations; which is an important element in comprehensively addressing the threat.
- d) UNOCT stand in solidarity with victims of terrorism all over the globe and advocate for unity to defend their rights and recognize the important role they can put in avoiding terrorism and advancing better societies.
- e) The UNOCT put gender consideration in its mainstream into counter-terrorism work which aids the preventive and responsive efforts more successful, recognize the essential part women play in taking the threat and better the shades lights on the pioneers of radicalization.
- f) The UNOCT utilizes and support multidimensional methods, means and programme like sports promotion, prevention of weapons of mass destruction and chemical, biological, radiological and nuclear materials from terrorists, cybersecurity, protection of human rights, youth engagement, addressing the issue of terror financing etc; as veritable means and measures of counter-terrorism.

In Africa, the African Union established institutions that are pre-occupied with fighting terrorism. They are; AMISON/ATMINS in Somalia, the joint Multinational forces in the Lake Chad Basin, the G5 Sahel joint forces, the SADC mission in Mozambique (SAMIM), and bilateral initiatives in Mozambique¹⁷. All the above bodies collaborate with UNOCT to fight terrorism in their domains¹⁸.

The counter terrorism institutions in Nigeria are the court, the armed forces, civil defense, the police force, prison and correctional centres; which cut across the three arms of government; the Legislative, Executive and Judiciary effectively and efficiently discharging their responsibilities¹⁹.

¹⁶ OHCHR; 'Human Rights, Terrorism and Counter-terrorism' <www.ohchr.org> accessed 9 January, 2023; 'The death penalty, terrorism and international law' <www.penalreform.org> accessed 9 January, 2023.

¹⁷ (n.16)

¹⁸ African Union, 'African Leaders to scale up efforts against unconstitutional changes of government; terrorism and foreign mercenaries' <www.au.int> accessed 12 January 2023

¹⁹ Strengthening capacity to counter terrorism in Nigeria' <www.unodc.org> accessed 12 January 2023

Insurgency in Nigeria

The two noteworthy and continuous insurgencies in Nigeria are the Biafra agitators and the Boko Haram terrorist group. The Boko Haram which means western education is a sin started as a group movement in 2002 in Maiduguri Borno state of Nigeria, primarily aimed to bring about

change of regime from democratic and secular rule to the sharia system, in 2009 Boko Haram became an uprising in Bauchi state that extended to other northern states resulting in the death of its members, civilians and law enforcement officers in hundreds. Its activities include bombing, mass shooting, kidnapping and execution that spread across Nigeria, its activities made the Nigerian government to declare a state of emergency in Borno, Yobe and Adamawa states respectively in 2013²⁰.

The activities of Boko Haram are continuous up till date, utilizing small-scale insurgent hit-and-run attacks on various government and civilian targets, followed by large-scale military engagement from the Nigerian government, joint military collaboration with other countries (Joint Taskforce JTF), widespread urban lockdowns, door-to-door searches arrest etc; brining about human rights abuses on the part of both government and the insurgent²¹.

The pledge of allegiance by Boko Haram to the Islamic state in 2015 raised and draw the support of the international community to support in fight against them wherein the group was recognized internationally as a terrorist organization. The activities of the set which picked in 2014 and 2015 has refused drastically in number of casualties and operations currently. The Nigerian military in collation with Benin, Cameroon, Chad and Niger have pushed the sect out of several area in the North east Nigeria, but the group still retain some territories and continue to launch attacks against children, women mostly. The conflict has been reasonable being limited in the Northern particularly Borno state, but has displaced millions of people in the region. In June 2018, the Nigerian Army announced that two thousand internally displaced people were to return home²². However, in July 2022, about 68 suspected Boko Haram sect attacked Kuje Prison in Abuja using high explosive leading to the escape of over 800 of the 994 in makes²³.

The problem of inequality in resource stiring, wealth control in the socio-political composition of Nigeria creates tension, instability, insecurity and countless agitation for restructuring, justices, fairness and equity. One of which is the Biafra agitation²⁴. It started gradually after the Nigerian civil war, but have exactly gained high momentum since the advent of President Buhari regime under the leadership of Nmandi Kanu due to the perceived increase of the above highlighted factors against the Igbo. This movement that started peacefully have become violence to some extend through imposition of curfew and punishment against offenders, government military attackers of its members especially the attack on the home of Nnamdi Kanu and the arrest and ongoing prosecution of him. Generally, the conduct of the Biafra agitators constitute insurgency denotatively, but do not constitute terrorism by virtue of the exception provision of the African Union by Article 3(1) of the OAO Convention of Prevention and Combating of Terrorism 1999²⁵. However, the individual criminal conduct of individuals of the group which constitute act of terrorism provided by the above stated operational Nigerian law and or regional or international ratified law, are been punishable according to the law.

²⁰ Gillian Dunn, 'The impact of the Boko Haram insurgency in Northeast Nigeria on childhood wasting: a double -difference study' <www.conflictandhealth.biomedcentral.com/.../> accessed 13 January 2023

²¹ Rafael Serrano and Zacharias Pieri, 'By the numbers: the Nigeria States efforts to counter Boko Haram' <www.book.operation.org/> accessed 13 January, 2023.

²² Centre for preventive Action, 'Conflict with Boko Haram in Nigeria' <www.cfr.org/> accessed 13 January, 2023.

²³ Nasir Ayitogo 'Abuja Prison Attack: Nigeria Government release details of escaped Boko Haram terrorists' <www.priumtimesng.com/.../> accessed 13 January, 2023).

²⁴ Uwaifo Samuel Osaretin 'Biafra Agitation and Politics of imbalance in Nigeria' (2019) (8) (2) Journal of Civil and Legal Sciences 262 '<www.omicsonline.org/.../> accessed 13 January, 2023).

²⁵ Nictolas Idris Erameh, 'The Biafra Agitation International Law and the Elusive Quest for self Determination' <www.researchgate.net/.../> accessed 13 January, 2023).

The identified causes of insurgency in Nigeria are; land use and proprietary rights, growth of social class awareness and desire for equality, discrimination, poverty, unemployment, political alienation, religious and ideological discontent²⁶, lack of proper education, Community based dialogue, intelligent gathering, increased military operation and effective collaboration among agencies of government²⁷.

RECOMMENDATION

Towards addressing the issue of insurgency in Nigeria, the following actions are recommended.

1. Development and management of a sustained comprehensive community base dialogue and intelligent gathering.
2. Development and implementation of permanent sustained social policy programmes and framework that addresses the issue of poverty, unemployment, education access, discrimination, political access, freedom of religion and believe to the extent that you do not exercise the freedom against the person of another, rehabilitation and reintegration.
3. Increase funding and development of a military and security forces having comprehensive information base of the issue, human, capital and material tools to address and tackle the issue.
4. Effective and efficient collaboration among all government agencies and body together with religion, ethnic and social group to ensure cooperation and shared communication and access among them.
5. Government partnership with the omitted Nation (ONOC) and the AU, to benefit and utilizes it methods, means and mechanisms to aides it monitoring, control and management of the issues of insurgency and terrorism as veritable tools of addressing human rights abuses and driving the human, economic, social, cultural and religious development of the Nigerian State.

CONCLUSION

International Humanitarian law focuses on minimizing disorder in any form of armed conflict and managing the resulting fall out of armed conflict. Terrorism is an aspect of armed conflict that exist both internationally and domestically (in form of insurgency sometimes) to disrupt the social, economic, legal development and wellbeing of the state and its citizens. The means and measures of addressing same is encapsulated in legal instruments that exists internationally, regionally and domestically.

In Nigeria, insurgency is a great militator against the growth and progress of the state and its citizens. The issue of Biafra and Boko Haram insurgency among other past and emerging insurgency need to be comprehensively examined to establish its causes continuously, develop practical measures that addresses the Nigerian peculiarity and dutiful implementation of same to save the Nigeria state from the mistake of its past, take charge of today and protect her future.

²⁶ Allswell Osmi Muzan, 'Insurgency in Nigeria addressing the causes as part of the solution' <www.safli.org/> accessed 13 January, 2023).

²⁷ Olumise O. Omudunsi and others 'Boko Haram insurgency in Nigeria: Advancing policy options for a lasting solution' Danubius Journals <www.dj.oniv-danubius.ro/> accessed 13 January, 2023).