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COMBATING TRANSNATIONAL CRIMES IN NIGERIA USING LOCAL AND INTERNATIONAL LEGAL INSTRUMENTS

MADU, Vivian Chukwudumebi

Associate Professor of Law NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES UNIVERSITY OF LAGOS, LAGOS

Corresponding Author: MADU, Vivian Chukwudumebi

Associate Professor of Law NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES UNIVERSITY OF LAGOS, LAGOS

ABSTRACT

It is well known that many governments have resorted to a wide range of constructions to justify, under international law, their unilateral exceptions to countering transnational crimes such as terrorism. Nigeria's status and role as a regional power continues to impact the entire West African sub-region. However, the country is facing serious security challenges that are complicated by transnational threats which are associated with organised crime and the activities of jihadist movements. Threats to security linked to the activities of terrorist and human traffickers in West Africa have attracted considerable attention from scholars, policy makers and practitioners alike. The aim of this study is to comprehend the nature of transnational crimes in Nigeria and how to utilize international legal provisions to combat them within the Nigerian Criminal Justice System. Appraise the nature and scope of international law on identified transnational crimes. Evaluate the effectiveness of the International legal framework on combating crimes within the Nigerian Criminal Justice System. Recommend appropriate judicial remedies. This study presents the role of Nigeria as a regional hegemon, and also discusses its response to transnational organised criminality and jihadist activities in the sub-region, highlighting Nigeria's official response as well as other interventions undertaken through bilateral and multilateral platforms. The efforts of the Nigerian government at combating transnational organised crime and the spread of jihadist activities are yielding some gains. However, lack of political will, bad governance, and poorly equipped and motivated defence and security agencies coupled with other problems such as the porosity of the borders and non involvement of the people have continued to inhibit progress. This paper seeks to take stock of a range of arguments, doctrines or constructions that states may resort to when seeking to justify their unilateral actions in combating transnational crimes. Many constructions have a valid legal basis and a proper scope of application. However, they also have limitations and often relate to a specific treaty, or the availability of a procedure, but do not alter the substantive obligations of the state in question under international law. In many cases, this results from the overlap of treaty law and customary norms of international law. Some of the constructions are open to abuse, i.e. bad faith efforts to distort international law to the detriment of human rights. Because the combined effect of the various excuses and exceptions are complex, there is a need for a holistic approach which seeks to address the combined effect of various constructions of unilateral exceptions. The study concludes that there is no controversy about the

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desirability of the Nigerian government to curb transnational organised crime and jihadist activities in the country. However, the complexities of strategies and modalities for effective curbing of transnational threats still requires in-depth and concerted efforts than have been given by stakeholders.

KEY WORDS: Transnational crime, kidnapping, money laundering, Terrorism

INTRODUCTION

The concept of transnational crime, from a criminological perspective, originated in the mid 1970's when the United Nations used the term in order to identify eighteen categories of transnational and mostly organised criminality. Transnational crime was then defined as offences whose inception, prevention and/or direct or indirect effects involved more than one country.[1] Such crimes include money laundering, terrorist offences/crimes, arms and human trafficking, trade in human organs, illicit drugs trafficking, fraudulent bankruptcy, bribery and corruption to mention but a few. Transnational crimes have spread exponentially with the development of globalization and it is only relatively recent that some progress has been made by states and international organisations in developing measures to combat this type of criminality. Transnational crimes are crimes that have actual or potential effect across national borders and crimes that are intrastate but offend fundamental values of the international community.[2] The term is commonly used in the law enforcement and academic communities. Transnational organized crime (TOC) refers specifically to transnational crime carried out crime organizations.[3]

The word *transnational* describes crimes that are not only international (that is, crimes that cross borders between countries), but crimes that by their nature involve cross-border transference as an essential part of the criminal activity. Transnational crimes also include crimes that take place in one country, but their consequences significantly affect another country and transit countries may also be involved. Examples of transnational crimes include: human trafficking, drug trafficking people smuggling, smuggling/trafficking of goods (such as arms trafficking and drug trafficking and illegal animal and plant products and other goods prohibited on environmental grounds (e.g. banned ozone depleting substances), sex slavery, terrorism offences, torture and apartheid.

Transnational crimes may also be crimes of customary international law or international crimes when committed in certain circumstances. For example, they may in certain situations constitute crimes against humanity.

The international community is confronted with an increasing level of transnational crime in which criminal conduct in one country has an impact in another or even several others. Drug trafficking, human trafficking, computer crimes, terrorism, and a host of other crimes can involve actors operating outside the borders of a country which might have a significant interest in stemming the activity in question and prosecuting the perpetrator. Contemporary transnational crimes take advantage of globalization, trade liberalization and exploding new technologies to perpetrate diverse crimes and to move money, goods, services and people instantaneously for purposes of perpetrating violence for political ends.[4]

Moreover, problems of weakened states and transnational crime create an unholy confluence that is uniquely challenging. When a criminal operates outside the territory of an offended state, the offended state might ordinarily appeal to the state from which the criminal is operating to take some sort of action, such as to prosecute the offender domestically or extradite the offender so that he or she may face punishment in the offended state. Nonetheless, in situations in which a government is unable (or unwilling) to cooperate in the arrest or prosecution of a criminal, the offended state has few options for recourse.[5] Furthermore, often state actors are part of transnational criminal dynamics in conflict zones and benefit from the smuggling of illicit goods.

Given the limits on the exercise of extraterritorial enforcement jurisdiction, states have developed mechanisms to cooperate in transnational criminal matters. The primary mechanisms used in this regard are extradition, lawful removal, and mutual legal assistance.[6]

Extradition is the mechanism by which one sovereign requests and obtains custody of a fugitive located within the jurisdiction and control of another sovereign. It is an ancient mechanism, dating back to at least the thirteenth century BCE, when an Egyptian Pharaoh negotiated an extradition treaty with a Hittite King. Through the extradition process, a sovereign (the requesting state) typically makes a formal request to another sovereign (the requested state). If the fugitive is found within the territory of the requested state, then the requested state may arrest the fugitive and subject him or her to its extradition process. The extradition procedures to which the fugitive will be subjected are dependent on the law and practice of the requested state.[7]

Extra-territorial jurisdiction applies when states parties to a treaty through the means of a reciprocal agreement sign into law that under certain circumstances persons can be punished or repatriated to states of origin for punishment of an offence committed in another state. It can be described as the operation of laws upon persons existing beyond the limits of the enacting state or nation but who are

[1] (UN Doc. A CONF. 169/15/Add. 1 (1995).

[2] Boister, Neil (2003), Transnational Criminal Law, European Journal of International Law. **14** (5): 953, 967–77. doi:10.1093/ejil/14.5.953.

[3] United Nations Convention against Transnational Organized Crime, which was opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003.

[4] Dan E. Stigall, U.S. Department of Justice (2013). "Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law". Notre Dame Journal of International and Comparative Law. 3 (1). SSRN 2211219.

[5] Weigand, Florian. Conflict and Transnational Crime: Borders, Bullets & Business in Southeast Asia. Edwar Elgar. ISBN 978 1 78990 519 9.

[6] Ibid no. 28.

[7] See Section 66(1) of the Independent Corrupt Practices Act.

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still amenable to its laws. Again it can be referred to as jurisdiction exercised by a nation in other countries by treaty, or by its own ministers or consuls in foreign lands.[8] Aside from mechanisms for the return of fugitives, states have also developed mechanisms for requesting and obtaining evidence for criminal investigations and prosecutions. When evidence or other forms of legal assistance, such as witness statements or the service of documents, are needed from a foreign sovereign, states may attempt to cooperate informally through their respective police agencies or, alternatively, resort to what is typically referred to as requests for "mutual legal assistance"[9] The practice of mutual legal assistance developed from the comity-based system of letters oratory, though it is now far more common for states to make mutual legal assistance requests directly to the designated "Central Authorities" within each state. In contemporary practice, such requests may still be made on the basis of reciprocity but may also be made pursuant to bilateral and multilateral treaties that obligate countries to provide assistance. Many countries are able to provide a broad range of mutual legal assistance to other countries even in the absence of a treaty.

The financial crime expert Veit Buetterlin explained that transnational crime types such as counterfeiting, smuggling, human trafficking, drug trafficking, illegal logging, illegal mining, or illegal wildlife trade can only be effective if the involved crime networks can launder the proceeds. He also mentioned that the international community needs to overcome a state where “criminals act internationally, while prosecutors stop at borders.[10] The general laws binding nations to extraterritorial agreements still rest on principle more than established order. The modern, global marketplace has put an additional dimension into extraterritoriality. The United States has consistently held that unless international jurisdiction conflicts are managed or mitigated, they have the potential to interfere seriously with the smooth functioning of international economic relations. The United States has therefore declared that it cannot disclaim its authority to act where needed in defence of its national security, foreign policy, or law enforcement interests. The effects of extraterritoriality extend to troops in passage, passengers on war vessels, individuals on mission premises, and other agencies and persons. The challenge is to be found where a state seeks to apply her own domestic laws to people or places outside of her jurisdiction. This is typically not acceptable, however there will be instances where such may be allowed in particular where both the legislating state in which such is to be enforced have a bilacteral agreement that this will be allowed. This is also possible if such a state is part of a multi-lateral agreement or treaty which has been validly domesticated or has the force of law in the legislating country. Instances of the application of extra territorial provisions occur. Where the crime is committed in an area where jurisdiction may be difficult to determine, for instance crimes committed aboard a ship or aircraft, crimes such as hijack of a plane or ship, drug trafficking or slave trade. Where the crime though committed abroad has the effect of threatening the security of the legislating state e.g treason, economic crimes etc. Crimes committed by the employees of the legislating state e.g diplomats in the course of their official assignment abroad. Where the offender or victim is a National of the legislating state. Where part of the act occurs in the legislating state and the other part occur outside. In such circumstance it will be treated as if the whole offence was committed within the legislating state. Where the person involved though a foreigner may be found to have long standing links with the legislating state. In the case of murder, where the act cursing injury occurred in a legislating state though the death resulting from the injury occurred outside the legislating state, or where the injury causing death occurred outside the legislating state but the death occurred within the legislating state, or where the injury and death occurred outside, but involves a national of the legislating state either as a victim or as an offender.

It is important to understand the basis on which states assume jurisdiction. It has been stated that a country will not give her citizen a holiday for their laws simply because they are out of their country. It is an established law by the USA government that where its citizen commits a crime for which he would have been punished if committed within the country’s jurisdiction the same principles will apply to that same citizen when he commits the same offence even if it was committed outside its jurisdiction.

The United Nations Convention against Transnational Organized Crime (UNTOC), adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime.[11] The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Countries are required parties to the Convention itself before they can become parties to any of the Protocols.

The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

It is the first global legally binding instrument with an agreed definition on trafficking in persons.[12] The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in

[8] V.C Madu, Lecture Notes on Extra Territorial Provisions and how it Applies.

[9] Weigand, Florian. Conflict and Transnational Crime: Borders, Bullets & Business in Southeast Asia. Edwar Elgar. ISBN 978 1 78990 519 9.

[10] (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) [2004] UKHL 56.

[11] It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003.

[12] The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003.

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persons with full respect for their human rights.

The Protocol against smuggling, deals with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders.[13] A major achievement of the Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon. The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.

The objective of the Protocol against illicit manufacturing and trafficking of fire arms, which is the first legally binding instrument on small arms that has been adopted at the global level, is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.[14] By ratifying the Protocol, States make a commitment to adopt a series of crime-control measures and implement in their domestic legal order three sets of normative provisions: the first one relates to the establishment of criminal offenses related to illegal manufacturing of, and trafficking in, firearms on the basis of the Protocol requirements and definitions; the second to a system of government authorizations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms; and the third one to the marking and tracing of firearms.

Constitutional law, criminal law and administrative law as a field of study is not a new area of law in Nigeria, as every law student must take at least one of them at first-degree level before graduation. However, issues relating to human trafficking and terrorism are relatively new, hence there are no adequate literature in this area of study. However, it must be acknowledged that there is proliferation of legal literature on the judiciary and the police as an agent for the administration of justice in Nigeria. The following are some of the written authorities on human trafficking, terrorism, the judiciary, the law enforcement agencies as organs of administration of justice.

Theoretical Review

For Unachukwu and Ijeoma Blessing Unachukwu[15] Nigeria has witnessed all sorts of violent activities that claimed lives and properties before and after independence but the emergence of Boko Haram, Islamic State in West Africa, banditry and militant Fulani Herdsmen have led to rising security challenges that have spread to all parts and regions of the country. These terrorists have made the country a hub of various forms of terrorist attacks which include suicide bombing, car bombing, lunching of rocket propelled grenades, assassinations, abductions and rape. In this orgy of evil adventure that has taken place in public squares, government buildings and installations, churches and mosques, schools, bridges, police stations, military barracks and installations as well as market squares and prisons where they free inmates, particularly their members incarcerated. In the fight against terrorism in Nigeria, the government have expended unquantifiable volume of resources and used all forms arsenal in a bid to curb this menace. This study therefore recommends that a definite policy framework for combating terrorism be set up and also the government initiates a regional partnership in West African in the fight against terrorism. This will help to destroy their strongholds in the country with weak military strength. Effective community and state policing should also be set up to ensure that immigrants who are suspected terrorists are nabbed early enough and prosecuted.

Background to Study

Nigeria the once peaceful nation of over 200 million people, is now being rocked by waves of violence, bombings, killings, kidnapping and threats of terror.[16] There have been security challenges in the South-South by the Niger Delta militants,[17] South-East by the Indigenous people of Biafra, North-West taken over by bandits, North-Central by clashes between farmers and cattle rears otherwise referred to as Fulani headsmen and South-West of the country. In fact, there is no part of the country that is immune to insecurity. The recent upsurge in terrorism and banditry in Nigeria has created enormous uncertainty to the security of life and property of individuals and on social stability in general.[18] Nigeria seems to be one of the African countries where terrorism appears to have become entrenched.

While Nigeria is dealing with the problems and challenges of terrorism, there is yet the challenge of human trafficking, which is equally a transnational crime. Human trafficking is prohibited under the Penal code, Criminal code, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 and its amendment of 2005, Administration of Criminal Justice Act, 2015 and the 1999 Constitution of Federal Republic of Nigeria. The Penal Code[19] prohibits the import, export, removal, buying, selling, disposal, trafficking or dealings with any person as a slave or their acceptance, receipt or detention against the will of any person as a slave, and punishes with imprisonment for a term which may extend to fourteen years and a fine. Whilst the term 'trafficking' is not defined under the penal code, a definition of the term is provided under section 82 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 and amendment of 2005 provides:

> *all acts involved in the recruitment, transportation within or across Nigerian Borders, purchases, sale, transfer, receipt or harbouring of a person, involving the use of deception, coercion or debt bondage for the purpose of placing or holding*

[13] The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, entered into force on 28 January 2004.

[14] The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition was adopted by General Assembly resolution 55/255 of 31 May 2001. It entered into force on 3 July 2005.

[15] Stephen Chuka Unachukwu and Ijeoma Blessing Unachukwu, An Appraisal of the Scope and Implications of Terrorism and Security Challenges in Nigeria, International Journal of Trend in Scientific Research and Development (IJTSRD) Volume 6 Issue 1, November-December 2021 Available Online: www.ijtsrd.com e-ISSN: 2456 – 6470

[16] V Ekundayo, Nigeria Terrorists Act: A right step (2012) opinion http://www.punch.ng.com/business/2012.

[17] F. C. Onuoha, The Transformation of Conflict in the Niger Delta in H.A Taiwo: I.O Seniyi, R.A Salaw and A. Usman (eds.), *Nigeria Beyond 2007: Issues, Perspectives and Challenges* (Faculty of Business and Social Sciences, University of Ilorin 2008), 265.

[18] B.O Nwabueze, 'Presidentialism in Commonwealth Africa', (C. Heorst and Co. and Nwamife Publishers 1972), 332.

[19] Section 279 of Penal Code.

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> *the person whether or not in voluntary servitude (domestic, sexual or reproductive) in forced or bonded labour or in slavery-like conditions.*

The Act prohibits the act of trafficking in persons under Section 13(1) and makes any person who commits the offence liable on conviction to imprisonment for a term of not less than two years and a fine of not less than Two Hundred and Fifty Thousand Naira. The Act[20] also prohibits forced marriage**.** forced labour[21] the procurement or recruitment of a person for use in armed conflict. Sadly, the under laying factor to most of these transnational crime is money, that is the quest to get rich at all cost. No one seems to care whether the source of the wealth is legitimate or not. Even our cultural values have been so watered down that it only the man who seemly has amerced wealth that gets to be conferred with traditional titles and honour.[22] All of these are reflective of a creation in which moral values have been jettisoned.[23]

There is a preponderance of economic and financial crimes in Nigeria which are largely undetected and unpunished.[24] The Nigerian justice system is yet to adequately address and ensure that the perpetrators are adequately punished.[25] This trend has turned Nigeria into a "low trust" society with damaging consequences for capital formation through local mobilisation and foreign direct investment.[26]

Rapid technological advancement at the end of the twentieth century has improved the quality of life but sadly this has also been used to the advantage of criminal and terrorist organisations.[27] The beginning of the twenty-first century has been blighted by a resurgence of terrorist attacks on a scale previously unimaginable. In order to checkmate all of the aforementioned crimes, there is the need for the nation to change its strategy of investigation of crimes which is usually through arrest of suspects and the extraction of confessional statement to the use of special investigation techniques which relies more on technology through the mounting of surveillance on suspects. In order to combat terrorism and complex crime, law enforcement agencies have had to adapt their investigative means and develop special investigation techniques. These techniques are used to systematically gather information in such a way that they do not alert the person(s) being investigated, for the purposes of detecting and investigating crimes and suspects.

> In this area of the world where crimes of violence are on the increase and means of investigation are in their rudimentary stage of development coupled with the secrecy with which these crimes are committed and the abiding faith in the concealment of facts by whatever means by the perpetrator(s) of these crimes, the responsibility of ensuring security for the lives and property of our citizens demands the detection of the perpetrators of these crimes by all means allowed by law. Detection of crimes is a never ending task the Police is called upon to perform and in the performance of this task they ought to be able to beat the suspects in their game of hide and seek… *Per Obaseki JSC in Igbinovia v State*.[28]

Under certain circumstances like in the time of war or state of emergency there will be a need to limit the enjoyment of certain rights for the purpose of protecting national security, or the life and property of citizen, physical integrity and fundamental freedom of others. Indeed, the protection of the right to life, and other rights is in itself a human right obligation.[29] The African Charter on Human and Peoples Right was adopted and ratified in Nigeria with some of its provisions introduced into the chapter two and chapter four of the Constitution. While the chapter two provisions are said to be non-justiciable rights unless when tied to the fundamental rights,[30] the rights enshrined in chapter four are however regarded as fundamental rights. Although chapter four rights are fundamental some of its provisions can be derogated from in times of war, emergency and for national security.[31] Both international instruments and municipal law make provision for rights that are absolute and non-absolute. Non absolute rights can be derogated from under special circumstances while absolute rights such as right to life are rights that cannot be derogated from.

Clarification of Concepts

According to the traditional definition, international law is a complex of norms regulating the mutual behaviour of states, the specific subjects of international law. International law is the body of rule that govern the relation between states.[32]

Black's Law Dictionary[33] define international law as the system governing the relationships between nations more modern, the law of international relations, embracing not only nations but also such participants as international organisations and individuals (such as those who involve their human right or commit war crimes) also termed public international law of nations, jus gentium publicum jus inter gentes, foreign relation law, in the latter two phrases, being

[20] Section 19 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act.

[21] Section 22 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act.

[22] Peter Anyebe and Vivian C Madu, Dealing with Challenges of Corruption and Money Laundering: The Place of Regulatory Laws, Chukwuemeka Odumegwu Ojukwu University Law Journal 3(2) 2018, 179.

[23] B. Owasanonye: "A Legal Perspective to Economic Crimes and Fraud" paper presented at a Roundtable on the Role of Forensic Investigative Accounting: Challenges for the Banking Industry, 19th July 2010, NIALS, Lagos.

[24] E Azinge; A book of Communiques: 2010 Roundtables of Nigerian Institute of Advanced Legal Studies, p. 99.

[25] Ibid.

[26] Ibid.

[27] Adedeji Adekunle, Complex Crimes and Challenges to law Enforcement in Administration of Justice and Good Governance in Nigeria (Essays in Honour of Hon. Justice A. Katsina Alu GCON CJN (Rtd) Epiphany Azinge and Adedeji Adekunle (Eds) NIALS 2011, p.85.

[28] (1981) NSCC 63 at pp 68-69.

[29] Akin-Ibidapo Obe:" Human Rights and State Security, the Nigerian Experience," in Akintunde O. Obolade (ed); A Blue print for Nigerian Law, (Faculty of Law, University of Lagos 1995) p. 289

[30] Centre for Oil Pollution Watch v. NNPC (2019) 5NWLR (Part 1666), at p. 518

[31] Adedeji Adekunle, Fair Hearing and Law Enforcement Some Recent Development in Current Themes in the 1999 Constitution: A Tribute to Hon. Justice S.M.A Belgore, D.A Guobadia and E. Azinge (Eds) NIALS, 2007, p. 315

[32] M.T Ladan, Materials and Cases on Public Law, Zaria, ABU Press Limited, 7 (200).

[33] B.A Garner, Black's Law Dictionary, St. Paul, West Group, 190 (2004).

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equivalent to nation or country.

International or the law of nations must be defined as law applicable to states in their mutual relations and to individuals in their relation with states. International law may under this hypothesis be applicable to certain interrelationships of individual themselves, where such interrelationship involves matters of international concern.

International Criminal Law

In explaining what is meant by "International Criminal Law" M.W Edward, S.P Ellen and S.C Roger in their book International Criminal Law: Cases and Materials 2nd Edition[34] posit:

In a broad sense, the subject covers all of the problems lying in the area where criminal law and international law overlap and interact. It is a field that has undergone an enormous expansion in recent years. This expansion is a result both of

(a) increasing globalisation of criminal conduct and consequently of national criminal law, and
(b) increasing reliance on criminal sanctions to enforce norms of international law, especially norms of international human rights and humanitarian law.

They subdivide international law into three sets of topics

(a) International Criminal aspect of national criminal law,
(b) Criminal aspect of International law: International Standards of Justice, and
(c) Criminal aspects of International law: International Criminal stricto senso.[35]

In giving the historical evolution of International Criminal Law they highlighted that:

> In its strictest possible sense, international law would refer to the law applicable in an international criminal court having the power to impose specifically panel sanctions on offenders. Until recently, international criminal law in this sense seemed to be, for the most part, despite the Nuremberg and Tokyo precedents, a purely hypothetical body of law, to be applied by an even more hypothetical court. However, with the creation of ad hoc tribunals for the trial of international offences committed in the former Yugoslavia and in Rwanda …, and with the treaty establishing the permanent International Criminal Court in force since July 1, 2002…, this body of law has begun to look much less hypothetical. It is now generally agreed that there are certain offences such as genocide, crimes against humanity, war crimes which are directly proscribed by international law; that international law itself imposes criminal responsibilities on those who commit these crimes; and that individuals who commit them are potentially triable not only before national courts but also before an International tribunal having jurisdiction over these offences.[36]

International Crime

As defined by the Black's law Dictionary is;

> a grave breach of international law such as genocide or a crime against humanity, made a punishable offense by treaties or applicable rules of customary international law. An international crime occurs when three conditions are satisfied (1) the criminal norm must derive either from treaty concluded under international law or from customary international law, and must have direct binding force on individuals without intermediate provision of municipal law. (2) The provision must be made for the prosecution of acts, penalised by international law in accordance with principle of universal jurisdiction, so that the international character of the crime might show in the mode of prosecution itself (e.g ICC) and (3) a treaty establishing liability for the act must bind the great majority of countries.[37]

In defining the notion of international crime, encyclopaedia of Public International Law states;

> the notion of international crime is difficult to define because the practice initiated by states at the end of World-War 11 of calling foreign states organs to account for international crimes has not been continued, and moreover, no generally recognised criteria for determining the content and limits of the concept of international crimes are perceptible in the field of existing international criminal law.

In the circumstance the narrowest conceptual definition imaginable would seem most appropriate; it should also establish a connection between the conception of the international crime and generally recognised basic principle of criminal law. The term "international crime" would have to be replaced with the stricter notion of "crimes against international law." The recognition of such crime would only be conceivable on the fulfilment of three conditions;

1. The relevant criminal norm would have to emanate directly from treaty concluded under international law or from customary international law, and it would have to enjoy direct binding force on individual without intermediate provision of municipal law. In this case liability to punishment for certain specified conduct would be established generally without any further need for a relevant penal provision in municipal law (self-executing treaty provision). Not only does it seem self-evident in the eyes of Anglo-American lawyers that criminal liability for an act may emanate directly from international law; this view has also been acknowledged in various international declarations and treaties, even though, for reason of legal certainty, most continental criminal law system makes criminal liability for an act dependent on pre-existence of a written legal provision in municipal law (e.g Basic Law of the Federal Republic of Germany, Art. 103(2).
2. Provision would have to be made for the prosecution of acts penalised by international law in this manner before an international criminal court, or if before a municipal court, in accordance with principle of universal jurisdiction so that international character of the crime might also find expression in the mode of prosecution itself.
3. A treaty establishing liability for an act as a crime against international law would have to be binding on the great majority of states.

M.W Edward, S.P Ellen and S.C Roger define international crime as;

[34] M.W Edward, S.P Ellen and S.C Roger, International Criminal Law: Cases and Materials, San Francisco, Lexis Nexis, 37 (2004).

[35] ibid

[36] Ibid.

[37] B.A Garner, Black's Law Dictionary, St. Paul, West Group, 190 (2004).

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> in an international context as well, the only satisfactory definition of an "international crime" at least for legal purposes, is one that focuses on whether the law, as revealed in state practice, prescribes that the conduct in question can or should give rise to criminal proceedings (whether national or international) and to penal consequences.[38]

Ben Saul, in his book Defining Terrorism in International Law,[39] defines the nature of international crime; "an international crime is a conduct prohibited by the international community as criminal."[40]

On the definition of crime, the European Court of Human Rights stated in the case of ***Kikkinakis v. Greece;***

> …the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla sine lege*) and the principle that criminal law must not be extensively construed to an accused's detriment… [requires that] an offence must be clearly defined in law. This condition is satisfied where we the individual can know from the wording of the relevant provision and, if need be, from the court's interpretation of it, what acts and omissions will make him liable.

Inter-American Court of Human Rights states that vagueness of definition of crimes violates the principle of nullum crimen nulla poena sine lege praevia. Article 9 of the American Convention states;

> Crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offence, thus giving full meaning to the principle of nullum crimen nulla poena sine lege praevia in criminal law. This means a clear definition of the criminalised conduct, establishing its elements and the factors that distinguish it from behaviours that are either not punishable offences or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behaviour with penalties that exact their toll on the things that are most precious, such as life and liberty.[41]

International Regime

According to Black's Law Dictionary is a set of norms of behaviour and rules and policies that cover international issue and that facilitates substantive or procedural arrangements among countries.[42]

Jurisdiction

According to Black's Law Dictionary is;

(a) A government's general power to exercise authority over all persons and things within its territory, especially a state's power to create interest that will be recognised under common law principles as valid in other states.

(b) A court's power to decide a case or issues a decree.

Given the above, the central question for this research will be, what are the international legal regime for the combating of transnational crimes. Rules of jurisdiction in a sense speak from a position outside the court system and prescribe the authority of the courts within the system. They are to a large extent constitutional rules. The provision of the US Constitution specifies the outer limit of the subject matter jurisdiction of the Federal courts and authorized congress within those limit, to establish by statute the organization and jurisdiction of the Federal courts.[43]

The court in the case of International ***Niger Build Construction v. Giwa*** dealt with the issue of jurisdiction thus;

> The issue of jurisdiction is so fundamental to adjudication, and ought always to be addressed first. This is so because a court without jurisdiction is without vires to determine any issue in the case and the proceedings, judgement and order made by the court become an exercise in futility and constitute a nullity.

On determinants of jurisdiction of court, the court held that;

> The jurisdiction of a court which is validly constituted connotes the limits imposed on its power to hear and determine the issue between the parties by reference to the following;
>
> a. The subject matter;
>
> b. The persons that is, the parties; and
>
> c. The relief sought, or any combination of the above.[44]

On distinction between territorial jurisdiction and judicial division of a court, the court held that there is a world of distinction between jurisdiction as it relates to the territorial or geographical jurisdiction of a court and jurisdiction in relation to the judicial division within which to commence an action. The distinction between venue as an aspect of jurisdiction which could be administrative or geographical, in which a suit may be heard, is often of the Federation. But when it comes to territorial jurisdiction, which is whether a suit ought to have been brought in one state but brought in another, the criteria is different. In such a case, the court has no jurisdiction and it cannot be conferred by agreement or consent of the parties.[45]

Universal Jurisdiction

In their discussion on jurisdiction M.W Edward, S.P Ellen and S.C Roger,[46] posit;

> Universal jurisdiction, refers to the competence of any state which obtains custody of the offender to prescribe and punish an offence with which it has no connection based on territoriality or nationality and by which it has not been particularly affected. Universal jurisdiction authorises states to apply their law to certain offences. Whether they are obligated to do so as well is, in principle, a separate question. Some writers regard the question whether a particular offence is subject to universal jurisdiction as the determinative question of whether it is a crime under international law.

The Restatement of Foreign Law section 404 (1986) indicates that

[38] M.W Edward, S.P Ellen and S.C Roger, International Criminal Law: Cases and Materials, San Francisco, Lexis Nexis, 37 (2004).

[39] B. Saul, Defining Terrorism in International Law, London, Oxford University Press, 11 (2008).

[40] Ibid.

[41] Castillo petruzzi et al v. Peru (1999) 1 ACHR 6 (30 May 1999) para. 121.

[42] B.A Garner, Black's Law Dictionary, St. Paul, West Group, 190 (2004).

[43] Ibid.

[44] Ibid.

[45] Ibid.

[46] M.W Edward, S.P Ellen and S.C Roger, International Criminal Law: Cases and Materials, San Francisco, Lexis Nexis, 37 (2004).

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the list of offences subject to universal jurisdiction includes piracy, slave trade, attacks on or hijacking of aircraft, genocide war crimes and perhaps certain acts of terrorism.[47]

Terrorism

Terrorism is a global menace that occurs within the sovereign of a nation and sometimes transcend national boarders, their activities target government, its national security and vulnerable persons in the society. Nigeria, like most nations, has a myriad of security challenges, some of which are peculiar to the country while others are cross-border or even transnational.[48] However, it is incontestable that the insurgency being waged by the Jama'atu Ahlus Sunna Liddawati wal Jihad, otherwise known as Boko Haram, is characterised by mindless violence.[49] This remains a collective threat to the country's security, inhibiting the people's freedom and way of life while threatening the country's sovereignty. The activities of the Boko Haram group have been characterised by mindless violence targeted against individuals and the government at large. However, having an accepted definition of terrorism in the international community has remained an albatross. This is because of the tendency of some players to criticise suggested definitions on the grounds of religion, culture, ideology and political perspective. In May 2013 the Federal High Court Abuja[50] declared the activities of Jama'atu Ahlus Sunna Liddawati wal Jihad otherwise known as Boko Haram, as terrorism and illegal. By this decision of the court the federal government proscribed the Boko Haram group.[51]

Further justifying that the activities of the Boko Haram group amounts to acts of terrorism let us consider the various definitions of terrorism. A law dictionary has defined terrorism as the use of threat or violence to intimidate or cause panic, especially as a means of effecting political conduct.[52] Silke describes terrorism as violence against the innocent.[53] A comprehensive definition of terrorism has been provided by the United Nations Ad Hoc Committee on International Terrorism in its Convention against International Terrorism. It provides that any person commits terrorism if that person, by any means, unlawfully and internally, causes death or serious bodily injury to any person, or serious damage to public or private property resulting in major economic loss.[54] It further provides that it is act of terrorism where such act intimidates a population or is aimed to compel a government or an international organisation to do or abstain from doing any act.[55] Nigeria's Terrorism Prohibition and Prevention Act 2022 only states that an "act of terrorism' means any act specified in section 1 of this Act." However, the Economic and Financial Crimes Commission (Establishment, etc.) Act No 1 of 2004 provides that terrorism is an act which may endanger life or property or is intended to intimidate or induce any government or the general public to do or abstain from doing any act, or disrupt any public service.[56]

The Black's Law Dictionary defines terrorism as the use of threat of violence to intimidate or cause panic, especially as a means of effecting political conduct. International Terrorism is defined as terrorism that occur primarily outside the territorial jurisdiction of the United States, law that transcends national boundaries by the means in which it is carried out, the people it is intended to intimidate, or the place where the perpetrators operate or seek asylum.[57]

Examining various definitions Saul definers terrorism as;

> Terror, terrorise, terrorism and terrorist. The ordinary linguistic meanings of these variant terms are instantly evocative and highly emotive, referring at literal level to intense fear, fright or dread. By itself, a literal meaning is not particularly instructive in distilling a legal concept of terrorism, since every form of violence is potentially terror-inspiring to its victim.[58]

This deceptively simple, literal meaning is overlaid with centuries of political connotations in specific historical circumstances. While the word terror stems from Latin, entering French and English in the Fourteenth century, the notions of terrorism and terrorist entered political discourse in the late eighteenth century, referring to the system of intimidation and repression implemented by the Jocobins (the Red Terror' or Reign of Terror) in the French Revolution.

Terrorism is defined by Shittu in his work as;[59]

> Any act which is a violation of the criminal laws of a state and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to; intimidate, put in fear, force, 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 standpoint, or to act according to certain principles; or disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or create general insurrection in a state.

[47] Ibid.

[48] Ibid.

[49] Vivian C Madu, Understanding the need to Mainstream Gender in Criminal Justice Response to Terrorism, Journal of Legal Studies and Research, vol. 9, 2023, accessible at https://jlsr.thelawbrigade.com/publications/annual-volume-9-2023.

[50] FHC/ABJ/CS/368/2013 dated 24th May 2013.

[51] See Federal Republic of Nigeria Official Gazette of 24th May 2013, Terrorism (Prevention) (Proscription Order) Notice. 2013.

[52] B.A Garner (ed.), *Black's Law Dictionary* (8th ed., West Publishing Company, St. Paul, Minn, USA, 2004) 1513.

[53] A Silke, 'Children, Terrorism and Counterterrorism: Lessons in Policy and Practice' in Magnus Ranstorp & Paul Wilkinson (eds.), Terrorism and Huma Rights (Routledge, London, Britain, 2008), 12

[54] United Nations Ad Hoc Committee on International Terrorism Comprehensive Convention (draft), Article 2 A/C/6/56/L.9, annex I.B. quoted by Alex P. Schmid, "Terrorism and Human Rights: A Perspective from the United Nations," in Magnus Ranstorp & Paul Wilkinson (eds.), *Terrorism and Human Rights* (Routledge, London, Britain, 2008), 16-17.

[55] A.P Schmid, in Vivian C Madu, Understanding the need to Mainstream Gender in Criminal Justice Response to Terrorism, Journal of Legal Studies and Research, vol. 9, 2023, accessible at https://jlsr.thelawbrigade.com/publications/annual-volume-9-2023.

[56] Section 45 of Economic and Financial Crimes Convention (Establishment, etc.) Act No. 1 of 2004.

[57] Ibid.

[58] B. Saul, Defining Terrorism in International Law, London, Oxford University Press, 11 (2008).

[59] W.K Shittu, Nigeria's Legal Response to Perennial Conflict Situations: The Anti-Terrorism Act 2011 in Perspective, in E Azinge (eds.) Plea Bargain in Nigeria: Law and Practice, Lagos, Nigerian Institute of Advanced Legal Studies, (2012), 200.

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Terrorism is also defined 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 of persons or particular persons, intimidate a population or compel a Government or an international organisation to do or to abstain from doing an act.[60]

The United States Department of States defined terrorism as politically motivated violence perpetrated against non-combatant targets by sub-national groups of clandestine agents, usually intended to influence an audience. This definition of terrorism is equally similar as described by Charles L. Ruby to be politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience.[61]

According to Juliet, International terrorism can be defined as;

> The threat or use of violence for political purposes when (1) such action is intended to influence the attitude and behaviour of a target group wider than its immediate victims, and (2) its ramifications transcend national boundaries as a result, for example, of the nationality or foreign ties of its perpetrators, its locale, the identity of its institutional or human victims, its declared objectives, or the mechanics of its resolutions.[62]

Terrorism according to the London Terrorism Act; is an act deliberately done with malice, and which;

(a) May seriously harm or damage a country or international organisation;

(b) Is intended or can reasonably be regarded as being intended to;

  (i) Unduly compel a government or international organisation to perform or abstain from performing an act;

  (ii) Seriously intimidate a population;

  (iii) Seriously destabilise or destroy the fundamental, political, constitutional, economy or social structures of a country or an international organisation; or

  (iv) Otherwise influence such government or international organisation 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 a 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 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, bomb explosions, the effect of which is to endanger human life;

  (vii) Interference with or disruption of the supply of water, power or any fundamental natural resource, the effect of which is to endanger human life.

Saul suggests a summary definition under which he sets out elements necessary for the offence of terrorism, based on the international community's identification of underlying wrongfulness of international terrorism, terrorism can be deductively defined as follows;

(1) Any serious, violent, criminal act intended to cause death or serious bodily injury, or to endanger life, including by acts against property;

(2) Where committed outside an armed conflict;

(3) For political, ideological, religious, or ethnic purpose;

(4) Where intended to create extreme fear in a person, group, or the general public;

  (a) Seriously intimidate a population or part of the population, or

  (b) Unduly compel a government or an international organisation to do or to abstain from doing any act.

(5) Advocate, protest that decent or industrial action which is not intended to cause death, serious bodily harm, or serious risk to public health or safety does not constitute a terrorist act.

Kidnapping and Hostage Taking

"Hostage taking"[63] it is unclear whether for this offence to be committed it is sufficient to "seize, detain or attempt to seize or detain" a person, or whether this must be accompanied by threats or the giving of explicit or implicit conditions for the release of the person held hostage. Whoever commits this offence is liable on conviction to life imprisonment. Cases involving jurisdiction under the Terrorism Prevention and Prohibition Act are prosecuted by the Director of Public Prosecutions of the Federation and tried in the Federal High Court.

In the United States of America 18 U.S. Code and 1201 on Kidnapping

Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

[60] Ibid.

[61] Ibid.

[62] Ibid.

[63] Section 24 of the Terrorism Prevention and Prohibition Act 2022.

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the person is wilfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or

(5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49. For purposes of this subsection, the term "national of the United States" has the meaning prescribed in section 101(a) (22) of the Immigration and Nationality Act (8 U.S.C. 1101 (a) (22).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

Conclusion

In the counterinsurgency operations to decimate Boko Haram, the Nigerian military has experienced several attacks by insurgents leading to ambush on, injury and death of officers, destruction of military formations and loss of weaponry. These actions are targeted to have impacts on the insurgency's intensity, period and aftermaths and are designed by the insurgents to operationally weaken the military in its violent contest for territories and establishment/propagation of a caliphate. Inquisitively, the paper focused on reactionary attacks. It illustrates that between January and August 2021, such attacks indirectly depict that the existence of the Boko Haram group was threatened thus warranting the annoyance of the group in form of retaliatory attacks against the military. Additionally, a strategically significant triumph for the military in its conventional warfare against insurgents to halt the protracted violence in the conflict zones was observable. Although marred with institutional deficiencies, the tide of victory seems to be with the military. However, much is needed to address fundamental issues incapacitating the military in the performance of its statutory mandates.

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