

TERRORISM, PUBLIC LAW AND INTERNATIONAL LAW: CONGRUENCE OF NIGERIA'S DOMESTIC LEGISLATION WITH THE INTERNATIONAL COUNTER-TERRORISM REGIME

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ABSTRACT

The interstate manifestation of terrorism creates a categorical imperative for the construction and maintenance of a global counter-terrorism framework. From the perspective of international law, Security Council Resolution 1373 of September 28, 2001 provides the normative basis for such a global counterterrorism infrastructure. Nigeria's responsibility as a member of the international community to conform to standards of conduct prescribed for members of the international community in the discharge of their international responsibilities, constrains us to ascertain the extent to which Nigeria's domestic legislation is congruent with the prescribed international template. In answer, we set out the historical background to the offence of terrorism, and in order to delimit the acceptable bases for institutional response to the offence, we analyzed extant counter-terrorism protocols and elicited the current orthodoxy with regards to definition of the offence. Using this as a background, we outline the components of the offence of terrorism in international law. From this perspective, we chronologically outlined the creation and elements of the offence of terrorism in Nigeria law. We compared the elements of the offence under applicable international protocols and under Nigeria law. Predicated upon this comparison, we reach a conclusion that Nigeria's antiterrorism regime is in both content and concept congruent with the concept of terrorism at international level.

Keywords: *Terrorism, Counter-terrorism, Terrorist, Victims, Injury, Nigeria*

1.0 INTRODUCTION

Terrorism is a topical issue in Nigeria. Nigeria's home-grown terrorist groups occupy prominent positions in global terrorism rankings. In the 2018 Global Terrorism Index, Nigeria occupied 3rd place, keeping company with countries such as Iraq, Afghanistan, Syria, Pakistan and Somalia. The impact of terrorism on Nigeria is rated at a very high score of 8.660 out of a maximum possible score of 10.¹Nigeria's Boko Haram, together with Islamic State, the Taliban,

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¹2018 Global Terrorism Index, <visionofhumanity.org/indexes/terrorism-index> accessed on March 8, 2019

and Al-Shabaab were responsible for well over half of the 18,814 deaths [caused by terrorists](#) around the world in 2017.²The Fulani Herdsmen, operating mostly in Nigeria has also attained a form of reverse eminence for its patented mixture of terrorism, ethnic cleansing and genocide and its even-handedness in dispensing horrendous savagery to men, women and children in the middle belt region of Nigeria.³Following the terror attacks on the United States, the Security Council, in an unusual legislative mode, prescribed steps and measure to be taken by members of the United Nations to contain terrorism. Some of these measures prescribed a template of national legislation to be put in place by states. Nigeria as a member of the international community is legally constrained to conform to standards of conduct prescribed by and for members of the international community in the discharge of their international responsibilities. Confronting the spectre of terrorism as a global challenge requires that states must modify the legal structure of their municipal laws so as to meet their international obligations in complying with prescribed and recommended global models. Conformity to globally prescribed models of behaviour constrains the content of decisions taken by states within their territories. States consequently lose the freedom to legislate without reference to events occurring outside their borders. Accordingly, the exercise of sovereign autonomy in enactment of legislation applicable within the domains of the sovereign is tempered by the fact that current developments in international law leads to the single conclusion that in order for a state to effectively legislate, it must willingly limit its sovereign power to ensure its legislation accords with a global model. The significant but clear conclusion is that the domestic affairs of a state which are regulated only by national law and traditions are contracting and international law or law of collective

²[Dominic Dudley](#), 'The Deadliest Terrorist Groups in the World Today' <www.forbes.com/sites/domicdudley/2018/12/05/> accessed March 8, 2019. (The Nigerian terrorist group Boko Haram, also known by the far longer name Jama'atu Ahlis Sunna Lidda'awati wal-Jihad, was once the world's deadliest terror group. Since it emerged in the northeast of the country in 2002 it has spread out to other nearby countries including Chad, Cameroon and Niger and the group has sworn allegiance to Islamic State. The group has gained notoriety for mass hostage takings and extensive use of children and women as suicide bombers.)

³Please see Rose Troup Buchanan, 'Global Terrorism Index: Nigerian Fulani militants named as fourth deadliest terror group in world' *Independent*, Wednesday 18 November 2015, <<https://www.independent.co.uk/global-terrorism-index-nigerian-fulani-militants-named-as-fourth-deadliest-terror-group-in-world>> accessed March 9, 2019, (The fourth deadliest known terrorist group has been named as the Fulani militant group operating in Nigeria and parts of the Central African Republic. Only Boko Haram, Isis, and al-Shabab were deemed deadlier than the little-known militant group from West Africa. In 2013, the Fulani killed around 80 people in total – but by 2014 the group had killed 1,229. Operating mainly in the middle belt of Nigeria, the group recorded 847 deaths last year across five states, and has also been known to stage attacks in the Central African Republic (CAR), according to the latest report from the Global Terrorism Index. As much as 92 per cent of their attacks target private citizens, reflecting the group's primary concern over the ownership of farmland. Each attack claims an average of 11 lives, with the largest known in April 2014 killing as many as 200 people after a group of the militants targeted community leaders and residents during a meeting in central province Zamfara.)

participation is expanding.⁴In this paper, we will explore the extent to which Nigeria has complied with the Security Council Resolutions in amending its domestic laws to comply with the global counterterrorism regime.

2.0 THE CHALLENGE OF TERRORISM IN INTERNATIONAL LAW

2.1. Background to the Offence of Terrorism

Historically, international law has been more concerned with potential usurpation of sovereign powers and privileges, breaches of territorial integrity, and inter-state violence than with internationally wrongful acts carried out by non-state actors.⁵ The term *terrorism* was coined originally to describe state action by the revolutionary regime in France of 1793-4, designed to consolidate the new government's power against perceived subversives.⁶*Terrorism* (from Latin *terrere* -to frighten) gained its political connotations from its use during the French Revolution. The French legislature led by Maximilien Robespierre, concerned about the aristocratic threat to the revolutionary government, ordered the public execution of 17,000 people (*regime de la terreur*). Robespierre's supporters who subsequently turned against him, accused him of using '*terrorism*' in an attempt to identify the illegitimate use of terror. Initially associated with state-perpetrated violence, the use of the word terrorism shifted to describing non-state actors, following its application to the French and Russian anarchists of the 1880s and 1890s.⁷Although the term *state terrorism* still has currency in some circles, generally, other terms for State attacks on civilians include legal terms such as war crimes, crimes against humanity, etc.⁸Therefore, legal definition of terrorism would not encapsulate bombings by a state to terrorise or intimidate its citizenry; however worthy they may be of condemnation.⁹ In the

⁴Leonid E. Grinin, 'Transformation of Sovereignty and Globalization', <<http://ssrn.com/abstract=1446647>> accessed on 25 October 2018, 10

⁵Tobiloba O. Awotoye, 'State Responsibility as a Panacea to International Terrorism' (2013) (1) (1) *Humanities and Social Sciences Journal*; 39 (In addition, the norms governing the use of force consistently responded to a unitary typology.)

⁶Dinah Pokempner, 'Terrorism and Human Rights: The Legal Framework', pp. 10-29, presented at the 'Meeting of independent experts on Terrorism and International Law: Challenges and Responses. Complementary Nature of Human Rights Law, International Humanitarian Law and Refugee Law' organized by the International Institute of Humanitarian Law Sanremo, 30 May - 1 June 2002 and the 'Seminar on International Humanitarian Law and Terrorism' organized by the International Institute of Humanitarian Law in Co-operation with the George C. Marshall Center, Sanremo, 24 - 26 September 2002

⁷Reuven Young, 'Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation', (2006) (29) (1) *Boston College of International & Comparative Law Review*, 28

⁸Dinah Pokempner, op.cit.

⁹Reuven Young, op. cit. 60; See Daniel G. Partan, 'Terrorism: An International Law Offense', (1987) (19) *Connecticut Law Review*, 751, 763

taxonomy of this paper, use of the term ‘terrorism’ is exclusively with reference to non-state actors.

Today terrorism is the phenomenon; and violence committed, described as a *terrorist act* perpetrated by loosely organized groups or individuals which at best share a common ideology. It is part of a strategy, used tactically to create fear among ordinary citizens to further a cause.¹⁰ Subsequent to the September 11, 2001 terrorist acts on the United States, the UN Security Council issued a series of counterterrorism resolutions.¹¹ From the perspective of international law, there is as of yet no canonical definition of terrorism.¹² While there is no unequivocal definition of terrorism, for the sake of clarity, this paper refers to terrorism as defined by Article 2 of the International Convention for the Suppression of the Financing of Terrorism. Under this definition, terrorism is:¹³

(a) anything covered by relevant UN Conventions and Protocols or; (b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The General Assembly’s Declaration on Measures to Eliminate International Terrorism of 1994¹⁴, and the Supplementary Declaration of 17 December 1996¹⁵ state that:

ii. Acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society;

¹⁰ T. Baid, ‘Coping with the Challenges of Terrorism and International Law’, *International Policy Digest*, (December 19, 2012)

¹¹ Elizabeth Nielsen, ‘State Responsibility for Terrorist Groups’ (2010) (7) (1) *University of California, Davis, Law Journal*; 151-191, 171, (The international legal system is grounded in a system of fixed sovereign states, allowing for some measure of reciprocity and with the benefit of some degree of deterrence.); see David Byman, *Deadly Connections: States that Sponsor Terrorism* (Cambridge: CUP, 2005) 54 – 64.

¹² Kenneth W. Abbott, ‘Economic Sanctions and International Terrorism’, (2007) *Vanderbilt Journal of Transnational Law*; 289; Geoffrey Levitt, ‘Is Terrorism Worth Defining?’, (1986) (13) *Ohio Northern University Law Review* 97, (*The search for a legal definition of terrorism in some ways resembles the quest for the Holy Grail: periodically, eager souls set out, full of purpose, energy and self-confidence, to succeed where so many others before have tried and failed*).

¹³ International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 39 I.L.M. 270 (2000)

¹⁴ G.A. Res. 49/60, U.N. Doc. A/RES/49/60 (Dec. 9, 1994)

¹⁵ Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, Annex to UN General Assembly Res 51/210 (17 December 1996)

iii. Criminal acts intended or calculated to provoke a state of terror in the general public, by a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.

The existence of a definition of terrorism shapes states' understanding of the problem, delimits their responses to it, and helps to distinguish lawful from unlawful responses.¹⁶ Extrapolating from the foregoing, terrorism may be defined as criminal acts intended or calculated to provoke a state of terror in the general public, by a group of persons or particular persons for political purposes. Currently international consensus in respect of a general definition of the crime of terrorism may be inferred from the current version of the Draft Comprehensive Convention against International Terrorism,¹⁷ It declares that it is essentially terrorism if a person, by any means, unlawfully and intentionally, causes¹⁸:

- (a) Death or serious bodily injury to any person; or
- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or
- (c) Damage to property, places, facilities or systems referred to in [the previous paragraph] resulting or likely to result in major economic loss; when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

Security Council Resolution 1566 of October 2004, while unanimously condemning terrorism in all its forms, irrespective of its motivation, and urging states to cooperate fully in the fight against terrorism, in its paragraph 3:

Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or

¹⁶Ved Nanda, 'The Role of International Law in Combatting Terrorism', (2001) (10) Michigan State University DCL Journal of International Law 603, 604; Reuven Young, op. cit. 26

¹⁷UN Doc A/59/894 (2005), Annex II for the latest draft

¹⁸Ibid, Article 2(1)

to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.¹⁹

It is very likely that over time, paragraph 3 is likely to be recognized as the Security Council's definition of terrorism, *de facto*, if not *de jure*.²⁰

2.2. An Outline of Current International Anti-Terrorism Conventions

Previous to the International Convention for the Suppression of Acts of Nuclear Terrorism²¹ there are at least twelve widely ratified international treaties relating to international terrorism, and these, are as follows:

- International Convention for the Suppression of the Financing of Terrorism,²² [Financing Convention]; the principal purpose of this treaty is to require States Parties to criminalize and establish jurisdiction over the enumerated offences and reaffirms the *aut dedere aut judicare* principle concerning these crimes.
- International Convention for the Suppression of Terrorist Bombings,²³ [Bombings Convention]; article 2 of this convention provides that any person commits an offence under this treaty if that person: unlawfully or intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with the intent to cause death or serious bodily harm; or - with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss. The treaty also provides for the criminalization of attempts to commit any of the offences listed above and for broad accomplice liability.
- Convention on the Marking of Plastic Explosives for the Purpose of Detection,²⁴ [Plastic Explosives Convention]

¹⁹S.C. Res. 1566, preamble, U.N. Doc. S/RES/1566 (Oct. 8, 2004)

²⁰Reuven Young, op. cit. 45; see also Rene Vark, 'Terrorism, State Responsibility and the Use of Armed Force' op. cit. 74-111

²¹Available at <http://untreaty.un.org/English/notpubl/English_18_15.pdf>

²²December 9, 1999, 39 I.L.M. 270 (2000)

²³December 15, 1997, 37 I.L.M. 249

²⁴March 1, 1991, 2122 U.N.T.S. 359

- Convention and Protocol from the International Conference on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation,²⁵ [Maritime Convention]; this convention prohibits a wide range of activities that endanger the safe navigation of ships at sea, including: seizure or the unlawful exercise of control over a vessel; acts of violence against persons on-board the vessel; destruction of the ship or its cargo; the placing of a device or substance on the ship that it is likely to endanger the vessel; destruction of maritime navigation facilities; false communication likely to endanger the safe navigation of the vessel; killing or injuring any person during the attempted commission of any of these offences. Article 2 of this treaty, proscribes attempts to commit any of these offences and sets forth accomplice liability. Article 2(c) also makes it an offence to threaten another person to commit certain of the enumerated acts.
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf,²⁶ [Fixed Platforms Convention]; this agreement, which supplements the Maritime Navigation Safety Convention, imports many of the provisions of that treaty for the protection of crimes committed on board or against fixed platforms located on the continental shelf.
- Convention on the Physical Protection of Nuclear Material,²⁷ [Nuclear Materials Convention]; this Treaty seeks to safeguard nuclear material and requires States Parties to enact national legislation prohibiting the following offences: unlawful receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material which causes or is likely to cause death or injury to any person or substantial damage to property; theft, robbery, embezzlement or fraudulent obtaining of nuclear material; acts constituting a demand for nuclear material by threat, use of force or other means of intimidation; threat to use nuclear material to cause death, serious injury or substantial property damage; and attempts to commit any of the above acts or any act that constitutes participation in any of the above acts.
- International Convention Against the Taking of Hostages,²⁸ [Hostages Convention]; Article 1 of this Convention provides that: - any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter

²⁵March 10, 1988, 27 I.L.M. 668

²⁶March 10, 1988, 27 I.L.M. 685

²⁷March 3, 1980, 1456 U.N.T.S. 101

²⁸December 17, 1979, 1316 U.N.T.S. 205

referred to as the ‘hostage’) in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (‘hostage-taking’).

- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents,²⁹ [Internationally Protected Persons Convention]; this Treaty prohibits the murder, kidnapping, or attack upon the person or liberty of an ‘internationally protected person,’ including diplomats. Moreover, it also proscribes a violent attack on the official premises, private residence, or means of transport of such persons, if the attack is likely to endanger their safety or liberty. The Convention also forbids threats and attempts to commit these offences, and includes a provision setting forth accomplice liability.

- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation,³⁰ [Montreal Convention]; this Treaty prohibits several acts, including: - acts of violence against other persons on board an aircraft if such acts are likely to endanger the safety of the aircraft; destruction of the aircraft rendering it incapable of flight or which is likely to endanger its safety in flight; placing a device or substance on board the aircraft that is likely to destroy the aircraft, render it incapable of flight or which is likely to endanger its safety in flight; destruction of or interference with air navigation facilities or their operation if such acts are likely to endanger the safety of aircraft in flight; or communication of information known to be false which endangers the safety of an aircraft in flight.

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation [supplement to the Montreal Convention],³¹ [Montreal Airports Protocol]; this Convention supplements the Safety of Aircraft Convention of 1971 by extending that treaty to cover similar acts committed at airports.

- Convention for the Suppression of Unlawful Seizure of Aircraft,³² [Hijacking Convention]; article 1 of this treaty provides that any person on board an aircraft in flight who unlawfully, by force or threat thereof (or by any other form of intimidation), seizes

²⁹December 14, 1973, 1035 U.N.T.S. 167

³⁰Sept. 23, 1971, 974 U.N.T.S. 178

³¹February 24, 1988, 1589 U.N.T.S. 474

³²Dec. 16, 1970, 860 U.N.T.S. 105

or exercises control of the aircraft or attempts to do so or acts as an accomplice to anyone who performs such acts, commits the offence of hijacking.

- Convention on Offences and Certain Other Acts Committed on Board Aircraft,³³ [Tokyo Convention].

A substantial body of primary rules on terrorism exists also at the regional level. Locally, we have the OAU Convention on the Prevention and Combating of Terrorism, July 14, 1999³⁴, and the Protocol to the OAU Convention on the Prevention and Combating of Terrorism, July 8, 2004³⁵, and the Plan of Action of the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa³⁶.

3.0 NIGERIAN LAW AND THE INTERNATIONAL TERRORISM CONVENTIONS

3.1. Background to Nigeria's Current Anti-Terrorism Legislations

The most significant Security Council measure adopted against terrorism is Resolution 1373 of September 28, 2001, in which the Security Council imposed a set of detailed obligations on all member states and required them to create a domestic legal and institutional framework to prevent and suppress the financing, preparation, and commission of terrorist acts and to cooperate with other states in this effort. In particular, states must³⁷:

- Ensure that *terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts*;
- Put in place effective border controls and ensure that asylum-seekers who are involved in terrorism are not granted refugee status; and
- Deny financial support and safe haven to terrorists.

Global models define many features of the contemporary nation-state, and these shape the structures and policies of nation-states in virtually all of the domains of social life.³⁸ Nigeria's first effort to comply with the demands and requirements of resolution 1373 was the enactment of the Economic and Financial Crimes Commission (Establishment, etc.) Act, 2004³⁹ which defined 'terrorism' as any act which is a violation of the Criminal Code or the Penal Code and

³³Sept. 14, 1963, 704 U.N.T.S. 219

³⁴<<https://au.int/en/treaties/oau-convention-prevention-and-combating-terrorism>> accessed 9 March, 2019

³⁵<<http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>> accessed 8 July 2017

³⁶<AU Doc. Mtg/HLIG/Conv.Terror/Plan.(I) (Sept. 14, 2002)>

³⁷S.C. Res. 1373, 6, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

³⁸John W. Meyer, John Boli, George M. Thomas, and Francisco O. Ramirez, 'World Society and the Nation-State', (1997) (103)(1)*American Journal of Sociology*, (144-181) 145

³⁹Chapter E1, Volume 5 of Laws of the Federation 2010

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 to⁴⁰ –

(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 a particular standpoint, or to act according to certain principles;

(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)

It further provides in its section 15 as follows:

i. A person who willfully provides or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used for any act of terrorism, commits an offence under this Act, and is liable on conviction to imprisonment for life.

ii. Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life.

iii. Any person who makes funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.

Subsequently, The Nigerian Terrorism Prevention Act, 2011⁴¹ was enacted which provides for measures for the prevention, prohibition and combating of acts of terrorism, the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of the Financing of Terrorism. It also prescribes penalties for violating any of its provisions. Although the Act does

⁴⁰Economic and Financial Crimes Commission (Establishment, etc.) Act, Sec. 46

⁴¹ Act number 10 of 2011, commencement date June 3, 2011. The explanatory memorandum to the Act states that: *This Act provides for measures for the prevention, prohibition and combating of acts of terrorism, the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of the Financing of Terrorism. It also prescribes penalties for violating any of its provisions.*

not define terrorism, it defines which acts constitute terrorism, and in this respect, in section 1(2), it states that

(2) In this section, *act of terrorism* means an act which is deliberately done with malice, aforethought and which:

(a) may seriously harm or damage a country or an international organization;
(b) is intended or can reasonably be regarded as having been intended to -(i) unduly compel a government or international organization to perform or abstain from performing any act; (ii) seriously intimidate a population; (iii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization, or(iv) otherwise influence such government or international organization by intimidation or coercion; and(v) an attack upon a person's life which may cause serious bodily harm or death;

(c) involves or causes, as the case may be .- (i) an attack upon a person's life which may cause serious bodily harm or death (ii) kidnapping of a person;(iii) destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;(iv) the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b) (iv) of this subsection;(v) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of biological and chemical weapons without lawful authority;(vi) the release of dangerous substance or causing of fire, explosions or floods, the effect of which is to endanger human life;(vii) interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life:

(d) an act or omission in or outside Nigeria which constitutes an offence within the scope of counter terrorism protocols and conventions duly ratified by Nigeria.

The reference in section 1(3)(d) to the counter terrorism protocols and conventions duly ratified by Nigeria refers to any of the following conventions when it is ratified—

(a) Convention on Prevention and Punishment of Crimes Against Internationally protected Persons; (b) International Convention Against the Taking of Hostages; (c)

International Convention for the Suppression of Terrorist Bombing; (d) Convention Against Terrorist Financing; (e) Convention on Offences and Certain Other Acts Committed on Board Aircraft; (f) Convention for the Suppression of the Unlawful Seizures of Aircraft; (g) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; (h) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; (i) Convention on the Making of Plastic Explosive for the purpose of Detection; (j) Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation; (k) Protocol for the Suppression of Unlawful Acts against Fixed Platforms located on the Continental Shelf; (l) Convention on the Physical Protection of Nuclear Material, whenever they are duly ratified; and (m) or such other convention assented by the Nigeria Government⁴².

In defining what acts are tantamount to international terrorism, section 9(8) provides that –

(8) For the purpose of this section, *act of international terrorism* means an act of terrorism involving- (a) a non-citizen; (b) a person possessing dual citizenship as specified in subsection (3) of this section⁴³; or (c) groups or individuals whose terrorist activities are foreign based or directed by the countries or groups outside Nigeria or whose activities transcend national boundaries.

Having proscribed terrorist acts, the Act goes further to proscribe organizations categorized or considered as terrorist. Accordingly, where two or more persons associate for the purpose of or where an organization engages in participating or collaborating in an act of terrorism; promoting, encouraging or exhorting others to commit an act of terrorism; or setting up or pursuing acts of terrorism, the judge in Chambers may on an application made by the Attorney General, National Security Adviser or Inspector General of Police on the approval of the President; declare any entity to be a proscribed organization and the notice should be published in official gazette.⁴⁴

⁴² Nigerian Terrorism Prevention Act, S. 40

⁴³ Ibid Section 9(3) provides that ‘Where a person declared as a suspected international terrorist under subsection (1) of this section possesses the Nigerian citizenship other than by birth. such a person may be deprived of his Nigerian citizenship in accordance with the Constitution of the Federal Republic of Nigeria’.

⁴⁴ Ibid Section 2(1); under section 2(2) an order made under sub-section (1) of this section shall be published in the official gazette, in two National newspapers and at such other places as the judge in Chambers may determine.

S. 2(3) A publication made under sub-section (2) of this section shall contain such relevant particulars as the judge in Chambers may specify: (i) a person who belongs or professes to belong to a proscribed organization commits an offence under this Act and shall on conviction be liable to imprisonment for a maximum term of 20 years;

S. 2(4) It is a defence for a person charged under sub-section (3) of this section to prove that the organization had not been declared a proscribed organization at the time the person charged became or began to profess to be a member of the organization and that he has not taken part in the activities of the organization at any time after it has been declared to be proscribed organization.

However, political parties are not to be regarded as proscribed organizations and nobody should be treated as such because of his or her political beliefs.⁴⁵

The Act proscribes meetings whose objective is the carrying out of terrorist acts. Thus, any person who arranges, manages or assists in arranging or managing or participates in a meeting or an activity which he knows is connected with an act of terrorism; provides logistics, equipment or facilities for a meeting, or an activity which he knows is connected with an act of terrorism; or attends a meeting, which he knows is to support a proscribed organization, or to further the objectives of a proscribed organization, commits an offence under the Act.⁴⁶ Rendering of support to terrorist acts and organizations is also prohibited. Consequently, any person who knowingly, in any manner, solicits or renders support for an act of terrorism; or a proscribed organization or an internationally suspected terrorist group, commits an offence under the Act.⁴⁷ For these purposes, ‘*support*’ includes incitement to commit a terrorist act; offer of material assistance, weapons, including biological, chemical or nuclear weapons, explosives, training, transportation, false documentation or identification; offer or provision of moral assistance, including invitation to adhere to a proscribed organization; and the provision of, or making available, such financial or other related services as may be prescribed in this act⁴⁸. Provision of training for terrorists is prohibited so that any person who, knowingly agrees to provide training or instruction: in the making or use of any explosive or other lethal device; or in carrying out a terrorist act, to a member of a terrorist group or a person engaging in, or preparing to engage in the commission of a terrorist act, commits an offence.⁴⁹ Furthermore, harbouring of terrorists is prohibited, so that any person whether or not in the armed services who harbours, conceals or causes to be harboured or concealed, a person whom he knew to have committed, or to have been convicted of an act of terrorism or against whom he knew that a warrant of arrest or imprisonment for such an act had been issued commits an offence.⁵⁰

S. 2(5) The Attorney General upon the approval of the President may withdraw the order if satisfied that such proscribed organization has ceased to engage in an act of terrorism— (a) the proscribed organization or person affected by the order made an application on notice; and (b) he is satisfied that a proscribed organization has ceased to engage in the acts specified in sub-section (1) of this section and that there is no likelihood of the organization engaging in such acts in the future and shall be published in the official gazette.

⁴⁵ Ibid Section 2(3)(ii)

⁴⁶ Ibid S. 3

⁴⁷ Ibid S. 4(1)

⁴⁸ Ibid S. 4(3)

⁴⁹ Ibid S. 6

⁵⁰ Ibid S. 5

The Act in accordance with the current jurisprudence of the several United Nations instruments creating obligations to proscribe terrorist activities proceeds on the understanding that contemporary terrorism is not a localized occurrence. It accordingly contains provisions that deal with the spectre of international terrorism. For the purposes of the section dealing with international terrorism, ‘*act of international terrorism*’ means an act of terrorism involving: a non-citizen; or a person possessing dual citizenship⁵¹; or groups or individuals whose terrorist activities are foreign based or directed by the countries or groups outside Nigeria or whose activities transcend national boundaries⁵².

The Act proscribes the taking of hostages within the wider context of acts of terror. It accordingly, contains a provision that a person who knowingly: seizes, detains or attempts to seize or detain; or threatens to kill, injure or continue to detain another person in order to compel a third party to do, abstain from doing any act or gives an explicit or implicit condition for the release of the hostage, commits an offence.⁵³ Within the perspective of this section, a ‘*third party*’ means a State, an international governmental organization, a natural or legal person or a group of persons⁵⁴.

The Act contains stringent provisions for the suppression of funding of terrorism. Consequently, any person who, directly or indirectly, provides or collects funds with the intention or knowledge that they will be used, in full or in part, in order to commit an offence in breach of an enactment specified in the Schedule to the Act; or do any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a group of people or to compel a government or an international organization to do or abstain from doing any act, commits an offence. For an act to constitute an offence under this provision, it is not necessary that the funds were actually used to commit the said offence.⁵⁵ A person who knowingly solicits, receives, provides or possesses monetary or other property or; enters into or becomes involved in an arrangement as a result of which money or other property

⁵¹ Under s. 9(3) where a person declared as a suspected international terrorist possesses the Nigerian citizenship other than by birth, such a person may be deprived of his Nigerian citizenship in accordance with the Constitution of the Federal Republic of Nigeria.

⁵² Ibid S. 9(8)

⁵³ Ibid S. 11(1)

⁵⁴ Ibid S. 11(2)

⁵⁵ Ibid S. 10

is made available, or is to be made available, for the purpose of terrorism or for a proscribed organization, commits an offence.⁵⁶

The Act makes provision for mutual assistance and extradition between Nigeria and foreign states. Thus, a foreign state may make a request to Nigeria for assistance in the investigation or prosecution and even extradition where there is mutual treaty of an offence related to terrorism.⁵⁷ The Attorney-General of the Federation may make a request to any foreign State to extradite a suspect if there is mutual extradition treaty, and/or to provide evidence or information relevant to an offence under the Act; or for the restraint and forfeiture of property located in that State and which is liable to be forfeited for being a terrorist property.⁵⁸ With respect to extradition, the offences created under sections 1, 2, 3, 4, 5, 6, 10, 11, 13 and 14 of this Act are considered to be extradition crimes for which extradition may be requested, granted or obtained under the Extradition Act⁵⁹.

3.2. An Outline of Nigeria's Current Anti-Terrorism Legislation

The Terrorism (Prevention) Act 2011 was in 2013 amended by the Terrorism (Prevention) (Amendment) Act, 2013.⁶⁰ The Act amends section 1 of the Principal Act by inserting a new subsection (1) by which all acts of terrorism and financing of terrorism are prohibited.⁶¹ It creates a new subsection (2) to the principal Act by which any person or body corporate who knowingly in or outside Nigeria directly or indirectly willingly: does, attempts or threatens any act of terrorism; commits an act preparatory to or in furtherance of an act of terrorism; omits to do anything that is reasonably necessary to prevent an act of terrorism; assists or facilitates the activities of persons engaged in an act of terrorism or is an accessory to any offence under this Act; participates as an accomplice in or contributes to the commission of any act of terrorism or offences under this Act; assists, facilitates, organizes or directs the activities of persons or organizations engaged in any act of terrorism; is an accessory to any act of terrorism; or, incites, promises or induces any other person by any means whatsoever to commit any act of terrorism or any of the offences referred to in this Act, commits an offence.⁶²

⁵⁶Ibid S. 13

⁵⁷Ibid S. 18

⁵⁸Ibid S. 19

⁵⁹Ibid S. 22

⁶⁰The explanatory note to the Terrorism (Prevention) (Amendment) Act, 2013 states that the Act amends the Terrorism (Prevention) Act No. 10, 2011, and makes provision for extra-territorial application of the Act and strengthens terrorist financing offences.

⁶¹ Terrorism (Prevention) (Amendment) Act, 2013 S. 2(1)

⁶² Ibid S. 2(2)

The Act amends sections 3-8 of the Principal Act by removing sections 3-8 of the Principal Act and substituting in their place new sections 3- 25. Thus, any person who intentionally: murders, kidnaps or commits other attacks on the person or liberty of an internationally protected person; carries out a violent attack on the official premises, private accommodation or means of transport of an internationally protected person in a manner likely to endanger his person or liberty; or, threatens to commit any such attack, commits an offence.⁶³ Any person who: arranges, manages, assists in arranging or managing, participates in a meeting or an activity, which in his knowledge is concerned or connected with an act of terrorism or terrorist group; collects, or provides logistics, equipment, information, articles or facilities for a meeting or an activity, which in his knowledge is concerned or connected with an act of terrorism or terrorist group; or, attends a meeting, which in his knowledge is to support a proscribed organization or to further the objectives of a proscribed organization, commits an offence.⁶⁴

Any person who knowingly, in any manner, directly or indirectly, solicits or renders support for the commission of an act of terrorism, or to a terrorist group, commits an offence under this Act. For these purposes, *support* includes: incitement to commit a terrorist act through the internet, or any electronic means or through the use of printed materials or through the dissemination of terrorist information; receipt or provision of material assistance, weapons including biological, chemical or nuclear weapons, explosives, training, transportation, false documentation or identification to terrorists or terrorist groups; receipt or provision of information or moral assistance, including invitation to adhere to a terrorist or terrorist group; entering or remaining in a country for the benefit of, or at the direction of or in association with a terrorist group; or the provision of, or making available, such financial or other related services prohibited under this Act or as may be prescribed by regulations made pursuant to this Act⁶⁵.

Any person - who knowingly harbours, conceals or causes to be harboured or concealed, hinders or interferes with the arrest of a person whom to his knowledge has - committed or is about to commit an act of terrorism; or is likely to commit an act of terrorism; or is a member of a terrorist group; or has been convicted of an act of terrorism but escaped from punishment, or, against whom he knew that a warrant of arrest had been issued, commits an offence.⁶⁶ Any

⁶³ Ibid S. 3

⁶⁴ Ibid S. 4

⁶⁵ Ibid S.5; under subsection (3), it is not necessary to prove that the material or information or facilities or financial assistance was actually collected or provided if it can be reasonably established that the person collected or provided the material, information or facilities or financial assistance to terrorists, or terrorist groups.

⁶⁶ Ibid S. 6

person who, knowingly, agrees to provide or receive training, training material or instructions in the making or use of any form of explosive or other lethal devices; in carrying out a terrorist act, to a member of a terrorist group; to a person engaging in or preparing to engage in the commission of a terrorist act, or, in the practice of a military exercise or movements but who is not an authorized officer acting in the performance of an official duty, commits an offence.⁶⁷

Any person who knowingly offers to provide, or provides any explosive or other lethal device to a terrorist group, a terrorist or any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group, commits an offence.⁶⁸ Any person who knowingly agrees to recruit or recruits another person to be a member of a terrorist group or participate in the commission of a terrorist act commits an offence.⁶⁹ Any person, who knowingly - incites or promotes the commission of a terrorist act; or incites or promotes membership in a terrorist group, or, solicits property for the benefit of a terrorist group or for the commission of a terrorist act, commits an offence⁷⁰. Any person who being - the owner, occupier, lessee or person in charge of any building, premises, room, or place knowingly permits a meeting to be held in that building, premises, room or place; or, the owner, charterer, lessee, operator, agent or master of a vessel or the owner, charterer, lessee, operator, agent or pilot in charge of an aircraft knowingly permits that vessel or aircraft to be used; or, the owner, lessee or person in charge of any equipment or facility that allows for recording, conferencing or meetings through the use of technological devices, knowingly permits that equipment, facility or devices to be used for purposes of committing an offence under this Act or for planning, promoting or supporting the commission of a terrorist act, commits an offence.⁷¹

Section 5 of the Act amends section 11 of the Principal Act which deals with Hostage Taking by deleting the entire section 11 altogether. Hostage Taking is now dealt with under section 15 of the Act. Accordingly, any person who knowingly- seizes, detains or attempts to seize or detain; or threatens to kill, injures or continues to detain another person in order to compel a third party to do or abstain from doing any act, or, gives an explicit or implicit condition for the release of the person held hostage, commits an offence. With respect to the provisions of this section, a

⁶⁷ Ibid S. 7

⁶⁸ Ibid S. 9

⁶⁹ Ibid S. 10

⁷⁰ Ibid S. 11

⁷¹ Ibid S. 12

third party means a state, an international governmental organization, a natural or legal person or a group of persons⁷².

Any person who is a member or professes to be a member of a terrorist group commits an offence⁷³. Furthermore, any person who belongs or professes to belong to a proscribed organization commits an offence.⁷⁴ Any person who conspires with another to commit an offence under this Act in Nigeria, or to commit a terrorist act in any place outside Nigeria being an act, which if done in Nigeria would have constituted an offence under this Act, shall be deemed to have conspired to do that act in Nigeria.⁷⁵ A person who knowingly, directly or indirectly - aids and abets; or, induces, incites, instigates, instructs; or counsels or procures another person by any means whatsoever to commit an act of terrorism, commits an offence⁷⁶. Any person who being in lawful custody, escapes; or, aids, facilitates or abets the escape of a person who is in lawful custody of any law enforcement or security agency or a person suspected to have committed an offence under any of the provisions of this Act, commits an offence.⁷⁷

Section 4 of the Act, in substitution for section 10 of the Principal Act creates a new section 10 which provides that a person or body corporate who, in any manner, directly or indirectly, willingly provides, solicits or collects any fund or attempts to provide, solicit or collect any fund with the intention or knowledge that they will be used, in full or in part to - finance a terrorist or terrorist organization; or, commit an offence in breach of an enactment specified in the Schedule to this Act, or, do any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a group of people or to compel a government or an international organization to do or abstain from doing any act, commits an offence under this Act.⁷⁸ In proving the offence of terrorist financing, it is not required that the

⁷² S. 15

⁷³ S. 16(1), however, under s. 16(2), it is a defence for a person charged with an offence under this section to prove that the entity in respect of which the charge is brought was not a terrorist group at or on the date that he- became a member of that entity; or professed to be a member of that entity; or has not taken part in the activities of that entity, after it became a terrorist group.

⁷⁴ 16(3) however, under s. 16(4), it is a defence for a person charged under this section to prove that the organisation had not been declared a proscribed organisation at the time the person charged became or began to profess to be a member of the organisation and that he has not taken part in the activities of the organisation at any time after it has been declared to be a proscribed organisation.

⁷⁵ S. 17

⁷⁶ S. 18

⁷⁷ Ibid S. 19

⁷⁸ Ibid S. 10(1)

funds: were actually used to carry out terrorist acts; or, were used to attempt a terrorist act; or, be linked to a specific terrorist act.⁷⁹

Section 6 of the Act amends section 12 of the Principal Act by substituting for the words ‘*cash*’ in subsections (5), (6) and (7) the words ‘*Fund and Property*’; and deleting subsection (8) which contains a definition of the words ‘*cash*’. Section 7 of the Act amends section 13 of the principal Act by substituting for section 13 of the Principal Act a new section 13 which provides that any person or body corporate, who, in or outside Nigeria: solicits, acquires, provides, collects, receives, possesses or makes available funds, property or other services by any means, whether legitimate or otherwise, to, a terrorist organization, or, individual terrorist, directly or indirectly, willingly with the unlawful intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or in part in order to commit or facilitate an offence under this Act or in breach of the provisions of this Act; or, attempts to do any of the above specified acts, and; possesses funds with the unlawful intention that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act by terrorists or terrorist groups, commits an offence under this Act.⁸⁰ Any person who knowingly enters into or becomes involved in, participates as an accomplice, organizes or directs others in an arrangement: which facilitates the acquisition, retention or control by or on behalf of another person of terrorist fund by concealment, removal out of jurisdiction, transfer to a nominee or in any other way; or, as a result of which funds or other property is to be made available for the purpose of terrorism or for the benefit of individual terrorist, or terrorist organization, or, proscribed organization, commits an offence under this Act.⁸¹ For an act to constitute an offence under this section, it is not necessary that the funds or property were actually used to commit any offence of terrorism⁸².

Section 19 of the Act amends section 40 of the Principal Act, amongst other amendments, by:

- (a) Inserting after the words ‘*terrorism investigation*’, the following: *terrorist* means any person involved in the offences under sections 1- 4 of this Act and includes his sponsor;
- (b) Substituting for the definition of the word ‘*terrorist*’, a new definition - *terrorist* means any natural person who commits any of the following acts:-(i) commission or

⁷⁹ Ibid S. 10(3)

⁸⁰ Ibid S. 13(1)

⁸¹ Ibid S. 13(2)

⁸² Ibid S. 13(3)

attempting to commit, terrorist acts intentionally by any means, either directly or indirectly; (ii) participation as an accomplice in terrorist acts, or (iii) organizing terrorist acts or directing others to commit such acts; (iv) contributing to the commission of terrorist acts with a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

(c) inserting after the definition of terrorist, the following definition-*terrorist act*, in addition to the provisions of the renumbered section 1 subsection (3) of the Principal Act, means an act which constitutes an offence according to the following agreements -(i) Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; (ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; (iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons; including Diplomatic Agents, 1973; (iv) International Convention against the Taking of Hostages, 1979; (v) Convention on the Physical Protection of Nuclear Material, 1980; (vi) Protocol for the Suppression of Unlawful Acts of violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; (ix) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988; (ix) The International Convention for the Suppression of Terrorist Bombing, 1997; (x) The Convention against Terrorist Financing; (xi) Convention on Offences and certain other Acts committed on Board Aircraft, and (xii) Convention on the Marking of Plastic Explosives for the purpose of Detection

(d) inserting immediately after the definition of the words '*terrorist investigation*' in the Principal Act the following:-*terrorist organization* means any group of terrorists that - (i) commits, or attempts to commit terrorist acts by any means, directly or indirectly, unlawfully and willfully; (ii) participates as an accomplice in terrorist acts; (iii) organizes or directs others to commit terrorist acts, or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Nigeria's implementation of UN Security Council Resolutions (UNSCRs) 2178, 2199, and the UN 1267/1989/2253 ISIL (Da'esh) and al-Qa'ida sanctions regime continues to evolve as the Nigerian government froze and confiscated terrorist assets as designated by U.S. Executive Orders and by UNSCRs.⁸³

4.0 COMPARISON OF NIGERIA'S ANTI-TERRORISM LEGISLATION WITH REQUISITE INTERNATIONAL INSTRUMENTS

4.1. International Law Contemplates Serious Injury, Death, and Serious Property Damage Causing Economic Harm as Proscribed Terrorist Outcomes

Causing the death of or serious bodily injury to non-combatant civilians is a proscribed outcome under the Bombings, Financing, and Nuclear Terrorism Conventions. The principle that killing or harming civilians is terrorism is supported by the other Conventions, though their prohibitions apply only in certain contexts (for example, in civil aviation airports or on ships). Death or serious bodily injuries is also encompassed by the definition in paragraph 3 of Security Council Resolution 1566, although not only civilians may be the target of terrorists' attacks under this definition. The standard appears to be *serious bodily injury*, a term used in the Financing Convention, Bombings Convention, Nuclear Terrorism Convention, Montreal Airports Protocol, and Security Council Resolution 1566. Any injuries caused in the commission of an otherwise prohibited act suffices as an additional illegal act. Injuries generally must be serious in nature to independently constitute terrorism.⁸⁴ Causing death or serious bodily harm to persons is a sufficient harm under the statutory definition of s. 1(3)(c)(i) of Nigeria's Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013 which provides for '*an attack upon a person's life which may cause serious bodily harm or death*'. The Bombings Convention contemplates damage to places of public use, state facilities, and public transport systems or infrastructure where it causes or is likely to cause economic harm. At international law, only significant (*extensive* in the Bombings Convention) property damage is a prohibited outcome and such property damage must result in economic harm. Furthermore, the property must have some public function (for example, transportation systems or markets), although this is not a settled distinction at international law. Whether property is privately or publicly owned is not determinative; the criterion is public use, not ownership. The Nuclear Terrorism Convention is broader and refers only to *substantial damage to property or to the*

⁸³ <www.state.gov/j/crt/2015/index/htm>

⁸⁴ Young, R., (supra), p. 53-4

environment.⁸⁵ Property damage is appropriate under s. 1(3)(c)(iii) of Nigeria' Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013 which encapsulates '*destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss*'.

4.2. At International Law the Terrorist Act Must Be Independently Criminal

A number of the conventions require acts to be independently *unlawful* to contravene their provisions (see the Bombings, Financing, Nuclear Terrorism, The Hague, Montreal, and Maritime Conventions and the Fixed Platforms Protocol). Independent unlawfulness, presumably a reference to applicable domestic law, is implicit in the other conventions too. For example, the deprivation of liberty of an internationally protected person, prohibited by the Internationally Protected Persons Convention, must be restricted to *unlawful* detention to render results that are not absurd. Some circumstances might warrant detention of such persons⁸⁶. This attribution of independent unlawfulness was met in the Economic and Financial Crimes Commission (Establishment, etc.) Act, 2004 which in section 46(a) defined terrorism as '*any act which is a violation of the criminal Code or the Penal Code and which*' However, this ascription of independent unlawfulness is absent in the currently applicable Nigeria' Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013, which in s. 1(3) uses the word '*knowingly*' to characterize the doing of the act, and in s. 1(3) defines an '*act of terrorism*' to mean an act which is deliberately done with '*malice aforethought*'. It is probable that the drafters of the Nigerian law deliberately chose not to use *unlawfully* in ascribing the prohibited acts so as not to unduly constrict the definition. Consequently, independent or underlying criminality as an element of terrorist offences is not required in the Nigerian definition, and simply committing a terrorist act as defined

4.3. International Law Requires Intimidation of a Population or Coercion of a Government or an International Organization

Sub-clause 2(1)(b) of the Financing Convention requires that the harm is done '*when the purpose of such [an] act, by its nature or context*' is to intimidate a population or coerce a government or international organization. Intimidation or coercion of some description, also

⁸⁵ Young, R., (supra), p. 55

⁸⁶ Young, R., (supra), p. 56

expressly required by the Hostages and Nuclear Materials Conventions is implicit in the other conventions and is inherent in the concept of terrorism. As an implicit requirement of the earlier conventions and prominent feature of the Financing Convention, intimidation or coercion should be regarded as a necessary element of terrorism as a legal concept at international law. The Hostages Convention provides for a wide class of entities that must not be made the subject of compulsion - a State, an international intergovernmental organization, a natural or juridical person, or a group of persons.⁸⁷ This prerequisite is replicated in s. 1(3)(b) of Nigeria Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013, which defines an ‘act of terrorism’ to mean an act which is *‘deliberately done with malice, aforethought and which is intended or can reasonably be regarded as having been intended to—unduly compel a government or international organization to perform or abstain from performing any act; seriously intimidate a population; seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or otherwise influence such government or international organization by intimidation or coercion’*. This definition anticipates not just compelling the domestic government, but any other government at all including foreign ones; not just intimidating the local population, but any other one else, including foreign ones; seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of any country at all including but not restricted to the local one, or an international organization; or otherwise influence any government whether local or foreign or international organization by intimidation or coercion. However, the act of seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of an international organization is a bit difficult to conceptualize, considering that most international organizations do not possess any such structures.

4.4.The Range of Victims at International Law Excludes Military Targets but expressly includes Internationally Protected Persons and Civilians

Section 3 of the Terrorism (Prevention) (Amendment) Act, 2013 in including internationally-protected persons in the range of victims, provides that –*‘any person who intentionally- murders, kidnaps or commits other attacks on the person or liberty of an internationally protected; carries out a violent attack on the official premises, private accommodation or means of transport of an internationally protected person in a manner likely to endanger his person or liberty; or*

⁸⁷ Young, R., (supra), p. 56-7

threatens to commit any such attack, commits an offence'. This protection of the person, liberty, official and private premises of internationally-protected persons is in accordance with the provisions of the appropriate international conventions. There is general consensus that only innocent persons - which is defined as persons unconnected with the terrorist's struggle - could be victims of terrorism. Thus, persons and property involved in armed conflict are excluded from the conventions, and accordingly they cannot be the subject of terrorist attacks under international law. The Aviation, Maritime, and Financing Conventions expressly exclude military and police aircraft and ships. Other conventions refer to doing the proscribed acts '*without lawful excuse*' or '*unlawfully*'. Placing a bomb in a situation of armed conflict would not constitute an offence against the Bombings Convention if the circumstances of an armed conflict would make the placement '*lawful*'. Thus, one can conclude that terrorist acts directed towards combatants do not come within the core definition of terrorism at international law. It is notable that the definition in Resolution 1566 refers to the range of victims of terrorism as including civilians, thereby avoiding the debate on terrorism directed against military targets.⁸⁸ Section 10 of the Terrorism (Prevention) (Amendment) Act, 2013, replacing s. 10 the Terrorism (Prevention) Act, 2011, provides in s. 10(1)(c) '*A person or body corporate who, in any manner, directly or indirectly, willingly provides, solicits or collects any fund or attempts to provide, solicit or collect any fund with the intention or knowledge that they will be used, in full or in part to - (c) do any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a group of people or to compel a government or an international organization to do or abstain from doing any act, commits an offence under this Act.....*' The problem with this section is that it is concerned with the collateral offence of terrorist financing. Consequently, if taken to the full, this provision would seem to suggest that the exclusion of attacks on combatants from constituting acts of terrorism is applicable only within the rubric of the collateral offence of terrorist financing and would not be included in other acts of terrorism. It is our position that this interpretation is contrary to the current jurisprudence. Despite the US position designating off-duty military personnel as non-combatants and holding that terrorist acts are capable of being committed against them, the current position is that the restriction of commission of terrorist acts to civilians or other persons not taking active part in the hostilities in a situation of armed conflict, spans the entire facet of

⁸⁸ Young, R., (supra), p. 57-8

terrorist acts and is not limited to funding terrorist acts intended to cause death or serious bodily injury to such civilian or other persons not taking active part in the hostilities in a situation of armed conflict.

It is certainly within a state's interest to define the range of victims widely, as this increases the number of attacks the state can classify as terrorist (thereby triggering, *inter alia*, increased investigative powers). It also gives greater protection to the military. However, when two interpretations are possible, the one consistent with international law should be preferred. Textual ambiguity should be construed in favour of harmony with international law. Furthermore, while attacks on civilians are likely to intimidate the public, small-scale attacks on military personnel are unlikely to have this effect.⁸⁹ Consequently, the provision of s. 10(1)(c) of the Terrorism (Prevention) (Amendment) Act, 2013, that the doing of *any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a group of people or to compel a government or an international organization to do or abstain from doing any act, commits an offence under this Act...*, renders it unclear, when this provision is extrapolated outside the confines of terrorist financing, how an attack on military personnel, who in any event, are expected targets of such attacks, can '*compel*' a government or international organization. Internal consistency with the provisions of this section and applicable international law dictates that inclusion of civilians and persons not taking part in hostilities in a situation of armed conflict as objects of terrorist's attacks applies across board to all acts of terrorism and not solely in connection with terrorist financing.

4.5.It is not required that "Terrorist" Acts are carried out for the Purpose of Advancing a Political, Religious, or Ideological Cause

Neither the Nuclear Terrorism Convention nor the Financing Convention's definitions require a religious, political, or ideological motive. Accordingly, this additional *mens rea* element is not a requirement at international law. Once the act and the purpose elements are proven, the motivation is arguably irrelevant.⁹⁰ In accordance with the international definition of terrorism, terrorism under the Nigeria Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013, does not require a specific motivation.

⁸⁹ Young, R., (supra), p. 94-5

⁹⁰ Young, R., (supra), p. 58

4.6.At International Law, causing a Prohibited Terrorist Outcome must be Intended

Each act proscribed in the conventions requires some form of *mens rea*, usually intent. For example, the Bombings Convention's prohibition in Article 2 refers to '*intentionally*' and the Financing Convention to '*willfully*' and '*intentionally*' doing certain acts. The Nuclear Terrorism, Internationally Protected Persons, Montreal, Nuclear Materials, and Maritime Conventions and the two Protocols require the act of terrorism specified to be an intended act. The Financing Convention also requires a form of desired foresight with respect to the consequences of the act, stating '*when the purpose of [the proscribed act], by its nature or context, is to intimidate...*' Similarly, Resolution 1566 refers to acts done '*with the purpose to provoke a state of terror... [or] intimidate...*'. Hence, the international definition requires first that the act is intended and second that the consequences are either intended or perhaps calculated.⁹¹Nigeria' Terrorism (Prevention) Act, 2011 as amended by Terrorism (Prevention) (Amendment) Act, 2013 uses knowingly, intentionally, willfully, to refer to the requisite *mens rea*. As pointed out previously, s. 1(3) of Nigeria' Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013, in creating the offence of terrorism states that '*a person who knowingly — does, attempts or threatens to do an act preparatory to or in furtherance of an act of terrorism; and in s. 1(3) states that 'act of terrorism means an act which is deliberately done with malice, aforethought and which may...*' This definition does not require an intention to do the act causing the harm; simply engaging in an act of terrorism is illegal. Section 1(3)(d) of Nigeria' Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013 includes in its definition of, '*act of terrorism*' "*an act which is deliberately done with malice, aforethought and which: an act or omission in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria*". The effect of this provision is that when any of the conventions come into force in Nigeria, the requisite mental element provided for in them will become the operative mental element and will prevail where the provisions of the Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013 are disparate from it.

⁹¹ Young, R., (supra), p. 59-60

4.7.The International Definition speaks to acts of Terrorism by a single Person; Group Conduct or Participation is not a Requirement

The conventions speak to individual, not state or group, conduct. The Nuclear Terrorism, Financing, Maritime, The Hague, and Hostages Conventions speak of ‘*person*’, and clearly individuals may perform acts of terrorism⁹². Nigeria Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013 speaks to persons. Thus, the terrorist acts specified in the Act are capable of being committed by a person as a single individual, or by persons as in a group. Consequently, group conduct is not indispensable in bringing a prohibited conduct within the application of the Act.

4.8.Justifications and Defences

Political exception is excluded in modern conventions and Resolution 1566⁹³. Like international law, the Nigerian Act does not create a political exception whereby terrorism committed for a particular purpose is excused or justified. However, s. 1(4) of Nigeria’ Terrorism (Prevention) Act, 2011, as amended by Terrorism (Prevention) (Amendment) Act, 2013, preserves the right of labour unions to conduct labour related protests even when such protests may have the capacity to disrupt a service. Thus, demonstration or stoppage of work which disrupts a service but is committed in pursuance of a protest is not a terrorist act within the meaning of this definition provided the act is not intended to - unduly compel a government or international organization to perform or abstain from performing any act; seriously intimidate a population; or, otherwise influence such government or international organization by intimidation or coercion.

5.0 CONCLUSION

The gravity of the challenge of terrorism to the stability of the state system necessitated the creation and maintenance of a global antiterrorism regime to manage and assuage the challenge. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. Criminalization of terrorist acts by the municipal laws of different states was in response to the demands of international law contained in several treaties and conventions and in applicable resolutions. In order to fulfil her international obligations under the applicable treaties, conventions and resolutions, the anti-terrorism laws of the different states and municipalities are required to conform to a stated

⁹² Young, R., (supra), p. 61

⁹³ Young, R., (supra), p. 63

international template. The conventions and resolutions evidence the international community's desire to facilitate a common approach. In the light of the transnational nature of terrorism, anti-terrorism measures, will operate more efficiently if the approach of the different states is consistent. Consequently, harmony of domestic legislation with international law is crucial. The question is has Nigerian domestic legislation attained this? It is our submission that Nigeria's model of antiterrorism legislation is in both content and concept congruent with the concept of terrorism at international. In managing that strategic challenge, the major elements of our domestic laws accord with international law.

