



# **Status Of The War Against Terrorism Under International Human And Humanitarian Laws**

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## **ABSTRACT**

Military actions taken against non-state terrorism organizations neither occupying any defined territory nor formally recognized by any state cannot translate to war. The situations in Afghanistan and Iraq qualify as wars. But operations involving the use of arms against suspected terrorists in America or European cities or anywhere in the world cannot be regarded as war. It is therefore crucial in the battle against terrorism to carefully distinguish between operations amounting to an armed conflict and other forms of struggle where police and security forces clearly operate outside the areas of armed conflict. This paper seeks to examine the status of the war against terrorism under International Humanitarian and Human Right Laws emphasizing how the two laws deal with terrorism.

**Key Words:** Status, War, Terrorism, International, Humanitarian, Human, Rights, Laws.

## **1.1 INTRODUCTION**

The September 11, 2001 attacks on the world trade centre in New York City and the pentagon in Washington DC have brought a new sense of urgency to the war against money laundering, international terrorism and financing terrorism<sup>1</sup>. Among other things, the brazenness and the ease with which these attacks were executed have exposed in dramatic way serious gaps and weakness in legal and financial systems worldwide. International efforts have now moved into gear to strengthen legal, financial, law enforcement measures and military response to perceived acts of terrorism. The most obvious example is the declaration by the United States of a global war against terrorism. The United States started this war with the invasion of Afghanistan with the apparent support of significant sections of the International community.

The Taliban controlled Afghanistan was attacked and defeated by the USA. The Taliban were replaced with a liberal pro-western government. Immediately after, the US with the support of Britain attacked the Republic of Iraq on March 20, 2003 on the unproved allegation of being in possession of Weapons of Mass Destruction (WMD). Consequently, the Iraq ruler Saddam Hussain was ousted. Since early 2002 the U.S has arrested hundreds of individuals suspected to be members of Al-qaeda or the Taliban of Afghanistan and detained them in various facilities located within Afghanistan and Guantanamo Bay in Cuba. In the aftermath of September 11, 2001 the U.S congress enacted the USA Patriotic Act under which a non-citizen can be detained without a charge for seven days. There are also reports of the U.S transferring individuals initially arrested inside U.S as terrorist suspects to the Guantanamo Bay in Cuba or to their detention facility in other countries without complying with international requirements for

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<sup>1</sup> See "Behind the Lives in the war on Terrorist Financing" published in International Financing Law Review, December, 2001.

extradition.<sup>2</sup> More disturbing are the cases of individuals who have disappeared after being captured by or handed over to U.S Forces, and whose whereabouts are totally unknown.<sup>3</sup>

Other countries have also been involved in various measures against terrorism. For example, Belarus enacted a law on fighting terrorism. Also, the British response to the event of 9/11 was the adoption of the Anti-terrorism, crime and security Act, 2001. The legislation authorized draconian measures including detention without trial.<sup>4</sup>

In Uzbekistan, an internal crackdown has also been conducted under the banner of the “war on Terror”. Thousands of peaceful Muslims have been arrested and detained as part of government response to insurgents. Detainees can face prison sentence of 20 years and are routinely tortured.<sup>5</sup>

Given the prevailing military discourse and the actual recourse to force, it might well have been anticipated that terrorist and counter-terrorist operations would have been analyzed within the legal paradigm that seeks to regulate armed conflict (International Humanitarian Law). Following several attacks of terrorism, many states have rejected the armed conflict characterization. Instead, such states have insisted that a terrorist attack is not military activity even if the nature of attack is such that it would also have been proscribed as contrary to the law of wars. Instead, states falling victims to acts of terrorism have argued that terrorists should be seen as serious, but ordinary, criminals. They are not to be considered war criminals, and states are not obliged to honour International Humanitarian Law (IHL) when they deal with them.

This paper seeks to examine the status of the war against terrorism under International Humanitarian and Human Right Laws emphasizing how the two laws deal with terrorism.

## 1.2 Conceptual Clarification

Terrorism can be seen as politically motivated violence to the extent that it aims to influence how power is exercised over a particular group of people. It does so by attempting either to replace or to coerce the group wielding power – usually the government of a state. Traditionally, international law has reflected little interest in questions concerning the legitimacy of a government, allowing a government that has been in long term, effective control of a state to speak for the state.<sup>6</sup> Thus, although international law distinguishes ‘State’ and ‘government’ for some purposes, it equates violence against the government with violence against the state.<sup>7</sup> Because terrorism is interpreted to be politically motivated violence, many commentators then equate it with violence by non-state actors.

This ‘state’ centered approach has persistently dominated any attempt at formulating a definition of terrorism. Thus, in 1937, the League of Nations defined ‘acts of terrorism’ as criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or group of persons or the general public.<sup>8</sup> Subsequently attempts remained state centred on the state. For most of its history, terrorism has been seen as a range of particular, proscribed acts. During the period of decolonization, because of the legitimacy of the cause of those fighting for their independence from racist or colonial regimes, the term almost disappeared from international instruments. However, when the term re-emerged in the international parlance of the 1990s, it was still defined in terms of a range of violent proscribed acts without reference to a political context.<sup>9</sup>

<sup>2</sup> Human Rights Watch “Iraq, Background of U.S Detention Facilities in Iraq” 7<sup>th</sup> May, 2004

<sup>3</sup> Ibid

<sup>4</sup> Javiad Rehman, “International Human Rights Law,” Essex Pearson, 2010, 2<sup>nd</sup> edition page 916-917

<sup>5</sup> Magolis, A. “Ripple Effect” in International Bar Association (IBA) News, February, 2006.

<sup>6</sup> There has been some exceptions in this general practice, including the international response to South Africa and Rhodesia. For a discussion of illegitimate governments and the recognition of governments, see B Roth. Government Illegitimacy In International Law with particular reference to governments in circle ( 1998 )

<sup>7</sup> Note that the terrorists are generally not members of the government under attack.

<sup>8</sup> Article 1(2) of the *Convention for the Prevention and Punishment of Terrorism* L.N Doc. C.5461(1). M.383 (1). 1937.V, reprinted in Manleyo Hudson (ed) *International Legislation VII* (1941) 862 (emphasis added)

<sup>9</sup> See the description of international instruments on terrorism in WeWhiney, F. ‘International Terrorism: United Nations Projects for Legal Controls’ (1984) 7:2 *Terrorism: An International Law Journal* 175, 177-180.

The General Assembly's Declaration on Measures to Eliminate International terrorism defined terrorist acts as 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.<sup>10</sup> Similarly, the *International Convention for the Suppression of the Financing of Terrorism 1999* renders as offence any act:

'intended to cause death or serious bodily injury to a civilian, or to any other person not taking part in the hostilities....when the purpose of such act...is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.'<sup>11</sup>

Article 2 of the beleaguered draft UN 'Comprehensive Convention on International Terrorism' reads:

'Any person 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 ... 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.'<sup>12</sup>

This definition has within it elements of both the normative and descriptive approaches. It generally prohibits a range of violent acts while also requiring a particular political motivation. The definition is strongly state-centered; it overtly aims at protecting a government (or other forms of recognized authority) against non-state actors.<sup>13</sup>

We submit that this definition will not provide the international community with foundation for a legally determinate anti-terrorism regime, or one which remains workable through changing political landscapes. This is because it is neither legally nor politically tenable to confer a monopoly over violence on the state. Perhaps the most significant right, for the purposes of constraint on the state's monopoly on violence, is the right to self determination recognized as a binding norm of international law.<sup>14</sup> Where the state denies this right, some commentators and states have urged that the people thus denied their right may resort legally to force in order to realize that right.<sup>15</sup>

The difficult issue for some countries is defining terrorism. Not all of the countries that have adopted the UN Convention<sup>16</sup> agree on specifically what actions constitute terrorism. The meaning of terrorism is not

<sup>10</sup> *Convention for the Prevention and Punishment of Terrorism* op.cit. n. 10

<sup>11</sup> Article 2(1) (b) of the *international Convention for the Suppression of Terrorist Financing 1999*.

<sup>12</sup> Report of the Co-ordinator of the Draft Convention, 3 August, 2005, available at <http://daccessdds.org/doc/UNDOC/GEN/N05/460/57/PDF/N0546057.pdf> Open Element. See also Gasser op. cit. note 24 at 552.

<sup>13</sup> Ibid.

<sup>14</sup> GA Resolution 1514 (XV) (Declaration on the Granting of Independence to Colonial Territories and People 1960); GA Resolution 2625 (XXV) (Declaration on Principles of International Law concerning Friendly Relations and Co-operation among State 1970); The Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 ICJ Reports (1971) 31; the Western Sahara Case ICJ Reports (1975) 12 (hereafter Western Sahara); East Timor Case ICJ Report (1995) 90 (hereafter East Timor).

<sup>15</sup> Chadwick, E. *Self Determination, Terrorism and the International Humanitarian Law of Armed Conflict (1966)* 147-8 and the authorities cited at note 51. Sundberg, J. 'Comments on the Fourth Interim Report of the Committee on International Terrorism' 7:2 *Terrorism: An International Journal* 185, 187-8.

<sup>16</sup> *The Convention for the Suppression of the Financing of Terrorism, 1999*.

conversely adopted due to significant political, religious and national implications that differ from country to country.<sup>17</sup> The ever changing nature of terrorism has made it very difficult for scholars to arrive at a single definition that will be acceptable to all.

Hyrans, R<sup>18</sup> sees terrorism as the “use of terror by political militants as a means of overthrowing a government in power, or forcing that government to change its policies.” This view found acceptance in some writings. For example Nef, J.,<sup>19</sup> describes terrorism as “the purposive use of violence by the precipitators against an instrumental target in order to communicate to a primary target a threat of violence so as to coerce the primary target into behavior attitudes through intense fear or anxiety in connection with a desired power (political) outcome.”

Having in mind the problem of defining terrorism, Alex Obote-Odora is of the view:

The problem of defining ‘terrorism’ contributed to reliance of some nations states on their own definition of the term, interpretation and implementation of their own strategies in combating terrorism. The United States, the European Union, the Organization of Islamic Conference and Others have their own separate documents, one contradicting the other, on terrorism and ways to tackle it.<sup>20</sup>

The above definitions signify that acts of terrorism are mainly perpetrated by non-state actors. Also, these definitions identify states or incumbent governments as the primary targets of terrorist activities for the purpose of coercing them to behave positively towards the aims of the terrorists.

Some scholars of terrorism argued that terrorism could not be viewed as one way traffic per se; rather such acts are perpetrated by both insurgents and incumbents. In his own analysis, Grant Wardlaw<sup>21</sup> acknowledges that the regime of terror is more important than the siege of terror because a state can visit terror on its citizens or others with more ease than an individual or a group that risk to be wounded or even be totally eliminated. This view can be substantiated by the practice of some powerful countries like the United States of America, Israel and Russia. In truism, the fact that a nation or a country or its interest comes under attack of a terrorist group does not legalize the act of terrorism in vengeance.<sup>22</sup> The invasion of Iraq by the United States and its allies, the bombing of Libya in 1985, the brutal crushing of the Chechen revolt by Russia and the daily killings, shelling and rocket bombing of Palestinians and their refugee camp by Israel.<sup>23</sup>

The dilemma in which the international community finds itself is that terrorists do not respect national borders. To be effective, an anti-terrorism programme therefore relies on international cooperation. However in order to remain effective, to retain its legitimacy and to avoid abuses, the anti-terrorism programme also needs to be contained within a functioning and workable legal system.

On the other hand, war is defined by the Black’s law Dictionary as hostile conflict by means of armed forces, carried on between States, nations, or rulers, or something between parties within the same nation or state. The Osborne’s Dictionary of Law defines ‘war’ as the legal categorization of the state of affairs existing between states when force is used to vindicate rights or settled disputes between them. Although

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<sup>17</sup> Schott, P.A. *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, the World Bank, 2006, pp.1-4.

<sup>18</sup> Hyrans, E. *Terrorist and Terrorism*, St Martins Press Inc, New York (1974).

<sup>19</sup> Nef, J. “Some Thought on Contemporary Terrorism, Domestic and International” In: Carson, J. Ed (1978): *Terrorism in Theory and Practice*, Toronto: Atlantic Council of Canada.

<sup>20</sup> Odora, O. “Defining International Terrorism.” *Mudoch University Electronic Journal of International Law*.

<sup>21</sup> Wardlaw, G. *Political Terrorism: Theory, Tactics and Counter-Measures*, Cambridge University, London (1982).

<sup>22</sup> Yusuf, B.A. “*Understanding Terrorism and its Political Dangers: Islamic Perspective*.” Being a 2 day National Conference on Human Rights in Islam. From 31<sup>st</sup> July – 1<sup>st</sup> August, 2010.

<sup>23</sup> Ibid.

the term war is used in different senses such as cold war, drug war, trade war, propaganda war etc, the term in its classical meaning refers to armed conflicts between parties in the same state or nation.<sup>24</sup> International Humanitarian Law also referred to as the law of armed conflict or the law of war<sup>25</sup>, prescribes universally accepted constraints on waging war. It further aims at protecting the fundamental human rights of victims and non-combatants in the event of armed conflict. The most important development of IHL was the adoption in 1977 of the two protocols additional to the Geneva Convention of 1949.

### 1.3 HISTORICAL PERSPECTIVE OF CONTEMPORARY FORMS OF TERRORISM, TERRORIST FINANCING AND MONEY LAUNDERING

#### 1.3.1 Historical Perspective of Contemporary Forms of Terrorism and Terrorist Financing

Historical analysis establishes an unfortunate picture of the antiquity of the crime of terrorism.<sup>26</sup> The phenomenon of terrorism is as old as human history. Since time immemorial there have been sad tales of terrorism and violence against the weak and the inarticulate. Many examples can be found where terrorism was accompanied by gross violations of human rights including torture and genocide. Amongst these were the horrifying massacres resulting from the Assyrian warfare during the seventh and eighth centuries B.C and the Roman obliteration of the city of Carthage and all its inhabitants.<sup>27</sup> Certain religious ideologies and the wars that were conducted to further those ideologies had a large element of terrorism and intolerance.<sup>28</sup> In more recent times the term ‘terror’ was associated with the Jacobin ‘Reign of Terror’ in the aftermath of the French Revolution.<sup>29</sup> The Jacobin ‘Reign of Terror’ led 1700 official executions with several thousand deaths and disappearances.<sup>30</sup> The First World War was a product of an international act of terrorism the assassination of Archduke Francis Ferdinand on the 28<sup>th</sup> June 1914 by the Serbians.<sup>31</sup>

Throughout the 20<sup>th</sup> century, the rise of nationalist, totalitarian ideologies such as Nazism and Stalinism, and the upsurge of racial, religious and linguistic extremism have been accompanied by terrorism. It is also the case that the essence of colonialism was terrorism in the form of violence and intimidation of indigenous people.<sup>32</sup> In the aftermath of the Second World War, state sponsored terrorism was deployed to resist granting the right of self determination to many of the oppressed.<sup>33</sup> The terrorism of colonialism produced a backlash. Terrorism was often met with counter terrorism; the colonizers used terror as an instrument to maintain their hold over their overseas territories, whereas the indigenous peoples and their national liberation movements resorted to terrorism and political violence as a means of gaining emancipation and independence.<sup>34</sup> In their effort to rid themselves of what they perceived as aliens, foreign and unlawful domination, resistance movements were formed. Many of the so called “national

<sup>24</sup>Ogbu, A.c. A Contextual Analysis of the ‘War’ Against International Terrorism in the Light of International Humanitarian Law and Human Rights Laws, 6, *NJI law Journal* (2012), p.133.

<sup>25</sup> See Frederic, D.M. *Handbook On the Law of War for Armed Forces*, ICRC, 1987, pp. 91-124.

<sup>26</sup> See Laqueur and Alexander (eds), *The Terrorism Reader: A Historical Anthology* (Routledge, 1987); Rehman, *The Weakness in the International protection of Minority Rights* (Kluwer Law International, 2000) pp.51-73.

<sup>27</sup>Kluper, *Genocide: Its Political Use in the Twentieth Century*, Yale University press, 1983, pp.11-18; Porter (ed), *Genocide and Human Rights: A Global Analogy*, University Press of America, 1982; Kluper, *The Prevention of Genocide*, Yale University Press, 1985, 1985; Kuper, *International Action: Genocide* (Minority Rights Group, (1984); Fein (ed), *Genocide Watch*, YALE University press, 1992.

<sup>28</sup> Ibid.

<sup>29</sup> Murphy, *Defining International Terrorism: A way out of the Quagmire*, 19 *IYBHR* (1989), 13.

<sup>30</sup> Rehman, J. *International Human Rights Law*, Bunnet University, 2010, ,89

<sup>31</sup> Ibid, at p.56.

<sup>32</sup> See Qureshi, “Political Violence I the South Asian Sub Continent in: Alexander (ed) (1976) 151-193; See also the Repots of the Session of the Working Group on Indigenous Populations and the Working group on Minorities.

<sup>33</sup> Elegab, *International Law Documents Relating to Terrorism*(Cavendish, 1995).

<sup>34</sup> For a useful analysis see Minority Rights Group (ed). *World Director of Minorities* (Minority Rights Crop, 1997).

liberation movements” such as the Algerian Liberation Movement (FLN),<sup>35</sup> African National Congress (ANC),<sup>36</sup> Irish Republican Army (Ireland),<sup>37</sup> Indian National Congress and Muslim League (British India) have all, at one point, been deemed terrorist organizations.<sup>38</sup>

At the height of decolonization movement, the issue of terrorism became a matter of serious contention between states with overseas colonies on the one hand and the newly independent and communist states on the other. Even at the end of the decolonization period, the legacies of colonial ties render the subject often an unpalatable one. There is a substantial relationship with the right to self determination for such groups or peoples as the Palestinians.<sup>39</sup> In this context, it needs to be noted that Osama Bin Laden, the prime suspect for the attack on the World Trade Centre on 11 September 2001 has consistently placed an emphasis on the right to self determination for the Palestinian peoples as a pre requisite to world peace and security. Another controversial area is the right of the Kashmiri Muslims to self determination; the conflict between India and Pakistan on the territory of Kashmir already having produced three wars.<sup>40</sup>

Paul Wilkinson<sup>41</sup> tracing the history of terrorism asserts that the Middle East has always been the brewing pot of terrorism. The Jewish Sicarri and Zealot Movements used terrorism as a weapon against the Romans in a prolonged guerrilla war in the first century. The same weapon was employed by the Assassin sect to eliminate its enemies, among the Muslims throughout the then Muslim world in the eleventh and twelfth centuries.<sup>42</sup>

According to Walter Laquer, acts of violence and terror dated back to history but acts of terrorism belong to the modern ages. The term “terrorism” was a coinage of French origin which was first used to refer to a repressive government in France popularly referred to as “*regime la terreur*” between March 1793 and July 1794? Later, terrorism became instrument of suppression and oppression on the hands of dictators.<sup>43</sup>

The September 11, 2001 terrorist attacks on the World Trade Centre in New York City and the Pentagon in Washington D.C. have brought a new sense of urgency to the war against money laundering, international terrorism and the financing of terrorism.<sup>44</sup> Among other things, the brazenness and the ease with which these attacks were executed have exposed serious gaps and weaknesses in legal and financial systems worldwide.<sup>45</sup>

Investigations carried out after these attacks, both in the U.S. and other countries especially Europe, the Middle East and Asia, have revealed a pervasive network of underground banking and other financing channels that have been used to finance terrorist activities.<sup>46</sup> As a result, immediate international response

<sup>35</sup> See Kuper, *The Pity of All: Polarization of Racial and Ethnic Relations*, Gerald Duckworth & Co., 1977.

<sup>36</sup> See Dubow, *The African National Congress* (Sutton Publishing Ltd., 2000); Beinert and Dubow, *Segregation and Apartheid in Twentieth Century South Africa*. (Routledge, 1995).

<sup>37</sup> See Patterson, *The Politics of Illusion: A Political History of the IRA* (serif, 1997); Smith, *Fighting the Ireland: The Military Strategy of the Irish Republican Movement* (Routledge, 1995).

<sup>38</sup> Hardy, *The Muslims of British India*, Cambridge University Press 1972; Tolinson, *The Indian national Congress and the Ruj*, 1929 – 1942: The Penultimate Phase (Maclean Hunter Press, 1976); Jalal, *The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan* (Cambridge University Press, 1985).

<sup>39</sup> On the complication generated by the definition of ‘peoples and indigenous people’ ‘ Re-Assessing Rights to self Determination: Lessons from the Indian Experience, 29 AALR (2000) 454.

<sup>40</sup> For further consideration see Rehman, ‘Re-Assessing the Right to Self Determination: Lessons from the Indian Experience 29 AALR (000) 454.

<sup>41</sup> Wilkinson, P. Terrorism: International Dimension.” In: Williams Gusteridge (ed) *Contemporary Terrorism*, US: Facts on File Inc, 1985.

<sup>42</sup> Ibid.

<sup>43</sup> Laquer, *Terrorism*, Boston: Little Brown, 1977.

<sup>44</sup> The focus of international legal and financial measures is against international terrorism. Acts of terrorism committed within national boundaries are normally covered by domestic criminal/or anti-terrorism laws.

<sup>45</sup> For an analysis of the September 11 attacks and related issues, see for example, the various articles collected in James F. Hoge, J.R. and Gideon Rose (eds), *How did this Happen? Terrorism and the New War*; (2001); Strobe Talbott and Mayan Chanda (eds), *the Age of Terror: America and the World after September 11* (2001).

<sup>46</sup> Herbert and Morals: The War against Money Laundering, Terrorism and the Financing of Terrorism, *Law Asia Journal*, 2002, p.1.

to this problem has been to take action to freeze the assets of persons and entities involved in terrorist activities, shut down businesses and other entities that have been used to finance such activities, and strengthened measures to criminalize terrorism and the financing of terrorism.

**1.3 Whether the War against Terrorism Qualify as War under International Law** According to Jean Rousseau, war is no more a relationship between states in which individuals are enemies only by accident, not as men nor even as citizens but as soldiers.<sup>47</sup> Thus, the Kellogg-Brian Pact of 1928 was entered into by states alone and provided that the High contracting parties solemnly declared that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another. Today, the term “armed conflict” is often used in place of war. Thus it has been stated that the expression “international humanitarian law”, “law of armed conflicts” and “law of war” may be regarded as equivalents<sup>48</sup>, while armed forces prefer law of armed conflict or “law of war”. From the foregoing, it is our humble view that the so called war on terrorism does not amount to war *stricto sensu*.<sup>49</sup> Military actions taken against non-state terrorism organizations neither occupying any defined territory nor formally recognized by any state cannot translate to war. The situations in Afghanistan and Iraq qualify as wars. But operations involving the use of arms against suspected terrorists in America or European cities or anywhere in the world cannot be regarded as war. It is therefore crucial in the battle against terrorism to carefully distinguish between operations amounting to an armed conflict and other forms of struggle where police and security forces clearly operate outside the areas of armed conflict.<sup>50</sup> It has thus been asserted:

“However appealing it is to mass media or as a rhetoric device used for the purpose of political discourse, that concept of a “war of terror” waged against a loosely organized international terrorist network does not stand up when analyzed from the view point of international law.”<sup>51</sup>

According to Greenwood, a group like Al-Qaeda cannot be a belligerent. It is merely a band of criminals, and to treat it as anything else risks distorting the law while giving that group a status which to some implies a degree of legitimacy.<sup>52</sup>

The political use of the term “war” is therefore not only unhelpful but misleading and it is suggested that an appropriate terminology be employed such as “law” enforcement operation. The distinction between “war” and ordinary “law enforcement operation” has profound implication for human rights. In wars, combatants are legally entitled to use lethal force against enemy combatants. They may not be punished for intentionally killing the enemy. This is known as the “combatant privilege.”<sup>53</sup>

The question as to whether a killing was lawful therefore usually centres on whether the person attacked was a combatant or not, and if not, whether the person was killed accidentally to an attack of legitimate military objective and whether that death was proportionate to the military objective to be gained or preventable through taken feasible precautions.<sup>54</sup> Although the right to life is non-derogable. Armed conflict presents this important and universally recognized qualification.

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<sup>47</sup> ICRC, “International Humanitarian Law” Geneva, 2002, p. 185.

<sup>48</sup> Ibid.

<sup>49</sup> Ogbu, A.C. “A Contextual Analysis of the War Against International Terrorism in the Light of International Humanitarian Law and Human Rights,” *NJIL Journal, Abuja*, (2012), p.134.

<sup>50</sup> Ibid.

<sup>51</sup> Greenwood, C. *War, Terrorism and International War*. (2004) 56 CLP 529 cited by Guglielimo, V. *The Sinews of Peace: International Law, Strategy and the Prevention of War*, (2006) BYIL, p. 106

<sup>52</sup> Ibid.

<sup>53</sup> Ogbu, A.C, op.cit at p. 10.

<sup>54</sup> Basic Principles of the use of Force and Firearms By Law Enforcement Officials. Adopted by the UN Congress on the Prevention of Crimes and the Treatment of Offenders, at Havana, Cuba, 27 August to 7 September, 1990. See UN Document ALCONF, 144/28/Rev. 1, p.112

In situations outside an armed conflict, all measures to neutralize the opponent such as arrest or non-lethal use of force must be considered first.<sup>55</sup> Police as well as military personnel acting in a law enforcement capacity are held to strict standards on the use of lethal force. One may only shoot in self defence; to defend others against imminent threat or serious injury; to arrest such a perpetrator and only when less extreme measures will not suffice. One may shoot to kill only when strictly unavoidable in order to protect life. Every incident of firearm used by officers in performance of their duty must be reported and subjected to review, particularly where death, injury or other grave consequences result.<sup>56</sup> In *MC Cann and Others v. United Kingdom*<sup>57</sup> the European Court on Human Rights in a close split decision that revised a split revision of European Commission upheld the killing of IRA operatives by a Britain SAS unit in Gibraltar. But while the particular circumstances and information at the time justified the resort to lethal force by the shooters, the court condemned Britain for the planning of the operation which did not show sufficient preparation for apprehension as a preferred option. The Nigerian Supreme Court in two recent decisions upheld the judgement of the High Courts of Ogun and Delta States convicting police officers for murder committed in circumstances showing the non-existence of caution. In *Adekunle v. State*,<sup>58</sup> the police officer shot at a moving vehicle and one of the occupants died as a result. The High Court of Ogun State rejected the defence of accidental discharge. Similarly, in *Ibikunle v. State*,<sup>59</sup> the accused police officer set out with other officers to arrest a suspected notorious armed robber who escaped from police custody. On reaching his home, the suspect locked himself up in a room and refused to open after several warning shots were fired. The police officers forced the window open and fired tear gas inside the room, but he refused to open and instead was warning police officers to leave or else he would kill any who dared to come inside. After two hours of efforts, the police fired a single shot in order to get access and effect his arrest but that shot turned out to be fatal. When the deceased was brought out, he was not the notorious armed robber they were looking for. In affirming the conviction to death of the police officers, the Supreme Court held that section 7 (1) and (2) of the Criminal Procedure Law do not permit a police officer to summarily execute any person who refuses to allow him free ingress into an apartment that he believes a suspect has entered.

The distinction between 'war' and ordinary law enforcement operation is also relevant with respect to detention. Under human rights law, any one arrested or detained on a criminal charge must be brought promptly before a judicial officer and entitled to trial within reasonable time otherwise he should be released.<sup>60</sup> Indefinite detention is arbitrary and a violation of international human rights law.<sup>61</sup> In time of war, the prohibition of arbitrary detention is supplemented and interpreted by reference to the IHL under which captured enemy combatants may be detained and civilians of occupied territory may be interned for the duration of the war.

The second question to ask is: Are terrorists entitled to protection under any other international legal regime if the war against terrorism does not qualify as "armed conflict" or "war" strictly speaking and whether the rules of IHL do not apply?

This question is answered in the affirmative. The war against terrorism is not war strictly speaking and therefore it is not governed by IHL. But rules of international human rights law will regulate such conflict.<sup>62</sup> Thus, although the statement by the United States that none of the provisions of the Geneva

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<sup>55</sup>Ogbu, A.C. A Contextual Analysis of the War against International Terrorism in the Light of International Humanitarian Law and Human Rights, *NJI Law Journal*, (2005), p.134.

<sup>56</sup>Ibid, Principles 9, 11, and 22.

<sup>57</sup> Judgment of the ECHR, September 27, 1995.

<sup>58</sup>(2007) 140 LRCN 1977.

<sup>59</sup>(2007) 144 LRCN 271.

<sup>60</sup>Ogbu, A.C, op.cit at p.11. 138. See S. 35 of the 1999 Constitution.

<sup>61</sup> Report of the Working Group on Arbitrary Detention, Questions of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment' Deliberations of UN Working Group 12<sup>th</sup> January, 1993.

<sup>62</sup> Goldman, R.K. and Titter more, B.D. "Unprivileged Combatants and Hostilities in Afghanistan: Their Status and Rights Under International Humanitarian and Human Rights Law in the American Society of International Law Task Force on Terrorism. Pp. 35-39. Available in <http://www.asu.org/taskforce/goldman.pdg>

Conventions apply to their conflict with Al-Qaeda in Afghanistan or elsewhere throughout the world<sup>63</sup> is generally correct that does not mean the conflict is devoid of any regulations at all. Firstly, there are human rights provisions which are non-derogable and this means that states must respect and observe those rights in all situations including war against terrorism. For instance, under ICCPR, the following rights are recognized as non-derogable rights: right to life, freedom from torture, cruel, inhuman or degrading treatment or punishment, freedom from slavery and servitude, freedom from imprisonment on ground of inability to fulfill a contractual obligation, right to recognition everywhere as a person before the law and freedom of thought, conscience and religion.<sup>64</sup> Similarly, provisions are made in Constitutions and Charters of most states and regional bodies.<sup>65</sup> These rights being non-derogable must be respected in all circumstances including the war against terrorism and armed conflict. Thus it has been argued that in times of war or armed conflict, IHL does not supersede human rights law. Rather, both of them co-exist, but human rights are subject to derogation in times of declared national emergency.<sup>66</sup> Thus, cases of and other inhuman and degrading treatments reported in respect of the Guantanamo Bay detention centre and some other places cannot be justified in anyway. According to Peter Koojimans “if ever a phenomenon was outlawed” unreservedly and equivocally, it is torture<sup>67</sup>. In *A (FC) and Others (FC) v. State of the Home Department*<sup>68</sup> Lord Bingham of the House of Lords commenting on the universality of the provision against torture stated as follows:

The duty of nation states to discountenance both the actual practice of torture and the use of its fruits in judicial proceedings is beyond a treaty obligation; it is a duty arising from international recognition of the prohibition against torture as a peremptory norm of customary international law- a ‘*jus cogens*’ which casts upon every member state of the global community where or not it has ratified or domesticated an anti-torture treaty, a duty not merely to refrain from authorizing or conniving at torture but also to suppress and discourage its practice.

Interestingly, the US Supreme Court has in a number of decisions held that persons held as a suspected terrorists are entitled to access to petitions for a writ of habeas corpus.<sup>69</sup>

As regards terrorism, it is the writer’s opinion that terrorist acts like that of September 11, 2001 can qualify as public emergency which threatens the life of the nation. However, it has been submitted that even if the life of the nation is threatened, derogation can only be justified to the extent, strictly required by the exigencies of the situation.<sup>70</sup> This simply means that any measure taken must be proportionate to the situation at hand. Thus, a derogation that is indefinite and limitless or predicated on hypothetical threat of future attack cannot meet the requirement of proportionality.

Finally, on this point, derogation can also be based on law that is reasonable and justifiable in a democratic society in the interest of national security or public safety, public order, public health or morals or the protection of the rights and freedom of others.<sup>71</sup>

<sup>63</sup> Bush, W.B. Memorandum on Human Treatment of Taliban and Al-Qaeda Detainees; 7 February, 2002 para 2b, available at <http://www.pego.no1p.info/whitehouse/bushmemo200220207ed.pdf>.

<sup>64</sup> Article 6, 7, 8, 11, 15, 16, and 18 of the ICCR 1966.

<sup>65</sup> Sections 33, 34, 35 and 36 of the 1999 Constitution, Article 2 of the *European Convention on Human Rights*, Article 2-15 of the *African Charter on Human and Peoples Rights*.

<sup>66</sup> Koojimans, P. (UN Special Rapporteur on Torture) “Report of the Special Rapporteur on Torture” E/CN4/1986/15 paragraph 3.

<sup>67</sup> Ibid.

<sup>68</sup> (2005) CHR p. 1, particularly at p.9 ratio 3.

<sup>69</sup> See for example *Rumsfield v. Padilla*, 542, US 426 (2004), *Hamdan v. Rumsfield*, 548 US 557 (2006) and *Boumediene v. Bush*, 553 (2008)

<sup>70</sup> UN Human Rights Committee, General Comment, No. 29, States of Emergency. (Article 4) para. 161 ICCPR Review, 31 August, 2001.

<sup>71</sup> Article 21 of ICCPR, Section 45 (1) of the 1999 Constitution.

Although our position is that terrorism does not apply outside of a situation of armed conflict, we argue that its rules and principles could well guide our understanding when we attempt to define and respond to terrorism in times of peace. We will discuss the applicability of International Humanitarian law (IHL) in both armed conflict situation and peace time.

#### 1.4 Applicability of International Humanitarian Law in Armed Conflict Situation

In terms of the *Geneva Conventions of 1949* and their Additional Protocols, IHL is to apply during times of armed conflict.<sup>72</sup> Thus, every armed conflict whether characterized as an international or an internal armed conflict, is governed by IHL.<sup>73</sup>

In the case of an international armed conflict, the 1949 Conventions<sup>74</sup> states that the four Conventions apply to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. This regime is then supplemented by Additional Protocol I.

Armed conflicts not of an international character are addressed in the *Geneva Convention of 1949*<sup>75</sup> and in Additional Protocol II. Common Article 3 conflicts, if interpreted as widely as is possible,<sup>76</sup> apply to all organized internal hostilities, but excludes acts of banditry, unorganized and short-lived insurrections.<sup>77</sup> Additional Protocol II is more limited in its application. This Protocol is limited to all armed conflicts which takes place in the territory of High Contracting Party<sup>78</sup> between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. Article 1(2) continues: "This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature, as not being armed conflicts."

The relevant IHL instrument does not provide an authoritative definition of 'armed conflict.' Prior to 1949, in order for hostilities to warrant regulation through the international law of armed conflict, it was necessary for the armed conflict to amount to a 'State of war.' This, in turn, existed only in circumstances where there had been a prior 'declaration of war.' An armed conflict could not commence without such a declaration. For these and other reasons, the Diplomatic Conference that drafted the 1949 Geneva conventions rejected any attempt to define 'armed conflict.'<sup>79</sup>

Thus, since 1949, a declaration of war is no longer necessary for an international armed conflict to exist between two or more states. Rather, all that is needed is for one of the parties to the conflict to make to make its intention clear by actually commencing hostilities.<sup>80</sup>

In grappling with concerns over how one defines an armed conflict-the consequences of which are crucial-we are guided by the jurisprudence of the international tribunals. The Appeals Chamber of the international Criminal Tribunal for the Former Yugoslavia (ICTY) offers the following explanation of what is meant by an armed conflict:

'...an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.'<sup>81</sup>

<sup>72</sup> Jinks, D. 'September 11 and the Laws of War' *Yale Journal of International Law*, (2004) 1, 20-21.

<sup>73</sup> We use the term 'armed conflict' to refer to armed conflict not of an international nature, that is a conflict between the armed forces of a state and dissident or rebelled armed forces

<sup>74</sup> Article 2

<sup>75</sup> Article 3

<sup>76</sup> As proposed by Pictet, J (ed.) ICRC Commentary On Geneva Conventions I (1952) 50

<sup>77</sup> Ibid.

<sup>78</sup> High Contracting Party is a state that has ratified the Protocol

<sup>79</sup> Jinks, d at note 51 relying on Castrein, E. (Civil War (1966) and Pictet, J. *Humanitarian Law and the Protection of war victims* (1975) 16-17, holds that definition was rejected on the grounds that precision would risk exclusion, while under specification would encourage application of the rules in questionable cases.

<sup>80</sup> Ibid.

### 1.5 Peacetime Terrorism

As with all criminal behavior, an act of terrorism is not limited to an armed conflict – it might also be perpetrated during peacetime.<sup>82</sup>

International Humanitarian Law Conventions do not apply to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence.<sup>83</sup> These are regarded as peacetime terrorism. In these situations, terrorism is not covered by the laws of war, but rather by anti-terrorism Conventions. Other forms of peacetime terrorism include: hostage taking, hijacking, maritime sabotage, attacks at airports, attacks against diplomats and government officials, use of bombs and providing financial support to terrorists.<sup>84</sup> This peacetime anti – terrorism Conventions established universal jurisdictions to prosecute perpetrators, require states where perpetrators are found to either prosecute them or extradite them and establish a duty to provide judicial co-operation for other states.

Terrorism is the peacetime equivalent of war crimes. But that does not make it a war like that obtainable in armed conflict situation. However, States have rights to use military in defense against a terrorist group.

However, the international community clearly does not consider individual domestic criminal legal systems of sovereign states equipped to combat terrorism. Twelve recent treaties deal separately with specific instances of terrorism, ranging from the hijacking of aircraft and ships, to handling of bombs and nuclear materials.<sup>85</sup> Initiatives aimed at combating terrorism have also been taken at a regional level, where there are now eight major instruments in place.<sup>86</sup> These treaty initiatives are meant to buttress a world-wide uniform anti-terrorism regime driven by the anti-terrorism agenda of the United Nations Security Council.

The anti-terrorism agenda has two phases, revolving around prevention and prosecution. Measures aimed at prevention include the surveillance of suspects and the monitoring and occasionally freezing or seizure of their assets. Assets seizure often follows on conviction for one of the treaty crime, but criminal conviction does not appear to be a prerequisite to seizure in all cases. In the monitoring, neither states nor individual may refuse to provide information on the basis of secrecy.<sup>87</sup>

### 1.6 The War against Terrorism under International Human Rights Law

The war against terrorism is not war strictly speaking and therefore, it is not governed by IHL, but the rules of International human rights law will regulate such conflict.<sup>88</sup> Thus, although the statement of the

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<sup>81</sup>*Prosecutor v. Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (case No.IT-94-1-AR 72); 105 ILR, 488.

<sup>82</sup> The International Criminal Court does not have jurisdiction over many acts of terrorism.

<sup>83</sup>Weldemer, S. (1983), *The Status of Combatants in Non – Non International Armed Conflicts Under Domestic and Transnational Practice*, 33 AM, U.L. REV. 53, 62-63.

<sup>84</sup>*International Convention for the Suppression of the Financing of Terrorism, 1999.*

<sup>85</sup>*Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Convention on the Prevention and Punishment of Crimes against internationally protected Persons, including Diplomatic Agents, 1973; International Convention against the Taking of Hostages, 1979; Convention on the Physical Protection of Nuclear Materials, 1980; Protocol on the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1988, etc.*

<sup>86</sup>Organization of American States (OAS) Convention to Prevent and Punish Acts of Terrorism taking, the Form of Crimes against Persons and Related Extortion that are of International Significance, 1971; European Convention on the Suppression of Terrorism, 1977; South Asian Association for Regional Cooperation; Regional Convention on suppression of Terrorism, 1987; Arab Convention on the Suppression of Terrorism, 1998; Convention of the Organization of the Islamic Conference on Combating International Terrorism, 1999; Treaty on Cooperation Among States Members of the Commonwealth of Independent States in Combating Terrorism, 1999; Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism, 1999 ( the Algiers Convention); OAS inter- American Convention against Terrorism, 2002

<sup>87</sup>Article 12(12) of the *Convention for the Suppression of Terrorist Financing, (1999).*

<sup>88</sup>Op.cit n. 38.

United States that none of the provisions of the Geneva Conventions apply to their conflict with Al-Qaeda in Afghanistan or elsewhere throughout the world is generally correct, that does not mean that the conflict is devoid of any regulation at all.

Firstly, there are human rights provisions which are non-derogable and this means that states must respect and observe those rights in all situations including the war against terrorism. For instance, under International Covenant on Civil and Political Rights (ICCPR), the following rights are recognized as non-derogable: right to life, freedom from torture, cruel, inhuman or degrading treatment or punishment, freedom from slavery and servitude, freedom from imprisonment on ground of inability to fulfill a contractual obligation, right to recognition everywhere as a person before the law and freedom of religion, conscience and thought.<sup>89</sup> Similar provisions are made in Constitutions of most states and regional bodies.<sup>90</sup> These rights must be respected in all circumstances including in the war against terrorism and actual armed conflict. It has been argued that in times of war or armed conflict, IHL does not surpass human right laws. Rather, both of them co-exist, but human rights are subject to derogation in times of declared public emergency. Thus, crisis of torture and inhuman treatment and other inhuman and degrading treatments reported in respect of the Guantanamo bay detention center and some other places cannot be justified in any way.

It is submitted that terrorist acts like that of September 11, 2001 can qualify as public emergency which threatens the life of the nation. However, it has been submitted that even if the life of the nation is threatened, derogation can only be justified to the extent, strictly required by the exigencies of the situation.<sup>91</sup> This simply means any measure taken must be proportionate to the situation at hand. Thus, derogation that is indefinite and limitless or predicated on a hypothetical threat of future attack cannot meet the requirement of proportionality.

### **1.7 International Perspective on Nigeria's Human Right Violations**

The most serious human rights problems (2011) were the abuses committed by the militant set called Boko Haram which was responsible for killings, bombing and other attacks throughout the country, resulting in numerous deaths, injuries and widespread destruction of property; abuses committed by the security services with impunity, including killings, beatings, arbitrary detentions, and destruction of property; and social violence, including ethnic, regional and religious violence.<sup>92</sup> Other serious human rights to change their government due to some election fraud and other irregularities; politically motivated and extra-judicial killings by security force, torture, rape and other cruel inhuman or degrading treatment of prisoners, detainees; harsh and life threatening prison and detention centre conditions; arbitrary arrests and detention; prolong pre-trial detention; denial of fair public trial; executive influence on the judiciary and judicial corruption<sup>93</sup>; infringements on citizens' privacy rights; restrictions of freedom of speech, press, assembly, religion, and movement; official corruption<sup>94</sup>; violence and discrimination against women; child abuse; female genital mutilation.....forced and bonded labour; and child labour<sup>95</sup>

### **1.8 Some Examples of Human Rights Violations in Nigeria**

#### **1.8.1. Boko Haram**

Boko Haram is an Islamic terrorist group that focuses its attacks on government officials, Christians and Muslims who speak out against their actions or are thought to aid the government known as "traitor Muslims." Attacks are primarily focused in north eastern Nigeria<sup>96</sup> They cite corruption committed by the

<sup>89</sup>Article 6, 7, 8, 11, 15, 16, and 18 of the ICCPR 1966.

<sup>90</sup>Sections 33, 34, 35 and 36 of the 1999 constitution of Nigeria. Article 2 of the European convention on Human Rights. Article 2-15 of the African Charter on human and Peoples Rights.

<sup>91</sup> UN Human Rights Committee, General Comment no. 29, State of Emergency (Article 4) para 16 ICCPR Review, 31, August, 2001

<sup>92</sup> [www.en.m.wikipedia.org](http://www.en.m.wikipedia.org)

<sup>93</sup> 2011 Country

<sup>94</sup> *ibid*

<sup>95</sup> Bureau of democracy, Human Rights and Labour, U.S Department of State

<sup>96</sup> Human Rights Watch " Spiriting Violence: Boko Haram Attacks and Security Forc Abuses in Nigeria" 2012

National Government as well as increased western influence as the primary reason for their often violent actions. The group engaging in Jihad was banded in 2000 by the spiritual leader Muhammad Yusuf.

In October 2013, Amnesty International recommended that the Nigerian government investigate the deaths of more than 950 suspected Boko Haram members that died under military custody in the first six months of the year.<sup>97</sup> However, this sympathy of the sect did not last for long. In 2014, the sect drew international attention from its 14 April kidnapping of approximately 230 female students from a secondary school in northern town of Chibok, Nigeria. From 3 to 7 January 2015, Boko Haram Militants seized and razed the towns of Baga and Doron – Baga and reportedly killed at least 150 people in the Baga massacre.<sup>98</sup> Boko Haram killed civilians, abducted women and girls, forcefully conscripted boys and men and even destroyed homes and schools.<sup>99</sup>

Human rights in Nigeria are protected under the most current constitution of 1999. Nigeria has made serious improvements in human rights under the constitution. Though American human rights reports of 2012 noted areas where significant improvement is needed, which include:<sup>100</sup> abuses by Boko Haram, killings by government forces, lack of social equality and issues with freedom of speech. The Human Rights Watch's 2013 world report states that intensified violence by Boko Haram and government corruption continue to undermine the status of human rights in Nigeria.

### **1.8.2 Nigeria Army Attack on Shia Sect**

The killings of hundreds of shia members of Islamic Movement of Nigeria (IMN) by the Nigeria army appears to have been wholly unjustified.<sup>101</sup> It was revealed that soldiers fired on the shia members at three locations in Zaria, northern Nigeria. The arm said its confrontation with the shia sect who have erected a makeshift road block resulted from an assassination attempt on the Chief of Army Staff, Lieutenant General Tukur Buratai, whose convoy was passing by. According to the Director Human Rights Watch<sup>102</sup> “the military version does not sack up.” It is almost to see how a road block by angry young men could justify the killings of hundreds of people. At best it was a brutal over reaction and at worst it was a planned attack on the minority shia group.”

Under international human rights law governing the use of force during policing operations such as this, the use of lethal force is only permitted when strictly unavoidable to protect life. Although people threw stones and had sticks, there has been no credible information that any soldier was injured or killed. It is also observed that the attack on the Shia in Zaria follows a well documented pattern of serious human rights abuses against civilians by Nigerian security forces, including for mass arrests, prolonged detention without trial, cruel and inhuman treatment, torture of detainees, and extra- judicial killings. The International Criminal Court in November 2010, said it was monitoring the situation in Nigeria. The office of the prosecutor detailed six possible cases of crimes falling within its jurisdictions against Boko Haram and two possible cases against Nigeria security forces for crimes against humanity and war crimes in relation to the north east insurgency.

The army carried out attacks on the the Hussaimiyya Baqiyatullah mosque and religious centre, at the house of the Shiite leader<sup>103</sup> and at the burial ground, Darul Rahma, over the course of two days. At least 300 Shia sect members were killed and many more injured.<sup>104</sup> The Shia leader was arrested and till date has not been granted bail.

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<sup>97</sup> “Nigeria death of hundreds of Boko Haram suspects in custody requires investigation” Amnesty International, 15 October, 2013.

<sup>98</sup> Some of Boko Haram worst attacks in Nigeria.

<sup>99</sup> “ Nigeria Human Rights Watch” [www.hrw.org](http://www.hrw.org).

<sup>100</sup> Bureau of Democracy, Human Rights and Labour, Human Rights Practices for 2012:2012.

<sup>101</sup> The killings took place from the 12<sup>th</sup> to 14<sup>th</sup> of December, 2015 in zaria, Kaduna state Nigeria

<sup>102</sup> Bekele, D (2015).

<sup>103</sup> The Shiite leader is Sheikh Ibrahim Al Zakzaky.

<sup>104</sup> [www.hrw.org](http://www.hrw.org). Accessed on 21/10/16.

### 1.7 Conclusions

Since the war against terrorism does not qualify for war or armed conflict in international law, the rules of International Humanitarian Law do not govern it. This however does not mean that it is not governed by any legal regime at all. Rather the rules of international human rights law regulate such rights as right to life, freedom from torture and inhuman or degrading treatment while fighting terrorists. Therefore, Military actions taken against non-state terrorism organizations neither occupying any defined territory nor formally recognized by any state cannot translate to war under International Humanitarian Law.

It is therefore crucial in the battle against terrorism to carefully distinguish between operations amounting to an armed conflict and other forms of struggle where police and security forces clearly operate outside the areas of armed conflict. Consequently, the 'war' against terrorism must be pursued with respect for basic human rights.<sup>105</sup>

It is therefore the writer's conclusion that the war does not qualify for war or armed conflict and therefore military personnel involved do not enjoy combatant privilege. The consequences therefore is that military personnel and the police are held to strict standards on the use of lethal force and all measures to neutralize the opponent, such as arrest must be considered first.

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<sup>105</sup> "World Report 2015: Nigeria." Human Rights Watch.