Insecurity in Nigeria – Whither International Law?

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Pre-colonial Nigerian kingdoms and societies are noted to have had relations with other kingdoms, the nature of which would pass for relations governed by what we have come to term ‘international law’ in today’s parlance. Aspects of this can be seen from the customary practices of the time, the commercial and other types of interactions that some of the pre-colonial Nigerian societies and kingdoms had with the outside world and with their neighbors, and the way in which these engagements and interactions were managed and guided by rules and regulations. The prevalence of trade across the sea and across societal boundaries, such as the trade between the Benin kingdom and the Portuguese led to the development of the laws of trade. The development of the laws of war in the course of the ‘Fulani wars’, the Ijebu and Aro expeditions, and other types of wars and battles that took place in pre-colonial Nigeria, are just some of the practices that lend credence to the existence of a certain level of engagement in pre-colonial Nigeria, that passes for what has become known as international law (Okeke 2015, 387).

Similar to its pre-colonial past, Nigeria has had a history of continued involvement and participation in the development of various forms of international law. Case in point is the role played by acceding to and signing treaties and agreements at the international level and even regional level. Nigeria's leadership role in the African Union, and in the development of diplomatic relations within the Economic Community of West African States (ECOWAS) is further backed up, for example, by its contribution of resources (particularly manpower) to the Economic Community of West African States Monitoring Group (ECOMOG) missions to restore democracy in Sierra Leone and Liberia respectively.

Nigeria continues to play a leadership role in its engagement with international law at the global, continental and regional levels. Having ratified and acceded to numerous international law treaties and instruments, and further domesticating many of them, the question to be asked is whether these instruments continue to have any tangible impact on the development of law in Nigeria? The purpose of this short commentary is not to rehash what has already been written but as indicated already, to comment on the current impact of international law on the Nigerian state and legal system. Against the backdrop of the ongoing war on terrorism, this contribution intends to assess if international law, and the principles emanating therefrom, are of any relevance in the current state of insecurity in Nigeria.

War Against Violence and Terror

The question can be validly asked if Nigeria is at a crossroads in respect of the safety of its people and continuity of the entity called Nigeria? During the past two decades, and more recently, the jihadist group known in Arabic as *Jama'atu Ahlus-Sunna Lidda'Awati Wal Jihad* (Boko Haram) (loosely translated in the Hausa language to mean 'Western civilization is forbidden') has wreaked havoc, and caused untold hardship in the northern part of Nigeria. The ideology and philosophy of Boko Haram is said to oppose any knowledge that contradicts the principles of Islam, and abhorring any idea of western liberalism as a whole. Its acts of terror include attacks on police stations, worship places, public buildings and even public spaces; ransacking of whole villages and massacring of villagers; mass kidnappings of school children and particularly girls, and a host of other dastardly acts. Boko Haram has earned itself a formal designation as a

terrorist organization by the United Nations Security Council (see UNSC SC/11410 press release), the European Union (see the EU Commission Implementing Regulation (EU) No. 583/2014), the United States and other economic groupings.

Nigeria has not been very effective in its counter-terrorism efforts to curb the activities of Boko Haram, and despite suffering heavy losses of life and resources, the activities of Boko Haram have continued. The lack of an adequate response by the Nigerian state to counter the activities of Boko Haram at the onset, has emboldened the group, and led to the group gaining grounds, and at the same time inspiring other networks and groups to carry out illegal and violent acts against citizens for their own gain (case in point the Fulani Herdsmen, who in their seeming quest for access to grazing land for their animals, have gone on a killing spree). In recent times, the confluence of an ineffective response by the Nigerian state and the appeal of violence as a means of agitation, have given rise to, among other things, a staggering increase in the incidents of bombings and kidnappings of people (women, and school students) for ransom. Most times the extorted ransom (though illegal) runs into millions and is paid by the families of the kidnapped to the terrorist organization Boko Haram (and in recent cases to the Fulani herdsmen), in the face of the inability of the state to protect or even to rescue the kidnapped citizens. This is despite the fact that Nigeria is a member of, or signatory to a host of international and regional instruments dealing with the prevention and combatting of the crime of terrorism and its financing. These are instruments such as the United Nations 1999 International Convention for the Suppression of the Financing of Terrorism, which was ratified by Nigeria in 2003; General Assembly resolution A/RES/60/288 adopting a UN Global Counter-Terrorism strategy by consensus (it is designed to assist the approach of member states to counter-terrorism priorities); OAU Convention on the Prevention and Combating of Terrorism, and its 2004 protocol, and the 2002 AU Plan of Action on the Prevention and Combating of Terrorism in Africa. These ransom funds are used by the terrorist group to fund its continued terror activities, without necessarily guaranteeing the release of the kidnapped, nor their lives. The activities of Boko Haram have over time extended across the Lake Chad basin countries (Nigeria, Niger and Chad) and Cameroon, thus destabilizing the subregion and affecting the lives and livelihood of over 17 million people.

The instruments that Nigeria has ratified and acceded to at the international, regional and sub-regional levels impose obligations on the Nigerian state to, inter alia, defend, promote and protect its people; and to ensure that there is an environment of peace and security for its people and its citizenry. This is a clear obligation that every state owes to its people. Unfortunately, merely ratifying and acceding to instruments does not translate into actual protection.

At the regional and subregional levels, as a member of the AU, and also of the Economic Community of West African States (ECOWAS), Nigeria is a signatory to the Peace and Security treaties, protocols and charters of the organization, which are direct strategic steps aimed at strengthening the capacity of African states (through a common approach) to deal with terrorist threats. Subregional arrangements towards combating terrorism are contained under the ECOWAS Conflict Prevention Framework (ECPF), which includes the 1999 Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and Security, and also the ECOWAS Warning and Response Network (ECOWARN) which provides the subregion with the capacity to gather information about potential threats (including terrorism threats), and to proactively act to prevent or mitigate such threats. The Multinational Joint Task Force (MNJTF) of the Lake Chad Basin Countries (LCBC), designed to coordinate military operations at inter-state level, conduct border patrols, and stop the flow of arms and to oversee counter terrorism operations in the region, was reactivated in 2015. It is an initiative of the AU, with the European Union (EU) as one of the main contributors, and is made up of military personnel from the LCBC countries. While this joint force has brought some dividends in stemming the spread of Boko Haram and freeing kidnapped civilians, and ensuring humanitarian aid reaches communities ravaged by the terrorists; it suffers from structural limitations, funding and procurement delays that have affected the effectiveness of the joint force in stopping terrorism activities in the region.

For its own part, Nigeria passed the Terrorism (Prevention) Act of 2011 into law (and amended in 2013 to provide for an extra-territorial jurisdiction). This Act sought to domesticate and effect the implementation of the Convention on the Prevention and Combating of Terrorism, and the Financing of Terrorism in Nigeria. These initiatives, among others, have not been sufficient to stem the tide of violence and kidnappings that is now rampant in northern and north-eastern parts of Nigeria, and spreading further inland and southward in the

name of the Fulani herdsmen.

It is important to highlight the impact of the terror activities on the population. As things stand, if the question were to be asked if the Nigerian state, in view of its failure to gain an upper hand in the war against the terror groups, has been able to ensure that it fulfils its obligations to its citizens under the various provisions in international law, the answer would be in resounding negative. The Nigerian state has failed in this regard, its historical and current involvement in numerous peace and security initiatives, and in enforcing international law on the continent notwithstanding. The obligation of the Nigerian state to its population is further entrenched by the principle of responsibility to protect (R2P). Adopted by the United Nations General Assembly (UNGA) at the 2005 World Summit, it is a key principle of international law that encapsulates the duties and responsibilities of a member state, in a situation of conflict and war. This principle highlights the importance of supporting the national rule of law and human rights institutions to ensure that governments have all the tools necessary to comply with their obligations to protect their populations from the specific crimes of genocide, crimes against humanity, war crimes and ethnic cleansing; and in cases where the state is unwilling or unable to do so, the international community has the additional responsibility to either coerce or use force to ensure that it affords such protections to the population at risk.

Though not legally binding on the international community, the R2P principle is however based on treaty obligations which are legally binding, and which Nigeria has acceded to. These are the Genocide Convention, the Geneva Conventions and additional protocols, and the Rome Statue of the International Criminal Court. The Nigerian government thus has an obligation to protect its population from the kinds of crimes that we have seen Boko Haram and other groups mete out on a defenseless population, unfortunately this has not been the case.

This discussion naturally leads us to the issue of the binding nature of international law. Though binding on states who have agreed to be bound by particular instruments, or binding by virtue of customary international law, international law at the same time has the sovereignty of nation states as its very basis, which one dares to say, is its Achilles' heel. Even though, means of trying to effect compliance exist, such as persuasion, coercion and sanctions,

and in some extreme cases, the use of force in a bid to maintain international peace and security as sanctioned by the UNSC (see chapter VII of the UN Charter), in the case of Boko Haram these measures have proven to either be late in implementation, or un-sustained, and therefore ineffective. Boko Haram has thrived at enormous costs to human life and capital, with well over 35,000 people killed, and over 2 million people displaced as a result of its activities in Nigeria, Nigeria's international law involvement and obligations notwithstanding. A multifaceted approach needs to be explored, which not only seeks to abate the violence through military means, but which also deals with the efforts to deliver public services, reduce the attraction that terrorist groups hold for the youth by improving the conditions for the citizenry, especially residents in hard-hit areas, establish popular trust in public authority, offer militants paths to demobilize safely and even potentially engage some in talks. All of these measures need to be applied and implemented conjunctively. As the activities of this terrorist group continues in Nigeria, and in the Lake Chad basin region, one waits to see if international law and its implementation will prove to be effective in stemming the activities of Boko Haram in the region.

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