



A LEGAL APPRAISAL OF TERRORISM AS A NEW PATTERN OF ARMED CONFLICT AND ITS CHALLENGES UNDER INTERNATIONAL HUMANITARIAN LAW*

Abstract

States across the globe are increasingly involved in violent conflicts with non-state armed groups. Transformations in the methods, means and characteristics of the twenty first century armed conflict have continued to test the adaptability of treaty and rules of warfare. As the world continues to urbanize, so do its conflicts, making war in cities and its consequences for civilian life a pressing concern. In recent years, internal armed conflicts are more frequent in numbers than the International armed conflicts. However, the problem does not lie in the increase of such conflicts, but in the fact that this new pattern of armed conflict has always violated the basic principle of armed conflict. Many parties to conflicts have not adapted their choice of weapons and tactics to the unique vulnerabilities of the civilians. In addition, technological advances in the realm of warfare present both promises and threats for the future of the law of armed conflict. Terrorism is a changing pattern of conflict in Africa, the recent rise of terrorist insurgency through guerrilla warfare and terrorist attacks has largely affected and diminished the impact of International humanitarian law during armed conflict. This article focuses on terrorism as a changing pattern of conflict in Africa and its challenges to the implementation of the principles and rules of international humanitarian law. This article submits that to a large extent, International Humanitarian Law in its provisions does not play a strong role in dealing with current terrorism around the globe. It concludes that terrorism and the counterterrorism approach adopted by some states not only violates international humanitarian law (IHL) but also negates the basic principle of humanity with devastating impacts on civilians. This article recommends that there should be effective development and implementation of legislation, policies and strategies against terrorism and its financing in line with international standards and best practices

Keywords: International Humanitarian Law, Armed Conflict, Terrorism, Non-International Armed Conflict and Counterterrorism.

1. Introduction

Globally, conflict and violence are currently on the rise, with many conflicts today waged between state and non-state armed groups.¹ While the very nature of 21st century warfare has arguably undergone significant developments in recent years, it is widely noted that non-State actors actively play an increasingly substantial role in contemporary violent conflicts.² This new type of conflict has come increasingly to the fore, they are conflict that takes place within and across states, in the form of armed insurrection, and terrorism³

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¹ International Committee of Red Cross and Red Crescent the Applicability of IHL to Terrorism and Counterterrorism October 1st 2015. <http://www.icrc.org> accessed on the 5th of September 2022.

² k Morgan, "Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare" (2013). Independent Study Project (ISP) Collection. 1618. https://digitalcollections.sit.edu/isp_collection/1618 accessed on the 7th of July 2022

³ *Ibid*



Armed conflict is a situation in which certain acts of violence are considered lawful and others are unlawful, while any act of violence designated as "terrorist" is always unlawful.⁴ The ultimate aim of an armed conflict is to prevail over the enemy's armed forces. For this reason, the parties to a conflict are permitted, or at least not prohibited under the rules of international humanitarian law, from attacking each other's military objectives or individuals not entitled to protection against direct attacks.⁵ Violence directed at those targets is not prohibited under the rules of armed conflict, regardless of whether it is inflicted by a State or a non-State party.⁶ Acts of violence directed against civilians and civilian objects are, on the other hand by contrast, unlawful, as one of the main purposes of IHL is to spare the civilians or civilians object which are not taking part in conflict from the effects of hostilities.⁷

IHL prohibits act or threats of violence the primary purpose of which is to spread terror among the civilian population. Recent years have continued to see the rise of non-State armed groups resorting to acts of terrorism.⁸ Africa, throughout the second half of the twentieth century has been wrecked by internal conflicts and civil wars. In the first half of the twenty first century, Africa in contrast to the end of the last century, is witnessing a new pattern of armed conflicts.⁹ The conflicts in South Sudan, the Al-shabab armed struggle in Somalia, the gunmen invasion of northern Mali and the Boko Haram insurgency in northern Nigeria are some of the new pattern of armed conflicts in the continent.¹⁰

Generally, most of the present-day armed conflicts in Africa are predominantly internal form of violence, all of the 15 most deadly conflicts in 2001 were internal conflicts. Indeed, all but 3 of 57 major armed conflicts registered for 1990–2001 were Non-international.¹¹ In SIPRI's 2000 Yearbook, it was stated that, Africa is the most conflict ridden region of the World and the only region in which the number of armed conflicts is on the increase. Again, in its 2002 Yearbook, SIPRI stated that, that internal conflict in Africa continued to be on the increase.¹² Also According to the Uppsala Conflict Data Program (UCDP), there have been an estimated 630 state-based and non-state armed conflicts on the continent between 1990 and 2015 and Africa particularly has experienced a disproportionately large number of the conflicts.¹³

Conflict remains the primary driver of terrorism, with more than 99 per cent of all terrorist-related deaths occurring in countries involved in a violent conflict or with high levels of political terror. The

⁴ International Committee of Red Cross *the Applicability of IHL to Terrorism and Counterterrorism Report* 01 October 2015. <http://www.icrc.org.document>. accessed on the 5th of August 2022

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

⁹ A. Mubarak and A S Maikudi, 'Terrorism as a Changing Pattern of armed Conflict in Africa: Role of International Humanitarian Law,' Article in Law · Doi: 10.5281/Zenodo.4682096 April 2021

⁹ The Stockholm International Peace Research Institute (SIPRI) 2000, Yearbook of World Armaments and Disarmaments. Oxford: Oxford University Press

¹⁰ A. Mubarak and A. S. Maikudi,

¹¹ *Ibid*.

¹² *Ibid*.

¹³ P D. Williams. *Continuity and Change in War and Conflict in Africa* Prism Volume 6, No. 4 the Journal of Complex Operations News | May 16, 2017



majority of deadly attacks take place in the Middle East, North Africa, and Sub-Saharan Africa, with Afghanistan, Iraq, Nigeria, Somalia, and Syria, bearing the heaviest burden.¹⁴

The increase in asymmetric wars, proliferation and fragmentation of parties involved in armed conflicts complicate and confuse the relevance and application of the principles of International Humanitarian Law.

International Humanitarian Law does not recognize 'terrorists' as their own discrete category of actors during situations of armed conflict, it however does recognize and prohibit "terrorist" activities.¹⁵ Any acts which would normally be categorized as 'terrorist' as understood within the context of the universal anti-terrorism instruments and criminal justice approaches during peacetime, such as the deliberate perpetration of acts of violence against civilians or civilian objects, constitute war crimes under IHL which should be prosecuted accordingly.¹⁶

For example, the taking of hostages is categorized as an offence under the International Convention against the Taking of Hostages 1979. It is similarly prohibited by Common article 3 of the Geneva Conventions in situations of Non International Armed Conflict and by article 34 Geneva Convention IV in international armed conflict. Hostage-taking is further prohibited in article 4(2) (c) Additional Protocols II.¹⁷

Significantly too, International Humanitarian Law prohibits indiscriminate and disproportionate attacks which have similar characteristics to terrorist attacks whether perpetrated during peacetime or in situations of armed conflict.¹⁸ this provision specifically prohibit acts or threats of violence the primary purpose of which is to spread terror among the civilian population or those no longer taking part in hostilities. Article 51(2) Additional Protocol I and article 13(2) Additional Protocols II specifically prohibit these acts of terrorism in the conduct of hostilities, providing that "acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited".¹⁹

One of the main purposes of International Humanitarian Law is to spare civilians and civilian objects from the effects of hostilities. International Humanitarian Law therefore prohibits both specific acts of terrorism committed in armed conflict and, as war crimes, a range of other acts of violence when committed against civilians or civilian objects²⁰

¹⁴ International Committee of Red Cross. Statement given by the International Committee of the Red Cross (ICRC), during the United Nations General Assembly, 76th Session, Sixth Committee Plenary Meeting on Measures to Eliminate International Terrorism, 8th October 2021. Article 08 October 2021

¹⁵ United Nations Office on Drug and crime, International humanitarian law, terrorism and counter-terrorism Conflation of terrorism and conflict, module 6; military approaches to counter terrorism 'E4J university module series counter-terrorism July 2018. Unodc.org.e4j/en/terrorism-mopdule-6/key issues/ihl/terrorism-and-counter terrorism.html accessed on the 19th of January 2023'

¹⁶ *ibid*

¹⁷ Common Article 3 to the Geneva Conventions 1949. . Article 34 Geneva Convention IV 1949. International Convention against the Taking of Hostages 1979. Article 4(2)(C) Additional Protocol II 1977.

¹⁸ Article 51(2) Additional Protocol I 1977. Article 13(2) Additional Protocol II of 1977

¹⁹ *Ibid*

²⁰ International Committee of Red Cross, The Applicability Of IHL To Terrorism And Counterterrorism 1st October 2015 <https://www.icrc.org/en/document/applicability-ihl-terrorism-and-counterterrorism> Accessed On The 19th Of January 2023



Most of the terrorist groups do not comply with International Humanitarian Law. Sometimes state parties are not concerned about the International Humanitarian Law principle when dealing with terrorism. Terrorism negates the fundamental principles of humanity as well as the essential principles and objectives of International Humanitarian Law, “War on Terror,” makes uncertainty about the adequacy of existing International Humanitarian Law to cope with the emerging security challenges of the 21st century²¹ The repeated occurrence of intrastate conflicts and act of terrorism, has left negative effects on the implementation of rules and principles Of International Humanitarian Law.

2. International Humanitarian Law and the Classification of Armed Conflict

The classification of a situation as an armed conflict means that international humanitarian law comes into force immediately. In earlier times, the existence of a ‘war’ in the legal sense was made dependent on an official declaration of war, however Since the Second World War, formal declarations of war have been virtually non-existent.²² Instead, the 1949 Geneva has classified armed conflict into the following categories.

International armed conflict, internationalized armed conflict, and non-international armed conflict. International humanitarian law makes clear what an international armed conflict is. According to the Geneva Conventions of 1949, Common Article 2 states that international armed conflict are “all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized,²³ the convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance’.²⁴This means that the occurrence of international armed conflict is clear, that is, it would be a conflict between the legal armed forces of two different states. A good example would be the North Korean- South Korean war of 1950.

The second type of conflict recognized by international humanitarian law is a new phenomenon known as an internationalized armed conflict. The situation of an internationalized armed conflict can occur when a war occurs between two different factions fighting internally but supported by two different states.²⁵ The most visible example of an internationalized armed conflict was the conflict in the Democratic Republic of Congo in 1998 when the forces from Rwanda, Angola, Zimbabwe and Uganda intervened to support various groups in the DRC and also the conflict in the Syrian Arab republic in which Russia and Iran intervened to support Syrian military against insurgents and on the other hand, the US and some European countries are supporting the insurgents against the Syrian troops.²⁶

The third type of conflict, which is non-international, armed conflicts, according to common article 3 of the Geneva Convention, are ‘armed conflicts that are non-international in nature occurring within the territory of one contracting party.’²⁷ Common Article 3 also states that it does not apply to

²¹ *Ibid*

²² C. Greenwood, ‘*The Concept of War in Modern International Law*’. International And Comparative Law Quarterly, Vol. 36 (1987), P. 283–306;

²³ Art. 2 of the Geneva Convention 1949

²⁴ *Ibid*

²⁵ G.S. Stewart, *Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict*, 85(850): 2003, P. 313-350

²⁶ *Ibid*

²⁷ Common Article 3 Of The Geneva Convention 1949



other forms of violence such as riots, isolated and sporadic acts of violence.²⁸ This abstract definition has made it difficult to make a clear distinction between a mere disturbance and an armed conflict, therefore relying heavily on the political will of states to classify the situation as an armed conflict. However, generally for a situation to be classified as a non-international armed conflict, it has to achieve two variables:

1. The hostilities have to reach a certain minimum level of intensity and form in a collective character²⁹; and
2. There has to be a level of organization of the parties.³⁰

3. Terrorism in Africa

UN Security Council Resolution 1566 2004 defines terrorism as criminal acts against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.³¹

A United Nations panel, on March 17, 2005, described terrorism as any act "intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act."

The European Union also defines terrorism for legal/official purposes in Art.1 of the Framework Decision on Combating Terrorism (2002). It provides that terrorist offences are certain criminal offences set out in a list comprised largely of serious offences against persons and property which, given their nature or context, may seriously damage a country or an international organization where committed with the aim of:

1. Seriously intimidating a population; or
2. Unduly compelling a Government or international organization to perform or abstain from performing any act; or
3. Seriously destabilizing or destroying the fundamental, political, constitutional, economic or social structures of a country or an international organization.³²

Also the United Kingdom's Terrorism Act 2000 defines terrorism to include an act "designed seriously to interfere with or seriously to disrupt an electronic system".³³

The United States has defined terrorism under the Federal Criminal Code. Title 18 of the United States Code defines terrorism and lists the crimes associated with terrorism. In Section 2331 of Chapter 113(B), it defines terrorism as activities that involve violent or life-threatening acts that are a violation of the criminal laws of the United States or of any State and appear to be intended:

1. To intimidate or coerce a civilian population;
2. To influence the policy of a government by intimidation or coercion; or
3. To affect the conduct of a government by mass destruction, assassination, or kidnapping;

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ Geneva Convention, Common Article 3, 1949. See also A. Mubarak and A. S. Maikudi, *Terrorism As A Changing Pattern Of armed Conflict In Africa: Role Of International Humanitarian Law Article in Law* · Doi: 10.5281/Zenodo.4682096 April 2021

³¹ United Nations Security Council Resolution 1566 (2004)

³² European Union Art.1 of the Framework Decision on Combating Terrorism (2002)

³³ The United Kingdom's Terrorism Act 2000



4. And occur primarily within the territorial jurisdiction of the United States”³⁴

Under the United State Patriot Act of 2001: terrorist activities include

1. Threatening, conspiring or attempting to hijack airplanes, boats, buses or other vehicles.
2. Threatening, conspiring or attempting to commit acts of violence on any "protected" persons, such as government officials.
3. Any crime committed with "the use of any weapon or dangerous device," when the intent of the crime is determined to endanger public safety or substantial property damage. ”³⁵

The number of armed groups designated as terrorist organizations engaged in non-international armed conflicts has increased in recent years, there has been an increase in conflict-related violence in several regions of Africa. ³⁶ Some of these groups are well-armed and resourced and show relatively high levels of organization, enabling them to carry out sustained and concerted operations and thus trigger an escalation of violence that is difficult for the relevant authorities to curb. ³⁷

African countries Including Burkina Faso, Cameroon, Libya, Mali, Nigeria, Côte D’ivoire and Somalia have suffered terrorist attack in which thousands of civilians have been killed³⁸

In the 1990s, terror attacks in Africa were somewhat episodic and limited to relatively well defined local context in Algeria, Liberia, sierra Leone and Uganda for example. But now, the emergence of groups like boko haram and spread of Somalia’s Al-Shabaab attack into Kenya, Uganda, has made terrorism a key security threat in Africa.³⁹ About 37% of 39,286 violence related fatalities recorded in Africa in 2004 occurred in Nigeria mainly as a result of attacks by boko haram.⁴⁰ This followed closely by the percentage of such fatalities related attack by Al-Shabaab in Somalia⁴¹ In 2014, for example boko haram killed 6,664 people, mostly civilian in Nigeria, Cameroon and chad, including the kidnapping of hundreds of people⁴² In Nigeria, on Tuesday 5th of July 2022 an attack was made on the prison facility of kuje FCT Abuja where about 62 inmate held in prison custody successfully escaped from the prison and the ISWAP terrorist group openly claimed responsibility for the attacked. ⁴³

In same month July 2022, the terrorist group attacked the military checkpoint in Abuja, the terrorist stormed an army checkpoint around zuma rock on the axis of Madalla and Suleja along the Abuja-

³⁴ The Federal Criminal Code. Title 18 of the United States Code defines terrorism and lists the crimes associated with terrorism. In Section 2331 of Chapter 113(B),

³⁵ The US Patriot Act of 2001.

³⁶ United Nation Security Council Counter-Terrorism Committee Executive Directorate *The interrelationship between counter-terrorism frameworks and international humanitarian law January 2022 material on terrorism/cted_ihl_ct_jan_2022.pdf* accessed on the 26th June 2022

³⁷ *Ibid*

³⁸ L. Gberie *Terrorism Overshadows Internal Conflict As Africans Countries Scramble For Solution* Africa Renewal April 2016 <http://www/terrorism/Terrorismovershadowsinternalconflict/AfricaRenewal.html> accessed on the 21st of June 2022

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² *Ibid*

⁴³ O. Udegbunam and S. Adenekan, *How Terrorist Attacked Kuje Prison, In Abuja Witnesses, Resident Premium Times Primuntimesng.com*. Accessed On 7th July 2022

President Buhari, The President of Federal Republic of Nigeria visit kuje, queries intelligence, response as ISWAP Claim responsibility [Www.thisdaylie.com](http://www.thisdaylie.com) accessed on the 7th of July 2022.



Kaduna express way and opened fire on the soldiers.⁴⁴ Terrorist group also claimed responsibility with regards the kidnapped civilians traveling by train from Kaduna to Abuja, in March 2022⁴⁵

The United Nations Develop Programme (UNDP) has reported that Insurgency-related conflicts have also claimed almost 350,000 lives in the North-eastern part of Nigeria up till the end 2020.⁴⁶ The report said insurgency directly resulted to the death of 350,000 people in three states in the region, while an estimated 314,000 people died “from indirect causes” in the entire North-east region.⁴⁷

The UNDP further confirmed, in another report released on June 24, 2021, that “national data” showed that conflict has directly resulted in the deaths of 350,000 people in the states of Borno, Adamawa, and Yobe in Nigeria as a result of battle or one-sided violence since 2009”.⁴⁸

3.1 Conduct perpetrated by members of terrorist groups involved in armed conflicts, in serious violation of international humanitarian law rules.

The UN Security Council has consistently denounced systematic and widespread abuses and violations of human rights and violations of international humanitarian law, including when perpetrated by terrorist groups. The Council condemned atrocities perpetrated by terrorist groups such as:

- a. The indiscriminate killing and deliberate targeting of civilians
- b. Mass executions and extrajudicial killings, including of children
- c. Kidnapping of civilians and arbitrary detention
- d. Recruitment and use of children in hostilities
- e. Rape and other forms of sexual violence that has at times been tactically used by terrorist groups
- f. Attacks on, and destruction of, protected objects such as schools, hospitals, and cultural and religious sites.⁴⁹

Terrorist groups involved in armed conflicts have commonly carried out military operations without regard for applicable norms and principles of international humanitarian law, in particular the principles of distinction, proportionality, and precautions. Similarly, such groups also commonly violate the protections applicable to civilians.⁵⁰ The prohibition of terrorist offences has been clearly set forth by the Council in its relevant resolutions and in numerous international and regional instruments.⁵¹ Although relevant international humanitarian law instruments do not define terrorism, they outlaw measures or acts of terrorism committed against civilians and persons not, or no longer,

⁴⁴ <http://www.vanduardingngr.com> *Terrorist Attack Military Check Point in Abuja* July 29 2022 accessed on the 24th of august 2022.

⁴⁵ N. Ayitogo *Kaduna train attacked* <http://www/Premiumtimes.com> July 2022

⁴⁶ K. Sanni, *Boko Haram: 350,000 dead in Nigeria* — UN the report estimate that through the end of the year 2020, the conflict in the north-east will have resulted in nearly 350,000 death with 314, 000 of those from indirect causes, ‘*Premium Times*’ June 28, 2021 <http://www/premiumtimes.com/news/heading/470476-insurgency-has-killed-almost-350,000-in-north-east-undp-html> accessed on the 19th of January 2023.

⁴⁷ *Ibid*

⁴⁸ *Ibid*

⁴⁹ See E.G., the 19 International Counter-Terrorism Instruments Adopted Under the Aegis of the United Nations: <https://www.un.org/securitycouncil/ctc/content/international-legal-instruments>.

⁵⁰ *Ibid*

⁵¹ *Ibid*



taking active part in hostilities, as well as acts or threats of violence the primary purpose of which is to spread terror among the civilian population.⁵²

Some of the Criminal conduct prohibited by international humanitarian law which are perpetrated by terrorist groups are:

a. Violence to life and person

International humanitarian law prohibits violence to life and person, as well as outrages upon personal dignity when committed against civilians and persons who are not, or no longer, taking active part in hostilities, including combatants or fighters who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause.⁵³ This includes prohibitions on murder and extrajudicial killings,⁵⁴ torture, cruel, inhuman and degrading treatment;⁵⁵ and sexual violence, including rape, sexual slavery, enforced prostitution or forced pregnancy.⁵⁶ Particular concerns have been raised about the use of sexual and gender based violence (SGBV) and related coercive acts by some terrorist groups.⁵⁷ In multiple contexts, conflict-related sexual violence has been linked to abductions, trafficking in persons and, in some cases, has been suspected to contribute to financial flows contributing to the funding of terrorist activities.⁵⁸

b. Taking of hostages

International humanitarian law prohibits the taking of hostages in both international and non-international armed conflicts,⁵⁹ with such conduct also amounting to a war crime under the Rome Statute of the International Criminal Court and the statutes of international criminal tribunals prosecuting violations of the laws and customs of war. Hostage-taking is frequently perpetrated in connection with other violations of international law triggering individual criminal responsibility, including arbitrary deprivation of liberty and enforced disappearances. Hostage

⁵² Art. 33, Fourth Geneva Convention; Art. 51(2), Additional Protocol I; Art. 4(2), Additional Protocol II.

⁵³ Common Article 3 To the Geneva Conventions Applicable to Non-International Armed Conflicts, Which Sets Out the Minimum Conditions Relating to The Treatment of Persons Applicable in All Armed Conflicts and Reflects “Elementary Considerations of Humanity”

⁵⁴ Common Article 3 To The Four Geneva Conventions; Art. 50, First Geneva Convention; Art. 51, Second Geneva Convention; Art. 130, Third Geneva Convention; Art. 147, Fourth Geneva Convention; Art. 75(2)(A), Additional Protocol I; Art. 4(2)(A), Additional Protocol II. See Also ICC Statute, Art. 8(2)(A)(I), (B)(Vi) And (C)(I). Relevant Conduct Has Also Been Criminalized Under the Statutes of the International Criminal Tribunals, Including The International Criminal Tribunal for The Former Yugoslavia (Hereinafter ICTY), The International Criminal Tribunal for Rwanda (Hereinafter ICTR), And The Special Court for Sierra Leone (Hereinafter SCSL)

⁵⁵ Common Article 3 to the Geneva Conventions; Arts. 12(2) and 50/51 Common to The First and Second Geneva Conventions; Arts. 17(4), 87(3), 89 And 130, Third Geneva Convention; Arts. 32 And 147, Fourth Geneva Convention; Art. 75(2), Additional Protocol I Art. 4(2), Additional Protocol II; Art. 8(2)(A)(Ii) And (Iii), (C)(I) And (Ii), ICC Statute. See Also Art. 2(B) And (C), ICTY Statute, Art. 4(A) And (E), ICTR Statute; Article 3(A) And (E), Statute of The SCSL

⁵⁶ Common article 3 to the Geneva Conventions; art. 14(1), Third Geneva Convention; art. 27(2), Fourth Geneva Convention; arts. 75(2), 76-77; Additional Protocol I; art. 4(2), Additional Protocol II. See also art. 8(2)(b)(xxii) and (e)(vi), ICC Statute. Relevant conduct has also been criminalized under the statutes of the international criminal tribunals. See arts. 2(b) and (c) and 5(g), ICTY Statute; arts. 3(g) and 4(e), ICTR Statute

⁵⁷ Conflict-related sexual violence has been defined to include rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and other forms of sexual violence of comparable gravity against any person (women, men or children). See e.g., S/2021/312. See also, ICRC, Checklist: Domestic Implementation of International Humanitarian Law Prohibiting Sexual Violence (2020), available at <https://www.icrc.org/en/document/checklistdomestic-implementation-international-humanitarian-law-prohibiting-sexua>

⁵⁸ Related acts of violence and coercion include rape, sexual slavery, forced marriages, executions on charges of adultery or of sexual minorities, corporal punishments.

⁵⁹ Common article 3 to the Geneva Conventions; arts. 34 and 147; Fourth Geneva Convention; art. 75(2)(c), Additional Protocol I; art. 4(2)(c), Additional Protocol II.



taking has become a very common act perpetrated by the terrorist group, like the bokoharam terrorist group taking hostage of chibok girls, Kaduna train victims and several others of such incidences

c. Attacks on persons or objects protected under international humanitarian law

Humanitarian law rules governing the conduct of hostilities provide for the obligation of Parties to the conflict, and distinguish between civilians not taking direct part in the hostilities, on the one hand, and combatants or persons taking direct part in hostilities, on the other.⁶⁰ As an extension of this rule, they must also distinguish between civilian and military objects. Furthermore, even attacks directed against a lawful military target must comply with the principle of proportionality (meaning that the expected incidental loss of civilian life, injury to civilians, damage to protected objects or a combination thereof cannot be excessive in relation to the concrete and direct military advantage anticipated).⁶¹ Hence, the direct targeting of civilians not taking direct part in hostilities and indiscriminate attacks that fail to target an identifiable military objective is prohibited.⁶²

The act of intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities has been recognized as a war crime triggering individual criminal responsibility in both international and non-international armed conflicts.⁶³ Operations by terrorist groups have commonly been indiscriminate or have even targeted civilians directly including through suicide attacks, roadside bombs and improvised explosive devices (IEDs) employed in populated or busy areas for maximum lethality and disruption.

d. Humanitarian objects and personnel

Parties to an armed conflict are required to respect and protect humanitarian personnel. This requirement is set out as an explicit obligation in Additional Protocol I in relation to international armed conflicts.⁶⁴ Although treaty law of non-international armed conflict does not explicitly provide for a similar obligation, it is accepted that the requirement that relief action be undertaken if the civilian population is suffering undue hardship due to a lack of basic supplies cannot be fulfilled without protecting personnel and object involved in such operations.⁶⁵ In this sense, the Rome Statute of the International Criminal Court criminalizes, as a war crime, both in international and non-international armed conflicts, intentionally directing attacks against personnel, installations, material, units or vehicles involved in humanitarian assistance provided such personnel or objects are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.⁶⁶

⁶⁰ Art. 51(5)(b), Additional Protocol I.

⁶¹ *Ibid*

⁶² . Articles 51.2 of Additional Protocol I and 13.2 of Additional Protocol II

⁶³ Art. 8(2)(b)(i) and 8(2)(e)(i), ICC Statute. ICTY, Galić, (IT-98-29-T), Trial Chamber, 5 December 2003. The International Court of Justice, in the “Nuclear Weapons” case, linked the prohibition of indiscriminate attacks to attacks against the civilian population by stating that “States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets.

⁶⁴ Arts. 70(4) and 71(2) of Additional Protocol I. See also Art. 59, Fourth Geneva Convention.

⁶⁵ Art. 18(2), Additional Protocol II.

⁶⁶ See Arts. 8(2)(b)(iii) and 8(2)(e)(iii), ICC Statute. The protection also extends to peacekeeping missions conducted in accordance with the Charter of the United Nations.



Humanitarian law requires Parties to the armed conflict to respect and protect medical personnel, units⁶⁷ and transports⁶⁸ exclusively assigned to medical purposes. Such personnel or objects may be civilian or military. They lose their protection if they commit or are used to commit acts harmful to the enemy, outside their humanitarian function.⁶⁹ Against this background, the Rome Statute criminalizes intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law, as well as hospitals and places where the sick and wounded are collected, provided they are not military objectives.⁷⁰ Such acts amount to war crimes in both international and non-international armed conflicts.

e. Cultural property

International law instruments applicable to armed conflict provide for the obligation of Parties to the conflict to respect and protect cultural objects and places of worship. They therefore prohibit the commission of acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and the use of such objects in support of the military effort, both in international and non-international armed conflicts.⁷¹ Consequently, intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, and historic monuments that are not military objectives amounts to a war crime provided the conduct has a nexus with an armed conflict.⁷²

f. Conscription of children

International humanitarian law also prohibits conscripting or recruiting children under the age of 15 years into armed forces or armed groups or using them to take direct part in hostilities.⁷³ Violating this prohibition amounts to a war crime in both international and non-international armed conflicts.⁷⁴ Furthermore, the Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict, provides that non-State armed groups “should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”.⁷⁵ It should be noted that terrorist groups frequently recruit children for exploitation other than their use in hostilities. For example, such groups have used children in a variety of support

⁶⁷ Medical Units Include Hospitals and Other Similar Units, Including Medical or Pharmaceutical Stores, Both Civilian and Military, Whether Permanent or Temporary. See Art. 19, First Geneva Convention; Art. 18, Fourth Geneva Convention; Art. 8(E), Additional Protocol I.

⁶⁸ Medical Transports Include Means of Transportation by Land, Water or Air, Such as Ambulances, Hospital Ships and Medical Aircraft, Both Civilian and Military, Whether Permanent or Temporary

⁶⁹ See E.G., Art. 13, Additional Protocol I; Art. 11, Additional Protocol II. It Must Be Noted That International Humanitarian Law Instruments Provide for A List of Acts or Circumstances That Should Not Be Considered as Acts Harmful to The Enemy and Indicates That Protection Should Not Cease Before Warning Has Been Given

⁷⁰ Art. 8(2) (B) (Ix) of the ICC Statute.

⁷¹ Art. 53, Additional Protocol I; Art. 16, Additional Protocol II. See Also Hague Convention for The Protection of Cultural Property in The Event of Armed Conflict and Its Second Protocol.

⁷² Arts. 8(2)(B)(Ix) of ICC Statute.

⁷³ See art. 77(2), Additional Protocol I; Art. 4(3)(c), Additional Protocol II. In addition to the Geneva Conventions and their Additional Protocols, relevant prohibitions are also included in the Convention on the Rights of the Child (art. 38(3)); the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, esp. its articles 1-4; and the Convention on the Worst Forms of Child Labour (arts. 1 and 3).

⁷⁴ Art. 8(2)(b)(xxvi) and 8(2)(e)(vii), ICC Statute.

⁷⁵ Art. 4, Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict



roles such as cooks, porters or messengers, with girls in particular also having been subject to sexual slavery and forced marriage.⁷⁶

g. Starvation as a method of warfare

International humanitarian law provides for safeguards aimed at protecting civilians and mitigating the negative humanitarian impact of the armed conflict on the civilian population. Hence, unduly refusing to allow and facilitate or otherwise obstructing the delivery of humanitarian relief may amount to a violation of international humanitarian law. To the extent that such obstruction amounts to intentionally using starvation of civilians as a method of warfare in an international armed conflict, the conduct qualifies, in accordance with Additional Protocol I⁷⁷ and the Rome Statute,⁷⁸ as a serious violation of international humanitarian law that triggers individual criminal responsibility as a war crime. Also, in December 2019, the Assembly of State Parties to the Rome Statute unanimously adopted an Amendment to Article 8 in order to include intentional use of starvation as a method of warfare as a war crime also when committed in non-international armed conflicts.⁷⁹

3.2 Counterterrorism Measures Adopted by States and its Challenges to Applicability of IHL rules and principles

According to the ICRC report on International Humanitarian Law and The Challenges of Contemporary Armed Conflicts in 2019, some States deny that International Humanitarian Law applies to their counterterrorism operations even in the face of plainly obvious situations of armed conflict out of a concern that recognizing the existence of an armed conflict could somehow legitimize terrorists.⁸⁰ The ICRC has, for many years now, been observing three key challenges to the applicability of IHL to counterterrorism operations.

First, Denying that non-State armed groups designated as “terrorists” can be party to a non-international armed conflict is problematic, as it greatly impedes application of the fundamental rules that IHL sets out for both State and non-State parties to conflict, like the rules on the conduct of hostilities or the rules governing humanitarian access, and may jeopardize the effective application of the protection contained therein.⁸¹

Secondly, there is a tendency among some States to consider any act of violence by a non-State armed group in an armed conflict as an act of terrorism, and therefore necessarily unlawful, even when the act in question is not in fact prohibited under IHL. This approach is likely to diminish any incentive to comply with IHL.⁸²

⁷⁶ See also the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“Paris Principles”), as well as relevant Security Council resolutions on children and armed conflict, including S/RES/2427 (2018); S/RES/1998 (2011) and its precursor resolutions.

⁷⁷ Art. 54(1), Additional Protocol I.

⁷⁸ Art. 8(2)(b)(xxv), ICC Statute

⁷⁹ Resolution ICC-ASP/18/Res.5 of 6 December 2019. The text of the amendment reads as follows: “Amendment to be inserted as article 8-2-e)-xix) of the Rome Statute: Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies.

⁸⁰ K. Morgan, “*Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare*” (2013). Independent Study Project (ISP) Collection. 1618. https://digitalcollections.sit.edu/isp_collection/1618 accessed on the 5th of July 2022

⁸¹ *Ibid*

⁸² *Ibid*



Thirdly, some States have developed a discourse according to which the exceptional threat posed by non-State armed groups designated as “terrorist” requires an exceptional response. Some States are dehumanizing adversaries and employing rhetoric to indicate that actors designated as “terrorist” are undeserving of the protection of international law, including IHL.⁸³

Many States recognize that IHL applies to their counterterrorism operations when the conditions for its application are met. The determination as to whether an armed confrontation involving such groups amounts to an armed conflict, or is part of one, needs to be made objectively and exclusively on the basis of the facts on the ground and the recognized criteria for conflict classification under IHL.

Under IHL, if a non-State armed group that has been designated as “terrorist” is sufficiently organized for the purposes of IHL, and is involved in sufficiently intense armed confrontations with the State or other armed groups, the situation will amount to a non-international armed conflict, and will be governed by IHL. In contrast, situations of violence involving individuals or groups designated as terrorist but remaining below the threshold of armed conflict are not governed by IHL.⁸⁴

IHL permits neutralizing and overcoming the enemy while preserving standards of humanity in armed conflict. IHL includes rules allowing, for instance, lethal force to be directed against lawful targets based on the principle of military necessity, or the internment of enemies for imperative reasons of security. IHL does not hinder States from fighting terrorism effectively, while setting out a baseline of humanity that all States have agreed to respect, even in the most exceptional situations.⁸⁵ Efforts, undertaken within the framework of counterterrorism measures, to curb direct and indirect support to so-called “terrorist organizations” have led to increased monitoring of and restraints on all activities seen as providing support or assistance to non-State armed groups or individuals designated as “terrorists”.⁸⁶

It is clear from various armed conflicts in the past decade that counterterrorism measures also adversely affect the ability of impartial humanitarian organizations including the ICRC to carry out their humanitarian activities and conduct principled humanitarian action in conflict settings. This is particularly true in areas where armed groups designated as “terrorists” are active and where principled humanitarian action is most needed. In some contexts, counterterrorism measures have prevented humanitarian relief and protection from reaching those most in need. Among the various counterterrorism measures developed by States and international organizations, some are of particular concern like penal laws criminalizing any form of support to individuals or groups designated as terrorists, sanctions regimes aimed at ensuring that no resources benefit such individuals and groups.⁸⁷ These measures, inadvertently or deliberately, have impeded or even prevented impartial humanitarian action, to the detriment of those in need.⁸⁸ They can affect a variety of humanitarian activities, many of which are elements of the ICRC’s mandate.

⁸³ *Ibid*

⁸⁴ Common Article 3 of Additional Protocol to Geneva Convention of 1949

⁸⁵ International Committee of Red Cross. *International Humanitarian Law and The Challenges of Contemporary Armed Conflicts Recommitting to Protection in Armed Conflict On The 70th Anniversary of The Geneva Conventions* [Http/Www/Ihl-Challenges-Contemporary-Armed-Conflicts_Web_7%20\(1\). Pdf](http://www/ihl-challenges-contemporary-armed-conflicts_web_7%20(1).pdf) Accessed On The 7th Of July 2022

⁸⁶ *Ibid*

⁸⁷ *Ibid*

⁸⁸ J.S. Burniske and N. Modirzadeh, *Pilot Empirical Survey Study on the Impact of Counterterrorism Measures on Humanitarian Action*, 2017: <https://pilac.law.harvard.edu/pilot-empiricalsurvey-study-and-comment> accessed on the 13th august 2022 . see also K. Mackintosh and P. Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action, commissioned by the United Nations Office for the Coordination of Humanitarian Affairs*



In 2011, the ICRC raised this issue publicly and expressed its concern about the impact of counterterrorism measures on humanitarian action.⁸⁹ It has reiterated its position on various occasions, notably through statements before the UN General Assembly Sixth Committee and the UN Security Council. Counterterrorism measures adopted by States and international organizations should not contradict the humanitarian principles that States have supported politically or endorsed through IHL treaties, and should not hinder impartial humanitarian organizations from carrying out their activities in a principled manner. Counterterrorism measures impeding principled humanitarian action are incompatible with the letter and spirit of IHL. For example, prohibiting delivery of medical services to wounded or sick members of such groups, such prohibitions are incompatible with IHL, rules like the rules on governing humanitarian activities, including the entitlement of impartial humanitarian organizations to offer their services and the obligation to allow and facilitate the relief activities undertaken by such organizations.

The ICRC condemns acts of terrorism regardless of their perpetrators, whether or not they are committed in the context of armed conflict. At the same time, the ICRC is concerned about the humanitarian consequences of counterterrorism operations in many contexts.⁹⁰ The ability of impartial humanitarian organizations to carry out their exclusively humanitarian activities, and to provide relief to those who need it most, is at stake. Thus, in reality the self-serving attitude adopted by states, and method of “picking and choosing” when and how the rules of IHL can apply especially with respect to terrorism should be regarded as one of the gravest threats and challenges to humanitarian norms and effective implementation of the rules and principles of IHL.

4. Conclusion and Recommendations

Terrorism is one of the major threats to global peace, terrorism is not just a threat to global security but has been increasing many Humanitarian crises worldwide. Recruiting child soldiers, women sex exploitations, slavery, human trafficking, starving, refugee crisis, can be identified as some of those crises made by terrorism.

There is a tendency among the States to consider any violation of law and order by a non-State group in a civil uprising as an act of terrorism, even when that particular act is not prohibited under International Humanitarian Law. ICRC has mentioned that the counterterrorism measures adopted by States and international organizations should not contradict the humanitarian principles that States have supported politically or endorsed through International Humanitarian Law treaties.

Continued efforts aimed at ensuring that all counter-terrorism measures are implemented in compliance with international law, including international human rights law, international humanitarian law, and international refugee law awareness should be raised concerning the potential effect of counter-terrorism.

Steps can be taken to improve communication and information-sharing, as needed, both among public authorities, as well as between government actors and relevant non-governmental stakeholders. Also there should be Sensitization of relevant stakeholders to the potential issues that

and the Norwegian Refugee Council, 2013: https://www.unocha.org/sites/unocha/files/CounterTerrorism_Study_Full_Report.pdf accessed on the 13th august 2022

⁸⁹ International Committee of Red Cross. *International Humanitarian Law and The Challenges Of Contemporary Armed Conflicts Recommitting To Protection In Armed Conflict On The 70th Anniversary Of The Geneva Conventions* [Http/Www/Ihl-Challenges-Contemporary-Armed-Conflicts_Web_7%20\(1\). Pdf](http://www/Ihl-Challenges-Contemporary-Armed-Conflicts_Web_7%20(1).Pdf) Accessed On The 7th Of July 2022

⁹⁰*Ibid*



may arise in relation to the counter-terrorism/humanitarian affairs intersection, Steps towards ensuring that relevant domestic frameworks are sufficiently clear and foreseeable and provide effective safeguards against arbitrary implementation and measures to ensure that those who have committed violations of international humanitarian law are brought to justice in accordance with applicable international law.

Consider taking comprehensive approaches to prosecuting the conduct of members of terrorist groups as well as relevant considerations of international humanitarian law and international criminal law, in accountability strategies development and application of IHL.