



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

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ABSTRACT

Since the beginning of civilization on earth, military forces have been engaged in several battles for one reason or the other. The battles are now mostly narrowed to the territory of one state, with devastating effect on the civilians. The known horrors of armed conflict do not have to be described. Loss of lives, properties of all sorts and damage to the natural environment are common place. Effect of these losses are severe on those still living; ranging from psychological, social and physical suffering. This is so, despite the fact that International Humanitarian Law ever since its inception to the present time has set limits on the rights of belligerents to the choice of means and method of warfare. The law also prohibits destruction of property and objects belonging to the civilians, including objects belonging to the environment. Challenges to the implementation and enforcement of International Humanitarian Law (IHL) in the Boko Haram insurgency and war against terrorism in Nigeria can be traced to the country's law on implementation of treaties. The paper examined the issue of terrorism, counterterrorism and international humanitarian law as pertains to the insurgency in Nigeria. The doctrinal research method was adopted in this work. From the analysis, the paper found that both the general public are mixed together with no clear understanding of the rules of war again. In clear teams, conflict has metamorphosed into phenomenon call terrorism where aggrieved groups, for political reasons and some extreme ideologies, vent violent rage on innocent civilians. The paper concluded that the violations of IHL are not due to the inadequacy of its rules, but rather to lack of willingness to respect them, or and also due to ignorance of the rules. Hence there is need for the government, NGOs and humanitarian organisations such as Red Cross to intensify efforts of disseminating rules of IHL in peace time.

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

1. INTRODUCTION

Since time immemorial, mankind has shown great disposition to warfare (armed conflict¹) and this continues till today. Terrorism is seen as criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.² In recent years, States have had to confront a threat emanating from individuals and non-State armed groups that resort to acts of terrorism. In response, States and international organisations have developed increasingly robust counterterrorism measures. There is no doubt that it is legitimate and necessary for States to act at the national, regional and international level to ensure their security and the security of their population. Acts of terrorism negate the basic principle of humanity and go against the principles underlying International Humanitarian Law (IHL). Recent years have again seen

¹ Commentary on Geneva Convention I.

² United Nations Security Council Resolution 1566 (2004)

the rise of non-State armed groups resorting to acts of terrorism. This is of course an increasing concern domestically but also internationally.³

This situation has led States - and international organisations - to react by tightening existing counter-terrorism measures and introducing new ones. Fighting terrorism may take various forms, including armed conflict. As a result, the question of the relationship between the legal frameworks governing IHL and terrorism has returned to the forefront of legal discussions,⁴ raising a host of legal issues such as the revival of the notion of “war against terrorism”, the relevance of IHL for those engaged in the fight against terrorism, the legal status under IHL of those fighting alongside non-State armed groups and subsequently detained, or the determination of the paradigm governing the use of force against these groups and those claiming allegiance to them.⁵ Tolling the line of history, for example, from Iraq, to Iran, Nigeria, France, United States and to all States which have been victims of terrorism, they have witnessed random gun-shootings, detonation of dangerous explosives or kidnappings of people who are not prepared and armed (and are basically considered as innocents or guilty targets) with the high hopes of degrading the public confidence bestowed on the government on sit.

The aim of IHL is to protect human being and to safeguard the dignity of man in the extreme situation of war. There is no doubt that IHL provides legal protection to human life and to property and environment.⁶ Nevertheless, there have been countless violations of these treaties and of basic humanitarian principles, resulting into suffering and death, which might have been avoided had IHL been respected. Most of the armed conflict taking place today are non- international armed conflicts. Thus the wanton destruction associated with armed conflict is now experienced within the confines of a single state. For example, the Boko Haram insurgency caused severe loss of lives and properties especially in the northern part of the country.⁷ The Boko-Haram insurgency is similar to many internal wars that took place, and are taking place till date. However, until recently, IHL does not apply to non-international armed conflict (NIAC) no matter the intensity. However by the provisions of Common article 3 to Geneva Conventions (GC) and with the adoption of Additional Protocols to GCs IHL is applicable to NIACs where it reached certain level of intensity and satisfy some conditions, as further provided for in Additional Protocol II to GC. This paper will examine terrorism, counter-terrorism and International Humanitarian Law with particular focus on Nigeria.

2. DEFINITION OF CONCEPTS

Terrorism

The concept of terrorism is one of the most difficult concepts to deal with when it comes to definition. There is no agreeable definition for the term ‘Terrorism’. The problem of having an acceptable definition could be attributed to the fact that the difference of ideology between the developed and developing nations, on one hand and the conduct of the United Nations towards the developing nations on the other.⁸ However, terrorism is defined as the systematic use of violence and intimidation to coerce a government or community into acceding to specific political demands.⁹ Article 2 of the draft comprehensive Convention on International Terrorism defined terrorism as:

³ C Gertrude, ‘Defining Armed Conflict in International Humanitarian Law’ <<http://www.inquiriesjournal.com/a?id=1697>> accessed 19 January 2023.

⁴ M Cohen, ‘International Humanitarian Law of Armed Conflict: A Critical Annotated Bibliography for Collection Development’ [2013] (40) *International Journal of Legal Information*, 393-416.

⁵ T Butcher, ‘Middle East Correspondent. ‘Iraq Bombs: 250 Die In Worst Terror Attack’ <<https://www.telegraph.co.uk/news/worldnews/1560477/Iraq-bombs-250-die-in-worst-terror-attack.html>> Accessed 19 January 2023.

⁶ Hague Regulation 1899, art. 23(g); Additional Protocol 1 to Geneva Conventions 1977, arts. 52-54 and 56

⁷ Amnesty International, ‘Our Job is to Shoot, Slaughter and Kill: Boko Haram Reigns of Terror in the North-East Nigeria’ <<https://www.amnesty.org/en/documents/AFR44/1360/2015/en/>> accessed 20 January 2023.

⁸ A R Moten, ‘Understanding Terrorism Contested Concept, Conflicting Perspectives and Shattering Consequences’ [2010] (18)(1) *Intellectual Discourse*, 31- 63; *Nicaragua v United States* (1986) *ICJ Reports* 14; *Democratic Republic of Congo v Uganda* (2005) ICJ Reports 168.

⁹ N Pearsall and M Trumble, ‘Political Parties and Terrorist Groups’ [2000] (4)(2) *Terrorism and Political Violence*, 101

any person who commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes: death or serious bodily injury to any person; or serious damage to public or private property, including a place of public use, a state or government facility, a public transportation system, an infrastructure facility or the environment; or damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act.¹⁰

In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes:

criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes" and that such acts "are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."¹¹

Terrorism is also viewed as the threat or use of violence and terror for the achievement of apolitical, socio-economic or other expedient purpose against an individual or group of individuals, a thing or group of things, a state or group of states.¹²

Blacksley defines terrorism as:

...violence committed by any means; causing death, great bodily harm, or serious property damage; to innocent individuals; with the intent to cause those consequences or with wanton disregard for those consequences; and for the purpose of coercing or intimidating some specific group, or government, or otherwise to gain some perceived political, military, religious, or other philosophical benefit.¹³

Terrorism, according to Dinstein,¹⁴ constitutes "acts of violence committed to instill fear (to terrorize) a state or a social group, where the victims are chosen either at random or because of mere association with a target entity."

Counter-Terrorism

Counterterrorism incorporates the practices, military tactics, techniques, and strategies that governments, law enforcement, business, and intelligence agencies use to combat or eliminate terrorism. Counterterrorism strategies are a government's motivation to use the instruments of national power to defeat terrorists, the organizations they maintain, and the networks they contain.¹⁵

Counter-terrorism consists of actions or strategies aimed at preventing terrorism from escalating, controlling the damage from terrorist attacks that do occur, and ultimately seeking to eradicate terrorism in a given context. Counter-terrorism can be classified according to four theoretical models: Defensive, Reconciliatory, Criminal-Justice, and War. Generally speaking, each model contains differences in threat perception, how to guard against that threat, how to frame terrorism in the law and constitution, and which agents effect counter-terrorism.

International Humanitarian Law

International Humanitarian Law (IHL) means international rules established by treaties or customs, which limits the right of parties to a conflict to use the methods or means of warfare of their choice; or which protect state not party to the conflict or persons and objects that are or may be affected by the

¹⁰ Draft Comprehensive Convention on International Terrorism 2002, art. 2

¹¹ United Nations Declaration on Measures to Eliminate International Terrorism annex to UN General Assembly resolution 49/60, Measures to Eliminate International Terrorism, of December 9, 1994, UN Doc. A/Res/60/49.

¹² O B C Nwoliwe, 'Organised Terrorism and National Sovereignty' (A. B.Sc. Project, submitted to the Dept. of Political Science, University of Nigeria, Nsukka 1977) xiv.

¹³ C Blakesley, *Terror and Anti-Terrorism: A Normative and Practical Assessment* (Ardsey, NY: Transnational Publishers 2006) 31; *AG v Awoyele* (1952) 19 NLR 52.

¹⁴ Y Dinstein, 'Humanitarian Law on the Conflict in Afghanistan' [2002] (96) *Am. Soc'y of Int'l L. Proc.*, 23

¹⁵ D E Stigall and Others, 'The 2018 National Strategy for Counterterrorism: A Synoptic Overview' (American University National Security Law Brief 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3466967> accessed 19 January 2023.

conflict.¹⁶ IHL is also defined as “a special branch of law governing situation of armed conflict”.¹⁷ The aim of humanitarian law is to make war humane and prevent wanton destruction and suffering. The provisions of IHL have always been tailored to fit human requirements.¹⁸ Thus, IHL main object is to regulate hostilities in order to attenuate their hardship.¹⁹ As such therefore, IHL derives from the basic principle that individual is entitled to certain minimum right, whether in peace or during war. Thus he is entitled to protection, security and respect; if wounded or captured he is entitled to care and humane treatment; if dead, his body is entitled to decent treatment. On these grounds, particular means of waging war are forbidden, usage of particular weapons is restricted or forbidden, and particular types of attack against specified groups of people or places are prohibited.²⁰

Insurgency

The Black's Law Dictionary describes an insurgent as a person who, for political purposes, engages in armed hostility against an established government, while denoting insurgency as the adjective of “insurgent”.²¹ Fundamentally, an insurgency is a civil war characterised by a power asymmetry between belligerent groups. The weaker of these groups constitutes the ‘insurgent’ party, while the stronger is the government. Through ideological and social manipulation of the general population, the insurgent party ultimately seeks to transfer political power from the government to itself.²² Insurgent activities therefore may include violence, but are likely to involve a wider platform of ideological and social activism as well. A critical universal feature in any successful insurgency is the ‘progressive attrition of the opponent’s political capability to wage war.’²³

3. THE INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE ON TERRORISM

IHL does not provide a definition of terrorism. However, in situations of armed conflict, it prohibits most acts that are criminalised as ‘terrorist’ in domestic legislation and international conventions specifically addressing terrorism. For instance, in armed conflict, IHL prohibits direct and deliberate attacks against civilians, based on the principle of distinction, which is a cornerstone of this body of law. It also prohibits indiscriminate attacks (such as bombing in civilian settings) and hostage taking, to name but a few examples. These prohibitions apply in both international armed conflict (IAC) and non-international armed conflict, and are of a customary law nature as well. Even if IHL does not define terrorism, it is nonetheless not silent on this issue. It expressly prohibits ‘measures of terrorism’²⁴ and ‘acts of terrorism’²⁵ against persons not or no longer taking part in hostilities, irrespective of who – among the parties to the armed conflict – commits such acts. The main objective of these provisions is to ensure that a party to an armed conflict is prohibited from terrorising civilians under its control. IHL therefore provides a strong legal framework with explicit prohibitions applicable also to non-State armed groups designated as terrorist whose violations entail individual criminal responsibility at both domestic and international level.

Fighting Terrorism Covered by the IHL Provisions

Most frequently, fights against terrorist groups, if at all covered by IHL, are covered by the IHL provisions on non-international armed conflicts, provided that the two traditional conditions for that law to apply are fulfilled, i.e. a sufficient degree of organisation of the group and a sufficient intensity of violence between the group and one or several States and/or armed groups.²⁶ While IHL applies

¹⁶ M T Ladan, *Materials and Cases on International Law* (Zaria: ABU Press 2007) 200.

¹⁷ H P Gasser, *International Humanitarian Law: An Introduction* (Geneva: Henry Dunant Institute 1993) 3.

¹⁸ *Ibid*, 16

¹⁹ J Pictet, *Development and Principles of International Humanitarian Law* (NY: Oxford Uni. Press 1980) 1.

²⁰ Y Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (New York: Cambridge University Press 2004) 4

²¹ B A Garner (ed.), *Black's Law Dictionary* (8th edn., St. Paul, MN.: Thomson West 2004) 823

²² D Galula, *Counterinsurgency Warfare: Theory and Practice* (Westport, Connecticut: Praeger Security International 1964) 3-6

²³ A Mack, ‘Why Big Nations Lose Small Wars: The Politics of Asymmetric Conflict’ [1975] (27)(2) *World Politics*, 177.

²⁴ Geneva Convention IV, art. 33

²⁵ Additional Protocol II, art. 4

²⁶ *The Prosecutor v Dusko Tadic*, IT-94-1, Trial Chamber II, Judgement, 7 May 1997, para 562; *The Prosecutor v Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, IT-04-84-T, 3 April 2008, paras 49 and 60.

according to the facts (organisation and intensity of violence) on the ground, International Human Rights Law (IHRL) requires a government to repress, whenever possible, terrorist armed groups with law enforcement means and without resorting to the degree and kind of violence which would trigger the applicability of the IHL provisions on non-international armed conflicts. This would mean that the government may not, under Human Rights Law, resort first to fighting a terrorist group according to the rules of the IHL provisions on non-international armed conflict, but may act according to the (less protective) rules on the use of force under IHL only once the group has engaged in the degree and kind of violence which makes the IHL provisions on non-international armed conflicts applicable. It is however obvious that the IHL provisions on non-international armed conflicts equally apply if the government is – in violation of the aforementioned (arguable) Human Rights Law obligation – the first to resort to the degree and kind of violence making IHL applicable.²⁷ A non-international armed conflict between a government and an armed group in its territory may spill over into the territory of a neighbouring State and in this case the IHL provisions on non-international armed conflicts apply in the neighbouring State without any need to analyse whether the necessary level of violence to trigger its applicability is also fulfilled in the neighbouring State.²⁸ In case of a transnational armed conflict against an armed group only based in a neighbouring State or between a State and an armed group based in several other States, the group as such must fulfil the requirements of organisation and must be one single armed group under one responsible command, according to IHL. The level of violence against one adversary, even if resulting from coordinated acts worldwide, must equally be reached.²⁹

Universal Sectoral Treaties on Terrorism and their Relationship with International Humanitarian Law

The international community from the outset chose a pragmatic approach, known as the sectoral, piecemeal or enumerative approach: the adoption of numerous treaties that address specific acts of terrorism, but not terrorist activities in general. Initially, the same sectoral approach was adopted at regional level, but from the 90s onwards several general conventions were adopted at regional level. Some of them provide for a generic definition of terrorism, for example the African Union Convention. Others, such as the Council of Europe Convention, apply to the offences contained in the universal sectoral conventions. Some combine the two methods. The regional experience shows that it is possible to adopt a comprehensive treaty on terrorism. Broadly speaking, these treaties provide for the criminalisation of certain forms of conduct under domestic law and seek to ensure that alleged perpetrators are not able to escape trial and punishment by absconding to another country. They do so by providing extended bases for States to establish jurisdiction and an obligation to extradite or prosecute. They also create frameworks for judicial cooperation and mutual legal assistance.

Many of the earlier treaties remain silent in this respect, presumably because they prohibit activities that do not regularly occur during an armed conflict, such as, for example, the hijacking of an aircraft. Those who do, including the three most recent conventions, tend to exclude acts governed by International Humanitarian Law. First, the 1979 Hostage Convention specifies that it does not apply during times of armed conflict as defined in the Geneva Conventions and its Additional Protocols insofar as these are applicable to a particular act of hostage taking, and in so far as State parties are bound under these conventions to prosecute or extradite the hostage taker.

Second, the 1997 Terrorist Bombing Convention and the 2004 Nuclear Terrorism Convention both exclude ‘the activities of armed forces during an armed conflict, as those terms are understood under International Humanitarian Law, which are governed by that law.’ Admittedly, some affirm that the term ‘armed forces’ does not include non-State armed groups. Yet, the majority opinion, and my own, is that these provisions should be understood as referring to both State and non-State armed groups. Both conventions include a safeguard clause that provides that nothing in the Convention may affect

²⁷ T Ferraro, ‘The Applicability and Application of International Humanitarian Law to Multinational Forces’ [2013] (95)(891) *International Review of the Red Cross*, 584.

²⁸ N Lubell, *Extraterritorial Use of Force Against Non-State Actors* (Oxford: Oxford University Press 2010) 220-224.

²⁹ Ministry of Defence, UK, *The Manual of the Law of Armed Conflict* (Oxford University Press 2004) 282.

the rights and obligations of States and individuals under international law, including International Humanitarian Law. Moreover, they use a different term, 'military forces of a State', when referring to State armed forces. Finally, arguably the term armed forces under IHL cover both the armed forces of the State and the armed forces of the non-State party.

Third, the 1999 Convention on Terrorism Financing includes the same safeguard clause. Moreover, its definition of acts of terrorism whose financing is prohibited is limited. The definition embodies what may be called the lowest common denominator. It defines acts of terrorism as a) acts criminalised in the other international treaties, and b) any other act intended to cause death or serious bodily injury to a civilian or any other person not taking an active part in the hostilities in a situation of armed conflict. In other words, the 1999 Convention on Terrorism Financing would not apply to lawful acts of war. It is also worth noting that the definition excludes damage to property. Yet, we find such an element in many regional conventions, and the 1997 Terrorist Bombing Convention includes extensive damage to property that results in major economic loss. In conclusion, as a general principle, the international conventions do not apply during times of armed conflicts to acts governed by International Humanitarian Law.

The Distinctions between IHL and the Legal Framework Governing Terrorism

Even if IHL and the legal framework governing terrorism may have some common grounds in terms of prohibitions, from a more general perspective, they still have different objectives, rationales and structures. In essence, they are not the same.

A crucial difference is that, in legal terms, armed conflict is a situation in which certain acts of violence are lawful and others are unlawful, while any act of violence designated as terrorist is by definition unlawful and criminal. The ultimate aim of armed conflict is to prevail over the enemy. For this reason, parties to the conflict are permitted to attack, or at least are not prohibited from attacking each other's military objectives or individuals not entitled to protection against direct attacks. Violence directed at those targets is not prohibited under IHL, regardless of whether it is inflicted by a State or a non-State armed group. By contrast, acts of violence against civilians and civilian objects are unlawful. Therefore, IHL regulates both lawful and unlawful acts of violence by all parties, while no similar approach can be found in the legal regime governing acts of terrorism.

Another difference lies in the fact that, under IHL, the parties to an armed conflict have the same rights and obligations under IHL (even if that is not the case under domestic law). This principle reflects the fact that IHL's goal is to ensure the equal protection of persons and objects affected by an armed conflict irrespective of the side on which they find themselves during the armed conflict. The legal framework for terrorism obviously does not contain such equal rights and obligations for perpetrators of terrorist acts.

However, it is important to note that while IHL does provide for the same rights and obligations for belligerents, it does not confer any legitimacy to armed groups. Article 3 to the Geneva Conventions explicitly states that the application of IHL 'shall not affect the legal status of the Parties to the conflict'. Similarly, Additional Protocol II affirms that 'Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government to maintain or re-establish law and order in the State'.³⁰

The Overlap

Despite these differences, overlaps still remain. If IHL prohibits both specific acts of terrorism committed in armed conflict and a range of other acts committed against the civilian population and civilian objects, and considers them to constitute war crimes, nothing prevents States choosing to designate such acts as terrorist acts under their domestic law or under international conventions aimed at eliminating terrorism. Overlaps will continue and even contradictions between IHL and the legal framework governing terrorism will unavoidably endure if States continue to designate lawful acts of war as terrorist actions.

Adding a layer of incrimination by designating as 'terrorist' acts that are not unlawful under IHL may discourage IHL compliance by non-State armed groups. All motivation for fighting in accordance with the law would be likely to erode in such cases. Indeed, labelling as 'terrorist' acts that are lawful under IHL renders more difficult the implementation of Additional Protocol II,³¹ whose objective is to

³⁰ Additional Protocol II, art. 3

³¹ *Ibid*, art. 6(5)

grant the broadest possible amnesty to persons having participated in the hostilities. For obvious reasons, the prospect of amnesty is obfuscated if even lawful acts of war are qualified as acts of terrorism. This may ultimately become an obstacle to peace negotiations and reconciliation efforts in the future. It is true that this discourse is not easy to hear nowadays because of the Islamic State group and affiliated armed groups such as Boko Haram who clearly reject IHL and the values underpinning this body of law. However, one must think beyond this as contemporary belligerency shows that forms of non-international armed conflict involving more “classic” insurgents or non-State organised armed groups with which IHL issues can be addressed still endure. Furthermore, in order to reflect the reality of armed conflicts and the rationale of IHL, which is that military objectives can and will be attacked, the ICRC holds the view that attacks against military objectives which are not prohibited by IHL should not be labelled ‘terrorist’ in international conventions and, ideally, in domestic legislation. Acts directed at military objectives constitute the very essence of armed conflict and should never be legally defined as ‘terrorist’ under another regime of international law. To do so would imply that such acts are prohibited and must be subject to criminalisation under that other international legal framework.

Because of these overlaps and because international conventions addressing terrorism generally apply in situations of armed conflict, it is essential to have in counterterrorism instruments clauses regulating the relationship between IHL and international conventions addressing terrorism. This would be the only way to avoid, as far as possible, the overlaps and contradictions between the two bodies of law. The issue is complex, as exemplified by the discussions surrounding the UN Draft Comprehensive Convention on International Terrorism whose IHL saving clause is one of the main stumbling blocks for completing the drafting process of this instrument.

The formulation of such a clause will be critical in order to maintain IHL integrity and rationale, but also to avoid ambiguity and misinterpretation detrimental to IHL. From the ICRC’s perspective, any political agreement on the UN Draft Comprehensive Convention on International Terrorism should be translated into a legally correct IHL clause and should not be concluded to the detriment of IHL underlying principles.

4. INSURGENCY IN NIGERIA AND INSTRUMENTS ON INTERNATIONAL HUMANITARIAN LAW

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 takes into account of the provision of Universal Declaration of Human Rights (UDHR)³² and provision of International Convention on Civil and Political Right (ICCPR)³³ both of which provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. During armed conflict victims are subjected to torture as degrading treatment. To this end, this convention established a committee against torture. Whether or not the Nigerian army is observing the provisions above is very doubtful. From the reports collided from the press, parties to the ongoing Boko Haram crises are summarily executed when caught. Boko Haram itself has shown videos of members of the Nigeria army whose heads were cut off while the army has also consistently boasted of many insurgents who have been killed without recourse to law. In all of these, it would appear that it is the harmless civilian populace who are often caught in the crossfire of the war between Boko Haram, the Nigerian army and the hapless Communities that have become to theater of war and bloodshed. It is disgraceful, in Nigeria, to notice that instead of providing security and welfare for the civilian victims, politicians have continued to play politics with the very lives of these victims.

The provisions of the convention on prohibition or restriction on the use of certain conventional weapons, which may be deemed to be excessively injurious or to have indiscriminate effects, 1981 recognizes the importance of pursuing every effort which may contribute to progress towards general and complete disarmament under strict and effective international control. The scope of application refers to article 2 which is Common to Geneva Convention of 1949 for the protection of victims of armed conflict. Its Additional Protocol I deals with non-detectable fragments and also prohibits the use of weapons, the primary effect of which is to injure by fragments which in the human body escape detection by x-ray etc.

³² UDHR 1948, art. 5

³³ ICCPR 1966, art. 7

The general view is that Common article 3 of the Geneva Convention has attained customary status and thus applicable to all nations of the world, coupled with the fact that GCs of 1949 attained universal status.³⁴ Taking Boko Haram in this respect, despite the fact that their activities cross the shores of Nigeria to the neighbouring countries, their major activities are within the territory of Nigeria and Nigeria is a signatory to all the conventions. Therefore one can rightly assert that the Boko Haram situation scale the hurdle of this condition for the attainment of NIAC status.

The provisions of the Convention on the Prevention of the Crime of Genocide 1948 recognizes that all period of history, genocide has inflicted great losses on humanity and being convinced that in order to liberate mankind from such an odious scourge, international cooperation is required. The Convention provides that persons charged with direct and public incitement, attempt, complicity and conspiracy to commit genocide or has committed genocide shall be tried by a competent tribunal of the state or the International Criminal Court (ICC).³⁵ It is worthy to state that recognition of NIAC status does not confer legitimacy to the cause and excess of either the insurgents or the government forces. The only thing that can justify resort to force by any armed group as rightly pointed out, is the legitimacy of their goals, the decency of their means and their ability to respect IHL.

5. CONCLUSION AND RECOMMENDATIONS

Terrorism is a serious threat and it must be fought against vigorously, but for this purpose it is neither necessary nor appropriate to blur existing legal categories. IHL in particular, which prohibits all acts that might be reasonably labelled as terrorist, applies independently of whether the acts which trigger its application are lawful, unlawful or even terrorist under its rules. The problem is, however, that many questions related to whether, when and which rules of IHL apply to an organised use of force remain controversial even outside the fight against terrorism.

In defining a group as 'terrorist', States often tends to avoid the applicability of International Humanitarian Law (IHL). They do this under the erroneous impression that IHL would confer impunity for acts of terrorism or would not allow terrorist threats to be efficiently eliminated. Although terrorism is not defined in IHL, all the acts of a terrorist nature (e.g. indiscriminate attacks, attacks against civilian objects, spreading terror, etc.) are prohibited under this body of law. By refraining from applying IHL and favouring the definition of new criminal acts under domestic or international law, States develop an unnecessary layer of law and risk qualifying lawful acts of war as terrorist acts, which would most certainly discourage armed groups designated as terrorist to comply with IHL. One can rightly opine that the violations of IHL are not due to the inadequacy of its rules, but rather to lack of willingness to respect them, or and also due to ignorance of the rules. Hence there is need for the government, NGOs and humanitarian organisations such as Red Cross to intensify efforts of disseminating rules of IHL in peace time. This can be done through radio programs and incorporating the principles into civic education and general studies in our schools. This will ensure that even if war or insurgency breaks, and civilians are conscripted or recruited as the case may be, they will respect the rules of IHL which will in turn save humanity.

³⁴ ICRC, 'Geneva Conventions of 1949 Achieve Universal Acceptance' <<https://www.icrc.org/eng/resources/documents/news-release/2009-and-earlier/geneva-conventions-news-210806.htm>> accessed 20 January 2023.

³⁵ Convention on the Prevention of the Crime of Genocide 1948, art. VI