

RELEVANCE OF INTERNATIONAL HUMANITARIAN LAW TO THE DEPLOYMENT OF MULTINATIONAL FORCES: A FOCUS ON NORTH-EASTERN NIGERIA¹

Abstract

Since 2009, Nigeria has been faced with the challenging of combating Boko Haram insurgency. The insurgents are mainly operating in the North-eastern part of Nigeria particularly in Adamawa, Borno and Yobe states. To assist the government in combating this threat to its sovereignty, there has been created a multinational joint task force, under the auspices of the African Union Peace and Security Council. The force, made up of 8700 military and civilian personnel is in place but is yet to become operational. This paper examines the relevance of international humanitarian law (IHL) to the deployment of multinational forces, focusing on the soon-to-be operational multinational joint task force to assist in North Eastern Nigeria. It discusses the origins of the multinational force, its legal basis, as well as the relevance of the IHL to its operations. It also points out some of the rules of IHL which the multinational force must comply with in spite of difficulty to do so.

Key words: Multinational Force, Multinational Joint Task Force, Non-international Armed Conflict, Boko Haram, African Union Peace and Security Council

1. Introduction

A multinational force can be said to be a military one consisting of troops from two or more states acting in concert to reach a common goal. The use of multinational forces in warfare is not new as alliances have been formed time and again over the course of history, by states during warfare, to achieve their various goals. It has been noted that more than ever before, multinational forces are increasingly adopted today as the means of executing military operations.² Cost-effectiveness as well as the ‘potential for increased legitimacy’ is touted as some of the advantages of the use of multinational forces.³ Pooling resources can indeed make for more efficient and effective use of personnel and material thus reducing costs, while the very act of the alliance or coalition has the effect of boosting or strengthening the cause of the allies, appearing to give additional legitimacy⁴ to such cause as this signifies broader approval of the action.

Multinational operations utilizing multinational forces are mainly undertaken today either under the United Nations (UN) command and control, or that of a regional organisation such as the North Atlantic Treaty Organisation (NATO), African Union (AU), Economic Community of West African States (ECOWAS), etc. acting with UN authorisation.⁵ These multinational forces are deployed with specific mandates in mind, i.e. to achieve a particular purpose. The specific mandates of multinational operations

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²M Zwanenburg, “International Humanitarian Law Interoperability in Multinational Operations,” *International Review of the Red Cross* (2013), 95 (891/892) p. 681.

³*Ibid.*

⁴V Bernard, “Editorial- Multinational Operations and the Law- Great Expectations, Great Responsibilities,” *International Review of the Red Cross* (2013), 95 (891/892) p. 475.

⁵*Ibid.* The United Nations Charter 1945, in its Article 2(4) prohibited the threat or use of force in international relations between States except for use in individual or collective self-defence (Article 51, UN Charter) which must also be reported back to the United Nations Security Council. The Charter also set up a collective security system in its Chapter VII under which threats to international peace and security are collectively responded to by States through force where necessary, by enforcement action (see Article 42, UN Charter). Such collective enforcement action may be carried out under the control of the UN directly or the UN may authorise a regional body or even a group of States to so carry out such action. The forces used to achieve peace in these instances are usually multinational forces because of the coalition of States as the UN and such regional organisations do not have troops of their own. Any collective self-defence undertaken under Article 51 of the UN Charter would also naturally involve the use of multinational forces.

worldwide can broadly be classified into two types, namely, Peacekeeping and Peace Enforcement Operations.

Peacekeeping operations are deployed in principle, ‘in support of a ceasefire or other agreed upon peace measures.’⁶ The operations are literally to ‘keep the peace’ on ground. The UN is the world’s leading peacekeeping body with peacekeeping formally starting with the UN mission in 1956 during the Suez Canal Crisis⁷ as a ‘form of impartial interposition between belligerents.’⁸ Traditional UN peacekeeping has three fundamental principles⁹ which are consent of the parties to the conflict; impartiality and non-use of force except in self-defence and defence of the mandate. No less than 69 peacekeeping operations have been deployed by the UN over the years with increasingly robust mandates not necessarily restricted to ensuring a ceasefire but so multidimensional as to include facilitating political process, protection of civilians, protection and promotion of human rights, restoration of the rule of law, etc.¹⁰

On the other hand, peace enforcement involves “the application of a range of coercive measures, including the use of military force.”¹¹ It is used to enforce peace rather than keep the peace. Peace enforcers are usually heavily armed and participate fully in hostilities to create a state of peace. They are “active fighters who must force a cease-fire that is opposed by one or both combatants; in the process, they lose their neutrality.”¹² Thus, unlike peacekeeping operations, peace enforcement operations do not involve the consent of at least one of the parties to the conflict and uses the maximum force required to create peace, with the peace enforcement force being an active participant in the conflict at hand. The UN peace enforcement missions are conducted under Chapter VII of the UN Charter which deals with collective measures, coercive ones included,¹³ to be taken for the maintenance of international peace and security.

2. Application of International Humanitarian Law to Multinational Operations

It has been a matter of debate whether or not multinational forces engaged in peace operations — peacekeeping and peace enforcement — can be parties to an armed conflict and thus be bound by International Humanitarian Law (IHL). The argument is said to be centred on the premise that ‘peace forces generally operate on behalf of the international community as a whole, thus precluding them from being qualified as either a ‘party’ to an armed conflict or a ‘power’ within the meaning of the Geneva Conventions of 1949 and, hence from being a belligerent under IHL.’¹⁴

However, the strict division or ‘long-standing distinction’ between *jus ad bellum* and *jus in bello* in public international law leaves no room for such arguments to stand. The legitimacy or not of the use

⁶Encyclopedia Princetoniensis, ‘Peacekeeping/Peace Enforcement,’ <pesd.princeton.edu/?q=node/259> accessed on 4 June 2015. Peacekeeping has also been described as military operations conducted with the consent of belligerent parties to maintain negotiated truce and to facilitate diplomatic resolution.” GlobalSecurity.org, ‘Military: Chapter II- Peacekeeping,’ <www.globalsecurity.org/military/library/report/call/call-93-8_chap2.htm> accessed on 4 June 2015.

⁷ The UN Emergency Force (UNEF I) deployed to the Suez Canal during the Suez Crisis is stated to be the first formally named peacekeeping mission undertaken by the UN. See V Bernard (n. 4) p. 476.

⁸ R Hatto, ‘From Peacekeeping to Peacebuilding: The Evolution of the Role of the United Nations in Peace Operations,’ *International Review of the Red Cross* (2013), 95 (891/892) p. 495. It is noted that UN peacekeeping was an improvisation born majorly out of the tensions of the Cold War between the United States and the former Soviet Union which virtually rendered dormant Chapter VII of the UN Charter. As a result, the UN had to look for alternative ways or “less ambitious measurements than collective security” to ensure international peace and security. See *ibid*, p. 497.

⁹*Ibid*, p. 503.

¹⁰*Ibid*, p. 496. See also United Nations Peacekeeping, ‘Peace and Security,’ <www.un.org/en/peacekeeping/operations/peace.shtml> accessed on 5 June 2015.

¹¹*Ibid*.

¹²GlobalSecurity.org, ‘Military: Chapter III- Peace Enforcement,’ <www.globalsecurity.org/military/library/report/call/call-93-8_chap3.htm> accessed on 4 June 2015.

¹³ See Article 42 of the United Nations Charter.

¹⁴T Ferraro, ‘The Applicability and Application of International Humanitarian Law to Multinational Forces,’ *International Review of the Red Cross* (2013), 95 (891/892) p. 583

of armed force by multinational forces acting for the preservation of international peace and security by virtue of an international mandate falls within the realm of *jus ad bellum* and thus cannot affect the applicability or not of IHL rules to actions of the multinational forces in the field. Thus, the question whether or not multinational forces can be parties to an armed conflict and thus bound by IHL, depends on an analysis of circumstances prevailing in the field (prevailing facts) to determine if the legal conditions necessitating the applicability of IHL stated in Common Articles 2 and 3¹⁵ of the Geneva Conventions of 1949 are fulfilled.¹⁶ This view goes to protecting the integrity of IHL and ensuring the principle of equality between belligerents.¹⁷ It also aligns with decisions by international judicial bodies that the applicability of IHL rules should be determined via an examination of circumstances on ground, rather than rest on the views of participants in the hostilities.¹⁸

Given that the applicability of IHL to peace operations as a whole is determined by circumstances on ground, the mandate or not of the mission whether as a peacekeeping or peace enforcement mission does not determine the applicability of IHL to the actions of the multinational forces. While it is true that a peace enforcement mission is more likely to engage in the use of force than peacekeeping missions, that is not always so. Deployment of a multinational force following a resolution under Chapter VII of the UN Charter, for example, does not automatically make such force a party to an armed conflict. What is to be considered is whether or not such forces were actually drawn into hostilities on ground and resorted to the use of force.¹⁹ The multidimensional nature of peacekeeping operations today as noted above also increases the likelihood of a resort to force by such forces, or peacekeeping troops may be drawn into conflict which requires them to resort to force. All these may well make forces with a peacekeeping mandate parties to an armed conflict and thus bound by IHL rules. Therefore, as stated by Ferraro:

The volatile environment in which multinational forces are more frequently operating means that less emphasis must be placed on the label given to the mission and that, in line with IHL, rather than focusing on whether the nature of the mission comes under Chapter VI or Chapter VII, an analysis must be made of the actual circumstances prevailing on the ground.²⁰

¹⁵ Common Articles 2 and 3 deal with the scope of the application of IHL. Common Article 2 deals with international armed conflicts while Common Article 3 deals with non-international armed conflicts. It is noted that Article 1(4) of the Additional Protocol I to the Geneva Conventions expands the meaning of international armed conflicts and that Additional Protocol II to the Geneva Conventions “develops and supplements” Common Article 3.

¹⁶T Ferraro (n. 14) p. 565. See International Committee of the Red Cross (ICRC), ‘International Humanitarian Law and the Challenges of Contemporary Armed Conflict,’ *Report of the 31st International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 28 November-1 December 2011*, p. 30 and 31. (available at <www.icrc.org/en/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf> accessed on 6 June 2015)

¹⁷*Ibid.*, p. 574. The purpose of IHL is to mitigate suffering in war and thus to protect persons who are not participants in hostilities or who are no longer participants in hostilities in an armed conflict. This it does without reference to the legality or not of the armed conflict. The preamble to the Additional Protocol I of the Geneva Conventions makes this point when it states as follows in its paragraph 5: “Reaffirming further that the provisions of the Geneva Conventions... and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict.”

¹⁸For example, in *The Prosecutor v. Milutinovic*, Case No.IT-05-87-T, Judgment (Trial Chamber), 26 February 2009, para. 125, the International Criminal Tribunal for the Former Yugoslavia (ICTY) reiterated that “the existence of an armed conflict does not depend upon views of the parties to the conflict.”

¹⁹ An example is given of the deployment of European Union forces in 2003 to the Democratic Republic of Congo. The EU forces are said to not have been drawn into hostilities despite having been deployed under a resolution adopted under Chapter VII of the UN Charter. Since there was no need to resort to force on the part of the troops, they never had need to apply IHL rules and were never a party to the conflict in the DRC. See T Ferraro (n. 14) p. 565, footnote 9.

²⁰ See *ibid.* Missions under Chapter VI refer to peacekeeping missions. Chapter VI of the UN Charter deals with “Pacific Settlement of Disputes.” UN Peacekeeping is said to be traditionally associated with Chapter VI of the

3. Deployment of Multinational Forces in North-Eastern Nigeria

Nigeria has for a while been faced with combating Boko Haram insurgency. Boko Haram, a radical Islamic sect operating mainly in North-eastern Nigeria (Borno, Yobe and Adamawa states)²¹, is intent on creating an Islamic state in Nigeria and launched military operations in 2009 to achieve that.²² The Nigerian government has sought for international help in combating the insurgency and transnational efforts have been made to combat the insurgency. A prime example is the Multinational Joint Task Force (MNJTF) made up mostly of troops from Chad, Niger and Nigeria. The MNJTF was established in 1998 with the aim of fighting trans-border crime²³ in the Lake Chad region.²⁴ The force had mostly been dormant until it recently focused on combating Boko Haram having been so mandated in April 2012, to conduct joint counter-terrorism/counter-insurgency operations. The force was active²⁵ in the North-eastern region with its headquarters at Baga, Borno State.²⁶ From the actions of the MNJTF which included actual combat against Boko Haram to halt their activities and not merely to preserve an existing peace on ground and its mandate expanded in 2012 to include counter-insurgency actions, it is clear that this was a peace enforcement operation.

Efforts have been made to make the MNJTF better operational. In October 2014, member States of the Lake Chad Basin Commission i.e. Cameroon, Chad, Niger and Nigeria together with Benin Republic, in improving their cooperation against the insurgency, pledged more troops to the MNJTF, an arrangement that should have become operational in November 2014.²⁷ This however never happened. The current status of this MNJTF is unknown.

On the other hand, the creation of another Multinational Joint Task Force (MNJTF) to combat Boko Haram is underway. On 19 January 2015, the UN Security Council (UNSC) issued a presidential statement called for the creation of a “sustainable, viable and effective” MNJTF to combat Boko Haram.²⁸ Also on 20 January 2015, a Meeting of Ministers of Foreign Affairs and Defence²⁹ on the Security Situation in Nigeria and the fight against Boko Haram met in Niamey, Niger for the purpose

Charter although it has never been invoked in that regard as the UNSC does not need to refer to any specific chapter of the UN Charter when “passing a resolution authorizing the deployment of a UN peacekeeping mission.” United Nations Peacekeeping, ‘Mandates and the legal basis for peacekeeping,’ <www.un.org/en/peacekeeping/operations/pkmandates.shtml> accessed on 4 June 2015.

²¹ The activities of Boko Haram spread to other States and cities such as Bauchi, Kano, Abuja, Gombe, and even go across border into the border towns of Cameroon, Chad and Niger. These cross-border activities by Boko Haram have made the insurgency more of a regional than a mere Nigerian problem.

²² Farouk Chotia, ‘Who are Nigeria’s Boko Haram Islamists?’ *BBC News*, May 4, 2015 <www.bbc.com/news/world-africa-13809501> accessed on 5 June 2015.

²³ Smuggling, trafficking and banditry.

²⁴ See ‘Boko Haram Seizes Army Base in Nigerian town of Baga,’ *BBC News*, January 4, 2015 <www.bbc.com/news/world-africa-30672391> accessed on 5 June 2015.

²⁵ See Senator Iroegbu, ‘How Gwoza, - Boko Haram Hqtrs, was Liberated- Olukolade,’ *ThisDay Live* March 27, 2015 <www.thisdaylive.com/articles/how-gwoza-boko-haram-hqtrs-was-liberated-olukolade/205235/> accessed on 4 June 2015, for some of the activities of the MNJTF against Boko Haram.

²⁶ This headquarters was overrun by Boko Haram insurgents after a long battle with soldiers. See ‘Boko Haram seizes military base in Borno- Witnesses,’ *Vanguard Nigeria*, January 4, 2015 <www.vanguardngr.com/2015/01/boko-haram-seizes-military-base-borno-witnesses/> accessed on 4 June 2015. The new headquarters is purportedly in N’Djamena, Chad.

²⁷ I Zamfir (March 2015), ‘African-led Counter-Terrorism Measures against Boko Haram,’ <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/551302/EPRS_ATA\(2015\)551302_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/551302/EPRS_ATA(2015)551302_EN.pdf)> accessed on 5 June 2015, p. 2.

²⁸ See ‘UN urges Military Action against Boko Haram,’ *France 24*, January 20, 2015, <m.france24.com/en/2015120-un-security-council-military-action-boko-haram-nigeria> accessed 15 June 2015.

²⁹ Of the following States- Benin, Cameroon, Equatorial Guinea, Chad, Niger and Nigeria. Representatives of Canada, China, France, the United States of America, The European Union, The Economic Community of West African States (ECOWAS), the Organization of Islamic Countries (OIC), the African Union (AU), the Lake Chad Basin Commission and the Community of Sahel-Saharan States (CEN-SAD), were also in attendance at the meeting.

of facilitating the creation of the MNJTF.³⁰ In its resolutions,³¹ the meeting welcomed the presidential statement of the UNSC; requested a report on regional and international efforts in the fight against Boko Haram to be submitted to the African Union Peace and Security Council (AU PSC) for an authorisation of the deployment and mandate of the MNJTF; called for a meeting under the auspices of the African Union Commission, of experts during the first week of February 2015 to finalize the concept of operations and other relevant document necessary for the “full operationalization” of the MNTJF; and also requested a transmission of the finalized concept of operations of the MJNTF and the communicate of the AU PSC authorising the MJNTF to the UNSC for a resolution authorising the MNJTF and also establishing a fund for the Force.³²

The AU PSC on 29 January, 2015 authorised the deployment of the MNJTF comprising of 8,700 military and civilian personnel, for an initial period of 12 months.³³ The mission of the MNJTF as authorised by the AU PSC is to “create a secure environment, restore state authority and facilitate humanitarian assistance in the affected areas.”³⁴ The AU PSC has in turn asked the UNSC to authorise the multinational peace operation via a resolution as well as set up a trust fund. Also, the meeting of experts called for under the auspices of the AU Commission on the elaboration of operational documents for the MNJTF was held from 5 to 7 February 2015 in Yaoundé, Cameroon.³⁵ During the meeting, the draft concept of operation (CONOPS) was finalised.³⁶ On 12 June 2015, the draft CONOPS was approved. The CONOPS among others defines the MNJTF’s mandate; outlines its area of operation; outlines the establishment of a central military command; and outlines a joint coordination mechanism for the control of the MNJTF troops.³⁷ This MNJTF is however yet to become fully operational.

4. Relevance of IHL to the Deployment of the MNJTF in North-Eastern Nigeria

It has been made clear above that whether or not multinational forces are engaged in an armed conflict (regardless of whether the mandate is a peacekeeping or peace enforcement) is a question of facts to be determined by circumstances prevailing on ground as against the view that multinational forces are never parties to an armed conflict or can never be truly said to engage in an armed conflict. In the case of the deployment of multinational forces in Nigeria, there already was an armed conflict on ground, a non-international armed conflict³⁸ between Nigeria and Boko Haram,³⁹ before the deployment.

³⁰ See United Nations Security Council, ‘Annex to the Letter dated 22 January 2015 from the Permanent Representative of the Niger to the United Nations addressed to the Secretary-General,’ <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/551302/EPRS_ATA\(2015\)551302_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/551302/EPRS_ATA(2015)551302_EN.pdf)> accessed on 4 June 2015.

³¹ *Ibid.*

³² *Ibid.*, conclusions 4 and 11.

³³ Global Centre for the Responsibility to Protect, ‘Nigeria,’ <www.globalr2p.org/regions/nigeria> accessed on 3 June 2015.

³⁴ I Zamfir (n.27), p. 2. More specific tasks of the MNJTF include “conducting military operations, achieving coordination at inter-state level, conducting border patrols, finding abducted persons, stopping the flow of arms, reintegrating insurgents into society and bringing those responsible for crimes to justice.” *Ibid.*

³⁵ African Union, ‘Experts Meeting on the Elaboration of Operational Documents for the Multinational Joint Task Force (MNJTF) of the Member States of the Lake Chad Basin Commission and Benin against the Boko Haram terrorist group,’ <www.peaceau.org/en/article/experts-meeting-on-the-elaboartion-of-operational-documents-for-the-multinational-joint-task-force-mnjtf-of-the-member-states-of-the-lake-chad-basin-commission-and-benin-against-the-boko-haram-terrorist-group> accessed on 4 June 2015.

³⁶ *Ibid.*

³⁷ ISS Africa, ‘PSC to Approve Final Plans for the Regional Fight against Boko Haram,’ <www.issafrica.org/pscreport/on-the-agenda/psc-to-approve-final-plans-for-the-regional-fight-against-boko-haram> accessed on 16 June 2015.

³⁸ A non-international armed conflict was defined by the Appeals Chamber of the ICTY as a “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” *Prosecutor v. Tadic*, IT-94-1-AR72.

³⁹ The on-going conflict between Nigeria and Boko Haram has been determined to be a non-international armed conflict by the Office of the Prosecutor of the International Criminal Court in November 2013 in a report titled; ‘Report on Preliminary Examination Activities 2013.’ The report states: “The required level of intensity and the

However, it is noted that “deployment in a conflict zone does not necessarily mean that multinational forces become a party to the armed conflict affecting the area in question.”⁴⁰ Such forces become a party to the conflict and thus bound by IHL rules in their operations only when the conditions for the applicability of IHL are met.⁴¹

At this point, it is worthy to note that any armed conflict between the multinational forces and Boko Haram cannot be an international armed conflict as an international armed conflict results from the resort to armed force between two or more states. Boko Haram is not a state so that takes it out of question. Boko Haram being a non-state armed group, the armed conflict can only be a non-international one.

Generally,⁴² two conditions must be fulfilled before a non-international armed conflict (NIAC) is said to exist i.e. the conflict must be between “two or more parties demonstrating a certain level of organisation;” and the fighting must have reached a “certain threshold of intensity.”⁴³ For the determination to be made that the armed conflict between Nigeria and Boko Haram is a NIAC within the meaning of IHL, Boko Haram necessarily has passed the level of organisation test.⁴⁴ For the MNJTF, going by the structure and organisation of multinational forces, they are said to inherently meet the level of organisation required for the existence of a non-international armed conflict.⁴⁵ Thus, the first condition for the existence of a NIAC is fulfilled. Turning to the second condition, intensity, in its evaluation, the following elements can be taken into consideration:

number, duration and intensity of individual confrontations; the types of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces participating in the fighting; the number of casualties; the extent of material destruction; the number of civilians fleeing combat zones; and whether fighting is widespread.⁴⁶

level of organisation of parties to the conflict necessary for the violence to be qualified as an armed conflict of non-international character appear to have been met.” See Tobi Soniyi, ICC declares Conflict in N’Eastern Nigeria Civil War,” *ThisDay Live*, November 25, 2013, <www.thisdaylive.com/artices/icc-declares-conflict-in-n-eastern-nigeria-civil-war/165171> accessed on 5 June 2015. The ICC report is available at <http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/OTP%20Preliminary%20Examinations/OTP%20-%20Report%20%20Preliminary%20Examination%20Activities%202013.PDF> The view of the ICC as to the level of organisation of Boko Haram so as to meet the condition for the determination of a non-international armed conflict is adopted in this paper.

⁴⁰ T Ferraro (n.14), 575.

⁴¹ *Ibid.*

⁴² It is noted that Additional Protocol II to the Geneva Conventions in its Article 1(1) defines a non-international armed conflict much more restrictively than Common Article 3. It introduces a territorial requirement into the definition, requiring that the non-state actor in the armed conflict “exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations” and implement the provisions of the Protocol. It is arguable that if this narrower test requiring territorial control is applied to the conflict with Boko Haram, the conflict will still be decided as a NIAC considering the large patches of territory and entire towns that have been under the control of Boko Haram in recent times. Thus there is no difference if the status of the conflict is determined strictly under Common Article 3 or together with Additional Protocol II. However, it is submitted that since Article 1(1) of Additional Protocol II states that the Protocol “develops and supplements” Common Article 3 “without modifying its existing conditions of application,” a determination of a NIAC under the strict terms of Additional Protocol II is necessary only for the application of the provisions of the Protocol. Internal conflicts that fall short of the Additional Protocol II test but which pass the wider test as under Common Article 3 are still NIACs properly so called, with the provisions of Common Article 3 and IHL rules that have become part of customary international law applicable in such instances. See generally T Ferraro (n.14), p. 577, footnote 48.

⁴³ T Ferraro *ibid.*, p. 576.

⁴⁴ See the ICC report mentioned in footnote 36 above.

⁴⁵ See generally, T Ferraro (n.14), p. 576-577.

⁴⁶ *Ibid.*

Concerning this second condition, this will have to be judged from the circumstances on the field, when the MNJTF created under the auspices of the AU becomes fully operational. Judging pre-emptively from the mission of the multinational force stated above to wit: “create a secure environment, restore state authority and facilitate humanitarian assistance in the affected areas,”⁴⁷ it is expected that the actions of the MNJTF will fulfil the second condition for the determination of the existence of a non-international armed conflict between itself and the Boko Haram group.

The situation in Nigeria would thus be such that there would be on the one hand a NIAC between Nigeria and Boko Haram, and a NIAC existing simultaneously between the MNJTF and Boko Haram at the same time. This sort of situation has been referred to as a multinational NIAC.⁴⁸ A multinational NIAC has been defined as “an armed conflict in which multinational armed forces are fighting alongside the armed forces of a ‘host’ state, in its territory, against one or more organised armed groups.”⁴⁹ Since all the state actors and entities endowed with international legal personality⁵⁰ are on the same side of the conflict, the conflict thus remains a non-international armed conflict and is not internationalised or one of mixed character.⁵¹ A fragmented approach⁵² to the “relationship between belligerents” leads to this conclusion.⁵³

5. International Humanitarian Law Obligations on Multinational Forces in Non-International Armed Conflict Situations

Having submitted that the rules of International Humanitarian Law that are applicable to non-international armed conflicts are relevant in this conflict, it is apt at this point to at least, highlight those rules. Generally, the following international instruments on International Humanitarian Law are applicable in non-international armed conflict situations. There is therefore an obligation on the part of the multinational forces involved in such conflicts to abide by them in their operations. They are:

- a) Article 3 Common to the Four Geneva Conventions of 1949;⁵⁴
- b) Article 4 of the Hague Convention of 1954 for the Protection of Cultural Property;⁵⁵
- c) Protocol II of 1977 Additional to the Geneva Conventions of 12 August 1949;⁵⁶

⁴⁷ See note 33 above.

⁴⁸ T Ferraro (n.14), 597.

⁴⁹ *Ibid.* See International Committee of the Red Cross (ICRC), ‘International Humanitarian Law and the Challenges of Contemporary Armed Conflict’ (n.16) p. 10.

⁵⁰ Such as the MNJTF in this case being a multinational force deployed by a sub-regional group, the Lake Chad Basin Commission which has international legal personality.

⁵¹ *Ibid.* An armed conflict of mixed character or an internationalised armed conflict is said to be ‘internal hostilities that are rendered international.’ James Stewart, ‘Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict,’ <http://www.mkkk.org/eng/assets/files/other/irrc_850_stewart.pdf, 315> accessed 5 June 2015.

This could be a result of an intervention by a state in support of a party to the non-international armed conflict (NIAC) or if some parties in the NIAC are in fact acting as proxy for another state. See *Prosecutor v. Tadic*, T-94-I-A, Judgement, 15 July 1999, paragraph 84.

⁵² i.e. “examining and defining every bilateral relationship between belligerents in terms of IHL” separately. Ferraro, 596. See International Committee of the Red Cross (ICRC), “International Humanitarian Law and the Challenges of Contemporary Armed Conflict” (n.16), p. 31.

⁵³ See generally *ibid.*, 596-599 for a discussion on contrary views.

⁵⁴ The Four Geneva Conventions of 1949 are as follows- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I), Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II), Geneva Convention relative to the Treatment of Prisoners of War (Geneva Convention III), Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV). (Entry into force in 1950.)

⁵⁵ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954. (Entry into force in 1956.)

⁵⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 1977. (Entry into force in 1978.)

- d) The Convention on Certain Conventional Weapons of 1980, its Protocols I to IV (through amended Article 1) and Protocol V;⁵⁷
- e) The Ottawa Convention of 1997 banning Anti-personnel Mines;⁵⁸
- f) The Second Protocol of 1999 to the Hague Convention for the Protection of Cultural Property;⁵⁹
- g) The Optional Protocol of 2000 to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict;⁶⁰
- h) Protocol III of 2005 additional to the Geneva Conventions.⁶¹

While most of these instruments are generally applicable to all armed conflict situations, Article 3 Common to the Four Geneva Conventions of 12 August 1949 as well as Protocol II of 1977 Additional to the Geneva Conventions of 1949 are specifically relevant to Non-International Armed Conflicts. The minimum obligation is contained in the Common article 3 as follows:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, according all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

⁵⁷Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 1980. (Entry into force in 1983.)

⁵⁸Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997. (Entry into force in 1999.)

⁵⁹Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict of 1999. (Entry into force in 2004.)

⁶⁰The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 2000. (Entry into force in 2002.)

⁶¹Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) of 2005. (Entry into force in 2007.)

This provision has been described as a “convention in miniature” because it contains within it the basic minimum standards of international humanitarian law applicable in conflict situations⁶². The International Court of Justice reinforced this view, stating that the rules in common Article 3 reflects elementary considerations of humanity applicable under customary international law to any armed conflict.⁶³

For non-International armed conflicts which have attained a high level of intensity, the Common article 3 is supplemented by the provisions of Additional Protocol II of 1977. Its scope is more restricted than that of common Article 3; it applies only to conflicts between a State’s armed force and “dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”⁶⁴

Additional Protocol II is only activated in case of a non-international armed conflict waged between the governmental armed forces and an insurgent group or groups. It does not involve the conflicts between insurgent groups or various armed groups within a territory of a single State.⁶⁵ Also, the insurgents have to be under a responsible command, which implies some degree of organization of the insurgent armed group or dissident armed forces. However, this does not necessarily entail that a hierarchical system of military organization similar to that of regular armed forces should be present.⁶⁶ It merely means an organization capable, on the one hand, of planning and carrying out sustained and concerted military operations, and on the other, of imposing discipline in the name of a de facto authority.⁶⁷ The insurgents should exercise control over a certain amount of territory of the State as to enable them to carry out sustained and concerted military operations and to implement this Protocol.⁶⁸

It is submitted that the Boko Haram conflict meets these criteria for the activation of the Additional Protocol II and therefore, the following must thus also be observed:

- a) Protection of the wounded and sick: In this regard, all wounded and sick must be respected, protected and treated humanely, medical units and transport must be protected and respected and the use of the distinctive emblem of the Red Cross must be respected.
- b) The civilian population and individual civilians must not be made the object of attacks as long as they do not take direct part in hostilities. The problem with this provision, however, is that the Boko Haram insurgency is not a conventional warfare. In many instances, it is difficult to identify the insurgents since they do not properly distinguish themselves. Again, most of their operations have involved suicide missions carried out by persons who are not in any way adorned as combatants. It is therefore difficult for the soldiers to distinguish between civilians and the insurgents.
- c) Starvation of civilians as a method of warfare is also prohibited. This protection also includes the protection of materials and objects which are indispensable to the survival of the civilian

⁶²The Law of Armed Conflict, Lesson 10: Non-International Armed Conflict,’ <www.icrc.org/eng/assets/files/other/law10_final.pdf> p.5, accessed on 6 June 2015.

⁶³Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States*), 1986 I.C.J. Reports p.114, paragraphs 218 and 219.

⁶⁴See Article 1(1) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II) of 8 June 1977. See also, M Mack, ‘Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts,’ (Geneva: ICRC, 2008), p.9.

⁶⁵ S Verhoeven, ‘International and Non-International Armed Conflicts,’ in *Institute for International Law K.U. Leuven*, Working Paper No. 10, 2007, p. 10.

⁶⁶*Ibid*, 10

⁶⁷ SS Junod, *Commentaire des Protocoles Additionels du 8 Juin 1977 aux Conventions de Genève du 12 août 1949*, (Geneva, International Committee of the Red Cross: 1986), p. 1376. Cited and quoted in S Verhoeven (n.65), 10.

⁶⁸*Ibid*, 11

- population. In its operations therefore, the MNJTF must ensure that foodstuffs, crops, livestock, drinking water installations and irrigation works are not objects of attack.
- d) Potentially dangerous locations like dams, dykes must not be attacked.
 - e) There must be humane treatment for all victims. Thus, "all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions, and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors."⁶⁹

6. Conclusion

In this paper, we have discussed the applicability and relevance of international humanitarian law to the deployment of multinational forces to combat the Boko Haram insurgents in North-Eastern Nigeria. In doing this, we have discussed the origin of the MNJTF as well as the relevant rules of international humanitarian law which the multinational force must comply with in its operations. Although it has been observed that the nature of the insurgents' operations makes it difficult to respect some aspects of the provisions of IHL, efforts must be made by the MNJTF to comply as much as possible with the rules.

⁶⁹Article 4(1), Additional Protocol II.