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ANALYSIS OF INTERNATIONAL LEGAL INSTRUMENTS ON TERRORISM AND HUMAN RIGHT PROTECTION VIS-À-VIS NIGERIA LEGAL TERRAIN

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Abstract

The most pressing concerns facing current generation across the universe is the geometric rise in the incidence and notoriety of terrorism and terrorist activities. This has culminated into the emergence of International human rights standards owing to the obligation to control the violent and extreme behaviour. It is not gainsaid that Nigeria, as a sovereign State, has also launched a campaign against terrorism. While the response of Nigeria to combat terrorism has been applauded; the incessant human rights violation by the security personnel championing the fight against terrorism remains problematic. To this end, this paper analyses international legal instrument on terrorism, protection against violation of human rights while fighting terrorist and what the Nigeria stand to benefit from it. The paper posits that there are adequate provisions to curb the spread of terrorism in the various international legal instruments and domestic legislations on the issue, but lack of political will on the part of government remains the ultimate challenge. The paper recommends enforcement paradigm of the existing legal framework on terrorism and human right protection in Nigeria.

Key words: Terrorism, Legal Instruments, Human Right, Protection, International Standards, Nigeria.

Introduction

Terrorism is global phenomenon. Its menace has escalated in the recent time to a point that no nation in the world over can hardly guarantee her freedom from the terrorist attack in view of the various motives attached to it. The international stakeholders have responded by putting in place a number of international legal framework to combat terrorism and at the same time prevent human rights abuse in the circumstance. This terrorist activity is not novel in Nigeria. It has forced the country to embark on certain measures to combat the unwanted scenario. However, in the course of executing the measure to combat terrorism, human rights violation have been the consequential effect. It is against the foregoing backdrop that this paper examines various international legal instruments on control of terrorism and protection of human rights with a view to drawing lesson for Nigeria.

Conceptual Analysis

The term terrorism is classified as one of the most contentious concepts in recent political parlance, particularly if one draws from the ideological interpretations of one man's terrorist is another man's freedom fighter, which has become a justification for the violent acts of both state and non-state actors in a bid to contrast one side's legitimate killing to

another side's illegitimate killing.¹ The root of the word terrorism can be traced to the Latin word *terrere* meaning to frighten, terrify, deter, or scare away. Professor Christopher Blackley defines terrorism as: ...violence committed by any means; causing death, great bodily harm, or serious property damage; to innocent individuals; with the intent to cause those consequences or with wanton disregard for those consequences; and for the purpose of coercing or intimidating some specific group, or government, or otherwise to gain some perceived political, military, religious, or other philosophical benefit.² Thus, terrorism is a particular species of political violence involving a threat of violence against non-combatants or property in order to gain a political, ideological, or religious goal through fear and intimidation.³

The concept terrorism was given an internationally recognize definition in 1994⁴, with the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes and that such acts are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.⁵ Article 2 further contain a comprehensive definition of terrorism as unlawfully and intentionally causing, attempting or threatening to cause: (a) death or serious bodily injury to any person; or (b) 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 (c) 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.⁶ The draft article further defines as an offence participating as an accomplice, organizing or directing others, or contributing to the commission of such offences by a group of persons acting with a common purpose. Hence terrorism is a strategy employed

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¹ S. P. Subedi, The U.N. Response to International Terrorism in the Aftermath of the Terrorist Attacks in America and the Problem of the Definition of Terrorism in International Law, 4 INT'L LAW F. DU DROIT INT'L 159, 163 (2002).

² A. Adegboyega, "Boko Haram and terrorism in Nigeria: Exploratory and explanatory notes" Global Advanced Research Journal of History, Political Science and International Relations, (2012) pp. 103-107

³ *Ibid*

⁴ 1994 United Nations Declaration on Measures to Eliminate International Terrorism annex to UN General Assembly resolution 49/60, 'Measures to Eliminate International Terrorism' of December 9, 1994, UN Doc. A/Res/60/49. President Barack Obama, while commenting on the Boston Marathon bombings of April, 2013, declared that "Anytime bombs are used to target innocent civilians, it is an act of terror". Section 1 of Nigeria's Terrorism Prevention Act of 2011 defines acts of terrorism to include kidnappings, use of explosives, intimidation, destruction of government facility, disruption of water or power supply, and other acts or omissions outside Nigeria, which constitute terrorism

⁵ Walter La Queur, 'Terrorism: A Brief History, Countering the Terrorist Mentality', *Journal* 2007 available at <http://usinfo.state.gov/journals/itps/0507/ijpe/laqueur.htm>

⁶ *Ibid*

by actors' state and non-state actors with widely differing goals they intend to achieve and constituencies they intend to reach.

Furthermore, and in response to the September, 2011 terrorist attacks on the United States⁷, the UN General Assembly set up a working group to fashion a comprehensive convention on international terrorism. In its deliberations, the group proposed a general definition of terrorism, but same could not be achieved as a result of Malaysia's objections to some point not to be included in the definition of terrorism, which also signified the impossibility of generally and or unanimous definition of the term terrorism.⁸ Therefore, it is my opinion that terrorism has its root with a core meaning. It is this core meaning that manifests in the objective elements shared by most writers. The purpose of a terrorist act is to achieve an outcome of terror on its target, so the *mens rea* of terrorism as an act is not to build a destroy state or organization but to destabilize same in order to achieve political, ethnic, religion or other goals. Thus, there was no total unanimity, but the majority opinion was that terrorism was permissible in certain conditions. When a cruel oppressor a tyrant being an enemy of all mankind, in violation of the law of God and human justice, left his victims with no other way out of intolerable oppression, than commission of a terrorist act which is last refuge of the oppressed, all other means having been exhausted.⁹

Overview of the International Legal Framework against Terrorism

Starting from the least ambitious threshold of the conventions regulating hijacking in the 1960's and 1970's, finds the international community forming and adopting new instruments, dealing with more specialized forms of terrorism with increasingly advanced language. The United Nations General Assembly has played an important role in addressing some of the more specific manifestations of international terrorism, such as airline hijacking, unlawful seizure of aircraft and hostage taking, by adopting resolutions and conventions that require states to criminalize these acts. International cooperation between states for the suppression of international terrorism was manifested by a series of agreements dealing with a crime that threatens not only human life and safety, but also the existence of every civilized society.

An analysis of the subject matter of the international instruments dealing with terrorism reveals that they encompass different manifestations of violence upon civil aviation, civil maritime navigation and sea based platforms, as well as attacks upon persons including hostages, diplomats and other internationally protected persons. Various global conventions have been adopted under the auspices of the UN, or its agencies, to combat specific aspects of terrorism. These have tended to be in response to a particular event or atrocity. They are;

⁷ *Ibid*

⁸ A. John, and F. Makinde, 'Government arrested, released UN bombing suspects in 2007' *The Punch*, 2 September. (2011)

⁹ B. Zlataric, *History of International Terrorism and Its Legal Control*, in *International Terrorism and Political Crimes* (M. Cherif Bassiouni ed.) 474, 479

The Convention on Offences and Certain Other Acts Committed on Board Aircraft

This was adopted in Tokyo in 1963.¹⁰ It is considered to be the first international treaty against terrorism. The Convention, negotiated under the auspices of the International Civil Aviation Organisation (ICAO) 173 States were Parties, including 48 Commonwealth States. A number of them have since gained independence and some have formally succeeded to the Convention. The Convention establishes a uniform approach to acts on board aircraft which are offences against penal law, or which may or do jeopardise the safety of aircraft and persons or property on board, or good order and discipline on board. The Convention includes provisions relating to the exercise of jurisdiction in its Articles 3 and 4 and detailed rules as to the powers of the aircraft commander in Articles 5 to 10. Article 11 deals with hijacking. The Convention makes detailed provision for the powers and duties of Parties when an offence is committed on board an aircraft. Article 11 deals with the specific offence of unlawful seizure of an aircraft hijacking. When a person on board an aircraft has unlawfully committed by force, or threat of force, an act of interference, seizure or other wrongful exercise of control of an aircraft in flight as defined in Article 1(3), or when such an act is about to be committed, the Parties are under a duty to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his or her control of the aircraft.

Convention for the Suppression of Unlawful Seizure of Aircraft 1970

As a result of inadequate provisions that were not nearly enough to combat hijacking of aircraft. During 1968 and 1969 there was a rapid increase in number, 122 in all. ICAO therefore convened a conference at The Hague which adopted the Convention on 16 December 1970. It entered into force on 14 October 1971. As of September 2002 it had 175 Parties, of which 47 are Commonwealth States. The approach adopted by the Convention is very different from that of the Tokyo Convention. The Hague Convention begins by establishing an offence of hijacking in its Article 1. It then imposes an obligation on the Parties to make the offence punishable by severe penalties¹¹ Each Party is required to take such measures as may be necessary to establish its jurisdiction over the offence, and any other act of violence against the passengers or crew of an aircraft in certain defined circumstances.¹² Each Party, if satisfied that the circumstances so warrant, is under a duty to take an alleged offender into custody or to take other measures to secure his or her presence.¹³ When an alleged offender is found in the territory of a Party, if it does not extradite it must submit the case to its competent authorities for the purpose of prosecution.¹⁴ Article 1 provides that:

¹⁰ This Convention entered into force on 4 December 1969 and has 180 states parties, according to the website of the UN Counter-Terrorism Committee (CTC) available at www.un.org/sc/ctc/law.shtml

¹¹ Article 2 of the Convention For The Suppression Of Unlawful Seizure Of Aircraft 1970

¹² Article 4 *ibid*

¹³ Article 6 *ibid*

¹⁴ Article 7 of the Convention for the Suppression of Unlawful Seizure Of Aircraft 1970

Any person who on board an aircraft in flight: (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or (b) is an accomplice of a person who performs or attempts to perform any such act commits an offence.

The component elements of the principal offence are therefore: Seizure or exercise of control of an aircraft or an attempt to do so, Seizure or exercise of control or an attempt by force or threat of force or by any other form of intimidation, Seizure or exercise of control or an attempt that is unlawful, Seizure or exercise of control or an attempt on board an aircraft in flight. The hijack of an aircraft will constitute an offence only if it is committed by the use or threat of force or by any other form of intimidation.¹⁵ Many hijackings are accomplished by the threat of force rather than its use, although there have been many where force was used, and passengers and members of the crew have been killed or wounded, most dramatically the event on 11 September 2001. Both categories are included in the offence. The threat of force contemplates all cases where the use of force or violence is threatened against members of the crew or passengers, or the aircraft itself. The offence may also extend to a threat to use force against persons or property not on board the aircraft, provided that the threat was made by a person on board the aircraft and for the purpose of seizing or taking control of it. It is doubtful whether the words 'or by any other form of intimidation' extend the scope of the offence since such conduct is likely to involve the threat of force, although it is possible that a hijacker might attempt to gain control of an aircraft by making a threat to the pilot which falls short of a threat of force e.g. blackmail.

Convention for The Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971¹⁶

The approach adopted by the Montreal Convention is very similar to that of the Hague Convention and many of their provisions are identical. The Montreal Convention begins by establishing a number of offences. Each Party is required to take such measures as may be necessary to establish its jurisdiction over the offences in certain defined circumstances. Each Party, if satisfied that the circumstances so warrant, is under a duty to take an alleged offender into custody or to take other measures to secure the presence of the person.¹⁷ A Party in whose territory an alleged offender is found is under a duty, if it does not extradite to submit the case to its competent authorities for the purpose of prosecution. Special provision is made for joint air transport operating organisations or international operating agencies that operate aircraft which are subject to joint or international registration. With respect to Parties that establish such organisations or agencies, the Convention does not apply if the places of take-off and landing, actual or intended, are situated within the

¹⁵ The Hague convention adopted on 16 December 1970, 860 UNTS 12325. This Convention entered into force on 14 October 1971 and has 181 states parties, according to the website of the UN CTC

¹⁶ Montreal convention adopted on 23 September 1971, 974 UNTS 14118. This Convention entered into force on 26 January 1973 and has 183 states parties, according to the website of the UN CTC

¹⁷ Convention For The Suppression Of Unlawful Acts Against The Safety Of Civil Aviation 1971

territory of the same Party if it established the organisation or agency.¹⁸ However the Convention will apply even in those cases if the offence is committed, or if the offender or alleged offender is subsequently found, in the territory of a Party other than that Party.

Article 1(1) provides that: Any person shall be guilty of an offence if he unlawfully and intentionally:

- (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.¹⁹

In each case, the conduct must be unlawful and carried out intentionally. The former requirement excludes from the scope of the offence conduct which is legally justifiable or done with legal authority, such as preventive action by police. The requirement that the act should be intentional applies only to the acts performed, not to their consequences; it is immaterial whether the consequences were those intended. More so, save in the case of the offences established under Article 1(1) (b) and (e), it is not necessary that the consequences should actually occur; it is sufficient that they are likely.²⁰ It is unclear which system of law should govern such questions. However, it seems that such conduct would fall outside the scope of the offence if it is justifiable under the law of the Party of registration of the aircraft.

1973 Convention on the Prevention and Punishment of Offences against Internationally Protected Persons, Including Diplomatic Agents

The Convention was adopted by the United Nations General Assembly on 14 December 1973, entered into force on 20 February 1977 and as of September 2002 it had 121 Parties.²¹

¹⁸ *Ibid*

¹⁹ Article 1 Convention For The Suppression Of Unlawful Acts Against The Safety Of Civil Aviation 1971

²⁰ *Ibid*

²¹ They are as follows: Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Belize, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burundi, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Korea Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, Gabon, Germany, Ghana, Greece, Grenada, Guatemala, Haiti, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Liberia, Libyan Arab Jamahiriya,

Article 1(1) defines internationally protected person only for the purposes of the Convention. The term was new, and its use in the Convention does not affect the differing degrees of protection accorded to international persons under treaties or customary international law. Article 1(1)(a)²² defines an IPP as a Head of State including any member of a collegial body performing the functions of a Head of State, a Head of Government or a Minister of Foreign Affairs, whenever any such person is in a foreign State which of course includes a Commonwealth State, and includes family members who accompany him or her.²³

Article 1(1)(b) includes in the definition of IPP any representative or official of a State, or any official or other agent of an international organisation of an intergovernmental character, who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity.²⁴ Article 2 provides, that intentional commission of: (a) a murder, kidnapping or other attack upon the person or liberty of an IPP (b) a violent attack upon the official premises, the private accommodation or the means of transport of an IPP likely to endanger his person or liberty (c) a threat to commit any such attack (d) an attempt to commit any such attack and (e) an act constituting participation as an accomplice in any such attack shall be made by each Party a crime under its internal law.²⁵

The acts will almost certainly already be offences under the law of each Party; and there is no requirement to create a new crime of an offence against an IPP, although some countries may choose to enact separate offences for political or policy reasons. As the opening words make clear, the offences must be committed intentionally.

1979 International Convention against the Taking of Hostages

This was adopted by the United Nations General Assembly on 17 December 1979, entered into force on 3 June 1983 and as of September 2002 it had 110 Parties. Article 1(1)²⁶ defines hostage-taking as, first, the seizure or detention by a person of another person and, secondly, a threat to kill, injure or continue to detain him or her unless a third party does or abstains from doing any act. This condition for release can be explicit or implicit; sometimes it is not clear if the hostage will in fact be released even if the demand is acceded to. The third party can be a State, an international intergovernmental organisation, a natural or juridical person or a group of persons in fact any natural or legal person. The act can be

Liechtenstein, Malawi, Maldives, Mali, Malta, Mauritania, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, The Former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Viet Nam, Yemen, Yugoslavia.

²² 1973 Convention On The Prevention And Punishment Of Offences Against Internationally Protected Persons

²³ J. Lambert, "Terrorism and Hostages in International Law" Grotius, Cambridge, (1990) pp. 2-5

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ 1979 International Convention against the Taking of Hostages

committed by a private individual or by the agent of a State. There is no requirement that force be used to effect the taking of the hostage, the victim might be tricked into going with his keepers, but the element of detention implies a degree of force or the threat of it.

The indispensable element of the offence is the compulsion of a third party to act or to abstain from acting as a condition for release of the hostage. Although ordinary kidnapping normally though not always seeks to compel third parties to do something, in practice hostage-taking transcends kidnapping since the demands of hostage-takers are almost invariably political, using that term in its broadest sense.²⁷ Nevertheless, the wording is wide enough to cover kidnapping, though most cases of kidnapping for non-political purposes have no international element.

Article 13²⁸, however provides that the Convention does not apply if the act is committed within one State, both the hostage taker and his victim are nationals of that State, and the alleged offender is found there. But the Convention will apply if the alleged offender then flees to the territory of another Party.

Convention on the Physical Protection of Nuclear Material 1979

The purpose of the Convention is set out in the preamble to avert the potential dangers posed by the unlawful taking and use of nuclear material by the adoption of effective measures to prevent, detect and punish such offences.²⁹ Article 2(1) applies the provisions of the Convention to international nuclear transport. This is defined in Article 1(c) as the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination. These limitations on the scope of the Convention might be partly remedied by a comprehensive treaty on nuclear terrorism.³⁰ The negotiation of such a treaty has not yet been concluded, and may never be because of the reluctance of some States to consider an exemption for the activities of the armed forces of nuclear weapon States.

Furthermore, Article 3³¹ requires each Party to take steps, within the framework of its domestic law and consistent with international law, to ensure that, during international nuclear transport, nuclear material in its territory, or on board a ship or aircraft under its jurisdiction in so far as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described. Article 7³² defines the offences as:

²⁷ J. Lambert, *Terrorism and Hostages in International Law Grotius*, (Cambridge, 1990) pp. 2-5

²⁸ 1979 International Convention against the Taking of Hostages

²⁹ A. Aust, *Modern Treaty Law and Practice*, (Cambridge, 2000) pp. 207-211.

³⁰ *Ibid*

³¹ Article 3 of the Convention On The Physical Protection Of Nuclear Material 1979

³² Article 7 *ibid*

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property (b) a theft or robbery of nuclear material (c) an embezzlement or fraudulent obtaining of nuclear material (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation (e) a threat (i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or (ii) to commit an offence described in paragraph (b) in order to compel a natural or legal person, international organisation or State to do or to refrain from doing any act (f) an attempt to commit any offence described in paragraphs (a), (b) or (c) and (g) an act which constitutes participation in any offence described in paragraphs (a) to (f).

The commission of the acts must be committed intentionally, but, apart perhaps from threats under paragraph 1(e)(ii), motive may be irrelevant. The offences therefore embrace ordinary criminal acts, not just those with a terrorist purpose.

Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991

What prompted enactment of this convention was that in 1985 there were 13 acts of sabotage killing 473 people. In 1989 two acts killed 279, and it was that year, in the aftermath of what had by then been the single most serious international terrorist attack, that the Convention was conceived. The basic purpose of the Convention is to prevent terrorists, or for that matter any other person with no legitimate right to them, being able to obtain unmarked plastic explosives.³³ The existence of criminal penalties may help to deter crime, but the increased possibility of detection should be an even more effective deterrent. Most States have rigorous controls on explosives, including their manufacture, possession, transport and use. The main thrust of the Convention is therefore to tackle the problem posed by the difficulty of detecting unmarked plastic explosives.³⁴ Although the Convention was adopted within ICAO, both its preamble and articles show that its purpose is not limited to preventing the use of unmarked plastic explosives in attacks on aircraft.³⁵ It is directed at the detection of any unmarked plastic explosives and not with any particular use to which they may be put. It should therefore help to prevent the use of plastic explosives in any terrorist attacks or by other criminals, whatever their target.

³³ Article 2 of the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection

³⁴ *Ibid*

³⁵ R. V. Dam, 'A New Convention on the Marking of Plastic Explosives for the Purpose of Detection', *Air Law* (1990), pp. 167-177

International Convention for the Suppression of Terrorist Bombings 1999

The Convention was a response to the increasingly widespread use of bombs in terrorist attacks, particularly in public places. Article 2(1) provides that Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility: (a) With the intent to cause death or serious bodily injury or (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.³⁶ The definition is broad in scope and includes devices which, although not designed for the purpose, have the capability to cause death³⁷ etc. It therefore covers, for instance, pressurised cylinders which, when used for their proper purpose, are relatively harmless, but if misused can cause considerable harm.

1997 International Convention for the Suppression of Terrorist Bombings:

The Convention prohibits any person from intentionally delivering, placing, discharging, or detonating an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility with the intent to cause death or serious bodily injury, or with the intent to cause extensive destruction to such a place, facility, or system, resulting in or likely to result in major economic loss, Mandates co-operation in the prevention of such offenses by prohibiting, in their territories, illegal activities of persons, groups, and organizations that encourage, instigate, organize, knowingly finance, or engage in the perpetration of such offenses. Further co-operation is required through the exchanging of accurate and verified information; and encourages research and development of methods to detect explosives, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, co-operation, and transfer of technology, equipment, and related materials.³⁸

International Convention for the suppression of the financing of terrorism 1999:

It requires parties to take steps to prevent and counter the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals or which engage in illicit activities such as drug trafficking or gun running, commits states to hold those who finance terrorism criminally, civilly and/or administratively liable for such acts; and provides for the identification, freezing and seizure of funds raised for terrorist activities, as well as for the sharing of the forfeited funds with other states on a case by-

³⁶ 1999 International Convention for the Suppression of Terrorist Bombings

³⁷ Ibid

³⁸ 1997 International Convention for the Suppression of Terrorist Bombings

case basis; accordingly bank secrecy is no longer an adequate justification for refusing to co-operate.³⁹

It is importantly observed at this stage that each of these treaties, once ratified by a state, imposes slightly different obligations. As a general rule these include: establishing their jurisdiction over the offences described, making the offences punishable by appropriate penalties, taking alleged offenders into custody, prosecuting or extraditing alleged offenders, co-operating in preventive measures; and At the same time, the offences referred to in each of the conventions are deemed to be extraditable offences between states parties under existing extradition treaties, and under the convention itself.

Africa Regional Legal Framework on Terrorism

The development of regional legislation on counter terrorism began in 1992 when the Organisation of African Unity (OAU) came up with a framework for countering terrorism. OAU Heads of State and Government adopted a Resolution aimed at enhancing co-operation and coordination between member states in order to fight terrorism.⁴⁰ In 1994 in Tunis, the OAU Assembly adopted a Declaration on the Code of Conduct for Inter-African Relations, condemning terrorist's acts in all their forms and rejected acts of religious fanaticism and extremism.⁴¹

The OAU Convention on the Prevention and Combating of terrorism (Algiers Convention) was adopted in 1999 and took the bold move of defining terrorism. Article 1 defines a terrorist act as an act that may violate criminal laws of a member state, endanger and cause harm to the lives of citizens as well as destruction of public property. Intimidation and imparting fear are also considered to be terrorist acts.⁴² Apart from defining a terrorist act, the Preamble to the Convention sets the general tone, emphasising cooperation among its member states relations; promotion of human values based on tolerance rejecting all forms of terrorism irrespective of their motives for example self-determination, liberation struggles.⁴³ Article 2 requires states parties to review their national laws and establish criminal offences for terrorist acts as defined in the Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences. States parties are also required to notify the Secretary General of the OAU of all the

³⁹ Terrorist Financing Convention, deposited with the Secretary-General of the United Nations. Information on status provided by UN, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtldsg_no=XVIII11&chapter=18&clang=en

⁴⁰ F Viljoen, 'International human rights law in Africa' (2007) 299.

⁴¹ Ibid

⁴² (a) any act which is a violation of the criminal laws of a state party and may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to: (i) 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 (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or (iii) create general insurrection in a state. (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i) to (iii). OAU Convention on the Prevention and Combating of Terrorism, July 1999.

⁴³ Preamble OAU Convention on the Prevention and Combating of Terrorism, July 1999

legislative measures on terrorist acts within one year of ratification of, or accession to the Convention.⁴⁴ Article 4 of the Convention deals with areas of cooperation, and identifies certain activities by states as prohibited as they further terrorism. It also requires states to cooperate and share information without using confidentiality as a reason not to share information. Investigations and arrest of persons involved in terrorist activities is within the jurisdiction of national law of each state, exchange of information and establishment of data bases and extradition between states is paramount.

Furthermore, in 2002, a Plan of Action on the Prevention and Combating of Terrorism in Africa (counter Terrorism Plan of Action) was adopted by the Intergovernmental High Level meeting of member states of the African Union held in Algiers, Algeria.⁴⁵ The counter Terrorism Plan of Action provides a tactical road map for countering terrorism. It also calls on states to sign and ratify and implement the Algiers Convention as well as international conventions that are concerned with counter-terrorism. Member states are encouraged to cooperate internationally with states in countering terrorism and to take note of the correlation between terrorism and other related activities such as drug trafficking.⁴⁶ States are also urged to improve border security and ensure that their immigration processes are fool proof to ensure that falsification of travel documents is minimal. The Anti-Terrorism Plan of Action further urges states to enact legislation and equip the judiciary with the necessary tools to be able to use the laws once they are enacted. Financing of terrorism is also covered by the Anti-Terrorism Plan of Action. The Peace and Security Council is charged with the responsibility of coordinating counter-terrorism in Africa through public awareness and implementation of all counter-terrorism legislation by member states within the region. There is, however, no mention of the role of the African Commission on Human and Peoples Rights.⁴⁷

The Protocol to the OAU Convention on the Prevention and Combating of Terrorism (Anti-Terrorism Protocol) was adopted in 2004. This Protocol consolidates the provisions of earlier African Conventions. Its main purpose is to coordinate and harmonise continental efforts in countering and preventing terrorism and implementation of other international standards through the Peace and Security Council.⁴⁸

Legal Response to Terrorism in Nigeria

Terrorism is an existential threat to the survival of the Nigerian State and the global community. Terrorism clearly subjects the citizens to mindless violence, psychological trauma, or general disorder contrary to existing legal, International, Regional and

⁴⁴ Article 2

⁴⁵ 7Plan of action of the African Union High-level Inter-governmental Meeting on the Prevention and Combating of Terrorism in Africa <http://bibliotecavirtual.clacso.org.ar/ar/libros/iss/pdfs/oau/PoAfinal.pdf> (accessed 1 October 2010).

⁴⁶ *Ibid*

⁴⁷ Protocol to the OAU convention on the Prevention and Combating of Terrorism <http://www.africaunion.org/root/au/Documents/Treaties/Text/The%20Protocol%20on%20Terrorism%2026July2004.pdf> (accessed 2 October 2019).

⁴⁸ *Ibid*

Constitutional stipulations.⁴⁹ There were no existing anti-terrorism laws that could adequately check possible activities of terrorism in Nigeria prior to the passage of the Terrorism (Prevention) Act, 2011. The Terrorism (Prevention) Act was clearly a direct response to the inclusion of Nigeria by the United States of America on the list of countries of interest and the attendant pressure mounted by the International community, especially the Western Countries for Nigeria to stand up to be counted in the global anti-terrorism crusade.⁵⁰ The main aim of the 2011 anti-terrorism law was therefore to cure this deficiency by promulgating a law to detect, prevent, and suppress the financing of terrorism and terrorist acts.⁵¹ The TPA which covers 41 sections has a far reaching provisions ranging from definition and prescription of crimes of terrorism, to intelligence gathering, prevention, investigation and prosecution of terrorist suspects and other miscellaneous offence.

Section 1(1) of the Terrorism (Prevention) Act, 2011 prohibits and criminalizes acts of terrorism as against any person who does, attempts or threatens to do an act preparatory to or in furtherance of an act of terrorism; commits to do anything that is reasonably necessary to promote an act of terrorism; or assists or facilitates the activities of persons engaged in an act of terrorism, Section 1 (2) makes up for the non-express definition of terrorism by clearly ascribing copious and expansive meaning to the expression acts of terrorism.⁵² Acts of International Terrorism on the other hand as contemplated by Section 9(8) refers to acts of terrorism involving a non-citizen of Nigeria; a person possessing dual citizenship as specified in sub-section (3) of the same section; or groups or individuals whose terrorist activities are foreign based or directed by the countries or groups outside Nigeria or whose activities transcend national boundaries. It should be noted that to secure a conviction on a terrorism Charge, the prosecution must prove, not only the acts of terrorism, but that this was deliberately done with malice aforethought. From fundamental rights perspective, some sections of the TPA are in line with constitutional provisions of fundamental rights. However, several provisions raised fundamental rights concern as enshrined in the constitution.⁵³ Worthy of note are sections 9, 12, 26 and 28 of the TPA that give tremendous powers in the National Security Adviser, Inspector General of Police and the State Security Service with little or no oversight for accountability.⁵⁴

It is therefore pertinent to note that on February 21, 2013, the TPA was amended by the Terrorism Prevention Amendment Act 2013 (TPAA). The new Amendment Act brought some changes and addresses some Human Right issues of the TPA.⁵⁵ For instance, the enormous powers of the National Security Adviser, the Inspector General of Police and the State Security Service under the TPA is now vested on the Attorney General of the

⁴⁹ John Glaser, 'Anti- Terrorism Laws in Nigeria Threaten Civil Liberties' (Antiwar, 3rd September, 2011) <<http://news.antiwar.com/2011/09/03/anti-terror-law-laws-nigeria-threaten-civil-liberties>>accessed 8/8/2015

⁵⁰ C. J. D. Dakars, 'Nigeria's Anti- Terrorism Laws and Practices: The Imperative of Mainstreaming Human Rights into Counter-Terrorism Administration' (2013)

⁵¹ Security Council Resolution 1456, 2003, Para.6.

⁵² *Ibid*

⁵³ D Adams, and U. M. Ogbonnaya, 'Ethnic and Regional Violence in Nigeria: Implications for National Security' (2014) 20 Hein Online

⁵⁴ E. Vera, 'Nigeria Terrorism Act: A Step Forward' The Punch (Nigeria, 24th January, 2012)

⁵⁵ *Ibid*

Federation or in a manner as prescribed by the Act as “shall be the authority for the effective implementation and administration of this Act, and shall strengthen and enhance the existing legal frame work to ensure – (a) conformity of Nigeria’s counter terrorism laws and policies with International Standards and United Nations Conventions on terrorism, while the office of National Security Adviser shall be the coordinating body for security and enforcement agencies.

Conclusion

The effectiveness of specific anti-terrorism conventions is questionable since the enforcement of the existing instruments depends much on the political willingness of states parties to support the international cooperation in criminal matters. Though, the adoption of the Terrorist Bombings Convention and the Terrorist Financing Convention is an evidence of the determination of the international community to deal with the phenomenon of international terrorism. The African instruments on terrorism, however, lack specific emphasis on protection of human rights while countering terrorism.⁵⁶ They however encourage member states to ratify international instruments and cooperate with other states. Terrorists’ activities are second nature to Nigeria. It is carried out by individuals, groups in both private and public places and offices including the government you least expect. It is government terrorism that has given birth to other forms of terrorism conducted by individuals and groups. The increased terrorist violence caused by Boko Haram in recent times is enormous and is a great challenge to security, peace, unity and development of the country. Therefore, what is mostly needed in the fight against terrorism is not the development of new norms but the enforcement and consistent application of the existing international norms by all states including Nigeria. Allow and empower state Attorney General to arrest and prosecute terrorist found in their respective states, engages the services of private machineries in the fight against terrorism when necessary and Need to investigate terrorist finance and bring the perpetrators to book.

⁵⁶ *Ibid*