

NATURE OF TERRORISM AND ANTI-TERRORISM LAWS IN NIGERIA*

Abstract

Terrorism poses an unprecedented threat to Nigeria's national security interest, and indeed, the very existence of the Nigerian State. The paper examines the definition and forms of acts of terrorism in Nigeria with a view to understanding the continual existence of the menace despite measures adopted by the government to counter terrorism. Nigeria has witnessed various conflicts with features of terrorism although an attempt to label such acts as terrorism had met with stiff oppositions. Hence, terrorism remained undefined under Nigerian law for a long time. The absence of a specific anti-terrorism law to prosecute terrorism related cases had been a clog on prosecution of terrorism related cases, but with the enactment of the Terrorism Prevention Act 2011, this obstacle has been overcome. Going by the definition of acts of terrorism as provided for under the Act, motive is one of the reasons why terrorism is treated differently from other criminal acts. Religious motive for the advancement of terrorism is what is being witnessed in Nigeria today. Hence, a multi-sector approach especially, religious, legal and political means towards ending terrorism in Nigeria is recommended.

Keywords: *Terrorism; Nature, Evolution, Boko Haram, Militancy in Nigeria.*

1. Introduction

Terrorism is a concept of both national and international contestations. Nigeria has suffered various terrorist attacks in the past. It is presently witnessing violent terrorist acts and future terrorist threats are still likely to occur. The nature and historical development of terrorism in Nigeria is an indication of how the country has gradually transformed from a once peaceful and quiet society to a modern state where acts of terrorism are threatening the very existence of the Nigerian state. Nigeria has had a long and unfortunate history of communal conflicts, ethnic and religious violence. Although activities of different groups that target civilians are terrorist in nature, the attempts by the government to use this label may have created some confusion. Hence, terrorism remained undefined for a long time under Nigerian law¹. In Nigeria, there have been various groups agitating for political, philosophical, ideological, racial, ethnic and religious interests of their people and groups. These ethnic militia groups often unleashed terror and attacks against the security forces. Depending on one's perspective and understanding of the motivations of each group, there is a tendency to define the groups using different terms: self-determination groups, nationalist, guerrilla fighters, rebels, urban youth gangs or terrorists². It is debatable whether the use of terror by these groups qualified all of them to be referred to as terrorists.

2. Terrorism: Conceptual Foundation and Context

This section provides a cursory overview of the definition of terrorism as the concept that has no settled definition in the international level. Despite several attempts to define the concept in the past, the diverging views of sovereign states of the UN have made it hard to reach a consensus. There are more than dozen UN legal instruments on terrorism³. It is apt to state that none of these instruments specifically defines terrorism.

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¹ B.O. Adeyomi, 'Terrorism in Nigeria: Groups, Activities and Politics'. *International Journal of Politics and Good Governance* vol. 11, 2010.

² A. Mu'azu, *Understanding the Emerging Trends of Terrorism in Nigeria: A Case of Boko Haram and similar Groups*, 2011. In *Responding to the Emerging Trends of Terrorism in Nigeria*. Conference Proceedings. CLEEN Foundation. No. 16.

³Examples include, Convention on the Prevention Punishment of Crime against internally protected Diplomatic Agents adopted by the General Assembly of the UN on 14 December 1973, International Convention against the Taking of Hostages, adopted by the GA on 17 December 1979; International Convention for the Suppression of

Some writers argue that ‘the most powerful states, who in most cases dictate the international agenda, have found greater benefit in not defining terrorism since this provides them with more freedom in drafting their policies’⁴. The problematic nature of terrorism is not restricted to the absence of definition; but the argument goes further, concerning at what point terrorist acts constitute crime under international criminal law⁵. There are several scholarly approaches and argument on how terrorism should be defined. However, a definition could perhaps be found by reference to the seriousness of the terrorists’ acts, the target, motives of terrorist attacks and certain factors. The first factor, not necessarily in terms of relevance but for the sake of convenience that needs consideration in the definition of terrorism is the motive behind a specific terrorist attack. The relevance of motive in establishing criminal liability though it is often considered at the sentencing stage is a new phenomenon⁶. Although reference to purposes and especially to motives have been challenged. It is argued that motive provides the mechanism through which regular criminals are distinguished from terrorist. Per this aphorism, the decree to which an act is classed as terrorism, as distinct from criminal enterprise, rests on the motives. In both cases, there is a criminal capability based on intent. The motive is the main reason why terrorism is treated differently from other sorts of crimes. Yet, finding the scope of these motives is not easy; too restrictive an approach risk rendering the definition ineffective; too expensive one risks including offences that can be dealt with under criminal laws. The paradox becomes apparent when one envisages removing this requirement. Yet, if it were to be, it will be difficult to identify conventional crimes from terrorism. For instance, ‘Like terrorists, criminals use violence to attaining a specific end. However, while the violent act itself may be similar- kidnapping, shooting, arson, for example the purpose or motivation clearly is not whether the criminal employ violence to obtain money, to acquire material goods or to kill or insure a specific victim, he Is acting primarily for selfish personal motivations (usually material gain)’⁷. Therefore, it could be argued that the prosecution faces the task of proving the criminal intent and that the said act is committed in furtherance of a defined motive. If the latter is not proved, then the act will be an ordinary crime. But some also argue that the inclusion of motive does not in practice make proof of terrorist offences much more arduous. The other factor that needs consideration is the seriousness of the violence. Some argue that only serious violence should be dealt with anti-terrorism laws. But how serious is serious? It is stated that seriousness is defined using weapons of mass destruction and the extent of the damage.

The third factor is the target of terrorist attacks. Terrorists most often target innocent civilians as a means of influencing a government or other entity. The aim is ‘either to immobilize the target of terror to produce disorientation and/or compliance or to mobilize secondary targets of demands (e.g. government) or target of attention (public opinion). Influencing the targets of terror meaning the victims is not the primary goal of the attack. The attack is calculated to send a message to the target of demand and charge public attitude in the target of attention’. Terrorism could arguably be defined by reference to the above elements. This approach however is not to be taken for granted. Some authors suggest six elements that need to be taken into consideration if terrorism is to be defined at international level: ‘the *mens rea* aspect, the purpose of the act; the characteristic of the act itself, the target of the act, the perpetrators; the scope of the definition in time or place, and whether any exception or justification could be applicable.’⁸ yet, other commentators have proposed between five and eight elements in their definition⁹ differ on the relevant factors pertinent to any

Terrorist Bombing, adopted by the GA on 15 December 1997; International convention for the Suppression of Financing of Terrorism adopted by the GA on December 1999; International Convention for the suppression of Acts of Nuclear Terrorism, adopted by the GA on 13 April 2005

⁴ B. V. Ginkel, ‘Combating Terrorism: Proposals for Improving the International Legal Framework’. in Cassese, A. (editor). *Realizing Utopia: The Future of International Law*. (Oxford, Oxford University Press), 2008, p. 467

⁵ Cassese A. (2008) *International Criminal Law*. Oxford University Press. Oxford. pg. 467.

⁶ G. Binder, ‘The Rhetoric of Motive and Intent’. *Buffalo Criminal Law Review*, vol., .2002, p. 94

⁷ B. Hoffman, *Inside Terrorism: Revised and Expanded Edition*. Colombia Press. New York, 2006.

⁸ Ginkel *Supra*

⁹ A. P. Schmid & A.J. Longman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Base, Theories and Literature*. Transaction Publishers 2005.

potential international definition of terrorism is, at the very least, proof that consensus is absent on the precise parameter of what constitute terrorism. Thus, if scholarly works fundamentally differ on the constituent parts of an international definition of terrorism, one holds little hope that will find harmony. The dynamic nature of terrorism lies in the fact that terrorism has changed and adapted itself overtime. While in the 1980's and 1980's terrorism was synonymous to airplane hijackings and hostage takings, by the 1980s and 1990's terrorism became a synonym for car bombings and assassinations. After each terrorist act, enforcement measures were adopted forcing the terrorists' organizations to turn to other means to achieve their goal. Terrorism therefore has a dynamic nature.

3. Background to the Enactment of Anti-Terrorism Law in Nigeria

The way leading to the enactment of the Terrorism Prevention Act (TPA) 2011 (as amended) has been a long one. Some writers have attributed Nigeria's delay in enacting an anti-terrorism legislation to the relative newness of acts of terrorism in the country. In attempting to trace the historical antecedent of the making of the law, one must necessarily take a bearing from the point of the 9/11 attacks as the event marked a turning point in the global perspectives of what terrorism portends and the necessity to wage a concerted war against it globally.¹⁰ One direct consequence of the attacks is that it spurred the United Nations Security Council (UNSC) to pass resolution 1373 by which all member states were required to make terrorism a serious crime in domestic legislation along with terrorists funding and other ancillary offences. The UNSC also set up the Counter-terrorism Committee (CTC) to follow up progress in the implementation of resolution by member states. The initial reaction of the Nigerian government to the resolution can simply be described as ambivalent, engendered by political bickering and parochial ethno- religious sentiments. Between 2001 and 2004, no step was taken by the Nigerian government to give effect to resolution 1373 as there was no counter-terrorism law in existence then. Rather than enact a new law as demanded by the resolution, the National Assembly perfunctorily inserted two sections in the Economic and Financial Crimes Commission (Establishment) Bill¹¹ that was then undergoing legislative process.¹² The two sections now form section 15 and 46 of the EFCC (establishment) Act 2004. Section 15 of the Act merely creates some offences relating to terrorism¹³ while section 46 attempts to define terrorism.

It is on record that as far back as 2003, there were several violent acts in Nigeria, of the nature that signaled imminent danger, capable of snowballing into terrorism. In the late December 2003 and early January 2004, a group, called 'the Talibans' raided police stations in north eastern states of Borno and Yobe, and reportedly took officers hostage, stole weapons and killed at least seven people¹⁴. The United states of America department of state country Reports on Terrorism 2004, in respect of Nigeria, also noted that, Osama Bin laden went on record as identifying Nigeria as fertile ground for action¹⁵. It was further gathered that some individuals and private groups in Nigeria had ties with terrorists' sources in Sudan, Iran, Pakistan and Libya; and that, members of terrorists' groups, including Al-Qaeda had operated and recruited in Nigeria.¹⁶ By 2006, the Niger Delta militant groups were becoming restive and violent. Attacks on the oil pipelines by the

¹⁰ On September 20, 2011 president Bush delivered an inspirational speech to America that rallied support for the 'war on terror'. See nytimes.com/2006/09/Washington/06 bush- transcript.html....

¹¹ The new EFCC (Establishment) Act 2002 was then being overhauled to meet up with international standard on financial crime legislation.

¹² Note that EFCC (Establishment) Act is essentially directed towards addressing financial crimes and money laundering.

¹³ Offences created are: terrorist funding and attempt to commit a terrorist act.

¹⁴ US Country Report on Terrorism (2004) (Nigeria). Retrieved from www.state.gov/document/organization/45313.pdf

¹⁵ *ibid*

¹⁶ US Country Report on Terrorism 2005 (Nigeria). Retrieved from www.state.gov/document/organiszation/65462.pdf

movement for the emancipation of Niger Delta had been recorded¹⁷ There were also threats of further attacks to destroy all oil facilities until all their demands for justice in their struggle against poverty, marginalization, under employment and environmental degradation was met. There were clear indices of the vulnerability and susceptibility of Nigeria to terrorist attacks. Given this prevailing circumstances, it might be expected that an anti-terrorism bill would have been introduced, subjected to vigorous legislative and public debates and passed without much opposition. This was not to be the case, as all initial steps at legislating against terrorism, most strangely faced with stiff opposition at the national assembly. In 2005, the cabinet of the then president Obasanjo drafted a counter terrorism bill which was presented before the national assembly for consideration. This did not see the light of day.

By 2010, terrorism had evolved in Nigeria, full blown, both in scope and shape. Boko Haram insurgency had emerged and continued to escalate in sophistication. Between September 2010 and May 2011, Boko Haram had successfully carried out over fifty attacks¹⁸. It then downed on the law-makers that terrorism had no borders, religion, gender, race, ethnicity and nationality; but a true manifestation of evil that defies human nature and which must be combated. An event of international significance deserves to be mentioned here as one of the factors that eventually compelled Nigeria to enact an anti-terrorism legislation. On December 25 2009 (Christmas day), a young Nigerian, Umar Abdlmutallab, who was associated with Al-Qaeda in the Arabian Peninsula, attempted to set off an explosive aboard Delta/North West Airline flight 253, with 274 passengers. The plane which originated in Nigeria had stop-over at Amsterdam. The attempt was unsuccessful as he was overpowered by passengers¹⁹. Consequent upon this event, the US Transportation Security Administration (TSA) issued new security measures which included blacklisting Nigeria by classifying it 'Country of interest' on the US Terror Watch List. The implication of blacklisting a country is that citizens of the designated and affected countries will be subjected to enhanced screening techniques such as body scan, pat-down, and a thorough search of carry-on luggage for traces of explosives, no matter where they are travelling from. The Nigerian government wasted no time in taking the necessary diplomatic steps to avert a face-off with the US. The US gave four conditions to be fulfilled by Nigeria before it could be delisted. These conditions included: public condemnation of any form of terrorism in the world; improvement of security in the nation's airports; deployment of air marshal on board aircraft and legislation geared towards combating terrorism in the country²⁰. It was in fulfillment of these conditions and further pressures from the US that culminated in the enactment of TPA 2011.

4. Defining Terrorism under Nigerian Law

Defining terrorism remains as controversial as ever on the international level. For this reason, different states have come up with their own definitions tailored to suit their domestic needs. However, the study of terrorism has been a similarly daunting task for Nigeria. Until 2011, Nigeria's legal regime contained not one law specifically designed to deal with terrorism. The legal framework for the prevention of terrorism in Nigeria is essentially embodied in two enactments: Terrorism Prevention Act (TPA) 2011 and Terrorism (Prevention) (Amendment) Act 2013. The two laws shall hereinafter collectively be referenced to as Terrorism (Prevention) Act 2011 (as amended) or TPA 2011 (as amended), as the context so admits. Before the enactments of the TPA (as amended) the Criminal Code²¹ (in the south), the Penal Code²² (in the North)

¹⁷ Prominent amongst the groups are Movement for the Emancipation of Niger Delta led by Henry Okah and the Niger Delta Volunteer Force led by Asari Dokubo.

¹⁸ M. Ioannis *Boko Haram Attacks in Nigeria and Neighbouring Countries: A Chronology of Attacks*, 2014. Retrieved from www.terrorismanalysis.com/home8,no.6.

¹⁹ D. O. Unio, Report on the attempted Bombing of North/West Airlines flight 253, 'Christmas Day plot', 2010. International Center for Political Violence and Terrorism. Retrieved from www.port.org/pdf...

²⁰ O. James, 'U.S List Conditions to Delist Nigeria from Terror List'. www.Nigeriabestforum.com/society/news.

²¹ Cap.C38 Laws of the Federation of Nigeria (LFN) 2004.

²² Cap 89 Laws of Northern Nigeria 1963

and other statutes²³ dominated the criminal justice system in creating, defining and prescribing punishments for criminal acts. Significantly, while both the criminal code and penal code do not contain specific provisions for counter terrorism, they criminalize specific acts of violence e.g. murder, homicide, rape, riot etc.). The meaning ascribed to the word ‘terrorism’ reflects a person’s perspectives, background and philosophy. The definitional ambiguities embedded in the word ‘terrorism’ are encapsulated in the popular cliché; one man’s terrorist is another man’s freedom fighter, which immediately suggests the lack of consensus in determining who should be designated a terrorist or what should be considered terrorist acts. While it is agreed that there is no globally accepted definition of terrorism, it is to be stated that many countries have proceeded to provide definition in their Statutes. The TPA (as amended) carefully avoids the definition of terrorism as a concept. Rather, it defines ‘acts of terrorism’. Section 1(3) of the TPA (as amended) defines an ‘act of terrorism’ as an act which is deliberately done with malice aforethought and which may seriously harm or damage a country or an international organization. Any act also amounts to terrorism when it is done deliberately with malice aforethought and is intended to unduly compel a government or international organization to perform or abstain from performing any act²⁴. A terrorist act is committed when done with the requisite intent; it seriously destabilizes or destroys the fundamental political, constitutional, economic or social structure of a country or international organization by intimidation or coercion²⁵. It also amounts to a terrorist act where it involves or causes an attack upon a person’s life that possibly results in serious bodily harm or death²⁶. Intimidating or coercing a government or international organization is a terrorist act where it involves or causes: the kidnapping of a person, or destruction of a government public facility, or private property amongst others²⁷. This is particularly so where the act is likely to endanger human life or result in major economic loss. By section 2 (b) (I), which defines terrorism as acts which are done to unduly compel a government or international organization to perform or abstain from performing any act the definition of terrorism is confined to non-state actors thereby excluding state terrorism from the ambit of its definition. In terrorism studies the onus has traditionally been on the sub-national actor as a perpetrator of violence directed at civilian populations or state apparatus. Definitions of the term reflect this direction of inquiry, with given examples of terrorist acts exclusively vindicating non-state actors. The result of this phenomenon is that traditional definitions of terrorism have often failed to recognize the state as a perpetrator of terrorist acts, or at least to label their actions as terrorism. Hoffman, for example, seeks to draw a firm line in the sand between what he sees as ‘terrorism’, ‘perpetrated by a sub-national group or non-state entity’, and ‘terror’, that which is perpetrated by the state or those already in power²⁸. Other ‘orthodox’ scholars such as Jenkins (1980) and Wilkinson (1981) also chose to recognize this distinction²⁹. I see no reason why there should be a difference in terminology, I believe that a definition of terrorism should be action based, rather than actor based. There is an omnibus provision which criminalizes and treats as terrorist act ‘any act or omission’ in or outside Nigeria which constitutes an offence within the scope of a counter-terrorism protocols and conventions duly ratified by Nigeria³⁰. An act which disrupts a service but is committed in pursuance of a protest is also a terrorist act. However, strikes and demonstrations are excluded from the definition of terrorist acts, provided they are not intended to result in any harm referred to in subsection (2) (b) (i) (ii) or iv³¹. The harm referred to in the section includes seriously intimidating a population, influencing a government or international organization by coercion or intimidation.

²³23 Money Laundering (Prohibition) Act 2011; Economic and Financial Crimes (Establishment) Act 2004; Banks and Other Financial Institutions Acts 1991; Official Secrets Acts 1962; Extradition Act 1967;

²⁴ S. 1(3) of TPA 2011 (as amended).

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

²⁸ B. Hoffman, *Inside Terrorism*. Columbia University Press. Columbia.

²⁹ P. Winkinson, ‘International Terrorism’. In J. Baylis & N. Rengger (eds.), *Dilemmas of World Politics*. Oxford University Press, Oxford, 2002. pp. 228-267.

³⁰ S. 1(3) (d)

³¹ S. 1 (4)

5. Terrorism Offences

The following offences have been created under the TPA (as amended): a) murder, kidnapping and other attacks on a person or liberty of an internationally protected person³² (b) Terrorist meetings,³³ soliciting and giving support to terrorist groups for the commission of a terrorist act, harboring terrorists or hindering the arrest of a terrorist, provision of training and instruction to terrorist group or terrorist, concealment of information about acts of terrorism, provision of devices to a terrorist, recruitment of persons to be members of terrorist groups or to participate in terrorist acts. Incitement, promotion or solicitation of property for the commission of terrorists acts, provision of facilities in support of terrorist acts, financing of terrorism, dealing in terrorist property, hostage taking, membership of a terrorist group or proscribed organization, conspiracy to commit terrorist acts, aiding and abetting terrorist acts, escape or aiding and abetting escape, attempt to commit an offence under the Act, preparation to commit terrorist acts, unlawful assumption of character of officers of any law enforcement or security, tampering with evidence and witness, obstruction of any officer of a law enforcement or security agency amongst others.

5. Types of Terrorism

From the definition of what constitutes terrorism, it is apt to state the different forms in which terrorism can manifest. Thus, the following are types of terrorism: though the list is not exhaustive:

State Terrorism

This is defined as terrorism used by states for repression of their own citizens, political opponents, and minorities, as well as against conquered people and enemies in war³⁴. It can equally be defined as the use of violence by states in the furtherance of political ends. State agencies, just as much as secret societies or dissident groups commit terrorist acts to produce or maintain political objectives³⁵. An example is the Odi massacre of 20th November 1999 when the Nigerian Military opened fire on defenseless and unarmed civilians in Odi, a village in Bayelsa state.

State Sponsored Terrorism

These are acts of terrorism sponsored and launched by one country against another using violence and lethal force with a view to achieving long term political or strategic objective. The aim of the country, which sponsors and abets terrorism and insurgency, can range from destabilization and weakening of a government or central authority to the break-up of the existing social and political order, in the targeted country³⁶.

Nationalist Terrorism

Nationalist terrorist seeks to form a separate state for their own national group, often by drawing attention to a fight for 'national liberation' that they think the leading government has ignored. Nationalist terrorism is quite difficult to define; this is because most groups agitating for one thing or the other insist that they are not terrorist³⁷. Examples of Nationalist terrorist are the pro-Biafara Separatist group known as the Indigenous People of Biafara (IPOB) which is a proscribed terrorist organization in Nigeria.

Religious terrorism

These terrorists seek to use violence to further what they see as divinely commanded purpose, often targeting broad categories of foes to bring about sweeping changes. Religious terrorism is characterized by compliance with belief. Example of religious terrorism in Nigeria is Boko Haram.

³² S.3 (b)

³³ S.4(c)

³⁴P. Wilkinson, *Political Terrorism*. Retrieved from <http://www.terrorismanswers.com/terrorism/types.html>.

³⁵ Ibid.

³⁶ Ibid.

³⁷H. H. Hyunwook, *Terrorism, Political Violence and World Order*. Retrieved from <http://www.terrorismanswer.com/terrorism/types.html>.

Anarchist Terrorism

This is terrorism aimed at the production of limited change, designed to force the government to change its policy on issues. These are revolutionaries seeking to overthrow established governments.

Suicide Terrorism

It is defined as a politically motivated violent attack perpetrated by a self-aware individual who actively and purposely cause their own death through blowing himself along with his chosen target. A good example is *Boko Haram*.

Nuclear Terrorism

This is the use, or threat of use, of nuclear power plant for causing extensive and / or irreversible environmental damage. Under this form of terrorism, terrorist organizations use nuclear devices (chemical/biological) weapons to cause mass murder and devastation³⁸.

Cyber Terrorism

It is defined as the use of computing resources to intimidate or coerce others. An example of cyber terrorism could be hacking into a hospital computer system and changing someone's medicine prescription to lethal dosage as an act of revenge³⁹.

Ethno-nationalism

This is another form of terrorism within the broader context of terrorism. It is said that 'unlike other terrorist, ethnic terrorists focus on forging distinct ethnic identity and fostering mobilization⁴⁰. The reception of this form of terrorism is a manifestation of how most African countries have used 'ethno-nationalist' terrorism to liberate themselves from colonial powers.

6. Conclusion

This paper has examined the definition and forms of terrorism. The study has demonstrated that the process of achieving acceptable terrorism legislation in a democratic society is slow, even though a rise in security threats acts as catalyst in speeding up the process. Terrorism poses great danger to the Republic of Nigeria as various groups have emerged overtime with terrorist acts which threaten our mutual co-existence as a nation. Based on these acts, we can conclude that there are three sorts of terrorism in Nigeria; Islamists, Nationalist, and groups that oppose the policy of the ruling party. Therefore, any study of the problem of terrorism should be seen through these categorizations. Furthermore, Religious extremism poses a threat to Nigeria's national security interest; this is a concern for Nigeria. Christians and Muslims in Nigeria have great respect for each other's religious observances, tolerate intermarriage and conversion but the growing trend of religious extremism poses great challenge to this coexistence. This research has shown that there have been religiously motivated terrorist attacks in Nigeria. The study has criticized the absence of a clear legal regime on terrorism as one of the problematic features of studying terrorism in Nigeria. For this reason, the enactment of the TPA could be justified on this premise. A multi-sectoral approach toward counter terrorism measures in Nigeria is thus suggested.

³⁸ <http://www.ict.org.linter-ter/frame.html>.

³⁹ *ibid*

⁴⁰ D. Byman 'The Logic of Ethnic Terrorism'. 21 *Studies in Conflict and Terrorism*, 1998.