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# RESPONDING TO HOMEGROWN TERRORISM: THE CASE OF BOKO HARAM

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## ABSTRACT

If terrorism as it is known from history is changing, should the response to it change as well? This paper reflects on the rise and activities of Boko Haram in Northern Nigeria and the hesitation of domestic, regional and international efforts in stemming its spread. It finds that the rise and impact of homegrown terrorist groups like Boko Haram deserve closer attention than they have previously received particularly with regard to legal responses by domestic governments and the international community. The activities of Boko Haram in Nigeria have brought to the fore, challenges faced by law and governments in tackling an ideology whose purpose is so far largely misunderstood and whose means of garnering public attention remain as variant and as indiscriminate as their attacks of terror. This paper argues for a reconceptualization; a rethink about the implications for law and social order in the 21<sup>st</sup> century, by examining the lessons to be drawn from, and the responses to be considered, in addressing the emergence of groups such as Boko Haram and their brand of homegrown terror.

## INTRODUCTION

On June 16, 2011 and again on August 26 of the same year, suicide bombing previously unheard of in Nigeria, West Africa, was the means adopted for an attack on the Police Headquarters in Abuja the Federal Capital and on the UN headquarters also in Abuja, respectively.<sup>1</sup> A group identified as *Boko Haram* claimed responsibility.<sup>2</sup> The term 'Boko Haram' is more of an identity than an appellation. Boko Haram, or as is commonly interpreted by the media to mean *Western education is forbidden* or *Western education is a sin*, is according to the group a misinterpretation of the group's identity as they portray in the statement below:

Boko Haram does not in any way mean 'Western education is a sin' as the infidel media continue to portray us. Boko Haram actually means 'Western Civilisation' is forbidden. The difference is that while the first gives the

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<sup>1</sup> See David Cook, *The Rise of Boko Haram in Nigeria*, 4 CTC SENTINEL 3-5 (2011).

<sup>2</sup> *Id.* at 5.

impression that we are opposed to formal education coming from the West... which is not true, the second affirms our belief in the supremacy of Islamic culture (not education), for culture is broader, it includes education but not determined by Western education.<sup>3</sup>

From what was seen as a religious fundamentalist sect created in or around 1995 in Northern Nigeria, the group has been responsible for attacks on private citizens, businesses, military and police, with a total of about 820 incidents over the period 2009-2014.<sup>4</sup> These incidents include: assassinations (37), armed assault (480), bombing and explosions (248), hostage taking (23) and destruction of facility or infrastructure (104), and about five unknown or unaccountable incidents.<sup>5</sup> On April 14, 2014, when 276 school girls were kidnapped from their secondary school in Chibok Borno State in north-eastern Nigeria, the world saw this as an international outrage and acknowledged the perpetrators as terrorists whose activities had threatened the Nigerian nation. Although a global campaign to free the missing girls<sup>6</sup> was organized, as of January 2015 about two hundred and thirty girls were still missing.<sup>7</sup>

This paper considers the contemporary face of homegrown terrorism with its ideological as opposed to hitherto political underpinnings and, its ability to do as much physical damage as it can psychological. It examines the 'Boko Haram' terrorism phenomenon, its ideology and nature, its activities, and considers whether Boko Haram

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<sup>3</sup> The statement is credited to one Mallam Sani Umaru, a one-time acting leader of the group. Freedom C. Onuoha, *The Islamist Challenge: Nigeria's Boko Haram Crisis Explained*, 19 AFR. SEC. REV. 54, 57 (2010).

<sup>4</sup> See *Global Terrorism Database Online: Data on Boko Haram*, NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM [START] (May 2014), <http://apps.start.umd.edu/gtd/>.

<sup>5</sup> *Id.*

<sup>6</sup> The "Bring Back our Girls" campaign set up for this purpose has organized marches in Nigeria and mobilized high profile political and celebrity figures across the globe in support. See *About, BRING BACK OUR GIRLS*, <http://www.bringbackourgirls.org/about.html> (last visited Feb. 10, 2015).

<sup>7</sup> The total numbers of students kidnapped or those who have escaped from the group is not exact; there is a suggestion that the numbers kidnapped may be more than 300 and that only about 53 have escaped. Aminu Abubakar, *FACTSHEET: How Many Schoolgirls Did Boko Haram Abduct and How Many Are Still Missing?*, AFR. CHECK (Apr. 14, 2015), <http://africacheck.org/factsheets/factsheet-how-many-schoolgirls-did-boko-haram-abduct-and-how-many-are-still-missing/>.

is a purely domestic or, a global, problem. The paper also considers key issues in formulating a cogent response to the rise of homegrown terrorism and discusses the lessons to be learnt from the emergence of groups like Boko Haram. The conclusion reiterates the challenges and implications for law and governments in tackling an ideology whose purpose is not understood and whose objectives remain as variant and as indiscriminate as their attacks of terror.

## I. HOMEGROWN TERROR AND BOKO HARAM

Terrorism, meaning the coordinated intentional attacks on social space by a group with the intent of striking fear into the community, has been a fact of human society for as long as people have understood that inducing fear is a remarkable weapon. Bassiouni, commenting on the difficulties faced by the international community in responding to international terrorism, noted that “manifestations of terrorism and the means to prevent and control them have long been studied but governments have tended to ignore the dangers.”<sup>8</sup>

It is likely that governments ignore early signs of terrorist activity because the perpetrators are seen merely as dissidents or enemies of the government. Indeed, terror as a means of forcing change in government is not new. The revolutionary government of 18<sup>th</sup> century France unleashed a reign of terror, in effect terrorism by the state, with scores of counter revolutionaries killed. The leader of the revolutionary government Maximilien Robespierre encouraged the genuine belief that force was essential to subdue opposition when such opposition threatened the liberty achieved under the French Revolution. His words, “subdue by terror the enemies of liberty, and you will

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<sup>8</sup> M. Cherif Bassiouni, *Legal Control of International Terrorism: A Policy-Oriented Assessment*, 43 HARV. INT’L L. J. 83, 83 (2002).

be right, as founders of the Republic,”<sup>9</sup> explain this thesis of violence and force as a justifiable means *by the state* to quell opposition to the state.

The concept of state terrorism has however been overtaken by the wider adoption of the use of violence by groups engaged in battles with governments. In Africa, from Somalia to Mali, Libya to Nigeria, there is the emergence of non-state actors whose actions have seen a violence and terror in the societies in which they operate. Incidentally it is not these groups that consider themselves terrorist, the label is one used by the governments who have been under attack. Most earlier terrorist groups pursued a nationalist agenda, an objective prevalent between the 1950s and the 1970s when terrorist groups included the *Irish Republican Army*, the *Kurdistan Workers Party* – *PKK*, *Liberation Tigers of Tamil Ealan* – *Tamil Tigers*, the *Popular Front for the Liberation of Palestine*, *Black September*, *Hamas*, and *Hezbollah*. More recently, the nationalist agenda has been overrun by religious underpinnings. Groups such as *Al-Qaeda*, *Islamic State* – *ISIL*, and *Boko Haram* espouse the superiority of Islam and specifically of Sharia, the body of law that regulates private and public life in Islam. What marks the modern terrorism phenomenon is its significant engagement with the theatrical; it is not enough to carry out terror attacks, they must be brought to the attention of the world via modern communication.

When Boko Haram claimed responsibility for that first suicide bombing in Nigeria’s capital territory Abuja in 2011, it forced the Nigerian public and the world to acknowledge its existence and its brazenness. Prior to those attacks, the activities of the

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<sup>9</sup> See *Modern History Source Book: Maximilien Robespierre: Justification of the Use of Terror*, FORDHAM UNIV., <http://legacy.fordham.edu/halsall/mod/robespierre-terror.asp> (last visited Feb. 12, 2015); see also BRUCE HOFFMAN, *INSIDE TERRORISM* (Columbia Univ. Press 7th ed. 1998); CYNTHIA C. COMBS, *TERRORISM IN THE TWENTY-FIRST CENTURY* (Prentice Hall 7th ed. 2012).

group had been confined to the northern part of the country. Although the exact date of its founding is unknown,<sup>10</sup> Nigerian security forces have been quoted as saying that the group was originally known as *Ahlulsunna wal'jama'ah hijra*<sup>11</sup>, although it later morphed into *Jama'atu Ahlissunnah lidda'awati wal Jihad*<sup>12</sup> (meaning “People committed to the Prophet’s teaching and Jihad”). The group became prominent following the killing of its founder and erstwhile leader Mohammed Yusuf in 2009 after a series of fighting with the Nigerian army and the Nigerian Police. Confrontations with the army and police would come to characterize the groups’ activities and the government’s counter-terrorism response,<sup>13</sup> although the security forces have been accused of extra-judicial killings in this connection.<sup>14</sup>

The reasons for Boko Haram’s spread and growth have been the subject of a number of social research work. It has been argued that these reasons include the “prevailing economic dislocation in Nigerian,...and the ambivalence of some vocal Islamic leaders, who, though they did not actively embark on mutiny, but either did nothing to impede it from fomenting, or only feebly condemned it.”<sup>15</sup> The coincidence between Boko Haram’s activities in north-eastern Nigeria and an earlier religious group from the 1980s which also avowed Western civilization, the Maitatsine, and the similarities

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<sup>10</sup> Some consider that the group started with its acknowledged founder, Mohammed Yusuf, who was killed by the Nigerian security forces on July 30, 2009; others suggest the group has metamorphosed from various sects, and that the group may have links to Al-Qaeda or at least to foreign terrorist groups. See Shannon Connell, *To Be Or Not To Be: Is Boko Haram a Foreign Terrorist Organization?*, 3 GLOBAL SEC. STUD. 87–93 (2012); Theo Brinkel & Soumia Ait-Hida, *Boko Haram and Jihad in Nigeria*, 40 SCIENTIA MILITARIA: S. AFR. J. MIL. STUD. 1–21 (2012).

<sup>11</sup> Julian Taiwo & Micheal Olugbode, *Boko Haram Leader Killed*, THISDAY, July 31, 2009, at 4.

<sup>12</sup> See Freedom C. Onuoha, *From Ahlulsunna wal'jama'ah hijra to Jama'atu Ahlissunnah lidda'awati wal Jihad: The Evolutionary Phases of the Boko Haram Sect in Nigeria*, 41 AFRICA INSIGHT 159-175 (2012).

<sup>13</sup> See Hussein Solomon, *Counter-Terrorism in Nigeria*, 157 RUSI J. 6-11 (2012).

<sup>14</sup> See *Video Shows Nigeria 'Executions'*, AL-JAZEERA (Feb. 9, 2010), <http://www.aljazeera.com/news/africa/2010/02/2010298114949112.html>.

<sup>15</sup> Nkechi O. Anyadike, *Boko Haram and National Security Challenges in Nigeria: Causes and Solutions*, 14 J. ECON. & SUSTAINABLE DEV. 12, 12 (2013).

between fighting with the security forces and the strong fundamentalist teachings of both groups are not discounted as a reason for Boko Haram's emergence, including a long held suspicion against western teachings which purportedly contradicted Islamic teaching.<sup>16</sup> Another argument reflects on the political animosity against a southern non-Muslim president, Jonathan Goodluck, and notes that poverty or relative deprivation in those parts of Nigeria where the group operates are fundamental factors that have impacted the emergence of the stronger Boko Haram after the death of its founder.<sup>17</sup>

#### TERROR AND INFLUENCES IN SOCIETY

Although homegrown terror, as the term implies, refers to terrorism that has been enabled from within the confines of the domestic territory, Boko Haram is as relevant as every other item of news in the global media. Its relevance derives both from its nature and also from its mode of disseminating information. In terms of its nature, Boko Haram is a religious-based group and it espouses specifically, the supremacy of its religion, Islam. The groups which have occupied global terrorist information so far in the 21<sup>st</sup> century have been predominantly, groups that have espoused an Islamic identity. There is an understandable reluctance to engage with ideological, religious-based terrorism especially when the subject is considered sensitive, divisive and for the most part, subject to conflicting interpretations. Writing about the conflicts between Islam, international law and terrorism, Rehman posits that:

[I]t is now firmly established in the minds of many Muslims all around the globe that, in the 21st century, the principal colonial ambition of the United States is the invasion of Islamic Holy lands, an occupation of Muslim nations, and undermining of their values and traditions.<sup>18</sup>

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<sup>16</sup> See John Azumah, *Boko Haram in Retrospect*, 26 ISLAM & CHRISTIAN-MUSLIM REL. 33-52 (2014).

<sup>17</sup> See generally Adagba Okpaga et al., *Activities of Boko Haram and Insecurity Question in Nigeria*, 1 ARABIAN J. BUS. & MGMT. REV. 77-99 (2012).

<sup>18</sup> JAVAID REHMAN, ISLAMIC STATE PRACTICES, INTERNATIONAL LAW AND THE THREAT FROM TERRORISM: A CRITIQUE OF THE 'CLASH OF CIVILIZATIONS' IN THE NEW WORLD ORDER 9 (Hart Publishing 2005). For further explorations of this view, see also Kevin J. Fandl, Critical Essay,

Acts of terrorism have not only been committed against the U.S. or within U.S. territories but in diverse parts of the world. Yet, despite the location, the basis of these attacks remains the same.<sup>19</sup> The fact is that the dissemination of information in the advent of new, faster technologies also means the faster dissemination of ideas and the encouragement of ideals, positive or otherwise. As Hassanien noted, “[A] transnational problem that spans virtually the entire world, terrorism is an international phenomenon which represents the downside of globalization.”<sup>20</sup> Fahmy further observed that “terrorists today have become more global because of freedom of movement, free flow of information and communications, and the ability to exploit loopholes in the spectrum of domestic laws between countries.”<sup>21</sup>

In essence, homegrown terror has the capacity to *act locally and publish globally*. Boko Haram has managed to expand its territory and reaches due to certain social factors. According to Azumah, these include factors that aid the recruitment of new members to the group:

Weak local, state and federal institutions, the ever-widening gap between the rich and the poor, the general political climate in Nigeria that breeds and feeds on rumors and conspiracy theories, denials and the tendencies of state and federal officials to play down the scale of the atrocities, incompetent and unprofessional security forces, and rampant corruption among and collusion by the police and its attendant culture of impunity are all exploited by Boko Haram for recruitment and operation.<sup>22</sup>

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*Terrorism, Development & Trade: Winning the War on Terror Without the War*, 19 AM. U. INT’LL. REV. 587, 597 (2004); Mohammed R Hassanien, *International Law Fights Terrorism in the Muslim World: A Middle Eastern Perspective*, 36 DENV. J. INT’L L. & POLICY 221-53 (2008).

<sup>19</sup> For instance, see the latest independent attacks as at the time of writing – Charlie Hebdo shootings, Paris, January 7, 2015; Copenhagen shooting outside a synagogue, February 15, 2015; Boston marathon bombings, April 15, 2013; murder of British soldier Lee Rigby, London, May 22, 2013.

<sup>20</sup> Hassanien, *supra* note 18, at 221-53.

<sup>21</sup> Nabil Fahmy, *Terrorism is the World’s Problem*, 16 DUKE J. COMP. & INT’L L. 157, 168 (2006).

<sup>22</sup> *Id.* at 47-8.



In Nigeria, there is no doubt that social deprivation is a feature of the society that has produced Boko Haram, but there are other challenges as well. Problems faced by the Nigerian government have had negative effects. For example, there is an issue with human rights abuses by security forces on residents in those areas where the group has attacked and the vulnerability of security officers who, themselves, have suffered significantly through deliberate targeting of police stations and army offices by the group.<sup>23</sup> Also, there is an economic gap in those areas wherein the group operates, with a preponderantly young unemployed and poorly skilled population alongside evidence of wealth being consolidated to very few. Boko Haram picked up on this factor while they questioned the relevance and impact of Western education since in its view, the latter is responsible for corruption, mass poverty, class segregation, ignorance, disease, underdevelopment, and wealth in the hands of a few.<sup>24</sup>

Social conditions such as poverty, the absence of education and poor social infrastructure may support the growth and expansion of conflict situations. Regardless of other social conditions, however, there is also an independent criminal element to the nature of violence that may arise, especially in a young unemployed population. In identifying the causes of terrorism, these competing views, that is, whether terror attacks and terrorist groups arise out of socio-economic deprivations and need counter-terrorism measures focused on socio-economic deprivations or whether terrorism

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<sup>23</sup> See Samuel Oyewole, *Boko Haram and the Challenges of Nigeria's War on Terror*, 29 DEF. & SEC. ANALYSIS 253-62 (2013).

<sup>24</sup> Bamgbose Adele, *Boko Haram and Democracy in Nigeria's Fourth Republic*, 11 CONST. 63 (2011); DA'WAH COORDINATION COUNCIL OF NIGERIA, THE 'BOKO HARAM' TRAGEDY: FREQUENTLY ASKED QUESTIONS 16-7 (Da'wah Coordination Council of Nigeria 2009); Hassan, *Is Boko Haram?*, in Oyewole, *supra* note 23, at 256.

should be strictly construed as criminal behaviour in need of punitive measures, are an essential aspect of the debate.<sup>25</sup>

## II. A DOMESTIC OR AN INTERNATIONAL PROBLEM?

A definite response to the violence of terrorism is crucial and depends on whether terrorism is seen as a domestic or international problem. The absence of international agreement on how to define terrorism and how to punish it is a significant hurdle in addressing the phenomenon. Often, the domestic space is not enough to limit the impact of terror attacks and it has been the same in the instant case of Boko Haram, who have spread their impact beyond Borno, Yobe, Bauchi, Gombe, Plateau, Kano, and Kaduna states of Nigeria into Chad, Niger and Cameroun, three countries which border Nigeria's north-eastern territories. Defining a response to terrorism becomes even more important when terror is spread beyond borders. As Cassesse's argument on the need to define terrorism in such circumstances sets out well below:

Terrorism is a phenomenon that very often affects multiple states, which are all compelled to cooperate to repress it. Hence, however imperfect and incomplete, a common working definition is necessary so that all states concerned may agree on the target of their repressive action: how can states work together for the arrest, detention or extradition of alleged terrorists, if they do not move from the same notion? In particular, if some states assert that certain categories of persons who engage in conduct that normally would fall under the definition of terrorism must nevertheless not be classified as terrorists on some ideological or political grounds, how can cooperation be smoothly carried out between these states and others taking a different legal view?<sup>26</sup>

This issue of divergence of opinion, or indeed on the absence of opinion as to how to define terrorists and therefore on how to determine their culpability under law,

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<sup>25</sup> Other scholars have considered whether these parallels ought to be interpreted and treated as the demand and supply side arguments on terrorism. *See e.g.*, Shibley Telhami, *Conflicting Views of Terrorism*, 35 CORNELL INT'L L. J. 581, 586-87 (2002); Hassanien, *supra* note 18, at 222-3.

<sup>26</sup> A. Cassesse, *The Multifaceted Criminal Notion of Terrorism in International Law*, 4 J. INT'L CRIM. JUST. 933, 934 (2006).

underpins the challenges of tackling Boko Haram from both a domestic and an international perspective. It is getting increasingly harder to ignore the impact of terror even where attacks have happened far away. A “globalisation of indifference”<sup>27</sup> has made international law and domestic action slow to admit that the international community faces a global *threat* and not a global war, the former more dangerous for its uncertainty, Boko Haram and its visible social destabilization and destruction of lives and property act as a reminder that the threat from homegrown terrorist groups is real and the impact, devastating.

Incidences of terror and violence grounded in Islamic fundamentalism are not new in Nigeria. Bassioni’s comment earlier cited, on the lack of response by governments, is true in the Nigerian context. From the uprising of the 1960s, which eventually culminated in the Nigeria-Biafran civil war (1967-69), the country has seen riots, disturbances, and violence in the northern parts of Nigeria; agitations which have always been based on the agitator’s perception that a lack of conformity with Islam was not only responsible for their grievances, but justified the use of violence. What is common to all these attacks is not only the religious theme they all share, it is the uncommon silence of the various governments as these incidents occurred.<sup>28</sup> While the media, including international media, reported on the sporadic attacks and violence, the government did little or nothing to condemn them; arrests and punishment of offenders, if these happened, were often unreported and the punishments administered, extra-judicial.

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<sup>27</sup> Pope Francis, *Message of His Holiness Pope Francis for Lent 2015: Make Your Hearts Firm*, VATICAN (Oct. 4, 2014), [http://w2.vatican.va/content/francesco/en/messages/lent/documents/papa-francesco\\_20141004\\_messaggio-quaresima2015.html](http://w2.vatican.va/content/francesco/en/messages/lent/documents/papa-francesco_20141004_messaggio-quaresima2015.html).

<sup>28</sup> For a contemporary reflection on religious themed violence in Nigeria, see: Damola Awoyokun, *The Religion of Peace*, NIGERIA VILLAGE SQUARE ONLINE, <http://www.nigeriavillagesquare.com/articles/the-religion-of-peace.html> (last visited Feb. 13, 2015).

Global media reports confirmed the spread of Boko Haram attacks into Chad,<sup>29</sup> continuing attacks in Niger,<sup>30</sup> and in Cameroon.<sup>31</sup> The main cross-border impact of Boko Haram's activities was that on January 31, 2015 it finally attracted a regional response from the African Union endorsed by the United Nations, with the former agreeing to deploy 7,500 troops from Nigeria, Benin, Chad, and Cameroun to combat the group.<sup>32</sup> On February 7, 2015, Nigeria's Independent Electoral Commission (INEC) announced that the country's presidential elections scheduled for February 14, 2015 were cancelled and postponed till March 28, 2015, "to allow the multinational force time to secure the areas" held by Boko Haram.<sup>33</sup>

It is vital that there is caution and tact in addressing homegrown terrorism and that the fragile peace of the domestic and international community is not destroyed with impractical applications and subjective interpretations of law. However, the alternative interpretation (or silence) by political leaders on the violence posed by the ideological terrorism of groups like Boko Haram or ISIS is, in itself, a problem. Boko Haram<sup>34</sup> hardly ever received forceful condemnation by the Nigerian government and until the

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<sup>29</sup> *Nigeria's 'Boko Haram' Militants Attack Chad for First Time*, BBC NEWS (Feb. 13, 2015), <http://www.bbc.co.uk/news/world-africa-31453951>.

<sup>30</sup> Jon Stone, *Boko Haram Suicide Bomb Attack Hits Niger Town as Fighting Spills Over Nigerian Border*, THE INDEPENDENT, Feb. 8, 2015, <http://www.independent.co.uk/news/world/africa/boko-haram-suicide-bomb-attack-hits-niger-town-as-fighting-spills-over-nigerian-border-10032004.html>.

<sup>31</sup> *Nigeria's Boko Haram 'Kidnaps 20' in Cameroon Bus Hijacking*, BBC NEWS (Feb. 9, 2015), <http://www.bbc.co.uk/news/world-africa-31313590>.

<sup>32</sup> *UN Chief Welcomes African Union's Decision to Combat Boko Haram*, UN NEWS CENTRE (Jan. 31, 2015), [http://www.un.org/apps/news/story.asp?NewsID=49965#.WcwqkdH\\_rb0](http://www.un.org/apps/news/story.asp?NewsID=49965#.WcwqkdH_rb0).

<sup>33</sup> Associated Press, *Nigeria to Postpone Elections to Fight Boko Haram*, THE GUARDIAN, Feb. 7, 2015, <http://www.theguardian.com/world/2015/feb/07/nigeria-to-postpone-elections-to-fight-boko-haram>.

<sup>34</sup> Or its splinter group since 2012, Ansaru.

joint military action with other immediately affected States commenced in February 2015, they had hitherto been considered to be a local problem by the rest of the world.<sup>35</sup>

### III. ADAPTING THE LEGAL ORDER TO A RAPIDLY CHANGING WORLD

In the face of government inaction, Boko Haram was able to act, no longer as a random, sporadic, underground group launching attacks in secret and within a limited space, but, as a strong fearful unit unleashing its anger on geographic and virtual space. It has been able, in a time without decisive State action, to convert and to use the instantaneous communications of the internet and social media to promote a new ideology (or indeed it may be said, to resurrect an old one). This in effect is one of the problems counter-terrorism faces today: it has to respond to a fast-spreading ideology with amorphous objectives, not as has hitherto been the case, to a political movement with an identifiable list of objectives. Moreover, it is not just any fairy brained ideology –it is an ideology that derives its themes from an existing belief system. According to the U.S. Pew Research Center, there are about 1.6 billion Muslims in the world, which is about 23% of the world population.<sup>36</sup> In Nigeria alone, there are over 77 million Muslims.<sup>37</sup> The belief system of such a huge number of people as the basis for any propaganda will undoubtedly attract and retain a significant percentage of world interest.

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<sup>35</sup> See, e.g., Christopher Torchia (AP), *Nigerian President Goodluck Jonathan Criticised for Boko Haram Response*, HUFFINGTON POST (Jan. 13, 2015), [http://www.huffingtonpost.com/2015/01/13/goodluck-jonathan-boko-ha\\_n\\_6464928.html](http://www.huffingtonpost.com/2015/01/13/goodluck-jonathan-boko-ha_n_6464928.html); see also Marve Shearlaw, *Why Did the World Ignore Boko Haram's Baga Attacks?*, THE GUARDIAN, Jan. 12, 2015, <http://www.theguardian.com/world/2015/jan/12/-sp-boko-haram-attacks-nigeria-baga-ignored-media>.

<sup>36</sup> See Drew Desilver, *World's Muslim Population More Widespread Than You Think*, PEW RESEARCH CENTER (June 7, 2013), <http://www.pewresearch.org/fact-tank/2013/06/07/worlds-muslim-population-more-widespread-than-you-might-think/>.

<sup>37</sup> *Pew-Templeton Global Religious Futures, World Muslim Population, 2010*, PEW RESEARCH CENTER, [http://globalreligiousfutures.org/explorer#/?subtopic=15&countries=Worldwide&chartType=map&year=2010&data\\_type=number&religious\\_affiliation=23&age\\_group=all](http://globalreligiousfutures.org/explorer#/?subtopic=15&countries=Worldwide&chartType=map&year=2010&data_type=number&religious_affiliation=23&age_group=all).

The easy movement of arms and weapons and the ease of access in financial transaction across borders for financing terrorist groups have also helped. The spread of information and communication with like-minded groups across the globalized world also serves to bolster whatever confidence any homegrown terrorist group possesses. What is worse, the power of technology to exaggerate is also at hand. Graphic displays of violence can be exacerbated in the minds of the public who are confronted daily with these images. Ironically, the quick spread of information and updates via terrestrial and virtual mainstream media also serves to disseminate terrorists' propaganda.

There is no denying that modern terrorist attacks – suicide bombings, hijacking, kidnapping and/or killings all targeted towards gaining the attention of an 'enemy' government whether occurring within the domestic environment or outside a country – have incorporated a considerable measure of violence and aggression with the clear intention to kill. This motive has not been merely to gain the attention of and thereby force the targeted government to comply with the attackers' demands. The motive appears to be to destroy or at least do such irreparable damage and create chaos that will reverberate not only in the location where the attacks are carried out but throughout the international community. There is little concern for proportionality or for the collateral damage that may occur as a result. In fact, it is criminality at its most absurd – the immolation and destruction of countless innocent lives and property, for the sake of personal beliefs.

'Terror' strikes at the heart of the universal right to life, peace and security. This threat demands a cogent response by law and governments. Factors that have to be considered in addressing the threat include: the franchising of terror; defining the nature of the

present threat as an ideological challenge to social order; state sovereignty and the novelty of powerful non-state actors (insurgents); identifying appropriate strategies in these new conflicts; rethinking international legal norms such as the concept of ‘aggression’; and humanitarian action and the protection of civilians. Other important considerations include: the importance of trained security personnel who observe the rules of armed conflict; inventive responses in legal scholarship, diplomacy and community engagement; the potential expansion of the remit for individual criminal prosecution under the ICC; and future action.

#### A. THE TERROR FRANCHISE

There is a franchise angle to contemporary terrorist groups. Research from the Global Terrorism Database (GTD) suggests that Boko Haram has only admitted to or claimed about 17% of the attacks for which it was reported as responsible between 2009 and 2013.<sup>38</sup> Even though it cannot be stated that in its original incarnation, Boko Haram represents al-Qaeda or ISIS, indeed this paper takes the view that it has not operated as an official arm of either group. It is however able to align itself (or at least does not distance any external efforts to so present it) with what it sees as more powerful global forces whose objectives are part of its propaganda mechanism.<sup>39</sup>

By adopting itself as a franchise to external known terrorist groups like ISIS, Boko Haram has managed to provide an alternative form of employment and engagement for those who do not have jobs, those who find violence appealing, and those who see

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<sup>38</sup> See Pius Adesanmi, *Communique from Roundtable on Boko Haram at Carleton University, Ottawa, NIGERIA VILLAGE SQUARE* (Jan. 27, 2015), <http://www.nigeriavillagesquare.com/pius-adesanmi/communique-from-roundtable-on-boko-haram-at-carleton-university-ottawa.html>.

<sup>39</sup> The group however ‘pledged’ allegiance to Islamic State on Mar. 7, 2015, an allegiance purportedly accepted by ISIS. *Islamic State ‘Accepts’ Boko Haram’s Allegiance Pledge*, BBC NEWS (Mar. 13, 2015), <http://www.bbc.co.uk/news/world-africa-31862992>.

terrorism operations as a potential conduit for illegal trade and finance. The potential of developing terrorism as a viable enterprise also enables its transnational activities. When terrorist groups sack towns and villages, their members effectively take over the territory and conduct their business in that area. Research identifies that membership of Boko Haram is drawn not only from Nigeria but from across Chad, Niger, Cameroon, Sudan and across the Sahel region, comprises both intellectuals and retired army officers, and resorts to kidnapping, bank robbery, drug trafficking and solicited funds from like-minded foreign groups to fund its activities.<sup>40</sup>

The viability of the terrorist enterprise is of course at great cost to the government. It not only destabilizes the region but also the absence of security severely limits the potential for foreign investment. In affected areas, businesses are forced to close or move.<sup>41</sup> As more persons are attacked and displaced, jobs and means of income are also lost. There is severe impact on social costs, including the unavailability of housing, schools, and health facilities, etc. In Nigeria, the numbers of internally displaced persons (IDPs) fleeing from Boko Haram strongholds will continue to rise for as long as the group operates. This also means increased financial burden on the affected states and the federal government in providing emergency aid, food and other supplies, not to mention the potential burden for the West African region and the international community faced with increasing numbers of refugees fleeing from the areas of the Boko Haram conflict.

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<sup>40</sup> See Ufiem Maurice Ogbonnaya et al., *Terrorism in Nigeria*, 23 AFR. SEC. REV. 145, 148 (2014).

<sup>41</sup> See also Isaac Tamba, *An Economic Analysis of Boko Haram's Activities in the Chad-Cameroon-Nigeria Border Area*, 3 INT'L J. ECON. 28-34 (2015); cf. Todd Sandler, *Terrorism and Counterterrorism: An Overview*, 67 OXFORD ECON. PAPERS 1-20 (2015).



1. *Defining the nature of the threat: An ideological challenge to accepted social order*

Another issue which Boko Haram highlights is the difficulty for international law and action to identify and tackle the real roots of the threat of contemporary homegrown terrorism. This sees domestic governments and the international community presuming that previous strategies for combating threats to state sovereignty from political movements will work today. The religious wars of the Middle Ages may exist in history but the potential for religious conflict never disappeared, contrary to the present approach of shying away from the religious nature of the present terrorism threats. The fact that most states in the international community avow a secularist system has been of little help. Indeed it appears to have exacerbated the situation. Despite national laws, including the Nigerian Constitution removing any affiliation to a specific religion and positing the supremacy of the law, religion and in the present instance, the religion of Islam, has provided the basis and objectives for Boko Haram's terrorist incidents.<sup>42</sup>

More importantly however, the problem is with the focus on the superficial, i.e., the concern with the religious affiliation of the terrorist groups and the attendant risk of ignoring the reality of the ideological, as opposed to the merely religious nature of today's terrorism.<sup>43</sup> Arguments and counter-terrorism strategies that focus on the religion but not the ideology do not achieve much. Indeed legal provisions that attempt to exclude religion from the social space are not sufficient to check the spread of a more

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<sup>42</sup> There have been attempts to explain this sensitive linkage and by so doing to point out the reasons why overlooking the nature of the threat may mean the current counter-terrorism strategies are doomed to fail. Regardless of the controversial arguments they propose, the following sources are of interest in this regard: MICHAEL J. MAZARR, *UNMODERN MEN IN THE MODERN WORLD: RADICAL ISLAM, TERRORISM, AND THE WAR ON MODERNITY* (Cambridge Univ. Press 2007); Raymond William Baker, *Screening Islam: Terrorism, American Jihad and the New Islamists*, 25 ARAB STUD. Q. 33-56 (2003).

<sup>43</sup> See Richard Jackson, *Constructing Enemies: 'Islamic Terrorism'*, 42 POL. & ACAD. DISCOURSE 394 – 426 (2007).

deep-rooted ideology. Evidence of this is observed when the adoption of Sharia law by states in what should be a secular Nigerian Federation is examined.

Section 1 of the Nigerian Constitution provides for the supremacy of the Nigerian Constitution.<sup>44</sup> Section 10 of the same Constitution clearly removes the power of the Federal or State Government to adopt any religion: “[T]he Government of the Federation or of a State shall not adopt any religion as State Religion.”<sup>45</sup> Despite this, twelve states in Nigeria unilaterally declared Sharia law, previously limited to civil cases in those parts of Northern Nigeria that had a Muslim population, as the adopted law in the respective states.<sup>46</sup> The point here is that in flagrant disregard for the rule of law, the supremacy of the Nigerian Constitution has been overridden by arbitrary state executive fiat, without reprimand.

The impact of this unconstitutional and illegal usurpation of federal law and of the Constitution of a secular state on the basis of religion is easily evident. It can be seen for instance in the treatment of women in those areas that have come under Boko Haram control, contrary to Nigeria’s constitutional provisions on *Fundamental Rights*.<sup>47</sup> As

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<sup>44</sup> CONSTITUTION OF NIGERIA (1999), § 1.

<sup>45</sup> CONSTITUTION OF NIGERIA (1999), § 10.

<sup>46</sup> The twelve states are: Kano, Jigawa, Katsina, Sokoto, Zamfara, Kebbi, Borno, Yobe, Bauchi, Gombe, Kaduna, Niger.

<sup>47</sup> CONSTITUTION OF NIGERIA (1999), §§ 33-46. The gender imbalance and violence against women present in the society have not gone without criticism. See, e.g., Ine Nnadi, *An Insight into Violence against Women as Human Rights Violation in Nigeria: A Critique*, 5 J. POL. & L. 48-56 (2012) (detailing the various means by which domestic and international rules on fair treatment are consistently breached both by misogynist attitudes, patriarchal cultures, and administrative disregard for the rights of women including their ill treatment by law enforcement agents); Olufemi O. Ilesanmi, *Sexual Offences in a Muslim World*, 14 INT’L J. HUM. RTS. 215-232 (2010) (offering a critical analysis of the jurisprudence of Nigeria’s Sharia regime and the unfair treatment of the female accused in the Sharia case of *Zamfara State v. Bariya I Mugazu* (2000)); Uju Peace Okeke, *A Case for the Enforcement of Women’s Rights as Human Rights in Nigeria*, WOMEN’S UN REPORT NETWORK (Apr. 4, 2010), [http://www.wunrn.com/news/2010/04\\_10/04\\_05\\_10/040510\\_nigeria.htm#\\_ftn43](http://www.wunrn.com/news/2010/04_10/04_05_10/040510_nigeria.htm#_ftn43) (offering a general review of legislative provisions and judicial pronouncements on women in Nigeria, which fall short of guaranteeing full human rights protection for women as defined in international human rights conventions); see also Hussaina J. Abdullah, *Religious Revivalism, Human Rights Activism and the*

Nigerian writer notes, “[W]hen Nigerian states adopt sharia laws that are in their application blatantly unfavourable to women, it creates an environment in which a terrorist group like Boko Haram believes it has a right to do as it pleases with girls without prosecution.”<sup>48</sup>

Ignoring the ideological nature of the threat also restricts the adoption of a suitably strong ideological opposition which carefully considers the position of others who, while they may be Muslim, do not adopt or agree with the ideology behind the violence espoused by Boko Haram. Hence, in accepting the religious banner of terrorist groups, there is a negative impact on others who share the same faith, who bear the embarrassment and humiliation not to mention, suffering discrimination from the society, even as they are affected by the violence of the terrorist attacks in their locality. It is often overlooked that the victims of terrorist attacks are not only those who do not espouse Islam. In fact, adherents of the Muslim faith have suffered significantly in the crossfire of terrorism. The activities of Nigeria’s Boko Haram have been in the northern part of the country; in these parts, most of the citizens and residents, including the security forces that have been killed, practice Islam. Religion as an institution is merely the surface. There is a deep rooted ideology behind Boko Haram, which is the establishment of an Islamic Caliphate with distinctly strict leanings against what is presently accepted as the norm - a liberal, gender-equal society where people are free

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*Struggle for Women's Rights in Nigeria*, in BEYOND RIGHTS TALK AND CULTURE TALK: COMPARATIVE ESSAYS ON THE POLITICS OF RIGHTS AND CULTURE 96-120 (Mahmoud Mamdani ed., David Philip 2000) (examining the rise of the NGO movement in support of women’s rights in Northern Nigeria; rights which are however based on Islamic law which does not on its own promote gender equality and not the more liberal brand of international human rights).

<sup>48</sup> Sefi Atta, Opinion – Foreign Affairs, *Many of Nigeria’s Women Are Targets—Not Just the Kidnapped Girls*, TIME MAG., May 19 2014, <http://time.com/103531/nigeria-boko-haram-sharia-law/#103531/nigeria-boko-haram-sharia-law/>.

to pursue their own interests within the limits of national law.<sup>49</sup> In pursuing this ideology and regardless of the so-called 'war against Christians and infidels,' contrary to common notion, Boko Haram has not restricted its attacks to non-Muslims.<sup>50</sup>

Identifying the ideology behind the group requires a more in-depth study and diagnosis of the philosophies and theocratic underpinnings that inform their motives,<sup>51</sup> including the social factors that drive people to align with violence. This admittedly may prove more tasking than the much easier military counter-response. Without the counter-argument of a strongly advocated ideology predicated on the inviolability and sanctity of human life and a redress of the causes which lead to disillusionment with the state, groups like Boko Haram will not be defeated since the ideology driving their actions and the responses thereto, are clearly mismatched.

## *2. State sovereignty and the novelty of powerful non-state actors*

Threats to peace, security and sovereignty have long been the preserve of international law and superpowers were considered immutable in the world order established post-WWII. The events on September 11, 2001 and the ubiquitous use of technology changed this. In addition, it questioned the focus on states as victims or perpetrators of threats to international peace and security since terrorists, non-state actors, were

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<sup>49</sup> Watching through Boko Haram online videos and its pronouncements, one can form a very clear picture of this objective.

<sup>50</sup> In an online video, Boko Haram suggests, contrary to the reality of its attacks, that its mission is to kill Christians and unbelievers. *Boko Haram Leader Abubakar Shekau: 'Kill Kill Kill'*, N.Y. TIMES (May 5, 2014), <https://www.youtube.com/watch?v=sLAKoJYTLfA>.

<sup>51</sup> See, e.g., Alistair Crooke, *You Can't Understand ISIS If You Don't Know the History of Wahhabism in Saudi Arabia*, HUFFINGTON POST (Aug. 27, 2014), [http://www.huffingtonpost.com/alastair-crooke/isis-wahhabism-saudi-arabia\\_b\\_5717157.html](http://www.huffingtonpost.com/alastair-crooke/isis-wahhabism-saudi-arabia_b_5717157.html) (discussing the analysis of the growth of ISIS); see also Samuel Huntington, *Clash of Civilisations*, 72 FOREIGN AFF. 22-49 (1993). Compare David C. Rapoport, *The Four Waves of Modern Terrorism*, in ATTACKING TERRORISM: ELEMENTS OF A GRAND STRATEGY 43-76 (Audrey. K. Cronin & James. M. Ludes eds., Georgetown Univ. Press 2004), with Jeffery Kaplan, *Terrorism's Fifth Wave: A Theory, a Conundrum and a Dilemma*, 2 PERSPECTIVES ON TERRORISM (2008), available at <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/26/html>.

operating much like the pirates of old, without allegiance to any state or flag. International action has so far not managed to address the emergence of non-state actors and to develop a positive response to their threats. The 9/11 attacks were responded to with “War on Terror” rhetoric,<sup>52</sup> when in actual fact, the actions were neither an act of war by states or by state forces. The targets for retaliation for these attacks were governments considered to be part of the “axis of evil”<sup>53</sup> when again in fact, the perpetrators were independent, non-state actors.

One wonders how different the world may have been today if the 9/11 attacks were condemned as a hideous crime against state sovereignty by individual criminals and justice pursued on this basis. Unfortunately, the description of a ‘threat’ with the freedom fighting appellative, ‘terrorism’, and the perpetrators condemned with the martyr-like, ‘terrorists’ or ‘jihadists’<sup>54</sup> may have removed from the focus on what this brand of violence ultimately represents in the international community: a disregard for the sovereign powers of a state and abuse of the lack of a strong legal framework for individual criminal responsibility.

Beyond the threat to Nigeria’s sovereignty, the cross-border nature of Boko Haram’s attacks means that as the scale of the activity expands, the threat equally expands to the threat of the sovereignty of other states, lives and property. If a trend in terrorism is to be checked, the scale and scope of each threat by homegrown groups has to be clearly identified and an appropriate response from applicable domestic law or from the wider realm of international rules must also be devised.

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<sup>52</sup> George W. Bush, State of the Union Address to a Joint Session of Congress (Sept. 20, 2001).

<sup>53</sup> George W. Bush, State of the Union Address to a Joint Session of Congress, (Jan. 29, 2002).

<sup>54</sup> *Cf.* Jackson, *supra* note 44.

### *3. Appropriate strategies for new conflicts*

Misinformation and misunderstanding on how to respond to ideological religious-based terrorism fed the “War on Terror” rhetoric, drawing governments to respond to new threats with old strategies and with inevitably confused and disastrous consequences. Instead of eliminating the ‘enemy’ more enemies emerged and indeed, metamorphosed. Adopting the appropriate strategy in facing a new threat is a vital consideration which law and society are only beginning to recognize. In February 2015, the British army announced the creation of a new propaganda unit, the 77<sup>th</sup> Brigade (the Chindits) who will tackle ‘jihadist’ information on social media. This online-warfare unit corresponds with actions by the U.S. (with Twitter account – *Think Again Turn Away*) and France to engage in the virtual communications paraphernalia which terrorist groups like Boko Haram have so far, been winning.<sup>55</sup> Terrorist plans, attacks, consequences, news are all fed through the social media. Apart from disseminating information quickly and graphically, terrorists’ use of social media also guarantees the interest and recruitment of idealistic, fearful or idle young persons and provides cover for financial sponsorship or trade in arms.

There is a challenge before governments to preserve the freedom of communication of citizens in their attempts to shut down or eliminate access to violent social media within the domestic space. In addition, the potential of real warfare tactics as in ‘cyber warfare’ and harm to electronic equipment, hacking, virus campaigns, etc., are concerns

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<sup>55</sup> Tom Ford, *British Army's New 77th Brigade Will Wage Online PSYOP War with Terrorists*, INTERNATIONAL BUSINESS TIMES, Jan. 31, 2015, <http://www.ibtimes.co.uk/british-armys-new-77th-brigade-will-wage-online-psyop-war-terrorists-1486044>; see also Ewen MacAskill, *British Army Creates Team of Facebook Warriors*, THE GUARDIAN, Jan. 31, 2015, <http://www.theguardian.com/uk-news/2015/jan/31/british-army-facebook-warriors-77th-brigade>.

governments have to face in deciding the appropriate strategies to adopt in countering the new threats of modern terrorist groups.<sup>56</sup> It is a welcome sign that the international community no longer underestimates the importance of cyber engagement and tackling propaganda with equally strong propaganda while facing ‘enemies’ who are able to achieve their objectives by these very means.

#### *4. Rethinking international legal norms: the concept of ‘aggression’*

Rehman notes that ‘in the new millennium, terrorism poses the most serious threat to international order and global human rights.’<sup>57</sup> This threat has been sustained since 9/11, by aggression, if the latter expression is considered in its literal sense. Let us consider the crime of aggression under international law and terrorism as it occurs today, more closely.

International law rules guiding the use of force has maintained the illegality of aggression whether in the course of armed conflict or not. The Hague Conventions of 1899 and the 4 Geneva Conventions of 1949 with the two 1977 Additional Protocols have codified to a large extent the rules relating to armed conflict and these rules do not conceive of aggression as an acceptable use of force in armed conflict. The United Nations has outlined an almost exhaustive list of acts which constitute aggression.<sup>58</sup> The Preamble of General Assembly Resolution 3314 states *inter alia*, that “aggression is the most serious and dangerous form of the illegal use of force,” being fraught, in the

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<sup>56</sup> Cf. Kristen Elizabeth Uhl, Comment, *Freedom of Information Act Post-9/11: Balancing the Public's Right to Know, Critical Infrastructure Protection, and Homeland Security*, 53 AM. U. L. REV. 261 (2003-2004); Scott Shackelford, *From Nuclear War to Net War: Analogizing Cyber Attacks in International Law*, 25 BERKELEY J. INT'L L. 192 (2009); Amit Sharma, *Cyberwars: A Paradigm Shift from Means to End*, 34 STRATEGIC ANALYSIS 62-73 (2010).

<sup>57</sup> REHMAN JAVAID, INTERNATIONAL HUMAN RIGHTS LAW 879 (Pearson Education Ltd. 2d ed. 2010).

<sup>58</sup> See G.A. Res. 3314 (XXIX), U.N. Doc. A/RES/3314, Definition of Aggression (Dec. 14, 1974).

conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences.<sup>59</sup> Article 4 of the Resolution notes that the list of ‘acts of aggression’ detailed is ‘not exhaustive’.<sup>60</sup>

Article 3 provides as follows:

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2,<sup>61</sup> qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.<sup>62</sup>

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<sup>59</sup> G.A. Res. 3314, *supra* note 59, Preamble. The Resolution also reaffirms the duty of states not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity.

<sup>60</sup> G.A. Res. 3314, *supra* note 59, art. 4.

<sup>61</sup> *Id.* art. 2 provides as follows: “The First use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.”

<sup>62</sup> G.A. Res. 3314, *supra* note 59, art. 3.



It is obvious that the limitation of this list lies in the parties it addresses. Aggression whether in peace time or at war time, has been defined with reference to the acts of a recognised State or its armed forces, or the acts of a group, band, or some other unit on behalf of a State. As mentioned earlier, the concept of aggression in international law therefore seems to be applicable only with respect to States, who have traditionally been the main subjects of international law. Perhaps this is due to the latter reason, but one also suspects, because the international community has been reluctant to conceive of individuals as aggressors, the reason is to not mention the reluctance to view the historical violent pursuit of self-determination, especially in the period of resistance to continued colonial occupation, as internationally criminal acts.

Yet, modern day terrorism casts doubt on the unsuitability of the non-state actor as an aggressor. From the list above, apart from paragraph (g), which suggests the participation by non-members of a state's armed forces, non-states under international law are not seen as the perpetrators of acts of aggression. However, for the purposes of our present argument, if all references to 'states' and their armed, or land, sea and air forces were replaced with 'groups' or even with 'terrorist groups,' there does not seem to be much difference with modern terrorist attacks.<sup>63</sup> For example, by their own admission, Boko Haram denies the supremacy of the Nigerian government and puts itself outside the reaches of the Nigerian State. It has declared its intention to establish a Sharia Caliphate in the northern parts of Nigeria and across the Border States. To

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<sup>63</sup> The allusion to Statehood by ISIS bears some relevance in this discussion. If the latter considers itself a state but the international community does not see it as such, does this mean that conceiving of ISIS' attacks on other states are not acts of aggression? A strict interpretation of the international law, i.e., the requirement of a State as perpetrator will diminish the international condemnation of ISIS attacks on sovereign states as acts against internationally accepted principles.

maintain its position as an enemy of the Nigerian State, like the emergent ISIS in the Middle East claiming an *Islamic State*, Boko Haram has engaged and continues to be engaged with Nigeria's national security forces in armed combat. More significantly, it has invaded Chad, Cameroon and Niger. In effect, it could be argued that the 'aggression' of Boko Haram against the Nigerian State and its border countries can be adduced pursuant to the author's interpretation of Article 3(a) of the Resolution set out below:

The invasion or attack by the armed forces of ~~a State~~ *Boko Haram* of the territory of ~~another State~~, *Nigeria, Chad, Cameroun, Niger* or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of ~~another State~~ *Nigeria, Chad, Cameroun, Niger*, or part thereof.

Be that as it may, 'aggression' under international law, still connotes the (illegal) action of states or their agencies alone. In light of the admittedly alternative and inventive interpretation of aggression proffered above, this is a very limited perspective in a rapidly changing world. Where groups choose to constitute themselves as an opposing political and social organization to a state with no allegiance to any state or to the international community, they have essentially declared themselves outside the operational legal order. The world has to recognize this and adjust its legal order appropriately.<sup>64</sup>

##### *5. Humanitarian action and the protection of civilians*

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<sup>64</sup> See generally Elimma C Ezeani, *The 21<sup>st</sup> Century Terrorist: Hostis Humani Generis?*, BEIJING L. REV. 158-69 (2012).

The targeting of, and the collateral damage to, civilians in this new era of conflict is another issue for which the international community still appears relatively unprepared. International law, in the face of two world wars and numerous intra-country conflicts, has produced a formidable means not only of proscribing but also of regulating warfare. International humanitarian law, with the Geneva Convention Parts I-IV and Additional Protocols, recognizes the impact conflicts have on civilians. Particularly, Part IV of the Geneva Convention and the Additional Protocols I and II provide guidelines on how civilians who are not part of the fighting combatants should be treated. However, there is no composite body of law for the new conflicts occasioned by terrorism – how to intervene on humanitarian terms or how to regulate the conflict.

Both individual governments and the international community face a difficulty in responding quickly and appropriately to terrorist violence mainly because states have to make it up as they go along: should they consider amnesty negotiations, use security forces in violent repression, or hope the problem goes away? In responding to Boko Haram, Nigeria has done all three<sup>65</sup> and has been advised to do more, including guaranteeing economic empowerment as a counter –terrorism strategy in the region.<sup>66</sup> Agreed, there is little more that states or the international community as a whole can do in this piecemeal or arbitrary approach which sees governments responding to homegrown terrorist attacks on civilian lives on a speculative basis. International law is, by its very nature, constantly evolving and has to do so in response to new issues. However, there can be a concerted approach in this response given the impact on civilians who suffer displacement, the loss of lives, limbs and property, hardship and

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<sup>65</sup> See, e.g., Iro Aghedo & Oarhe Osumah, *The Boko Haram Uprising: How Should Nigeria Respond?*, 33 THIRD WORLD Q. 853-69 (2012).

<sup>66</sup> Iro Aghedo & Oarhe Osumah, *Bread, Not Bullets: Boko Haram and Insecurity Management in Northern Nigeria*, 35 AFR. STUD. MONOGRAPHS 205-29 (2014).

the loss of basic living amenities. Counter-terrorism strategies must also factor in the collateral damage done to civilians in military responses and for instance, provide health facilities for the wounded and safe houses for the displaced.<sup>67</sup>

Security personnel specially tasked with protecting civilian spaces and for offering humanitarian assistance are also essential. There is, in effect, no real gain in routing a terrorist group from one location and leaving the civilians without protection, in constant fear that their violators would return. Such circumstances also demand further review of counter-terrorism strategies that will cater for civilians when they have been attacked.

#### *6. Trained security personnel and the rules of armed conflict*

Perhaps the most obvious and disturbing predicament homegrown terror poses is the adequacy of the response by national security forces. In addition to the provision of armed equipment, effective responses require the discipline and observance of rule of law by security forces deployed in counter-terrorism operations. The Nigerian security forces, both military and police, have been accused of extra-judicial killings in the campaign against Boko Haram.<sup>68</sup> The credibility of the security forces in prevention and protection has also come under severe criticism with an Amnesty International report criticizing the Nigerian security forces as having “woefully and repeatedly failed in their duty to protect civilians....”<sup>69</sup> Local and foreign media have variously

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<sup>67</sup> See also *West Africa: Regional Boko Haram Offensive – Multinational Effort Should Protect Civilians, Respect Prisoner Rights*, HUMAN RIGHTS WATCH (Feb. 11, 2015), <http://www.hrw.org/news/2015/02/11/west-africa-regional-boko-haram-offensive>.

<sup>68</sup> See: *World Report: Nigeria (2014)*, HUMAN RIGHTS WATCH, <http://www.hrw.org/world-report/2014/country-chapters/nigeria>.

<sup>69</sup> *Nigeria: Nigerian Authorities Were Warned of Boko Haram Attacks on Baga and Monguno*, AMNESTY INTERNATIONAL (Jan. 25, 2015), <http://www.amnesty.org/en/news/nigeria-nigerian-authorities-were-warned-boko-haram-attacks-baga-and-monguno-2015-01-28>.

documented the heavy-handed approach of Nigerian security forces in their operations.<sup>70</sup>

Poorly trained security forces who act outside the scope of the law make the situation worse; they do not tackle the conflict and they do not inspire confidence in the society. Security forces must act in compliance with recognized norms of armed warfare and internationally agreed upon humanitarian principles must guide their operations. It is not enough to supply forces with equipment, training in combat operations and in the use of fighting equipment and regulation of their proper conduct in conflict situations must also be a prerogative of governments, domestic and international.

#### *7. Inventive responses in legal scholarship, diplomacy and community engagement*

Legal education by its nature looks forward but also casts its mind back to the past in order to develop a well-rounded approach to solving problems. The re-emergence of religious-based conflicts can be approached more maturely when the facts and circumstances in addition to the solutions regarding those conflicts are learnt properly and taught to the younger generation appropriately.

In our view, there has been little intervention from the legal and academic community in Nigeria on the appropriate legal framework for punishing the group. Legal scholarship has an obligation to identify ways and means of punishing ‘new’ offenses, including reassessing existing legal provisions. For instance, the case of Boko Haram can be approached with existing Nigerian criminal legislation.

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<sup>70</sup> Video Shows Nigeria ‘Executions’, *supra* note 14.

First, murder is a clear breach of Nigeria's criminal and penal laws. Section 306 of the Nigerian Criminal Code states that "[I]t is unlawful to kill any person unless such killing is authorised or justified or excused by law."<sup>71</sup> Murder is a capital offence under Criminal Code and the Penal Code the latter which applies in the northern states of Nigeria. Both section 319 of the Criminal Code and section 221 of the Penal Code provide the death penalty as the sentence for any person guilty of murder.<sup>72</sup> If it is agreed that one of the means by which Boko Haram pursues its objectives is murder, then the individuals in this group guilty of this offense are clearly liable under these provisions.<sup>73</sup>

Second, a declaration denying the supremacy of the Nigerian Constitution and actions 'levying war' with the intention of 'establishing a new State' in opposition to an existing sovereign Nigerian State can be considered to be a treasonable offense. Yet, no charges have been laid or brought against members of the Boko Haram group on these grounds despite their *de facto* stronghold on those areas of the country where they have effective control. Their 'allegiance' to the external government of ISIS (March 2015) mentioned earlier has also been ignored. The argument posited in this paper is predicated on an examination of relevant sections of the criminal and penal codes. Section 37(1) of the Criminal Code and section 410 of the Penal Code both prescribe

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<sup>71</sup> Criminal Code, § 306 (Nigeria).

<sup>72</sup> See Peter O. Anyebe, Sentencing in Criminal Cases in Nigeria and the Case for Paradigm Shifts, 1 NIALS J. CRIM. L. & JUSTICE 151, 161-2 (2011). Under section 41 of the Criminal Code, prosecution for treason must be commenced within two years of the alleged offense, a provision which may effectively place a bar on the prosecution of the members of Boko Haram depending on the date when the group could be said to have levied war against the Nigerian state.

<sup>73</sup> It is fair to note that there is some opposition to the death penalty in Nigeria but the penalty remains under the country's laws. See Onyekachi Duru & Ceazare Wisdom, *The Constitutionality of the Death Penalty under Nigerian Law*, (Sept. 6, 2012), available at <http://ssrn.com/abstract=2142981>.

the death penalty for treason and for conspiracy to commit treason under section 37(2) of the Criminal Code and section 411 of the Penal Code.<sup>74</sup>

The relevant section of the Criminal Code on Treason<sup>75</sup> states:

- (1) Any person who levies war against the State, in order to intimidate or overawe the President or the Governor of a State, is guilty of treason, and is liable to the punishment of death.
- (2) Any person conspiring with any person, either within or without Nigeria, to levy war against the State with intent to cause such levying of war as would be treason if committed by a citizen of Nigeria, is guilty of treason and is liable to the punishment of death.<sup>76</sup>

It is important to note however that under section 43 of the Criminal Code, prosecution for treason must be commenced within two years of the alleged offense.<sup>77</sup> There are two possibilities here. On the one hand, this time bar provision may mean that prosecution of the members of Boko Haram for this offense is no longer possible since it was not commenced in June 2011 when the group first claimed responsibility for the casualties of the suicide bombings in Abuja. However, the provision can also be read more inventively. The continued disregard of the sovereignty of the Nigerian State and its government by Boko Haram and the violent attacks against the citizens of that county can be interpreted as ‘levying war’ against the Nigerian state, a continuing act of treason.

Third, the question may be asked, whether Nigeria has legal provisions on terrorism?

Indeed, it does. Along with other countries who responded to the United Nations

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<sup>74</sup> Criminal Code, §§ 37(1)-(2) (Nigeria); Penal Code, §§ 410, 411 (Nigeria).

<sup>75</sup> In its interpretation of what the above section 37(1) of the Criminal Code meant in reference to levying war against the state, it has been reported that the court in *Boro v. Republic* affirmed that it was not necessary that there was a personal danger to the head of the state; it sufficed to show that the government was being forced to yield to force or expose the public to a state of danger. See Onyekachi Duru, *Treason and Treasonable Felonies*, FREE LAW LECTURE SERIES: NO. 16 2, [http://www.academia.edu/6792836/TREASON\\_AND\\_TREASONABLE\\_FELONIES](http://www.academia.edu/6792836/TREASON_AND_TREASONABLE_FELONIES).

<sup>76</sup> Criminal Code, § 37(1) (Nigeria).

<sup>77</sup> Criminal Code, § 43 (Nigeria).

Security Council Resolution 1373, which called for UN member states to ensure that terrorist acts are established as serious criminal offenses in domestic laws and regulations and that the seriousness of such acts are reflected in sentencing perpetrators,<sup>78</sup> Nigeria subsequently incorporated references to terrorism in its Economic and Financial Crimes Commission (Establishment etc.) Act (2004).<sup>79</sup> The interpretative provisions of the Act notes that:

“Terrorism” means

- (a) any act which is a violation of the Criminal Code or the Penal Code and which 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 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, sponsorship of, contribution to, command, aid incitement, encouragement, attempt threat, conspiracy, organization or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i), (ii) and (iii).<sup>80</sup>

Furthermore, the Terrorism (Prevention) (Amendment) Act, 2013 (hereinafter TPA), under section 1, prohibits “all acts of terrorism and financing of terrorism” and under section 2, prescribes “a maximum of death sentence” as punishment.<sup>81</sup> The TPA prohibits the murder, kidnap or attack (section 3(a)) or the violent attack on premises

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<sup>78</sup> S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

<sup>79</sup> Economic and Financial Crimes Commission (Establishment) Act (2004), (Nigeria).

<sup>80</sup> *Id.* §§ 46(a)-(b).

<sup>81</sup> Terrorism (Prevention) (Amendment) Act (2013), §§ 1-2 (Nigeria).



of an internationally protected person (section 3(b)).<sup>82</sup> Terrorist meetings, soliciting and giving support to terrorist groups, harbouring terrorists, provision of facilities or training, concealing information on terrorism, recruitment, dealing in terrorist property are all prohibited under the Act.<sup>83</sup>

Membership of a terrorist organisation, conspiracy, aiding and abetting, escaping or aiding escape, unlawful assumption of character of a law officer, obstruction of officer or security agent, tampering with evidence and witnesses are also prohibited and can attract life sentences or imprisonment.<sup>84</sup> The Act also provides that any entity, including a corporate entity, which finances or funds terrorism, is liable to a fine of not less than N100,000,000, prosecution of its principal officers, and winding up of the corporate entity.<sup>85</sup> The first prosecution under the TPA included the prosecution of a serving Senator Ali Ndume on charges of financing terrorism.<sup>86</sup>

In addition, the 1999 African Union (AU) Convention on the Preventing and Combating of Terrorism, under its article 3(2), clearly provides that “[P]olitical, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.”<sup>87</sup> Indeed State Parties have an obligation to prevent their territories being used as a base for terrorist attacks under article 4 of the Convention.

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<sup>82</sup> *Id.* §§ 3(a)-(b).

<sup>83</sup> *Id.* §§ 4-14.

<sup>84</sup> *Id.* §§ 15-25.

<sup>85</sup> *Id.* § 10.

<sup>86</sup> See O. Aigbovo & Patrick E. Igbiovvia, *National Security Imperatives and Criminal Policy*, in THE JONATHAN PRESIDENCY: THE FIRST YEAR 211, 228 (John Ayoade et al. eds., Univ. Press of America 2013). For criticisms of the legal framework for punishing terrorism Nigeria, see Isaac T. Sampson, *Legal Framework for the Punishment of Terrorism in Nigeria: A Critique of the EFCC Establishment Act*, 4 NIGERIAN ARMY Q. J. L. 314-342 (2008).

<sup>87</sup> This provision echoes Declaration on Measures to Eliminate International Terrorism, G.A. Res. 49/60, U.N. Doc. A/RES/49/60, para. 3 (Dec. 9, 1994). See also Declaration on Measures to Eliminate International Terrorism, G.A. Res. 51/210, U.N. Doc. A/RES/51/210 (Dec. 17, 1996). Over 40 countries including Nigeria have signed the AU Convention and as of 2006, 38 countries had ratified it.

Despite concerns as to the capability of African States many of whom are led by undemocratic governments and who faced more urgent problems of poverty and civil conflicts at the time,<sup>88</sup> this early attempt by the African Union is unique in its foresight. The Convention eliminated the suggestion that typically sensitive issues like religion or ethnicity justified the use of terror and promised to hold states accountable for the security of peace and freedom of threats of terrorism within and beyond their borders. The AU has also continued to establish a Plan of Action (2002) and has developed a Model Law on Counter Terrorism which states are encouraged to utilize in adopting national counter-terrorism legislation, all under an African Union Counter-Terrorism Framework.<sup>89</sup>

With all these legal provisions in place, why has it then proved difficult to control the expansion of Boko Haram and eliminate the threat it poses to Nigerian and international security? This paper argues that the ‘war on terror’ rhetoric has obfuscated existing legal avenues for responding to Boko Haram. A continuation of the post-9/11 ‘war on terror’ approach sees states immediately reaching for large-scale military response as a counter strategy to violence. From the Nigerian-Boko Haram example, it is clear that the absence of responses from the legal community suggesting the appropriate legal framework for punishing Boko Haram’s criminal and terrorist activity, the failure of judicial institutions to prosecute and punish the offenders under existing laws, and the extra-judicial strategy of killing apprehended alleged perpetrators adopted by security forces do more harm than good. In effect, the Nigerian State has been pitted against the

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<sup>88</sup> See, e.g., Kathryn Sturman, *The AU Plan on Terrorism: Joining the Global War or Leading an African Battle?*, 11 AFR. SEC. REV. 103-08 (2002).

<sup>89</sup> See *African Union Counter Terrorism Framework*, AFR. UNION PEACE & SEC. DEPT., <http://peaceau.org/en/page/64-counter-terrorism-ct> (last updated Nov. 23, 2015).

terrorist group, with both condemned in public opinion for engaging in equally violent and illegitimate action.

Table 1: Boko Haram in Context

| <b>Most Lethal Perpetrator Groups (2009-2013)</b> | <b># of Attacks</b> | <b># of Fatalities</b> |
|---|---------------------|------------------------|
| Taliban   | 2328                | 7348                   |
| Tehrik-i-Taliban Pakistan (TTP)                   | 761                 | 3804                   |
| <b>Boko Haram</b>                                 | <b>801</b>          | <b>3666</b>            |
| Al-Qa`ida in Iraq                                 | 786                 | 3417                   |
| Al-Shabaab  | 837                 | 2149                   |
| Al-Qa`ida in the Arabian Peninsula (AQAP)         | 467                 | 1939                   |
| Communist Party of India - Maoist (CPI-Maoist)    | 1356                | 1660                   |
| Islamic State of Iraq and the Levant              | 139                 | 1436                   |
| Al-Nusrah Front                                   | 66                  | 1010                   |
| Lashkar-e-Jhangvi                                 | 68                  | 829                    |

Source: START, May 2014<sup>90</sup>

Aside from legal scholarship, political and diplomatic response has to find a more honest and courageous way of condemning the ideological threats posed by these groups beyond what may be referred to as ‘surrogate advocacy’ arguments.<sup>91</sup> These are

<sup>90</sup> See START, *supra* note 4, Background Report.

<sup>91</sup> For example, President Obama’s analogy of the actions of ISIS as comparable to the crusades of the middle century is unfortunately representative of some political interpretations of the form of terrorism faced today. He said: "Unless we get on our high horse and think this is unique to some other place, remember that during the Crusades and the Inquisition, people committed terrible deeds in the name of Christ, and in our home country, slavery, and Jim Crow, all too often was justified in the name of Christ." Evan Simon, *Historians Weigh In on Obama's Comparison of ISIS Militants to Medieval Christian Crusaders*, ABC NEWS (Feb. 6, 2015), <http://abcnews.go.com/Politics/historians-weigh-obamas-comparison-isis-militants-medieval-christian/story?id=28787194>. This statement reveals an erroneous understanding of both the past and the present and has been justifiably criticized on this basis. The expression ‘surrogate advocacy’ was used in conversation with Dr. Femi Ilesanmi (RGU) on the instant issue.

arguments which attempt to placate everyone while inadvertently downplaying the threats posed by ideologies underpinned by religious themes.

Given the violence perpetrated by the growing actions of insurgencies, records of which are presented in the table above (including Boko Haram ranked third on the list), the socio-economic factors and common beliefs in areas of conflict also deserve attention. Many of the societies which have spawned terror and violence have underlying multifaceted sub-conflicts, which are only exacerbated in the face of immediate military counter-terrorism responses.<sup>92</sup> In the case of Boko Haram and its religious undertones, the very sensitivity of religion requires that those who teach it must be able to condemn what is contrary to their teaching or jurisprudence. Islamic scholars should be given the opportunity to clarify the truth or lack thereof, of the ideologies espoused by Boko Haram in the name of Islam. The inclusion and support of community, cultural, and religious leaders are therefore essential to finding lasting effective responses to terrorism. Isolating these important persons, or indeed relieving them of any responsibility to speak up against the violence perpetrated in the name of the religion over which they provide leadership and teaching, hinders rather than assists effective solutions.

#### *8. Expanding the frontiers of individual criminal responsibility*

For law to have teeth it must be able to punish those who breach its provisions. The ingenuity of the violence of homegrown terror groups who today base their ideologies on sensitive private issues of religion and spirituality is that they operate not only

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<sup>92</sup> I refer to military intervention and the resulting spread of conflicts in Libya– post Gaddafi, Syria, Iran, and Iraq – post Saddam which have spawned ISIS - a group to which, as earlier mentioned, Boko Haram pledged ‘allegiance’ to on Mar. 7, 2015. The socio-ethnic and power differences in these societies, it appears, have only been exacerbated by these interventions.

outside the law but presumptively, outside the *reaches* of the law. The good news is that the Rome Statute of the International Criminal Court (ICC) has been composed to foresee and establish punishment for individual criminal responsibility. The bad news is that the ICC does not have jurisdiction to prosecute terrorism. Whether the ICC can accommodate or indeed should accommodate prosecutions of individuals who cause violence and terror and to what extent the Court receives support from governments, non-governmental organizations, and other institutions in this regard is still to be determined.<sup>93</sup>

## B. FUTURE ACTION

Homegrown terror is not new. What is new is the growth of aligned ideologies, of groups rising up at the same time and in different countries, employing the same indiscriminate violence. Groups like Boko Haram evolve out of their peculiar milieu and act within their capacity as much as the limits of their manpower and funds allow. To respond to their actions, an appreciation of the ideology and strategies which drive these groups as well as a cogent response regarding the use of both non-lethal and armed warfare are essential. Boko Haram's emergence and control over the northern part of Nigeria and beyond signalled the threat of a new order for which international law and domestic action had hitherto been unprepared.

There is no doubt that social deprivation, such as is experienced in those areas where Boko Haram achieved a stronghold, provides a ready recruit for terrorist groups. Unfortunately, international co-operation in addressing poverty, unemployment, and

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<sup>93</sup> See Aviv Cohen, *Prosecuting Terrorists at the International Criminal Court: Re-evaluating an Unused Legal Tool to Combat Terrorism*, 20 MICH. ST. INT'L L. REV. 219-57 (2012).

lack of social infrastructure still remain at the macro level at best with disparate voluntary sector efforts in poverty alleviation programmes. The rules of international trade under the World Trade Organization and the fragile efforts to assist weaker economies, where incidentally terrorist groups find a ready home, retain their focus on rule creation without enough emphasis on means to stimulate domestic production and manufacture, provide gainful employment for young people, and expand access to socio-economic benefits.<sup>94</sup> International co-operation on the issue of terrorism will have to find means to limit the increasing socio-economic gaps which make it easier for disaffected youths and persons to prefer allegiance to violent groups as opposed to placing their faith in the state.

Further, despite the glaring consequences of military action as a mechanism to counter terror threats, whether in Iraq or Afghanistan, military might continues to be the only real means of engagement even in the domestic arena. Yet, poorly trained security forces, commands which give unlawful orders to soldiers, a slow rejoinder to the virtual tactics employed by terrorist groups, and a reliance on poorly strategized real-time security operations have only meant that terror groups have gained more time to become stronger and savvier in exploring and exploiting modern communications and technology. Also, in terms of response, it does not appear that the counter-strategies adopted take into account the fact that the frontline of homegrown terror is populated

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<sup>94</sup> See Raj Bhala, *Poverty, Islamic Extremism and the Debacle of Doha Round Counter-Terrorism*, 9 U. ST. THOMAS L. J. 5-160 (2012); see also Raj Bhala, *Poverty, Islamist Extremism, and the Debacle of Doha Round Counter-Terrorism: Part Two of a Trilogy—Non-Agricultural Market Access and Services Trade*, 44 CASE W. RES. J. INT'L L. 325 (2011); Raj Bhala, *Poverty, Islamist Extremism, and the Debacle of Doha Round Counter-Terrorism: Part Three of a Trilogy—Trade Remedies and Facilitation*, 40 DENV. J. INT'L L. & POL'Y 237 (2012); Frank J. Garcia, *Doha, Security, and Justice: A Response to Professor Raj Bhala*, 9 U. ST THOMAS L. J. 194-213 (2011); Robert J. Delahunty, *Trade, War, and Terror: A Reply to Bhala*, 9 U. ST THOMAS L. J. 61-193 (2011).

by the young, both male and female, and by children, and that many of these may be conscripted against their will.<sup>95</sup>

Political intervention emphasizing the establishment of democratic states and western values as a solution has also not eradicated the threat. A common change to western foreign policy post-9/11, has been the promotion of democracy, the latter as a necessary imposition that will vanquish the potential for terrorism. This linkage between violence and a democratic political system is more apparent than real. As recent political changes have shown from the deposition and killing of Iraq's Saddam Hussein in 2006 to the deposition and killing of Libya's Muammar Gaddafi in 2010, on grounds including that these leaders presided over undemocratic states, the emergence of strong terrorist factions in the post 'democratic' political spaces of these countries suggests democracy may not preclude the emergence of homegrown terrorist groups.

Boko Haram, for instance, gained prominence under a democratically elected Nigerian government and was able to expand its activities beyond Northern Nigeria where it originated. Rather than a simplistic view that suggests democracy will prevent homegrown terrorism, a better argument is that a disenfranchised people and the lack of strong enduring and independent institutions, including the legislature, courts and national security forces, provide a conducive environment for terrorist activity. Choi makes an informative observation on the connection between the rule of law and terrorism noting that where:

...citizens are socialized to trust in the fairness and impartiality of the legal system in times of disputes, they subscribe to established laws as a means to settle political grievances. From this perspective, engaging in violence would

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<sup>95</sup> See Thomas Hegghammer, *The Recruiter's Dilemma: Signalling and Rebel Recruitment Tactics*, 50 J. PEACE RES. 3-16 (2013).

be self-defeating behavior ultimately undermining a legal institution seen as important and necessary.<sup>96</sup>

As has been noted, “[T]he more citizens are stakeholders in the political process, the less likely it is that some of them form a terrorist organization.”<sup>97</sup>

Education increasingly looks to be an essential component of a long-term response strategy. Boko Haram has, for example, quite clearly expressed its impetus as deriving from a condemnation of western civilization which seeks to educate women. The group has demonstrated this by the kidnapping of school girls in 2014. As their actions signify, there is a vast difference between the gradual elimination of gender biases and differences which education has strived to achieve in the last and present century and the group’s views on the equal dignity of women in society.

However, the extent to which education is offered and to whom plays a part in both terrorism and counter-terrorism action and is an area where significant domestic and international action is still extant.<sup>98</sup> For instance, the ‘education’ offered by press and media coverage of terrorist attacks remains problematic, with terrorist activity profiting from the publicity which they inevitably enjoy from media coverage, particularly of cross-border or trans-national attacks.<sup>99</sup>

There are further indicators of a need for reconceptualising our responses to the expansion of homegrown terrorism in the international legal order. Non-state actors like

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<sup>96</sup> Seung-Whan Choi, *Fighting Terrorism through the Rule of Law?*, 54 J. CONFLICT RESOL. 940, 945 (2010).

<sup>97</sup> Alex P. Schmid, Senior Crime Prevention Officer at the UN, *cited in* Choi, *supra* note 93.

<sup>98</sup> Cf. Sarah Brockhoff et al., *Great Expectations and Hard Times: The (Nontrivial) Impact of Education on Domestic Terrorism*, 59 J. CONFLICT RESOL. 1186 (2014).

<sup>99</sup> See generally Aaron M. Hoffman et al., *Press Freedom, Publicity, and the Cross-National Incidence of Transnational Terrorism*, 66 POL. RES. Q. 896–909 (2013).



Boko Haram acting singly and collectively are real threats to state sovereignty. Related concepts in international law also need to adapt to these changes. Aggression, for instance, by its definition presumes the capacity of recognized states. Yet, co-ordinated attacks by groups like Boko Haram surely cast doubts on the idea that non-State actors cannot be guilty of aggression.

### III. CONCLUSION

This paper argued that the indiscriminate violence of homegrown terrorist groups like Boko Haram cannot be supplanted or overcome without a thorough understanding of the ideology and support behind their emergence. Understanding is essential for a successful strategy beyond the as yet unsuccessful and short termed military responses. The attack on the idea of the inviolability of human life is what makes the terror ideology reprehensible. That is what the legal and security responses have to focus on. At present, the rhetoric and pronouncements have been an attempt to demonstrate either the superiority of armed power by the state, or by intervening ‘superpowers’ (the latter term is used for want of a better means of expression), or the superiority of a democracy, civilization, or values. Terrorist action which slaughters lives, leaves people homeless and violates state sovereignty is not vile solely because these actions attack democracy, threaten civilizations, or breach values. They are vile because they deride the value of every human life without discrimination and seek to remove human freedoms. Understanding this simple fact as the foundation for determining responses to terrorism today is intrinsic to formulating workable counter-terrorism strategies.

The delay by the Nigerian government in formulating a cogent response to the violence displayed by Boko Haram and its overt threat to the sovereignty of the Nigerian State

has contributed significantly to the protracted and unsuccessful efforts to check the group and the impact of homegrown violence. But even more, the delay in a regional and international response is significantly to blame for the spread of violence by this group under the mistaken assumption that the emergence of Boko Haram was a Nigerian problem alone. It was not.