



**COUNTER TERRORISM AND OBSERVANCE OF INTERNATIONAL HUMANITARIAN LAW  
PRINCIPLES AND HUMAN RIGHTS IN  
NIGERIA AND THE UNITED STATES OF AMERICA**

**NAMENE, Bariabee Pyaneedam\***

**ABSTRACT**

*This article examined counter terrorism and observance of international humanitarian law principles and human rights in Nigeria and United States of America. The effect of armed conflict on parties thereto, civilians, the immediate environment and the society has made some set of rules regulating armed conflict and its operations to be drafted. There are some core principles guiding the operation of international humanitarian law (IHL) and parties to armed conflicts are expected to at all times operate within the confine of these principles. IHL principles are not always applicable in countering terrorism in Nigeria, and the application of international human rights law (HRL) in times of armed conflict in Nigeria is more challenging as the State as well as its armed forces usually sees national security as a ground for the suspension and violation of human rights in the country. It is recommended that the Terrorism (Prevention and Prohibition) Act, 2022 should be amended to include a section on the application of the principles of IHL in combating terrorism in Nigeria; intelligence gathering should be the hallmark of counter-terrorism in Nigeria so as to carry out attack against the target and ensure zero casualties; Nigerian courts should be proactive in making decision touching on the complementary application of the IHL and HRL during armed conflicts in Nigeria as is the case in the United States of America; and any terrorist who has been captured or surrendered and is no longer taking part in the armed conflict should be tried according to the law.*

**KEYWORDS:** *Armed Conflict, Conflict, Combatants, Terrorism, Counter Terrorism, Terrorists, Human Rights, National Security*

**INTRODUCTION**

The adverse effect of armed conflict on parties thereto, civilians, the immediate environment and the society has made the international community draft some set of rules regulating armed

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\* LL.B (Hons), BL, LL.M, PhD (In View), Legal Practitioner, Email: namenebp1@gmail.com, 0803 274 8138, 0815 338 0826.



conflict and its operations.<sup>1</sup>The scourge of war has no doubt brought appalling horror, destruction and suffering to many people, civilians and combatants alike. Families have been torn apart and dispersed, livelihoods destroyed and the hopes of countless men, women and children shattered.<sup>2</sup> While armed conflict may have been idealized in heroic tales of conquest, revolution and liberation no one who has really experienced its reality can escape being intensely tormented, destabilized and shaken as it is intrinsically inhumane.<sup>3</sup> It was the unspeakable agony of the victims of war that actually gave birth to what is today known as international humanitarian law (IHL), which has remained a body of law that was conceived on the battlefields for the alleviation of human suffering in all situations of armed conflict.<sup>4</sup>

There are some core principles guiding the operation of IHL and parties to armed conflicts are expected to at all times operate within the confine of these principles. Accordingly, it is one of the basic principles of IHL that persons that are engaged in armed conflict must at all times distinguish between civilians and combatants, as well as between civilian objects and military objectives. This principle of distinction remains a cornerstone of IHL. This relates to the specific rules aimed at the protection of civilians, such as the actual prohibition of direct or deliberate attacks against civilians as well as civilian objects, the clear prohibition of indiscriminate or arbitrary attacks and the use of human shields, and other rules regulating the conduct of

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<sup>1</sup>Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949; Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949; Geneva Convention Relative To The Protection of Civilian Persons in Time of War of 12 August 1949.

<sup>2</sup> N Melzer and E Kuster, *International Humanitarian Law: A Comprehensive Introduction* (International Committee of the Red Cross 2016) 12.

<sup>3</sup>*Ibid.*

<sup>4</sup>*Ibid.*



hostilities aimed at sparing or protecting civilians as well as civilian objects from the negative effects of the hostilities.<sup>5</sup> IHL also prohibits hostage-taking, whether of civilians or of persons no longer taking part in hostilities. Thus, the identification of legitimate targets is an essential issue during armed conflict for the application of principle of distinction requiring every party to a conflict to direct attack at those taking active part in the hostilities.<sup>6</sup>

It is a principle of IHL that attack on persons who are or should be recognised in the circumstances as *hors de combat* is prohibited.<sup>7</sup> A person qualified as *hors de combat* if he or she while in the power of an adverse party, clearly expresses intention to surrender, he or she is no longer capable of defending him or herself as a result of unconsciousness, shipwreck, wounds or sickness, and, in all these cases, does not make any attempt to escape, and abstains from any further hostile act.<sup>8</sup>

Nowadays, armed conflict seems not to be strange to any society. In fact, the beginning of the 21<sup>st</sup> century witnessed an increase in radical groups and many new forms of conflict. One good example of such forms of conflicts is terrorism, which has led countries across the globe to seek to protect themselves through adoption of drastic measures for prevention of terrorists and terrorist

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<sup>5</sup>L R Blank, 'Taking Distinction to the Next Level: Accountability for Fighters' Failure to Distinguish Themselves from Civilians' [2012] 46 (3) *Valparaiso University Law Review*;765<<https://scholar.valpo.edu/vulr/vol46/iss3/3>> accessed 25 April 2023.

<sup>6</sup>*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion* [1996] ICJ Reports 78, per Higgins J <<https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>> accessed 25 April 2023.

<sup>7</sup> N Melzer and E Kuster, *International Humanitarian Law: A Comprehensive Introduction* (International Committee of the Red Cross 2016) 106.

<sup>8</sup>Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, art 41(1).



acts, punishing perpetrators of the acts and blocking the sources of their funding. This is a reality in several countries in the world.<sup>9</sup>

There has been a surge in activities orchestrated by irregular combatants and extremist groups with examples from the attacks on the World Trade Center on September 11, 2001,<sup>10</sup> deadly attack by the Al Shabaab on Westgate shopping mall in Nairobi in 2013, and attacks by the Islamic State of Iraq and Syria (ISIS) which in August, 2020, launched several attacks in Iraq,<sup>11</sup> among many others – often accompanied with ruthless implications as combatants and extremist groups seek to pursue their objectives which may include the establishment of an Islamic State that would be ruled by Sharia as in the case of Boko Haram in Nigeria; capture and expansion of territory in the Muslim world in the case of the ISIS sect.<sup>12</sup>

Terrorism is a serious menace and constitutes a threat to the effective enjoyment of human rights whether in peace time or during armed conflicts. Thus, IHL provides for specific prohibition of measures of terrorism as well as acts of terrorism against individuals in the power of any party to armed conflict. As a result, the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention) prohibits collective penalties as well as every measure of intimidation or that of terrorism.<sup>13</sup> Accordingly, all acts of terrorism

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<sup>9</sup> P Micheletti, 'Anti-terrorism Laws must take Humanitarian Principles into Account' [2021] <<https://ideas4development.org/en/anti-terrorism-laws-humanitarian-principles/>> accessed 1 October 2022.

<sup>10</sup> L Bonilla, '19 Years On, Does a Post-9/11 Generation Remember the Attacks?' [2020] <<https://www.voanews.com/usa/19-years-does-post-911-generation-remember-attacks>> accessed 1 October 2022.

<sup>11</sup> H McKay, 'ISIS Launched more than 100 Attacks in Iraq in August, a Sharp Uptick from Previous Month' [2020] accessed 1 October 2022 <<https://www.foxnews.com/world/isis-launches-more-than-100-attacks-in-iraq-throughout-august-a-sharp-uptick-from-previous-month>> accessed 1 October 2022.

<sup>12</sup> D Byman, *Al-Qaeda, the Islamic State and the Global Jihadist Movement: What Everyone Needs to Know* (Oxford University Press 2015) 121.

<sup>13</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, art 33.



against any person that is not or is no longer taking part in the hostilities are prohibited under the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977 commonly referred to as “AP II”.<sup>14</sup> This is applicable to situation of non-international armed conflicts (NIAC) like the case of fight against terrorism as a result of the activities of the Boko Haram sect in Nigeria.

The Boko Haram is an organised armed group and, thus, a non-State actor or otherwise referred to as Non-state Armed Group (NSAG), violently engaging in an armed conflict with the armed forces of Nigeria.<sup>15</sup> The deadly sect qualifies as one that falls under the category of NIAC as it satisfies the two factors to be considered in determining the existence or otherwise of a NIAC, to wit; the intensity as well as duration of violence, and the organisation and nature of the group. The AP II spells out conditions that *dissident armed forces or any other organised armed groups like the Boko Haram sect in Nigeria must meet to be so qualified*, they must carry out weapons and fight regular armed forces of the State or against each other and usually on the territory of one or a number of States. The conditions include; fighting under a responsible command, exercising such control over a part of its territory in order to enable them to carry out a sustained as well as concerted military operations.<sup>16</sup> Acts aimed at spreading terror are prohibited.<sup>17</sup>

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<sup>14</sup> AP II 1977, art 4(2)(d).

<sup>15</sup> C Osisioma ‘Terrorism and Armed Conflict in Nigeria: A Case Study of Boko Haram’ [2022] 5 (1) *International Journal of Law and Society*;86.

<sup>16</sup>(n14), art 1(1).

<sup>17</sup>AP II 1977, art 51(2); AP II 1977, art 13(2).



The threat of terrorism and terrorism is gradually being used in Nigeria as a reason to justify violations of human rights as the primary responsibility of every government is to guarantee the security and the welfare of the people.<sup>18</sup> Nigeria like any other States often wants to cause restriction on the rights of people particularly where national security is involved.<sup>19</sup> Nigeria has used threat to national security as a justification for the violations of human rights of Nigerians, including limitation, and at times, the total restriction of fundamental rights.<sup>20</sup> The Supreme Court (SC) of Nigeria has reiterated this fact when it concluded that individual rights or human rights must always be suspended until the national security can be protected.<sup>21</sup>

Consequently, this article makes a case for the proper and effective respect and observation of the principles of IHL and HRL in counter terrorism efforts in Nigeria. This is imperative as terrorism is identified in this article as a major challenge to national security hence, ought to be fought with due regards to the human rights of the individuals as IHL and HRL are complementary and are to be given due regard even in the fight against terrorism in Nigeria. The practice in Nigeria has been the flagrant violations of human rights and disregard to the principles of IHL in countering terrorism. For example, the arrest and killing of Mohammed Yusuf, the first known leader of Boko Haram terrorist group in Nigeria in 2009 did not promote the principle of IHL prohibiting attack on those *hors de combat* as he was killed even when he was not carrying out further hostile act or attempting to escape which are grounds that could

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<sup>18</sup>CFRN 1999 (as amended), s 14(2)(b).

<sup>19</sup>C Walker, 'Legal Aspects of Counter-Terrorism and Intelligence in the Prevention of Terrorism' [2008] (1) (1) *International Legal Dimension of Terrorism*;47.

<sup>20</sup> J Banda and Others, 'Rights versus Justice: Issues Around Extradition and Deportation in Transnational Terrorist Cases' [2005] (14 (4) *African Security Studies*;59.

<sup>21</sup>*Dokubo-Asari v FRN* (2007) LPELR 958; *Ogwuche v FRN* (2021) 6 NWLR (pt 1773) 547.



have justified his killing under the provision of article 41 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977 (AP I). Thus, a terrorist once captured/arrested ought to be tried and punished accordingly if found guilty instead of carrying out extra-judicial killings which would never solve the problem. This article has the objective of examining counter terrorism and observance of IHL principles and human rights in Nigeria and United States of America.

## **CONCEPTUAL FRAMEWORK**

### **Armed Conflict**

Armed conflict refers to political conflicts where there is the use of armed force by at least two parties of which at least one is the Government of a State. A major armed conflict happens where there exists a war between States as well as a current political conflict within a State in which clashing or armed fighting between Government forces and its opponents and such actions result in deaths during the conflict.<sup>22</sup> IHL applies when armed violence is seen to have reached the level of armed conflict, whether international armed conflicts or non-international ones.<sup>23</sup>

### **Terrorism**

Terrorism refers to the unlawful use of violence or force against persons or property as a way

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<sup>22</sup> P Wallenstein and M Sollenberg, 'Armed Conflict and Regional Conflict Complexes' [1998] (35) (5) *Journal of Peace Research*;621.

<sup>23</sup>O C Nwachukwu, 'Armed Conflict under International Humanitarian Law' [2014] *NAUJILJ*;67.



of intimidating or coercing a government, the civilian population, or any section thereof, and this is done in furtherance of social or political objectives.<sup>24</sup> It has been described as a political violence carried out in an asymmetrical conflict and it is designed to induce terror as well as psychic fear, which is sometimes indiscriminate, through the destruction and violent victimisation of noncombatant targets, relating to acts meant to send a message from an illegal clandestine group or organisation.<sup>25</sup>

### **Counter-Terrorism**

Counter-terrorism means the plan adopted by the government of a country aimed at neutralising terrorist(s), terrorists groups or organisations, as well as their networks so as to make such person or groups incapable of instilling further fear in the citizens or government through the use of violence, and coercing the government to react in accordance with the goals of the terrorists.<sup>26</sup>

### **Human Rights**

Human rights are seen as those rights inherent to every human being. Human rights define the relationships between individuals as well as power structures, particularly the State. They are those rights which every human being must have against the State or any other public authority

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<sup>24</sup> T B Trosper, 'West Africa's war on terrorism: Time and Patience' Msc Dissertation Submitted to the Department of Strategic Studies (United States Army War College, Carlisle Barracks 2009) 25.

<sup>25</sup> C Bockstette, 'Jihadist Terrorist Use of Strategic Communication Management Techniques: George C. Marshall Centre Occasional Paper Series 20' [2008] <[http://www.marshallcenter.org/mcpublicweb/MCDocs/files/College/F\\_Publications/occPapers/occ-paper\\_20-en.pdf](http://www.marshallcenter.org/mcpublicweb/MCDocs/files/College/F_Publications/occPapers/occ-paper_20-en.pdf)> accessed 5 December 2022.

<sup>26</sup> D E Stigall and Others, 'The 2018 U.S. National Strategy for Counterterrorism: A Synoptic Overview' [2019] (1) *American University National Security Law Brief*;1.



in the State by virtue of his being a member of human family, regardless of any other consideration.<sup>27</sup>

## **APPRAISAL OF OBSERVANCE OF INTERNATIONAL HUMANITARIAN LAW PRINCIPLES AND HUMAN RIGHTS INCOUNTER TERRORISM OPERATIONS IN NIGERIA**

It is an indubitable fact that terrorism is a grave violation of human rights in any States suffering it, including Nigeria. Terrorism violates provisions of the instruments protecting human rights at the international level.<sup>28</sup> In the case Nigeria, terrorism also violates human rights statutes like Constitution of the Federal Republic of Nigeria, 1999, National Human Right Commission Act, 2004 (as amended), and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004. Most significantly, it deprives people living in the conflict zones of the right of enjoyment of their fundamental rights, particularly the right to life, which remains the supreme human right.<sup>29</sup> Additionally, terrorism threatens the existence of Nigeria and is capable of causing disorder and spread of chaos in the country if not controlled through laws and effective enforcement of the laws so enacted. Therefore, all the States are obliged to respect and protect human rights of the individuals in their States from every form of danger as well as all

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<sup>27</sup>C O Abakare, 'Human Right: Nature, Concept and Development' [2021] (1) (1) *Pinisi Journal of Art, Humanity and Social Studies*;21.

<sup>28</sup> United Nations Charter, 1945, United Nations Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Vienna Declaration and Programme of Action, 1993.

<sup>29</sup> J Agbonika, 'Terrorism and Human Rights: The Nigerian Experience' [2017] (2) (1) *KIU Journal of Humanities*;245.



acts of terrorism through appropriate measures.<sup>30</sup> In response to the problem of terrorism, Nigeria has enacted the Terrorism (Prevention and Prohibition) Act, 2022 (TPPA). The TPPA does not provide for the effective observation of the application of the principles of IHL and HRL as it does not provide for the use of surveillance in combating terrorism in Nigeria.

Terrorism is a serious threat as well as a veritable ground for human rights violation. The main aim of terrorism is the violation of human rights, the rule of law, democracy, and rule governing both IAC and NIAC and the protection of civilians, tolerance among nations and people, including the peaceful resolution of conflict. The direct, negative impact of terrorism is the infringement on the enjoyment of human rights, especially the rights to life, physical integrity, and liberty. Terrorist acts are capable of destabilising Governments, jeopardise peace and security, undermine civil society, threaten economic and social development, and may have negative effect on certain groups.<sup>31</sup>

Adoption of “shoot-to kill” approach by law enforcement policies in Nigeria in response to any perceived terrorist threats poses serious challenge to IHRL and principles of IHL. It is argued that the importance of ensuring that the whole law enforcement machinery, starting from the police to the prosecutors and officers in charge of the correctional facilities, always operate within the law in Nigeria.

States are obligated to protect and respect the right to life of all individuals from attacks by armed groups. In doing so, States are allowed to derogate from this obligation of protection

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<sup>30</sup>*Ibid.*

<sup>31</sup>(n29).



human rights when considered appropriate. Hence, measures taken by States pursuant to derogations are considered lawful only to the extent that they comply with the conditions that are set out in IHRL.<sup>32</sup>

It is submitted that principles of IHL, to wit; distinction between civilians and combatants, prohibition to attack those *hors de combat*, prohibition to inflict unnecessary suffering, necessity and proportionality should be applicable in counter-terrorism efforts by the Government forces (state actors) in Nigeria as the terrorists, especially the Boko Haram sect has been declared as “terrorist organisation” by Nigeria since 04/06/2013,<sup>33</sup> and the group occupies some communities in Nigeria, especially in Bornu State and has been carrying out sustained and concerted operations of a military nature. It is further submitted that this development has met the requirement of the provision of article 1(1) of the AP II 1997.

### **LESSONS FROM THE UNITED STATES OF AMERICA**

Since the September 11, 2001 attacks on the World Trade Centre and other infrastructure in the United States (US) (commonly referred to as the “9/11 attack”).<sup>34</sup> Many conferences have been held in addressing the historical aspects of terrorism, from its 19<sup>th</sup> century origins to its impact on national identity and state building.<sup>35</sup>

Arguably, the US has the major collection of legislation relating to counter-terrorism with a number of them pre-dating September 11 attack. Conversely, the aftermath of the September 11

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<sup>32</sup> International Covenant on Civil and Political Rights, 1966, 4.

<sup>33</sup> ‘Boko Haram’ <<http://www.britannica.com/topic/Boko-Haram>> accessed 30 April 2023.

<sup>34</sup> H L Steiner and Others, *International Human Rights in Context: Law, Politics, Morals* (3<sup>rd</sup> edn, Oxford University Press 2007) 375.

<sup>35</sup> J Goodman, *Stories of Scottsboro* (New York: Vintage 1994) 10.



attacks witnessed flurry of anti-terrorism legislative activity in the US relating to changes to existing legislation as well as enactment of other new legislation on anti-terrorism.<sup>36</sup> The post September 11 legislation in relation to the efforts of the US comprises of the Financial Anti-Terrorism Act 2001 which amended the Right to Financial Privacy Act 1978, Foreign Intelligence Surveillance Act 1978 Amendments Act, 2008, and the Patriot Act 2001, which is designed to prevent and punish terrorist acts, and for the enhancement of law enforcement investigatory tools, and other purposes for the prohibition and punishment of terrorists; the Bio-terrorism Response Act 2001, Terrorist Bombings Convention Implementation Act 2001, Enhanced Border Security and Visa Entry Reform Act 2002, and Enhanced Penalties for Enabling Terrorists Act 2002. However, the most appropriate laws from USA are the Foreign Intelligence Surveillance Act 1978 Amendments Act, 2008, and the Patriot Act, 2001 based on their innovative provisions that encourage the application of the principles of IHL and the human rights law (HRL) in combating terrorism which remains a major threat to national security across the globe. It has been argued that the effective promotion of human rights in the US has long been seen as an important project to be pursued when its “government has spare diplomatic capacity and national security is not being jeopardised”.<sup>37</sup>

The use of national security as an excuse for the violation of human rights has been condemned soon after the 11 September 2001 terrorist attacks in America when it was asserted that for the human rights movement to remain relevant the claim that national security trumps human rights

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<sup>36</sup> C Lumina, ‘Counter-terrorism Legislation and the Protection of Human Rights: A Survey of Selected International Practice’ [2007] 7 (1) *African Human Rights Law Journal*;49.

<sup>37</sup> W W Burke-White, ‘Human Rights and National Security: The Strategic Correlation’ [2004] 17 *Harvard Human Rights Journal*;251.



ought to be challenged directly.<sup>38</sup> The application of the principles of IHL in armed conflicts has been settled in the US following the decision in the case of *Bámaca Vela'squez v Guatemala*,<sup>39</sup> where the Inter-American Court of Human Rights recognised the actual and effective applicability of the American Declaration of the Rights and Duties of Man 1948 and the American Convention on Human Rights 1969 to armed conflict situations. The facts of this case were a complaint was filed by the petitioners on 5/03/1993, concerning a request for precautionary measures. The complaint was filed based on the detention as well as mistreatment inflicted on Efraín Bámaca Velásquez, including other combatants of the Guatemalan National Revolutionary Unit. Bámaca Velásquez, known as “Comandante Everardo”, formed part of the Revolutionary Organisation of the People in Arms (ORPA). This was one of the guerrilla groups that made up the National Guatemalan Revolutionary Unity. The applicant led this group's Luis Ixmatá Front. He disappeared on 12/03/1992, after an encounter that took place between the Army and the guerrilla fighter in the village of Montúfar, in the western part of Guatemala. He was taken alive as prisoner by the armed forces of Guatemala. He was imprisoned secretly in a number of military installations, tortured and eventually executed.

The Court considered the relevant facts of the case with the examination of all the documents provided by both the State and the Inter-American Commission. At the time this case was filed, Guatemala was faced with an internal conflict. The Inter-American Commission alleged that the actions by agents of the armed forces of Guatemala shows that the State has violated its

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<sup>38</sup> M Ignatieff, ‘Is the Human Rights Era Ending?’ *New York Times* (New York, 5 February 2002) 25 <<https://www.nytimes.com/2002/02/05/opinion/is-the-human-rights-era-ending.html>> accessed 5 May 2023.

<sup>39</sup> (2000) Series C No. 70, para 209.



obligation to respect as well as guarantee the rights established in Article 1(1) of the American Convention on Human Rights 1969 (ACHR) and its relation to Article 3 Common to the GCs 1949.

The Court stated that these violations perpetrated by the Guatemalan armed forces cannot be justified by the mere fact that the State was at the time faced with a guerrilla movement, as, although it has the right as well as obligation to guarantee its own security and also maintain public order, this must be done in accordance with the law and ethics, as well as the international law protecting human rights. However, the acknowledged the fact that a State facing terrorism or a rebel movement that really threatens its security and independence may cause the restriction or temporarily suspension of the exercise of certain human rights, but that this can only be done in accordance with the conditions spelt out in Article 27 of the ACHR. Article 27(2) of the ACHR sternly forbids the suspension of certain rights and, therefore, forced disappearances, the summary executions as well as torture are forbidden, even when they happen in states of emergency.<sup>40</sup>The court continued that Article 29 of the ACHR provides that its provisions may not be interpreted by any authority in the sense of restricting the enjoyment of any rights that are recognised by other instrument (conventions) to which Guatemala is a party; for instance, the GC of 12 August 1949.

Consequently, Guatemala was held responsible for the non-observance of the provision of Article 1(1) of the ACHR, in relation to violations established in Articles 4, 5, 7, 8 and 25 thereof. Accordingly, the Court concluded that the State was responsible for the violation of

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<sup>40</sup> (n39).



Article 1(1) of the ACHR, in relation to its Articles 4, 5, 7, 8 and 25. It is worth noting that the Inter-American Commission appears to be the only human rights body that has explicitly assigned to itself the competence to carry out the role of applying humanitarian law.<sup>41</sup>

The enactment of the Patriot Act, 2001 (PA) in the USA also encourages the application of the principles of IHL in armed conflict. The PA allows law enforcement agencies in US to use surveillance against all crimes of terror.<sup>42</sup> With the enactment of the PA, investigators are allowed to gather necessary information when investigating terrorism-related crimes, including those relating to chemical-weapons offenses, terrorism financing, the use of weapons of mass destruction, and killing of Americans abroad.<sup>43</sup>

It is submitted that the provisions of the PA on terrorism, national security and human rights are elaborate and capable of promoting application of the principles of IHL, especially the principle of distinction between civilians and combatants and conduct of armed warfare will be applied in conflict situation like combating terrorism as a way of promoting national security in the US as the terrorist will be singled out for punishment with the aid of surveillance and intelligence gathering. This will ensure zero casualties as a terrorist will be isolated for attack and/or arrest.

## CONCLUSION

There are some core principles guiding the operation of IHL and parties to armed conflicts are expected to at all times operate within the confine of these principles. The principles of IHL

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<sup>41</sup>*Abella v Argentina* (1997) Case 11.137, I/A Cm HR Report No. 55/97, paras 157–171; C Droege, ‘Elective affinities? Human rights and Humanitarian Law’ [2008] (90) (871) *International Review of the Red Cross*;546.

<sup>42</sup> PA 2001, ss 201-207.

<sup>43</sup>*Ibid*, s 101(a).



regulating armed conflict impliedly protect human rights, particularly the principles of distinction and that of proportionality. The application of the principles of IHL in the counter terrorism efforts of Nigeria is very necessary because the major terrorist group in the country, Boko Haram qualifies as an NIAC which the provision of Common Article 3 to the GC 1949 regulates as the group meets up conditions set out under the provision of article 1(1) of the AP II 1977.

### **RECOMMENDATIONS**

- i. The Terrorism (Prevention and Prohibition) Act, 2022 should be amended to include a section on the application of the principles of IHL in combating terrorism, especially where the non-state armed group like the Boko Haram has met the conditions to be so qualified, to wit; fighting under a responsible command, exercising such control over a part of the territory of the country in order to enable them to carry out a sustained as well as concerted military operations.
- ii. Intelligence gathering should be the hallmark of counter-terrorism in Nigeria so as to carry out attack against the target and ensure zero casualties. This will also promote the principle of distinction. This method is adopted in the US under the Patriot Act, 2001 providing for compulsory use of surveillance in identifying a suspected terrorist.



- iii. All the efforts and measures aimed at countering terrorism and ensuring national security should be in compliance with international human rights law, international law, international humanitarian law, as well as international refugee law.
- iv. Nigerian courts should be proactive in making decision touching on the complementary application of the IHL and HRL during armed conflicts in Nigeria and condemn violation of human rights during armed conflicts in the country. This is the position in the US as was held in the case of *Ba'maca Vela'squez v Guatemala*.<sup>44</sup>
- v. Any terrorist who has been captured or surrendered and is no longer taking part in the armed conflict should be tried according to the law and made to face trial.
- vi. Civilian populations and individual civilian not taking direct part in the hostilities, as well as civilian objects should be spared from attack.

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<sup>44</sup> (2000) Series C No. 70, para 209.