NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
INTERNATIONAL LAW PROGRAM

THE PROTECTION OF CHILDREN UNDER INTERNATIOANAL LAW DURING NON-INTERNATIONAL ARMED CONFLICT: CASE STUDY ON THE INTERNATIONAL REPONSIBILITY OF THE STATE OF NIGERIA IN THE FACE OF BOKO HARAM ATTACKS

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LL.M THESIS

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ACCEPTANCE/APPROVAL

JURY MEMBERS

We as the jury members certify that we have read the thesis tittled '**The protection of children under International Law during Non-International Armed Conflict: Case study on the International Responsibility of the state of Nigeria in the face of Boko Haram attacks'** prepared and submitted by **Agnes Olubojo Musa** defended on **24./05/2022** has been found satisfactory for the award of degree of Master of Laws in International Law

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DECLARATION

I AGNES OLUBOJO MUSA hereby declare that this thesis entitled “THE PROTECTION OF CHILDREN UNDER INTERNATIOANAL LAW DURING NON-INTERNATIONAL ARMED CONFLICT: CASE STUDY OF THE REPONSIBILITY OF THE STATE OF NIGERIA IN THE FACE OF THE ATTACKS OF BOKO HARAM”, has been prepared by myself under the guidance and supervision of ASST.PROF.DR. PERCEM ARMAN in partial fulfilment of the Near East University Graduate School of Social Sciences regulations and does not to the best of my knowledge, breach any law of Copyrights and has been tested for plagiarism and a copy of the result can be found in the thesis.

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DEDICATION

This dissertation is dedicated to the memory of my late Father Alhaji Musa Matthew Ojeda.

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Abstract

The subject of the protection of children's rights, as well as that of the responsibility of States, as main actors on the international scene, to observe the principles of IHL, will always remain relevant because of its exceptional importance and its always urgent nature. Thus, despite the international presence of the debate on the Covid19 pandemic, which is leaving room for debate, regarding the crisis in Ukraine, we felt it was appropriate to put back on the table of scientific reflection, these two questions mentioned at the outset. Children are the secure potential of a nation to secure its future. That is why the State must take the protection of children's rights seriously. By its declaration of succession to the Geneva Conventions, made on 09 June 1960,[1] the Federal Republic of Nigeria had undertaken its responsibility to enforce all the provisions of these conventions. This responsibility is laid down in Article 1 common to the Geneva Conventions and Additional Protocol I of 1977. In this research, we will, on the one hand, analyze the various means available to any State subject to International Law, and Nigeria in particular, in order to enforce the provisions of International Humanitarian Law, and on the other hand, we will analyze the various mechanisms of International Humanitarian Law, which are related to the protection of children in a situation of chaos produced by terrorist attacks. This is how we were able to answer our main research question, which is expressed in three parts, the first of which relates to the different principles of IHL that protect children. The second of the research question is related to the rights of children violated by the terrorist attack of Boko Haram in the north-eastern part of Nigeria. And the last part of our research question concerns the analysis of the means put in place by the Republic of Nigeria, in order to counter the rise of terrorism, by observing the international legal provisions relating to Humanitarian Law. The objective of this study is to understand theoretically that the Federal Republic of Nigeria must be held responsible for the violation of IHL principles relating to the protection of children. We demonstrate in this research that the criminal liability of the Federal Republic of Nigeria was incurred as a result of its own negligence, both internally and internationally. To carry out our research on

[1] List of States Parties to the Geneva Conventions of 12 August 1949 In https://international-review.icrc.org/ Consulted in 04.20.2022

analysis based on the research question, we mainly used secondary data, such as books, scientific journal articles, online conference debates and international reports. This approach has enabled us to grasp the case that involves the criminal responsibility of the Federal Republic of Nigeria, with regard to the observance of the principles of IHL, relating to the protection of children's rights during the period of chaos, caused by the attack on the Boko Haram terrorist group. Our approach to the study in this research was the qualitative approach, and the descriptive method because we tried to describe the main solution, which is to demonstrate that the State of Nigeria is criminally responsible for violations of the principles of IHL, on the one hand, as a result of its own internal negligence. On the other hand, however, the technical difficulty of putting these principles into practice is linked to the vague and imprecise nature of certain provisions.

Keywords: Armed Conflicts, Children, Insurrection, Boko Haram, Public International Law, International Law. Humanitarian Law.

ÖZ

"THE PROTECTION OF CHILDREN UNDER INTERNATIOANL LAW DURING NON-INTERNATIONAL ARMED CONFLICT: CASE STUDY OF THE REPONSABILITY OF THE STATE OF NIGERIA IN THE FACE OF THE ATTACKS OF BOKO HARAM"

Uluslararası sahnenin ana aktörleri olarak çocukların haklarının korunmasının yanı sıra Devletlerin sorumluluğunun, IHL ilkelerine uyma konusu, olağanüstü önemi ve her zaman acil yapısı nedeniyle her zaman ilgili kalacaktır. Bu yüzden, Ukrayna'daki krizle ilgili tartışmaya yer bırakan Covid19 pandemiyle ilgili tartışmanın uluslararası varlığına rağmen, bu iki sorunun daha başında bahsedildiği bilimsel düşünme masasına geri dönmenin uygun olduğunu hissettik. Çocuklar, bir ulusun geleceğini güvence altına almak için güvenli potansiyedir. Bu nedenle Devlet çocuk haklarının korunmasını ciddiye almalı. 09 Haziran 1960[2] tarihinde yapılan Cenevre Konvansiyonlarına art arda beyan ile Nijerya Federal Cumhuriyeti, bu anlaşmaların tüm hükümlerini uygulama sorumluluğunu üstlenmişti. Bu sorumluluk, Cenevre Sözleşmeleri ve 1977 Ek Protokolü I'de ortak olan 1. Maddede yer alır. Bu araştırmada, bir yandan Uluslararası Hukuk ve Nijerya'ya tabi herhangi bir Devletin mevcut olan çeşitli yöntemleri, Uluslararası İnsani Hukuk hükümlerini uygulamak amacıyla analiz edeceğiz ve diğer yandan Uluslararası İnsani Hukuk mekanizmalarını analiz edeceğiz, terörist saldırılardan kaynaklanan kaosa karşı çocukların korunmasıyla ilgili. İlk olarak çocukları koruyan IHL'nin farklı ilkeleriyle ilgili üç bölümde ifade edilen ana araştırma sorumuza bu şekilde yanıt verebildik. İkinci araştırma sorusu, Nijerya'nın kuzeydoğusunda yer alan Boko Haram'ın terör saldırısı nedeniyle ihlal edilen çocukların haklarıyla ilgiliydi. Araştırma sorumuzun son bölümü, İnsani Hukuk ile ilgili uluslararası yasal hükümlere uyarak terörizmin yükselmesiyle mücadele etmek amacıyla Nijerya Cumhuriyeti tarafından ortaya konan yolların analizi ile ilgilidir. Bu çalışmanın amacı teorik olarak Federal Nijerya Cumhuriyeti'nin çocukların korunmasına ilişkin IHL ilkelerinin ihlaline karşı sorumlu tutulması gerektiğini anlamaktır. Bu araştırmada, Nijerya Federal Cumhuriyeti'nin cezai yükümlülüğünün hem iç hem de uluslararası olarak kendi ihmali sonucunda ortaya çıkacağını gösteriyoruz. Araştırma sorusuna dayalı analiz araştırmamızı gerçekleştirmek için

[2] 12 Ağustos 1949 tarihinde Cenevre Konvansiyonunda yer alan tarafların listesi https://international-review.icrc.org/ 04.20.2022 yılında başvurdu

çoğunlukla kitaplar, bilimsel günlük makaleleri, çevrimiçi konferans tartışmaları ve uluslararası raporlar gibi ikincil verileri kullandık. Bu yaklaşım, Kaos döneminde çocukların haklarının korunmasına ilişkin IHL ilkelerinin göz önünde bulundurulmasıyla ilgili olarak Federal Nijerya Cumhuriyeti'nin cezai sorumluluğunu içeren olayı anlamamızı sağladı. Boko Haram terör örgütüne düzenlenen saldırının nedeni. Bu araştırmada çalışmaya yaklaşımımız niteliksel yaklaşım ve ana çözümü tanımlamaya çalıştığımız için açıklayıcı yöntemdi. Nijerya Eyaletinin, kendi iç ihmalinin bir sonucu olarak IHL ilkelerinin ihlalinden suç olarak sorumlu olduğunu göstermek. Ancak diğer yandan, bu ilkeleri uygulamaya koymanın teknik zorluğu belirli hükümlerin belirsiz ve belirsiz niteliğine bağlıdır.

Anahtar kelimeler: Silahlı çatışmalar, çocuklar, ayaklanmalar, Boko Haram, Kamu Uluslararası Hukuku, Uluslararası Hukuk. İnsani Hukuk.

LIST OF ABREVIATIONS

SPLA: Sudan People's Liberation Army.

CG: Geneva Convention.

UNSC: United Nations Security Council.

P.C.: Penal Code.

IAC: International Armed Conflict.

IAC: Non-International Armed Conflict.

ICRC: International Committee of the Red Cross.

ILC: International Law Commission

ACHR: American Convention on Human Rights.

ACHPR: African Charter on Human and Peoples' Rights.

IHL: International Humanitarian Law.

UDHR: Universal Declaration of Human Rights.

ADRDM: American Declaration of the Rights and Duties of Man.

IHRL: International Human Rights Law.

ICL: International Criminal Law.

UN: Organization of the United Nations.

NGO: International Non-Governmental Organization.

IO: International Organizations.

ICESCR: International Covenants on Economic, Social and Cultural Rights.

ICCPR: International Covenant on Civil and Political Rights.

AP: Additional Protocols (AP I and II).

DRC: Democratic Republic of Congo.

EU: European Union.

AU: African Union.

UNICEF: United Nations Children's Fund.

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CHAPTER I

General Introduction

1.1 Background

The issue of child protection is invaluable. It is, in itself, a demonstration of human meaning. It has been since the 1947's that this issue began to attract the attention of the international community. Given its nature and scope, this issue is at the crossroads of at least three branches of international law, as affirmed by MUMBALA ABELUNGU Jr.[3]. The Author notes that the protection of children in situations of armed conflict is supported by international humanitarian law (IHL), and supplemented by international human rights law (IHRL), as well as international criminal law (ICL).

The scientific opinion on this is more nourished by reflections that are built on the generalist aspects of IHL standards, which causes problem, on what concerns the effective application of IHL standards, in the field. Among the proponents of this thesis, we quote Mayssa MATOUK ABDELNABY, he argues: However, examination of these instruments shows that they are often characterised by the generality of their provisions, which are not always adapted to take into account the specificity of the child. In addition, they sometimes raise questions of applicability».[4] In addition to this trend, there are those, which focus rather on the legal nature of the parties to the conflict. They consider that the difficulty of defining the obligations of the parties to the conflict is linked by the legal nature of the latter. MUMBALA A, is one of those authors that we quote the reflection: «These are to be placed more at the level of the definition of the obligations of the parties to the conflict and the mechanisms to ensure

[3] MUMBALA ABELUNGU Jr (2016), International humanitarian law and the protection of children in situations of armed conflict (Case study of the Democratic Republic of Congo), Doctorate thesis in Law. p. 4.

[4] Mayssa MATOUK ABDELNABY (2017) Protection of the rights of children in armed conflicts Doctoral thesis in law from the University of Burgundy. P.2.

the implementation of these obligations».[5] We encourage our readers to continue this discussion in the part of the review literature, on point (1.2.2) where we have cited several authors with each one his point of view on this issue.

The purpose of this research is to do a two-tier analysis. The first level will consist in emphasizing the opportunity for the State to remain in the position of traditional reaction, in order to enforce international norms, for the benefit of population's victims of the abuse of rights caused by international actors, who are not subjects of international law (Terrorist Group), within the meaning of the State. And remaining on the same vein, we will analyze the conditions likely to trigger the international responsibility of a State, in the angle of the IHRL.

1.2 Literature review

The African literature on the issue of child protection is less abundant. And yet, the continent is one of the areas on the globe, whose children experience the worst forms of violations of their rights.

1.2.1 Legal analysis of the technical aspects of the research subject

1.2.1.1 *The Problem of the Generalist Character of the Provisions of International Legal Instruments Major Cause of Violation of the IHL Principles*

Let us begin this analysis with the following observation. The regime for the protection of children in situations of armed conflict as established by IHL and supplemented by international human rights law (IHRL), or even international criminal law (ICL).

Generally speaking, the question of the protection of children is characterized by the provisions of international law, the wording of which is rather generalist. For Ameth

[5] MUMBALA ABELUNGU Jr (2016), International humanitarian law and the protection of children in situations of armed conflict (Case study of the Democratic Republic of Congo), Doctorate thesis in Law. p. 4.

Fadel K[6], this generality of the provisions prevents, on the one hand, a real consideration of the specificity of the child. And on the other hand, it raises the questions of applicability. And the solution for this situation was two steps. The first step was purely legal. It was through the adoption of legal mechanisms. The peculiarity of this approach is the fact that these newly adopted texts offered an effective possibility, in the application of the clear provisions. In the account of these mechanisms, we refer mainly to the 1989 Convention[7] on the Rights of the Child and its various optional protocols. It should be noted that the main objective of the adoption of the 1989 Convention was to correct the inadequacy of the legal texts which provide for the protection of children's rights and to redefine the objective of protection[8]. The second approach was of a political nature. Indeed, as a result of the situation of continued violations of the legal texts as outlined above, the United Nations Security Council has become significantly involved in the issue of violations. And through the involvement of the Security Council, there is a kind of reminder for States regarding the taking of their responsibility mainly in the definition of sanctions against individuals posing acts that violate the principles of IHL.

Addressing the issue of the protection of children's rights, Doctor of Laws MUMBALA ABELUNGU Jr[9], Points out that the regime for the protection of children in situations of armed conflict, as organised by international humanitarian law supplemented by international human rights law, has weaknesses. These weaknesses relate to the definition of the obligations of the parties to the conflict, as well as the mechanisms that must ensure the implementation of these obligations. It asks the question about the content and effectiveness of the special protection reserved for the child (Civil or Military) in situations of armed conflict.

On the other hand, as an exception in terms of international legal texts relating to the protection of children's rights, we cite the Geneva Declaration of 26 September 1924. A short statement because it has only five articles, but the provisions are clearly well

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[6] Ameth Fadel Kane, (2014). *La protection des droits de l'enfant pendant les conflits armés en droit international*. Droit Université de Lorraine, Français. P.13

[7] See on:https://www.icrc.org/en/icrc-databases-international-humanitarian-law. Consulted in 04.05.2022

[8] Ibidem.

[9] MUMBALA ABELUNGU Jr (2016), *Le droit international humanitaire et la protection des enfants en situation de conflits armés (Etude de cas de la République Démocratique du Congo)*, Thèse de Doctorat en Droit. p. 5.

designed, with a great precision that allows an effective application. And with regard to the protection of the child, its article 03 is of a profound clarity, while offering a broad possibility of its application. Article 03 states that "the child must be the first to receive assistance in case of distress".[10] We think it would be wise to take into account both contexts, in particular the context of the Geneva Declaration, which was based on affordable realities, and whose simplicity of facts made it easier to interpret situations, and facts in law. In contrast, the current context is profoundly marked by an all-out development. Thus, we are witnessing the emergence of new concepts, which require a particular interpretation of the facts from a legal point of view. This is particularly the case with the problem posed by the scientific debate about the legal nature of a terrorist group.

For his part, Chris Yana[11] addresses the issue of children's rights from the perspective of criminal responsibility. It notes that there is no specific legal framework for the question of the criminal responsibility of children, who are actively involved in the activities of the terrorist group Boko Haram on Cameroonian territory. His questioning is relevant to us. Indeed, his questioning underscores the need for in-depth reflection on the issue of children's rights. The questioning of the author serves as scientific support and motivation. Because it reveals the legal vacuum that profoundly weakens the international system in its objective of protecting children's rights. The issue of criminal responsibility for children is a problem. The issue raised is the hierarchy of legal standards. What rules should be observed when a State signatory to the International Conventions is faced with a situation where international legislation is weak, and where, at the national level, the law on this situation remains vague and imprecise? We believe that puzzles remain unresolved on this issue.

1.2.1.2 *The legal concept of the criminal and civil liability of children through international legal instruments*

It should be noted that it was after the Second World War that the need to protect children began to attract the attention of legal thinkers. Denis Plattner,[12] Contends that

[10] Geneva Declaration September 26, 1924 (full text) in https://www.droitsenfant.fr/declaration-geneve-1924pdf.pdf. consulted in 04.21.2022

[11] Chris Y. (2018) The issue of the criminal responsibility of children involved in the terrorist acts of Boko Haram in Cameroon, Master's thesis in Law, University of Montreal. p.2.

[12] Denis P. (1983) Child Protection in International Humanitarian Law. Work presented at the international symposium "Children and War" held in Siunto Baths, Finland. P.1.

the experiences of the conflicts (World War I and World War II) had forced the conclusion that the elaboration of a legal instrument of public international law for the protection in times of war, of the civilian population, is necessary. So because the children are in that category, while they are in that category, they are the beneficiaries of that agreement. This aspect of things partly explains the fact that this convention remains silent on the issue of the age of the child. The age of the child remains the cornerstone of the question of the child's criminal responsibility in international law. In addition, children, as a member of the civilian population category, also enjoy the protection of the very first to regulate non-international armed conflicts. This text is contained in article 03 common to the four Geneva Convention (GC) of 1949.

Protection for civilian children was organized rather than that for child soldiers. Because the protection of child soldiers will be taken into account relatively late by means of the Additional Protocols (AP I and II), signed on 08 June 1977.

The International Convention on the Rights of the Child, United Nations Convention of 20 November 1989, states in its article that the child is every human being, under the age of 18.[13] And this provision leaves a gap, relating to the provisions of national law as regards the concept of majority.

Internally, the Federal Republic of Nigeria sets the criminal majority at the age of 12[14] with the condition of proving that at the time of commission or omission of the facts, the presumed had the capacity of discernment. The position of the Federal Republic of Nigeria on the issue of the protection of the child, in international law, Nigeria has adopted the law on the rights of the child as a signatory to the Charter of the United Nations and the African Charter on Human and Peoples' Rights. As a result, the Nigerian State adopted the 2003 Children's Rights Act to ensure adequate protection and reserve of the various rights of the child. The Rights of the Child Act, 2003 codified the United Nations Convention on the Rights of the Child. Living, surviving and developing is guaranteed by the United Nations Convention on the Rights of the Child. The Convention also protects against indecent and inhumane treatment such as sexual exploitation, drug abuse, child labour, torture, ill-treatment and neglect.

[13] See article 1 of the International Convention on the Rights of the Child United Nations Convention of 20 November 1989.
[14] See Section 30 Criminal Code Act 1990 in https://www.africanchildforum.org/. Accessed on 04.22.2022

Children have rights guaranteed by the Constitution of the Federal Republic of Nigeria, Chapter IV, and the Rights of the Child Act 2003. (As amended). Note that the latter, protects Nigerian children from all forms of violence. Violence is a state of physical or mental harm. While excessive punishment of children is violence, any state in which a child is subjected to emotional trauma or abuse may be considered a violation of their rights.

The international legal texts defining the child remain consistent in terms of its civil liability. Under the United Nations Convention on the Rights of the Child, a child is a child under the age of 18. Article 2 of the African Charter on the Rights of the Child also defines the child as a person under the age of 18. Every country that has signed this charter has corrected this situation in its national laws.

1.2.2 Legal analysis of the doctrinal reflections of the research subject

In his memory of master in law, Romane Nouzière,[15] questions the possibility of reconciling the measures deemed necessary by the legislator, by strengthening the legal arsenal, by creating new incriminations, to counter the terrorist on the one hand, and on the other hand, the strict respect of fundamental rights. Through his reflections, the author allows us to see, the delicacy of the question of the fight against terrorism. The State is almost forced to trample on certain values such as fundamental rights, in view of guaranteeing others, which are judged and considered in society, as values of higher rank. So we have a scene where the hours of custody are extended as part of the criminal investigation in the case of terrorism cases. The extension of the hours of custody on sight, brings a kind of expectation to the [16]right to freedom of movement to come and go. It thus raises the question of respect for human rights, which are supposed to be applied even in times of war. The legal nature of the chaos, which is produced by terrorist acts, remains open. Because terrorists are not an armed group, let alone a type of paramilitary movement. For their parts, MUNCH, Constance &

[15] Romane Nouzière (2017) Reconciliation between the criminal fight against terrorism and respect for fundamental rights, Université Laval Québec, Canada Master of Laws (LL.M.) and University of Toulouse I Capitole Toulouse, France Master (M.) P .2.
[16] See: on https://documents.law.yale.edu/. Consulted in 04.20.2022.

Baudoui Rémi[17] Note on the one hand the forced formalization of the term WAR AGAINST TERRORISM by world leaders in the years 2001, following the terrorist attacks that had struck the USA. On the other hand, the authors underline the urgent need for the modification and/or adaptation of France's legislative arsenal, as well as the revision of political thought, in terms of democratic ideology for the Member States of the European Union. On this question concerning the legal nature of the emergence of terrorism, the President of France Jacques C.[18] had taken his courage, to affirm, that the States of the world, was summoned to the WAR AGAINST TERRORISM.

Since 2001, the year that marks the official beginning of the global fight against terrorism, the foundation of the rule of law has been weakened. It is necessary to question the validity of the concept of the rule of law for the States of Europe. Because the emergence of terrorism -Conflict of a new nature- pushes the State to define preventive policies whose challenge the democratic governance of States.

We are of the same opinion as MUNCH, Constance & Baudoui Rémi, when they consider the reaction of European States to the blossoming of terrorism on the Continent of Europe, through the radicalization and indoctrination of European citizens. Reaction which consisted in rejecting in the majority the hypothesis of repatriation of foreign child combatants. This rejection was almost a violation of the Convention on the Rights of the Child.

The African child, is far from being spared from this issue of the protection of the child's rights. Indeed, the continent is one of the areas on the globe, whose children experience the worst forms of violations of their rights. In the face of this tragedy, hope is somewhat guaranteed, provided that the principles of international humanitarian law (IHL) find good defenders in times of war.

We share the same opinion as these two thinkers Knut Dörmann and Jose Serralvo[19] of the International Committee of the Red Cross (ICRC), when they assert that respect by the parties to the conflict, including those of IHL, should be the spearhead of the

[17] MUNCH, Constance & Baudoui Rémi (2021) The rule of law in the face of terrorism, a major challenge for European democracies. Masters: University of Geneva. P.4-5.

[18] Joint press briefing by Mr. Chirac and Mr. Bush on France's solidarity with the United States following the terrorist attacks of September 11, Washington, September 18, 2001. https://www.viepublique.fr/discours/195981-point-de-presse-conjoint-de-m-jacques-chirac-president-de-la-republique consulted in 04.23.2022

[19]See in : https://international-review.icrc.org/ Consulted in 04.09.2022

international community, within the framework of its commitments for the maintenance of peace. However, we think that this approach can only work well if the parties to the conflict are all, regular subjects of international law, rather than actors whose opinion no one is in favour of recognizing this quality of subjects on the international scene. It is strictly impossible for terrorists to observe humanitarian principles, because the nature of the latter already constitutes a brake on this whole enterprise of terror. It will remain in the order of a pious wish, to see strict compliance with the rules of IHL in force, because these principles embody the power to significantly improve the lot of civilians and especially children affected by armed conflicts.

For its part, MUMBALA ABELUNGU Jr,[20] think that the question of the protection of the child during the conflict, is hit by bowls. It places these duties, on the one hand, in the definition of the obligations of the parties to the conflict, and on the other hand, in the mechanisms that are supposed to ensure that these obligations are effectively observed on the battlefield for the benefit of children.

The observation of the author, seems to us of a great scientific significance. Indeed, international legal instruments, which organize the legal framework for the issue of child protection, do not offer or very little leeway, States in order to act freely by organizing an effective response to this question of the protection of children in situations of armed conflict. This leads us in this reflection to analyze the legal nature of the criminal liability attributable to the Federal Republic of Nigeria, on the issue of Boko Haram. Indeed, children and many families are victims of this security crisis caused by the emergence of the Boko Haram terrorist group in the north-eastern part of the country.

The complication currently encountered by all the legal arsenal of International Law in all its branches, is related to the impossibility of fixing the concept of terrorism in the legal lexical field, in order to allow the construction of a legal framework, and finding effective legal solutions, without interfering with the existing framework.

[20] MUMBALA ABELUNGU Jr (2016), International humanitarian law and the protection of children in situations of armed conflict (Case study of the Democratic Republic of Congo), Doctorate thesis in Law. p. 2.

There is no universal definition of terrorism.[21] The definition of terrorism is currently a real problem both internationally and domestically. There are, however, some States, which have internal legal provisions for terrorism. This is the case for the French Republic. The French Penal Code, defines terrorism in its article 421-1. However, the speed and depth with which terrorist acts were carried out around the world, particularly in the USA (11 September 2001), the attacks in Bataclan, the attacks on Charly-Hebdo's studio and other attacks that shook France in 2015, and the Boko Haram attacks at the same time, they forced the international community to reflect on this issue.

1.3 Statement of the research problem

Every human society is concerned about its future. Thus, the question of the safety of children must remain at the top of the list of priorities of both the international community and the national community, within the framework of a State. The protection of children's rights, is raised following the atrocities related to the terrorist attacks perpetrated by the terrorist group Boko Haram, in the north-eastern part of Nigeria. This situation has caused a wave of shock, including the impact on neighbouring countries, including Chad and Cameroon. And further, the emergence of the terrorist group is seen as the main cause of the security crisis situation in the Chad Basin. This problem, as described, is purely a matter of international law. However, it must be remembered that, the legal nature of the main actor (Boko Haram Terrorist Group) at the centre of this situation, complicates the handling of this issue in terms of international law, in the light of the current standards that organize the legal regime for the protection of children's rights.

1.4 Research Question

To effectively analyze the above problem statement, the research question is:

[21] Romane Nouzière (2017) Reconciliation between the criminal fight against terrorism and respect for fundamental rights, Université Laval Québec, Canada Master of Laws (LL.M.) and University of Toulouse I Capitole Toulouse, France Master (M.) P .10.

How should the Federal Republic of Nigeria organize itself in order to effectively address this multidimensional issue, which requires an effective response to the problem of the protection of children's rights, and the problem caused by the impact of the terrorist group Boko Haram in neighbouring countries in terms of respect for international human rights law?

1.4.1 In line with the above research questions, the research objectives is to theoretically and analytically explain the state responsibility of the Nigerian state to children in the cause of the violation of their right in plight of Armed conflict and how this rights can be better protected utilizing and enforcing the principles of international Humanitarian law and International Human Right Law.

1.5 Research gaps

As we have seen in the review literature, almost all my predecessors on this issue, on the vague character of some principles of IHL, and others have raised other aspects. We focused on the reaction of the State, in its capacity as the subject of international law. We propose a theoretical approach that the State must follow, when it is plunged into a chaotic situation, by an international actor, which is not a subject of international law. The great importance of putting back on the scientific table the issue of the disorder caused (terrorist attacks) by international actors, not subject to international law (terrorist group Boko Haram), is linked on the one hand, The development of weapons technology represents a danger. Indeed, according to a recent report by the United Nations (UN), the 21st century, is the one, where for the first time, military drones[22], this type of autonomous weapon, killed a human being. And on the other hand, the importance of returning to this reflection is directly attached to the danger of forgetting the priority nature of this question, following the great importance given to the machine, following the scientific considerations supported by the TRANS-HUMANIST movement, whose main objective is to increase human capacities. On the question of

[22] See the UN report on the war in Libya in https://www.killerrobots.org/fr/2021/06/08/a-u-n-report-suggests-libya-saw-the-first-battlefield-killing-by -an-autonomous-drone/ Consulted in 04.23.2022

war, this movement talks about the possibility of having augmented soldiers. In all this, the lack of interest in seeing the continuation of the human race, which necessarily involves the protection of children, is clearly defined.

1.6 Research Method and Hypothesis

To carry out our research on what the Federal Republic of Nigeria needs to do in order to effectively address this multidimensional issue, which requires an effective response to the problem of protecting children's rights, and to the problem raised by the impact of the terrorist group Boko Haram in neighbouring countries in terms of respect fo r International Human Law, we mainly used secondary data, such as books, articles from scientific journals, online conference debates and international reports. This approach has allowed us to understand on the one hand the opportunity that presents itself to the State, to remain in a classic position in order to respond internally, to the needs of the population victims of the abuses of rights caused by international actors that are not subjects of international law. And on the other hand, to react in the logic of the DIDH, facing its responsibility, towards the neighboring States victims of collateral damage. And finally, this allowed us to argue and say that there is no opportunity for the State, to soften its reaction, in response to actors who are not subject to international public law.

Through a thorough documentary analysis, we have been able to understand that in the same way that international norms dictate to the subjects of international law, the conduct to be followed in a crisis situation, it is in the same way as the State, in the face of situations not governed by the norms of international law, has the freedom to act, inspired by the logic of its best interests. Thus, in the light of what we have just demonstrated, we can affirm our hypothesis, according to: possession or not possession of the status of subject of law in international law is the main condition, which determines the legal regime to be applied in case of crisis. And in the face of international actors, who are not subjects[23] of international law, the best interests of the State will serve as a point of reference for all actions, and any reaction on the part of subjects of international law.

[23]See on: documents.mx

1.7 The content of the working chapters

Our thesis consists of four chapters, divided as follows:

• Chapter One: this is the chapter that introduces us into our research. We proceeded by presenting the overall context of the main topic of our research, which is based on the issue of protecting children's rights during the period of disorder. By means of a review literature, we have grasped the general thinking of scientific opinion on this issue of the protection of children's rights. And this opinion allowed us to present our particular orientation, by addressing this subject.

• Chapter Two: This chapter focuses on the State's internal response to violations of children's rights caused by the acts of international actors, which are not subjects of international law in the sense of States.

• Chapter Three: In this chapter of our thesis, we will address the question of the international responsibility of States, at the level of the DIDH. When neighbouring States are affected by collateral damage from events originating in another State. We will analyse mainly the conditionality that triggers international responsibility.

• Chapter Four: We will conclude, our research, by emphasizing the need for the State to allow itself to be led by its best interests, when it is confronted by difficulties caused by an international actor, who does not hold the status of subject of international law.

2 CHAPTER II

Humanitarian Law and the Protection of Children in Situations of Armed Conflict in Nigeria

This chapter focuses on the State's internal response to violations of children's rights caused by the actions of international actors, who are not subjects of international law in the sense of States.

2.1 International child protection mechanisms and actors

The understanding of the concept of child (a) is essential, for an excellent apprehension of the international mechanisms (b) which deal with the protection of the right of the child, are of both types. On the one hand, we have these instruments that are primarily aimed at children. And on the other hand, we have these instruments, which deal with this issue in a secondary way. This is the case of human rights instruments. And actors on the protection of rights in large numbers, among whom the State is at the top of the list at the national level.

2.1.1 The Child Concept

Article 1 of the Convention on the Rights of the Child (CRC) defines the child as: "For the purposes of this Convention, a child is defined as any human being under the age of eighteen years, unless the majority is reached earlier under the legislation applicable to the child."

For MEUNIER, there is a problem that this definition fails to solve, I quote, "Such a definition deliberately refrains from setting a starting point for childhood – conception, birth or some moment in between. The Convention therefore leaves it to each State to find a balanced solution to the conflicts of rights and interests that arise from issues such as abortion or family planning. The intention of the drafters was certainly to avoid taking a position on abortion and other problems before birth that could have

jeopardized the universal acceptance of the Convention. However, it appears that most articles of the Convention can only apply to the child after birth»[24]

FURAHA M[25], Notes that there is no difference between "child", a term with a biological connotation and "minor", a term with a legal tendency. The two terms are seen as synonymous.

In addition, MUMBALA A[26]., stresses that this definition of the child seems problematic. It gives national legislation ample opportunity to reduce or advance the age of 18 years, which is conventionally allowed. This could be detrimental to the child's well-being.

2.1.2 International legal mechanisms for the protection of children's rights

2.1.2.1 *The 1949 Geneva Conventions*

We will focus on the protection mechanism, which the CG organizes for children in the situation of CANI. As we have, the Boko Haram crisis in northeastern Nigeria is close to CANI, because there is no foreign government presence.

Protection of the Rights of the Child in the Geneva Conventions

This question of the protection of the rights of the child is organized by Common Article 03 of CG (a) and Article 04 of AP II (b).

[24] MEUNIER G. (2002) The application of the United Nations Convention on the Rights of the Child in the domestic law of States Parties, L'Harmattan, Paris, pp. 15-26.

[25] FURAHA MWAGALWA (2018), Thomas, Prohibition of participation in hostilities, demobilization and reintegration of child soldiers in the Democratic Republic of Congo, op.cit., pp. 20-21.

[26] MUMBALA A op cit p.05

2.1.2.1.1 Statement of the principle of child protection. Article 03 common to the GC clearly states the principle of protecting children as part of the civilian population in times of hostilities and armed conflict. Article 03(1) provides:

"Persons who are not directly involved in hostilities, including members of the armed forces who have laid down their arms and persons who have been taken out of action by illness, injury, detention or any other cause, will, in all circumstances, treated humanely, without any distinction of adverse character based on race, colour, religion or belief, sex, birth or wealth, or any other analogous criterion"[27].

By this provision, applicable in time of CANI, the child finds himself in the category of persons entitled to benefit from a special regard, by the authorities. The fact that the child is an integral part of the population makes this provision fully applicable to him.

2.1.2.1.2 The specific protection of children in IHL. Article 04 of AP II clearly organizes the specific protection of children.

These rights are explained through points (3) (a) (b) (c) (d) (e) of AP II, which we quote:

"Children will receive the care and support they need, including:

(a) they shall receive an education, including religious and moral education, as desired by their parents or, in the absence of parents, by their guardians;

b) all appropriate measures will be taken to facilitate the reunification of temporarily separated families;

(c) children under the age of fifteen shall not be recruited into armed forces or groups, nor allowed to take part in hostilities;

[27] See: article 03 common to the CG of August 12, 1949

(d) the special protection provided by this article for children under fifteen years of age shall continue to apply to them if they take a direct part in hostilities notwithstanding the provisions of sub-paragraph (c) and are captured;

(e) steps will be taken, if necessary and, whenever possible, with the consent of the parents or persons having primary custody by law or custom, for the temporary removal of children from area where hostilities are taking place to a safer part of the country, and to have them accompanied by persons responsible for their safety and well-being".[28]

2.1.3 The rights of the child protected by this provision are as follows

2.1.3.1 ***The right to a full education. Nelson Mandela Modibo, could already rightly say in his time that "education is the most powerful weapon for changing the world".***[29]

The future of a people, of a nation, and even of the human race, is guaranteed by education. The law imposes on the parties to the conflict the duty to organize the education of children during the period of non-international armed conflict. Education as discussed in this text refers to both scientific education and spiritual education.

Clearly, we can say that the GC organizes, in an effective and special way, the protection of the rights of the child, in five main points.

2.1.3.2 ***The right to a family environment.*** The child, for his need for full growth, must be surrounded by people from whom he will receive affection, and the values inherent in the manifestation of his personality, and for the development of his character.

Observing this right is of great importance, to the point that the same measure is provided for in Article 74 of PA I, which applies in the situation of CAIs.

[28] See: Article 04 of Additional Protocol II to the Geneva Conventions.
[29] See: Nelson M.: A Long Walk to Freedom. In https://www.abc-citations.com/, Accessed in 05.01.2022

2.1.3.3 ***The criminal immunity of children who*** have actively and directly participated in CANs. This provision provides the answer to the question of whether the criminal responsibility of children will be held against them, in the event of their direct and active participation in hostilities.

The law fixes on the one hand, the condition of the age for a possible recruitment, it is necessary that the children are more than fifteen years old, in order to take part in the hostilities, and on the other hand, even when in spite of their young age , they would come to be actively and directly engaged in hostilities, their criminal responsibility will not be engaged.

2.1.3.4 ***The right to the physical, moral and personal integrity of the child.*** The evacuation from one point to another, on the national territory, here is the legal measure, likely, to guarantee to the child, an integrity as well on the physical level, because in a place where there are pulls, explosions as well as collateral damage, following the NIAC, this can result from accidents likely to reduce the physical integrity of the child. And just as well, morally. The morality of the child, in full growth, is fragile to the point that easily, inappropriate actions, unhealthy remarks, can easily lead to behaviours and attitudes, likely to corrupt a child, for all the rest of his life.

2.2 Other international legal texts as a mechanism for the protection of children's rights

In addition to the legal provisions organized by the Geneva Conventions as well as the additional protocols, the issue of child protection is also organized on the one hand by the legal texts of IHRL and on the other hand by the legal text of the UN. We will first review some UN treaties, and the UNSC resolutions (a), and also we will see the IHRL treaties (b) taken in this matter.

2.2.1 UN legal texts in the protection of the child International child welfare treaties

2.2.1.1 ***The Charter of the United Nations.*** Concluded in San Francisco, on June 26, 945, the charter of the UN, constitutes its fundamental law. It indirectly states the principle of the protection of the rights of the child. This is in fact the declaration of faith of the peoples of the United Nations, on the fundamental values of man and woman. He writes in it:

"To proclaim anew our faith in the fundamental rights of man, in the dignity and worth of the human person, in the equal rights of men and women".[30]

2.2.1.2 ***The Convention on the Rights of the Child.*** Adopted on November 20, 1989, the Convention on the Rights of the Child establishes the sacrosanct principles, on the one hand, that of the best interests of the child and on the other hand, the principle of the protection of foetus.

In its article 01, the Convention provides:

"States Parties undertake to respect the rights set out in this Convention and to guarantee them to every child within their jurisdiction, without distinction of any kind, regardless of any consideration of race, colour, sex, language, religion, political or other opinion of the child or of his parents or legal representatives, of his national, ethnic or social origin, of his situation of property, of his incapacity, of his birth or of any other situation.

States Parties shall take all appropriate measures to ensure that the child is effectively protected against all forms of discrimination or punishment arising from the legal situation, activities, declared opinions or beliefs of his parents, legal representatives or members from his family '.[31]

This Convention lays down the responsibility of the State, towards the child, with regard to the rights of the latter.

[30] See: Preamble to the UN Charter
[31] See Article 01 of the Convention on the Rights of the Child of 20 November 1989.

2.2.1.3 ***Declaration on the Protection of Women and Children in Emergency and Armed Conflict.*** In Article 02, this declaration formally prohibits the use of chemical weapons in armed conflict, with particular emphasis on the presence of women and children, regarded as defenceless.

Article 02 provides as follows:

"The use of chemical and bacteriological weapons in military operations is one of the most flagrant violations of the 1925 Geneva Protocol, the 1949 Geneva Conventions and the principles of international humanitarian law, causes heavy losses to civilian populations, including defenceless women and children, and will be rigorously condemned."[32]

2.2.1.4 ***United Nations Convention against Transnational Organized Crime.*** Through this Convention, the United Nations have expressed the will to prosecute crimes and criminals across borders. The demonstration of this will relates to the protection of women and children. The States parties to the convention have all expressed the desire to see things organized in such a way that, I quote:

"If crime crosses borders, repression must cross them. If the rule of law is undermined not in one, but in many countries, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities offered by globalization for their own ends, then we must exploit those same opportunities to defend human rights and defeat the forces crime, corruption and human trafficking".[33]

Through this present protocol, children are once again placed at the very heart of the action and interests of the international community, with regard to the humanitarian issue. Because the fundamental rights of the child are guaranteed.

[32] See: Article 02 of the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.
[33] See: Preamble to the United Nations Convention against Transnational Organized Crime.

2.2.1.5 ***Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish the Treatment of Persons, Especially Women and Children.*** This protocol organizes the procedure against any form of criminal industry, which pursues as its objective the trafficking of human beings, and particularly women and children, who are the most vulnerable of all.

Article 06 points (1) (2) (4) (5) and (6) provides, I quote:

"1. Where appropriate and to the extent permitted by its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including by rendering legal proceedings relating to such trafficking non- public.
2. Each State Party shall ensure that its legal or administrative system makes provision for providing victims of trafficking in persons, where appropriate:
(a) Information on the applicable legal and administrative procedures;
(b) Assistance to ensure that their views and concerns are presented and taken into account at the appropriate stages of the criminal proceedings against offenders, in a manner that does not prejudice the rights of the defence.

4. Each State Party shall take into account, when applying the provisions of this article, the age, sex and specific needs of victims of trafficking in persons, in particular the specific needs of children, including housing, proper education and care.
5. Each State Party shall endeavour to ensure the physical safety of victims of trafficking in persons while they are in its territory.
6. Each State Party shall ensure that its legal system provides measures which offer victims of trafficking in persons the possibility of obtaining compensation for the harm suffered".[34]

[34] See: art.06 of the Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish the Treatment of Persons, in particular Women and Children

In the procedure organized in this protocol, sensitive law such as the identities of victims, are the most secure, given the circumstances in which, the trafficking of humans offences, could place them. In addition to the special protection linked to the identity of the victims of this offence, this protocol instructs the States parties, in particular, to organize things so that children, victims, can have access to education.

2.2.2 UNSCR Resolutions on Child Protection

2.2.2.1 ***RESOLUTION 1261 (1999).*** [35] ***Adopted by the Security Council at its 4037th meeting, 25 August 1999.*** Through this resolution, the UNSC to proceed by urging Member States to take measures so that children are under good protection during the NIAC period.

The resolution provides, among other things, the following:

"7. Urges all parties to armed conflicts to ensure that the protection, well-being and rights of children are taken into account during peace negotiations and throughout the post-conflict peacebuilding process. Conflict; (…)
8. Calls upon parties to armed conflicts to take concrete measures during armed conflicts to minimize the suffering inflicted on children, including the establishment of 'days of tranquillity' to enable the provision of essential services, and further calls on all parties to armed conflicts to promote, implement and respect these measures; (…)
Urges States and all relevant United Nations bodies to redouble their efforts to end the recruitment and use of children in armed conflict in violation of international law, through political and other action including to promote solutions that prevent children from taking part in armed conflicts; (…)
14. Aware of the adverse impact that the proliferation of weapons, in particular small arms, has on the security of civilians, including refugees and other vulnerable groups, including children, and, in this regard, recalls the resolution 1209 (1998) of 19

[35] See: UNSC resolution: S/RES/1261 (1999) August 25, 1999

November 1998, in which it underlined, among other provisions, the importance of all Member States, in particular States manufacturing or selling weapons, limiting transfers of arms which could cause or harm prolong armed conflicts or aggravate existing tensions and conflicts, and where he called for international collaboration to combat the illicit movement of arms".

This resolution clearly demonstrates the intentions of the [36]United Nations with regard to children during the NIAC period. It recalls, among other things, resolution 1209, relating to the commitment of States manufacturing and marketing weapons, to participate through measures to reduce the harmful impact of weapons in society, and in armed conflicts.

2.2.2.2 ***Resolution 2427 (2018).[37] Adopted by the Security Council at its 8305th meeting, 9 July 2018.*** With this resolution, the UNSC places particular emphasis on the invitation of regional and sub-regional organizations to take more participatory measures, so that the rights of children in the period of armed conflict are most honoured.

The UNSC says:

Commits regional or sub-regional organizations and agreements to continue to integrate the issue of child protection into their awareness activities, policies, programmes and mission planning, train their staff and staff their peacekeeping and field operations with child protection specialists, establish child protection mechanisms in their secretariats, including the appointment of coordinators, and to take regional and sub-regional initiatives to prevent violations and abuses of children affected by armed conflict and to expand existing ones."

[36] See: on https://documents.law.yale.edu/. Consulted in 04.20.2022.
[37] See: UNSC resolution: S/RES/2427 (2018) 09 July 2018

2.2.2.3 ***Resolution 1612 (2005).[38] Adopted by the Security Council at its 5235th meeting on 26 July 2005.*** "Strongly condemns the recruitment and employment of child soldiers by the parties to an armed conflict in violation of their international obligations, as well as all other violations and abuses committed against children in times of armed conflict."

With this resolution, the UNSC takes a firm position against the parties to armed conflicts, who have violated the recommendations of the Geneva Conventions, prohibiting the recruitment of children under the age of fifteen in military operations.

2.2.2.4 ***Resolution 1539 (2004).[39]Adopted by the Security Council at its 4948th meeting on 22 April 2004.*** "Calls on States and the United Nations system to recognize the important role of education in conflict zones in stopping and preventing the recruitment and recall of children who are contrary to belligerent obligations;

Notes with concern all cases of sexual exploitation and abuse of women and children, including girls, in humanitarian crisis situations, including cases involving humanitarian workers and peacekeepers, Urges contributing countries to incorporate the six main principles of the Standing Committee on Emergencies into codes of conduct for peacekeeping personnel and to create appropriate mechanisms of discipline and accountability and welcomes the Promulgation of the Secretary General's Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse".

Through this Convention, the UNSC is committed to reminding the parties to armed conflicts of the importance of education for children in conflict zones, and at the same time calls on them to take important measures to ensure that children, may enjoy their right to education despite hostilities.

In addition, the council notes the sexual and other abuses that women suffer in areas of armed conflict.

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[38] See: UNSC resolution: S/RES/1612 (2005) July 26, 2005

[39] Voir: la résolution du CSNU:S/RES/1539 (2004) 22 avril 2004

2.3 The Main International Texts of IHRL Organizing the Protection of Children's Rights

We will review, the main international texts, which organizes the IHRL (a), and then we will analyse the protection of the rights of the child in situations of non-international armed conflict by the IHRL (b).

2.3.1 The main international texts of IHRL

2.3.1.1 ***The Universal Declaration of Human Rights.*** The UDHR is a text, the moral value of which is unique in its kind. For indeed, it demonstrates with accuracy, the reason why, in all its forms, discrimination linked to race, sex, or religious, political or moral convictions, will never be the basis of social peace, at the world.

The UDHR enshrines the principle of the equality of human beings before the law. It thus rules out, at the same time, any form of ill-treatment.

In its Article 26 the UDHR, recognizes and enshrines the principle and the right of children to education, in these terms:

"1. Everyone has the right to education. Education must be free, at least as far as elementary and fundamental education is concerned. Elementary education is compulsory. Technical and vocational education must be generalized; access to higher education must be open in full equality to all on the basis of their merit.
2. Education should aim at the full development of the human personality and at the strengthening of respect for human rights and fundamental freedoms. It must promote understanding, tolerance and friendship among all nations and all racial or religious groups, as well as the development of the activities of United Nations peacekeeping.
3. Parents have a priority right to choose the kind of education to be given to their children".[40].

[40] See: Article 26 of the Universal Declaration of Human Rights

In its Article 25 (2), the UDHR, enshrines the principle of equality of children regardless of the situation in which they were born. Thus, children born in wedlock or out of wedlock are all equal in terms of treatment before the law.

2.3.1.2 ***Pacte International relatif aux Droits Civils et Politiques Conclu à New York le 16 décembre 1966.*** With regard to the protection of children, this pact enshrines, among other things, the principle relating to the freedom of parents and, where applicable, legal guardians, on the choice of the ideal type of education for children (See article 18 (4)). In addition, the pact recognizes the need of the child especially in case of divorce of the parents.

2.3.2 Protection of the Rights of the Child in situations of Non-International Armed Conflict by DIDH

Being applicable in all circumstances, the IHRL was supported by the UN, particularly in its open nature, in order to ensure the protection of the rights of children, even in times of armed conflict. Thus, the special nature of the protection of the rights of the child, as organized by IHRL, is explained by the objectives of the UN, as defined in its article 01, which states in particular, to on the one hand, the maintenance of international peace and security[41]. And on the other hand, the action of repressing acts of aggression and all forms of threats against peace.

Taking into consideration, therefore, the mission that the Charter at the UN, which is essentially related to international peace and security. Thus, in the fulfilment of its mission, by its means and its own policy, the UN has thus produced a new in the fight for the protection of the rights of the child.

[41] See: United Nations Charter Article 01.

2.3.2.1 ***Regional legal instruments.*** The protection of children's rights is at the regional level, organised by the various institutions that support the struggle for human rights. In this regard, we will limit ourselves to citing the legal provisions of the founding texts of these institutions, by way of notification of their involvement in the fight for the protection of the rights of the child.

2.3.2.1.1 The African Union

The AU enshrines the principle of the protection of children's rights in Article 13[42]

(k) of its instrument of incorporation. Paragraph (k) states:

"(k) Social security and development of policies for the protection of the mother and child and policies for persons with disabilities."

2.3.2.1.2 The European Union

In the EU Charter of Fundamental Rights, the principle of the protection of the rights of the child is enshrined in Article 24[43]

2.3.2.1.3 The American Convention on Human Rights

The protection of the child, and particularly with regard to the moral aspects of his person, is enshrined as a principle in the article 13[44] of this Agreement.

2.4 The security crisis caused by the Boko Haram attacks

[42] See Constitutive Act of the African Union Article 13.

[43] See Charter of Fundamental Rights of the European Union article 24.

[44] See American Convention on Human Rights, Article 13.

2.4.1 Origins of the terrorist group Boko Haram

Depending on the focal points of analysis, in an attempt to understand and explain the origins of the terrorist group Boko Haram, the researchers are grouped into at least three categories. However, they all agree on one point, that of the ideological fight led by the terrorist group of the Islamic religion. On the one hand, we have those that link the origins of the terrorist group Boko Haram, in the other problems of the failure of the State of Nigeria. In this category, we will mention the Cameroonian author Rodrigue Nana Ngassam, who analyzes the phenomenon Boko Haram. Seen from Cameroon, the author states, I quote:

Since the mid-1980s, the confines of Cameroon have been areas of disorder where state authority has struggled to impose itself due to the proliferation of armed bands of rebels, various traffickers and highway bandits. Using and abusing the porosity of borders and cross-border solidarity in cultural areas that transcend the limits of States, these criminal organizations are nourished by the flowering of vectors of violence resulting from the political instability that characterizes them. A first factor is the failure of States, one of whose weaknesses remains the inability to complete their authority in their territory. The larger Lake Chad basin remains under administered and suffers from chronic poor governance. It is in this context of vulnerability that Boko Haram appears in Nigeria officially in 2002 in the State of Borno.

It is a sectarian movement that brings to the surface social frustrations and religious tensions that are quite distant in a clenched society. The context is socially marked by the idleness of youth and strong resentment stemming from the perception of social injustices."[45]

The author presents to us, on the one hand, the situation related to the failure of the States of Cameroon and Nigeria in their responsibilities, in particular to establish the state authority over all their respective national territories. And on the other hand, he stresses the fact that the State does not manage either, to take care of youth properly.

[45]Rodrigue Nana N. (2020) : *Historique et contexte de l'émergence de la secte islamiste Boko Haram au Cameroun*. Rapport de recherche. Cahier Thucydide n° 24. In http://www.afri-ct.org/ Consulted in 05.01.2022

Among other things, the author argues that the speech of the founder of the Boko Haram group, in the person of Ustaz Muhamed Yusuf, is an instrument and a way to fill the unsatisfactory discourse of the Nigerian political authorities, close to the youth.
On the other hand, we have authors who explain the origins of the terrorist group Boko Haram, in an exclusively economic context. They speak of poverty, on the basis of a claim of a religious heritage of the Hausa people, who majority in the basin of Chad. Among these we will quote mainly, Simina Rautu, who says, I quote, "The main cause of the emergence of this group [Boko Haram] is in fact the misery that Nigerians have to endure every day."[46]

By presenting poverty as the main cause of the emergence of the Boko Haram group, the author takes care to retrace the cultural framework, while underlining the various protest movements initiated by the religious leaders, during the period which had forced the Federal State of Nigeria, to be politically driven by totalitarian regimes. The concern for this stability was in particular the search for political and institutional stability. This political and institutional stability, remained weakened by the protest movements for social well-being, led by the majority ethnic group of Nigeria, which are made up of the Hausa people.

And finally, the third category, researcher, is made up of those who explain the birth of the Boko Haram group, by pooling the views of the first two categories.

2.4.2 Emergence of the Boko Haram Terrorist Group

Ne faisant pas l sujet principal de notre recherche, nous proposons en peut des mots, quelques étapes, nous avons jugé utile dans le cadre de notre sujet, afin de saisir de manière basique l'émergence du groupe terroriste Boko Haram. Nous reproduisons pour ce faire, une partie du rapport de l'ONG FIDH :

[46] Iulia-Simina Rautu : *BOKO HARAM AU NIGERIA : UNE NOUVELLE FORME DE TERRORISME OUUN MOUVEMENT MILITANT RELIGIEUX ?* Mémoire rédigé par Iulia-Simina Rautu en vue de l'obtention du grade de Master en Science Politique, orientation générale, à finalité spécialisée en relations internationales. Année académique 2016-2017. P.31.

“From 2002 to 2004, he confined himself to the religious domain and preaching, then from 2004, the charismatic leader began to have political demands, in particular the establishment of an education system based on Koranic schools. In fact, from 2006, he set up a parallel Islamic education system in Borno State (north-east) by opening schools, high schools and Koranic universities, welcoming those excluded from an ultra-selective public system and inspired by the British model, and launched its slogan 'Boko Haram'. During this period, the group became more radical and often violent clashes pitted its militants against the security forces.

In December 2003, the organization launched its first major attacks against the police. It was also at this time that the first attacks on police stations to recover weapons and ammunition date. In 2006, Mohamed Yusuf was investigated for allegedly illegal activities, but the investigation was dropped. He was arrested several times, notably on November 13, 2008, for “illegal gatherings” and “disturbing public order”, but released by court order.

The summer of 2009 was the major turning point for the organization. On July 26, 2009, the Islamist group launched a simultaneous attack in four states in northeaster Nigeria (Borno, Bauchi, Yobe and Kano) after militants were injured during a police check. The toughest fighting takes place in Maiduguri (capital of Borno State) where the Islamists clash with the police for 4 days before the army intervenes. On July 30, the army bloodily crushes the Islamist rebellion. There are between 700 and 1,500 victims, including at least 1,000 in the ranks of the Islamists.3 including the founder of Boko Haram, Mohamed Yusuf, arrested by the armed forces and summarily executed by the police. The survivors fled and went into hiding »[47]

Through these three paragraphs, we were able to grasp in a few words, the emergence of the terrorist group Boko Haram.

[47] FIDH: FIDH acts for the protection of victims of human rights violations, the prevention of these violations and the prosecution of their perpetrators. A general vocation FIDH acts concretely for the respect of all the rights set out in the Universal Declaration of Human Rights – civil and political rights as well as economic, social and cultural rights. A universal movement Created in 1922, FIDH today federates 178 national organizations in more than 100 countries. It coordinates and supports their actions and provides them with an international relay. A requirement for independence FIDH, like the leagues that make it up, is non-partisan, non-denominational and independent of any government. In www.fidh.org Consulted in 04.22.2022

2.4.3 Legal nature of the Boko Haram Group

Understanding the nature of a thing, or phenomenon, is of major interest. This interest is closely related to the use of the thing, and to the treatment, which is supposed to be reserved for the thing.
This makes no shadow of doubt that the international scene has undergone considerable changes, by the appearance of new actors alongside States. Samy Cohen brings this change back to the 1990s.

He says, among other things: A new balance of power would have been established between the States and this heterogeneous set constituted by NGOs (non-governmental organizations), multinational firms, financial operators, migrants, terrorists, drug traffickers, mafias and countless other private actors».[48]

And how this is supported by a good understanding of the law. Any new actor in the legal sphere is generally perceived either as an evolutionary change in an area already covered by legislation, or still, this is an invitation that societal life addresses to the legislator, whose nature of the task, may in some respects resemble the task of a scout, who shows the sure way, who leads the whole society to great security and lasting peace.

In addition to this aspect of the emergence of new actors, we must also recognize the fact that the theatre of war is changing internationally. Sylvain Vité[49], acknowledges this when he states that "the reality of armed conflict is more complex than the model described in international humanitarian law…".

We think that the emergence of a terrorist group is much more an invitation than the legislator, both nationally and internationally, should consider with much more attention, given the depth and depth of the evil caused by the phenomenon of terrorism.

[48] See: Samy Cohen States faced with "new actors" in https://www.diplomatie.gouv.fr. consulted on 05.01.2022
[49] Sylvain V. Typology of armed conflicts in international humanitarian law: legal concepts and realities. In https://www.icrc.org/ in 05.01.2022

With respect to the legal nature of the terrorist group Boko Haram. It is to be placed in the category of new players on the international scene. This is well developed by several legal thinkers, particularly Professor Samy Cohen, whom we quoted in the preceding paragraph. And for his part, Professor Yves Paul MANDJEM,[50] In his study on jihadist groups and international relations, he asserts that the group Boko Haram, indeed, occupies the rank of an actor on the international scene.

However, the recognition of this position as a new player on the international level, especially for the terrorist group, does not resolve the question of the legal regime applicable to the terrorist group. We rely on the theory of law as regards personality in law, and affirm that the legal regime applicable to the subjects of law is exclusive, to the latter, because they fulfil the condition of having the obligations and being bearers of the duties towards the other subjects of law. This is verifiable both in international law and in national law.

2.4.4 Boko Haram: terrorist attack or armed conflict not of an international character[51]

"The ferocity of the terrorist act undermines all the moral and legal principles of our humanity. In this, he does not deserve peace. »[52]

We recognize the obvious, that the situation caused by the terrorist group Boko Haram is really complex.

Considering the principle of IHL (a) on the question of armed conflict, we shall see that, in reality, terrorism as currently experienced, remains a question of law, of course, but of which no legal instrument of international law, had not thought to reserve a

[50] Yves Paul MANDJEM (2020): Jihadist groups and international relations: contribution to a sociology of a controversial actor The case of Boko Haram in the Lake Chad Basin. Research Report. Thucydide Notebook 27. In http://www.afri-ct.org/ Consulted in 05.01.2022

[51] Ukhuegbe, S., Fenemigho, A.I. (2021). Determining the Termination of a Non-International Armed Conflict: An Analysis of the Boko Haram Insurgency in Northern Nigeria. In: Eboe-Osuji, C., Emeseh, E., Akinkugbe, O.D. (eds) Nigerian Yearbook of International Law 2018/2019. Nigerian Yearbook of International Law , vol 2018/2019. Springer, Cham. https://doi.org/10.1007/978-3-030-69594-1_14

[52] Marie Hélène Gozzi (2003), Terrorism: trial of a legal study, Focus, Ed. Ellipses, Paris, p. 5.

precise look. Indeed, we should not ignore the fact that since the attacks of September 11, 2001, in the United States, the form of the manifestation of terrorism has changed considerably. This prompted researchers to talk about MODERN TERRORISM. Thus, the legal nature of Boko Haram, namely, the fact that it is not an armed group within the meaning of the principles of IHL, causes problem, there is a black hole in international legislation, on the question of terrorism. Indeed, IHL, first of all the question of armed conflict, in a classical framework. Nevertheless, in order not to leave this question which brings IHL closer to the situation of attacks, the doctrine has tried to find under what conditions IHL (b) can apply in the question of terrorism

2.4.4.1 ***The principles of IHL and classical armed conflict.*** Also known as the law of war, IHL therefore offers the classic and legal framework for the conduct of war. IHL, presents in four instruments, the normative framework of war. To properly frame the course of the war, the IHL, proposes the difference between two types of armed conflicts, on the one hand, there is the International Armed Conflict (IAC), and on the other hand, there is the Non-International Armed Conflicts (NIACs).

The International Armed Conflict (IAC), is organized by common article 2(1) of the Geneva Conventions (GC) of 1949. There is no explanation, much clearer to understand this type of conflict, than that provided by the ICTY. Indeed, the court, affirms with simplicity and clarity saying I quote: 'there is an international armed conflict each time there is recourse to armed force between States'[53].

2.4.4.1.1 The Non-International Armed Conflict (NIAC).

Two texts of international humanitarian law, organizes, this question. These are Article 3 common to the 1949 Geneva Conventions and Article 1 of Additional Protocol II of 1977. An armed conflict is described as not international, when at least one of the parties to the fight is not a State, in the sense of the State in international law. And Article 1 of PA II applies to armed conflicts taking place in the territory of one of the

[53] See: ICTY, Tadic Case, Judgment on Defense Appeal Against Jurisdiction, October 2, 1995, para. 70. See also: ICTY, Case Mucic et al. (Celibici Camp), Judgment of November 16, 1998, para. 184: 'the resort to armed force between States is in itself sufficient to trigger the application of international humanitarian law'. This definition has since been taken up by other international bodies. See for example: Commission of Inquiry on Lebanon, Report pursuant to Human Rights Council resolution S-2/1, A/HRC/3/2, November 23, 2006, para. 51.

High Contracting Parties. This is particularly the case when there are clashes between the regular army and one or more armed groups having a regular organization, that is to say a training of fighters, which is under the command of a responsible person.

2.4.4.1.2 Application of the principles of IHL in the event of a terrorist attack

Unanimously, legal doctrine recognizes that there is no clear, uniform and universally recognized definition of terrorism. Sandra K [54], explains that the lack of applicable legislation is mainly related to the lack of a clear, uniform and universally recognized definition. And for his part, Professor Marco S [55], while affirming this observation, it will push the situation even further, by doing two things, on the one hand it proposes a reasoning by analogy [56], to find a coherent definition of terrorism. And on the other hand, the professor proposes three approaches in which, IHL/CAI standards apply to terrorist attacks.

According to the first, there is application of the IHL of IAC[57], because it is considered that the offensive of the intervening States is directed against the territory of the third State. This reasoning is problematic, however, since it does not qualify the terrorist group against which the offensive is directed as a party to the conflict; therefore, IHL is not applicable to it.

The second solution is the simultaneous application, on the one hand, of the IHL of CAI[58] with regard to the relationship between the attacking state and the host state and, on the other hand, the IHL of NIAC with regard to the relationship of the states with the terrorist group under attack. For Marco Sassòli, however, this solution is also flawed.

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[54] *Proceedings of the Bruges Colloquium Terrorism, Counterterrorism and International Humanitarian Law. In<https://www.coleurope.eu> Consulted in 04.23.2022*

[55] Sassoli, M. (2007). The definition of terrorism and international humanitarian law. In<https://www.semanticscholar.org> Consulted in 04.28.2022.

[56] Ibidem.

[57] *Proceedings of the Bruges Colloquium Terrorism, Counterterrorism and International Humanitarian Law. In<https://www.coleurope.eu> Consulted in 04.23.2022*

[58] Ibidem.

This is why the author proposes a third approach, which consists in applying only the IHL of NIAC[59], since, according to him, there is in itself no conflict between States.

Thus, we share with Professor Marco S, the third approach, because, in the case of the Federal Republic of Nigeria, there is not the presence of elements likely to make thought that the crisis of Boko Haram, would be of international nature. However, this application as proposed by Professor Marco S, is not entirely satisfactory, to the extent, or the terrorist group, are not organized in the direction given by IHL, for the armed group in the case of NIAC, which presents an organization, with the possibility of tracing the chain of command, in the search for causality.

2.5 The Federal State of Nigeria An Actor in the Protection of Children's Rights

In general, the struggle for the protection of rights seems to be the prerogative of International Organizations (IOs). However, already by its nature as the subject of international law par excellence, the State must be considered, as the first actor (a) par excellence, on this issue of the protection of children's rights. We will close this chapter, by analysing on the one hand the situation of the child in Nigeria and in some countries in the world (b) and on the other hand the cause of the weakness of this mission on behalf of Nigeria (c).

2.5.1 Brief presentation of the Federal Republic of Nigeria

The most populous country on the African continent, Nigeria ranks 7th in the world. A demographic giant, the Federal State of Nigeria, has a population of 206 million. According to the World Population Prospects,[60] this number may double.

Nigeria is a Federal Republic, consisting of 36 states to which must be added the Federal Capital Territory (FCT). The Constitution of the Fourth Republic, adopted in 1999, is taken from the 1979 Constitution, which was itself inspired by the Constitution of the United States of America. The President of Nigeria is elected by first past the post every

[59] Ibidem.
[60] see: https://population.un.org/wpp/ Consulted in 05.01.2022

four years. Nigerian voters elect members of the National Assembly (NASS) at the same time[61], composed of an upper house, the Senate, and a lower house, the House of Representatives. The Senate has 109 senators, three per state, and 360 representatives sit in the chamber.

For their implications with determination, and professionalism, IOs are seen as the only actors, to work on this issue of the struggle for the protection of the rights of the child. However, this task is originally devoted to States, and this justifies the sense of the sovereign character of the political power exercised by States. The protection of the population is one of the constitutional duties of a State. In this same vein, BEHRENDT Christian B,[62] defines the State as:

"A community of men, fixed on its own territory and possessing an organization from which results for the group envisaged in its relations with its members a supreme power of action, command and coercion."

The constitution of the Federal State of Nigeria, remains the only foundation that enshrines the duty to protect the rights of the State, and commits it to take adequate measures to ensure that the rights of the Child are effectively and effectively protected.

Thus, the Federal Constitution of Nigeria, on point 17relative to the social objectives, is largely relevant[63].

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[61] see: https://www.diplomatie.gouv.fr/fr/dossiers-pays/nigeria/presentation-du-nigeria/ Consulted in 05.01.2022

[62] BEHRENDT Christian BOUHON Fréderic (2014), Introduction to the general theory of the State, Brussels, Larcier, Collection of the Faculty of Law of the University of Liège, p. 80.

[63] See CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 [With First, Second and Third Amendments] Produced by the Federal Ministry of Justice, Abuja. Federal Constitution 7.—(1) The social order of the state is founded on the ideals of liberty, equality, and justice.(2) In promoting the social order—(a) every citizen shall have equal rights, obligations and opportunities before the law; (b) the sanctity of the human person shall be recognized and human dignity shall be upheld and enhanced; (c) government actions must be humane; (d) the exploitation of human or natural resources in any form for reasons other than the good of the community shall be prevented; and (e) the independence, impartiality and integrity of the courts, as well as their ease of access, must be guaranteed and maintained. (3) The State shall direct its policy towards ensuring that - (a) all citizens, without discrimination against any group, have the opportunity to secure sufficient means of subsistence as well as adequate opportunities for obtain suitable employment; (b) working conditions are just and humane, and that there are adequate facilities for leisure and social, religious and cultural life; (c) health, safety and welfare of all employed persons are safeguarded and are not endangered or abused; (d) there are adequate medical and health care facilities for all persons; (e) equal pay is given for equal work, without discrimination on the basis of sex or

The reference to child protection is at point (f). In addition to the Constitution, the various instruments of international law that we have reviewed engage States Parties in this struggle to protect children's rights.

In its commitment to the protection of children's rights, the Federal State of Nigeria has ratified a number of treaties, including the Convention on the Rights of the Child (CRC) on 16 April 1991. In addition to this convention, there is also the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[64] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Racial Discrimination. It is also a party to the International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights. In addition, through its membership of the AU, Nigeria has thus ratified regional agreements such as the African Charter on Human and Peoples' Rights.

However, it has signed but not ratified the Optional Protocol on Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the African Charter on Rights and Well-be of the child.

2.5.2 The Situation of the Child in the World and Nigeria

Currently, in an ever-increasing number, children used for military purposes. Based on the United Nations Children's Fund (UNICEF)[65] , nearly 250 million children are present in the world. Some were born and raised there. And nearly 125 million of them are directly affected by violence. Let's look at the situation of the child in the Democratic Republic of the Congo (DRC), Syria and Nigeria.

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any other on any ground; f) children, adolescents, old people are protected against any kind of exploitation and against moral and material abandonment; g) public assistance is provided in deserving cases or in other cases of need; and (h) the development and promotion of family life is encouraged.

[64] saw on : Rights of the Child in Nigeria Report on the implementation of the Convention on the Rights of the Child by Nigeria. A report prepared for the 38th session of the Committee on the Rights of the Child – Geneva, January (2005)

[65] saw on: https://www.unicef.fr/dossier/enfants-et-conflits. Consulted in 05.03.2022

2.5.3 The situation of the child in the DRC

In war for nearly 30 years now, the Congo, is one of the countries in the African Continent, which has lost the most children, in armed conflicts. The crisis of the Congolese child is characterized by violence that directly affects his person. It is precisely sexual violence.

2.5.3.1 ***The recent UNICEF report[66] referred to below.*** The DRC is one of the countries with the highest rates of gender-based violence against children, accounting for 47% of survivors in emergency zones.[67]

According to the 2013-2014 Demographic and Health Survey, 43% of women aged 25 to 49 are affected by child marriage, often related to early pregnancies. Indeed, 27% of girls aged 15-19 are pregnant and the DRC has the 7th highest rate of adolescent pregnancies in the world.[68]

As we have pointed out, the situation of the child in the Congo is more a situation, which affects the child in its psychological dimension, than the remnants of the dimensions.

2.5.4 The situation of the child in Syria

The realities of children in Syria, is one of the most serious humanitarian crisis the world has experienced since the world wars. As the NGO Humanium points out, and I quote:

"Syrian children are the first victims of the conflict. Often witnesses and targets of violence, they leave the country for refugee camps in neighbouring countries".**[69]**

Unlike the Congolese child crisis, children in Syria are subjected to other forms of trauma. They are faced with a type of material-related deficiency, in terms of living conditions.

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[66] saw on: https://ponabana.com/ consulted in 05.03.2022
[67] Ibidem.
[68] Ibidem.
[69] saw on: https://www.humanium.org/ consulted in 05.03.2022

As highlighted by the recent report of the International Committee of the Red Cross (ICRC), beyond the loss of loved ones, Syrian children suffer from displacement, I quote from the report:

"Three out of five young Syrians have been forced to leave their homes. Many report missing important milestones in their lives and having to change their personal plans. For example, one in five young people had to postpone their marriage because of the conflict, and seven in ten of those surveyed in Syria and Germany are single".[70]

In addition to this situation of displacement, the general population, and the Syrian child in particular, is experiencing the atrocious experience of famine, as reported by the ICRC, with clear words:

"Access to food remains a major problem. In Syria, three-quarters of young Syrians struggle to meet their basic needs or those of their households. In Lebanon, the ever-worsening economic crisis is also weighing on resources. More than two-thirds of young Syrians living in the country lack financial means, and more than half indicate that access to food and health care remains an issue for them".[71]

Thus, as supported by the various reports, the deplorable situation in which the child of the 21st lives, does not require the examples of more than two countries, to understand, the rights of the child are in continual demand of the most attention from the authorities, both at the national level and at the global level.

2.5.5 The Situation of the Child in Nigeria

Nigeria, the most populous country in Africa, and the 7th in the world, is facing multidimensional crises. The child of Nigeria, at the same time, is faced with the cultural problem, which is the epicentre of the security crisis in the Chad basin. Besides this situation, the child of Nigeria, faces the nutritional problem.

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[70] Seen on: https://info.icrc.org/hubfs/Syria%2010%20years/ICRC_Report-Syria. consulted in 05.03.2022

[71] Ibidem.

The NGO Food Security reports a chronic malnutrition situation in some states in Nigeria. This is clear from the 2020 report, which I quote:

From June 1 to July 20, 2020, the Government of Nigeria reported nearly 311,000 new admissions of children to the 16 states analyzed and its capital (FCT) (Table 3). The states of Jigawa (42%), Borno (23%) and Niger (16%) had the highest morbidity rates. The majority of health facilities remained operational in northern Nigeria."[72]

As we have just said, the situation of the child in Nigeria is of great concern. The security situation, takes center stage, and yet it is the critical situation, only the child of Nigeria. Whole families, continue the mourning of children abducted since 2014 by the terrorist group Boko Haram. The efforts of the government meet obstacles of many forms, and of more dimensions in terms of urgency.

2.6 The cause of Nigeria's weak response to Boko Haram atrocities

Compared to the impactful reaction of other states hit by terrorism, especially France, we feel that the reaction of the Federal State of Nigeria, has not been up to the task. Indeed, the effectiveness of the action of the French Republic, is perceived, notably by the approach of the elected people, mainly the French senators, who by a correspondence[73], they initiated a series of measures that the government is called upon to observe, in order to organize an adequate treatment for French children, victims of terrorist atrocities in Syria.

We'll use the failed state theory,[74] to support our point of view on the weak response of the Federal State of Nigeria to the atrocities perpetrated by the terrorist group Boko Haram.

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[72] Seen on: https://www.food-security.net/. Consulted in 05.03.2022

[73] See: Le Figaro, no. 23913 of Friday July 9, 2021: 169 "children of jihad" have been repatriated to France words, p. 7

[74] See: http://www.foreignpolicy.com. Accessed on 05.04.2022

Indeed, like many African States, the Federal State is experiencing the consequences of not completing its construction as a nation-state. The unresolved cultural cleavage that separates and weakens the country, in two blocks of which the North-East majority of Muslims, the southern part, populated by Christians, is the main source, which is at the origin of a number of problems such as:

- The weakening of the political action of the Federal State, on the extent of the national territory, of which almost the majority of the States in the north-eastern part of the country;
- Leaving the need for the supervision of youth to the care of the federal states, whereas in principle, being the future of the country, youth should be organized by the federal state, in collaboration with the federal states.

When division on the point of view is present in a State, it will only cause fragility, as is the case now.

Concretely, the failure of the actions of the Federal State of Nigeria, are mainly by consequence of the unfinished work that is found in the construction of the nation-state on behalf of the Federal Republic of Nigeria. And these consequences are manifest in particular by the maintenance of climates of extremism, as Zachary Devlin-Foltz notes: Fragile states in Africa generate political and security environments that intensify the multiplier effect of Islamist extremists in their ongoing struggle for influence against moderates. The fight against extremism in Africa can therefore only succeed in concert with stronger and more legitimate States»[75].

[75] See: AFRICAN SECURITY BULLETIN A PUBLICATION OF THE AFRICA CENTER FOR STRATEGIC STUDIES HIGHLIGHTS NO. 6 / AUGUST 2010. Accessed in https://africacenter.org/ in 05.04.2022

3 CHAPTER III

The international responsibility of the Federal Republic of Nigeria towards the neighboring States victim of the terrorist attacks of Boko Haram

In this chapter of our thesis, we will address the question of the international responsibility of States, at the level of IHL and IHLD. When neighbouring States are affected by collateral damage from events originating in another State. We will analyse mainly the conditionality that triggers international responsibility.

3.1 The international responsibility of the State

This question of the international responsibility of the State, is a matter in construction. It is not yet a fixed right, a branch of law already crystallized.

As regards the principle of the international responsibility of the State, we noted that it was not until 2001 that customary international law codified this principle. This, through the International Law Commission, through a Draft Article dealing with the responsibility of the State for any unlawful conduct. This project is therefore the only document on the question of the international responsibility of the State. And we will therefore use it for our reflection on the subject of the international responsibility of the State.

With regard to international responsibility, the draft codification has, for the moment, limited itself to stating the general conditions of such a nature as to fix the responsibility of the State for the unlawful acts or omissions and the legal consequences thereof.[76]

3.1.1 Definition:

[76]See: DRAFT ARTICLES ON STATE LIABILITY FOR INTERNATIONALLY UNLAWFUL ACTS AND RELATED COMMENTS. Text adopted by the Commission at its fifty-third session in 2001 and submitted to the General Assembly as part of its report on the work of that session. The report, which also includes comments on the draft articles, will be reproduced in the Directory of the International Law Commission, 2001, vol. II (2) with a correction. In http://www.eydner.org consulted in 04.23.2022.P.66.

Professor Jean Louis Basdevant defines international liability as the obligation under international law of the State to which an act or omission contrary to its international obligations is attributable, to provide reparation to the State, who has been a victim in himself or in the person or property of his nationals.

Similarly, Professor Ch. Rousseau, and Philips Manin,[77] State that, respectively, the international responsibility of the State, appears as a sanction of the actions of politically organized and internationally independent collectivities. And as far as Philips M is concerned, says of this responsibility, that it is not a direct means of applying international law, but rather it is the fundamental technique of sanction for the non-application of international law. And to finish this little paragraph on the definition of responsibility, we quote Professor Brigitte Stern[78] which affirms what follows, "all legal orders are aware of the institution of responsibility, defined as the fact that a person has a right to be held accountable for his or her actions,This leads to a break in the legal order or possibly in the material balance provided for by it. The international legal order is no exception to the rule and therefore, of course, this institution is known as international responsibility.

But because of the specificities of the international community, composed of sovereign subjects, international responsibility has its own characteristics"

3.1.2 Conditions of International State Responsibility

Three conditions are necessary for the international responsibility of the State to be triggered.

These are unlawful acts, damage or injury, and accountability.

[77] See: *International Responsibility*. In https://www.ladissertation.com Consulted in 04.26.2022
[78] Brigitte Stern (2011) The dilemmas of international responsibility today, Proceedings of the conference: towards new standards in the law of public responsibility, Senate, Luxembourg Palace.

3.1.2.1 ***The unlawful act.*** Article 12[79] the bill in full process of codification, on the international responsibility of the State provides: "A State is in breach of an international obligation when a fact of that State is not in accordance with what is required of it under that obligation, regardless of its origin or nature."

For Patrick Dailler[80], a fact is described as [81]unlawful in the report of subjects of international law, when the fact constitutes an infringement of the security of legal relations. This definition reinforces the doctrinal point of view, which affirms that only the violation of either a commitment (international treaty), or the violation of a rule of international law having the value of an international custom, is likely to evoke the notion of an unlawful act or omission. ZEBEDEE RURAMIRA[82] states that illicitness is the basis, the central element, in the process that triggers the retention of a State's responsibility at the international level.

3.1.2.2 ***The harm.*** The article 31[83] the bill in full process of codification, on the international responsibility of the State states: Responsible State is obliged to fully repair the harm caused by the internationally illicit fact. Damage includes any damage, both material and moral, resulting from the internationally unlawful act of the State."

The Latin brocade in international public law: PACTA SUNT SERVANDA, can be seen as, a doctrinal source, in order to establish the notion of both respect for commitments, and also of reparation.

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[79] See: DRAFT ARTICLES ON STATE LIABILITY FOR INTERNATIONALLY UNLAWFUL ACTS AND RELATED COMMENTS. Text adopted by the Commission at its fifty-third session in 2001 and submitted to the General Assembly as part of its report on the work of that session. The report, which also includes comments on the draft articles, will be reproduced in the Directory of the International Law Commission, 2001, vol. II (2) with a correction. In http://www.eydner.org consulted in 04.23.2022.P.131.

[80] Patrick Dailler and Alain Pellet (2002), Public international law, 7th ed., L.G.D.J., Paris, 2002, p. 796.

[81] Davidsson, Elias. (2004). Legal boundaries to UN sanctions. The International Journal of Human Rights. 7. 1-50. 10.1080/13642980310001726206.

[82] See: ZEBEDEE RURAMIRA: International Responsibility of Member States of International Organizations. In: https://www.memoireonline.com. Consulted in 04.23.2022

[83]See: DRAFT ARTICLES ON STATE LIABILITY FOR INTERNATIONALLY UNLAWFUL ACTS AND RELATED COMMENTS. Text adopted by the Commission at its fifty-third session in 2001 and submitted to the General Assembly as part of its report on the work of that session. The report, which also includes comments on the draft articles, will be reproduced in the Directory of the International Law Commission, 2001, vol. II (2) with a correction. In http://www.eydner.org consulted in 04.23.2022.P.240.

Thus, reparation, which is established in principle in international law, is always triggered, that when a right, recognized and protected on behalf of another subject of international law, was violated. It is in the same logic, that in the case of the Chorzów factory,[84] the CPJI, affirms: the reparation is therefore the indispensable complement, which attaches to any breach of the application of a convention.

3.1.2.3 ***Accountability.*** Jean C. and Serge Sur[85], present imputation as a process whose function is to make it possible for the conduct of an internal subject to be linked to an international subject for the purpose of determining liability.

Finck François,[86] defines accountability as the behavioural characteristic of an individual, or group of individuals who can or must be attached to a state, or an international organization. The reproached behaviour is therefore the first, so that the international responsibility of a State, itself held against the latter. Then comes the causal link. And this link is established by the fact of the quality that the State confers on its agents. Being a fiction of the reflection of the legal thinkers, the State, manifests itself by means of its constituent organs, which, in turn, are animated by physical persons, which justifies a quality for doing this.

As demonstrated by the rules of IHL, jurisprudence has evolved the notion of the accountability of the international responsibility of the State. For illustrative purposes, we propose to analyse two of the scenarios that are included in Rule 149.

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[84] *Usine de Chorzów, compétence, C.P.J.I., série A, n° 9 (1927)*, p. 21. In *DRAFT ARTICLES ON STATE LIABILITY FOR INTERNATIONALLY UNLAWFUL ACTS AND RELATED COMMENTS*. Text adopted by the Commission at its fifty-third session in 2001 and submitted to the General Assembly as part of its report on the work of that session. The report, which also includes comments on the draft articles, will be reproduced in the Directory of the International Law Commission, 2001, vol. II (2) with a correction. In http://www.eydner.org consulted in 04.23.2022.P.240.

[85] Jean Combacau and Serge Sur. In: ZEBEDEE RURAMIRA: International Responsibility of Member States of International Organizations. In: https://www.memoireonline.com. Consulted in 04.23.2022

[86] Finck François (2011) Imputability in the law of international liability testing on the commission of an unlawful fact by a state or an international organization. Doctoral thesis in public law. University of Strasbourg. P.19

3.2 Extensive application of the rule of international responsibility of the State for the purposes of accountability of acts or omissions of State bodies

"Rule 149[87]. The State is responsible for violations of international humanitarian law attributable to it, including (a) violations committed by its own bodies, including its armed forces; (b) violations committed by persons or entities authorized to exercise the prerogatives of public authority; (c) violations committed by persons or groups actually acting on or under the direction or control of the Minister; (d) violations committed by private persons or groups that it recognizes and adopts as its own conduct."

3.2.1 Imputation to the State of acts or omission of its own Organs

Although preceded by the Lieber Code, however first in terms of the date of its signature (1899-1907), the Hague Conventions, we the first multilateral treaties. In particular, they set the course of action during the war.

Thus, that the responsibility of the members of the armed forces of a State, itself covered by the latter, goes back almost always. Indeed, it is an old of customary international law, which was codified by the Hague Convention in 1907(Cfr art.03 Conv. de la Haye 1907[88]). Thus, the main element, which is taken into account, so that the international responsibility of the State, itself retained, is therefore, the nature of the entity author of unlawful fact vis-à-vis the State, both in its constitution and in its functioning.

Article 04 of the draft [89] Law on the International Responsibility of the State, clearly states that: "The conduct of any body of the State shall be regarded as a fact of the State under international law, whether that body exercises legislative, executive, judicial or other functions, whatever its position in the organisation of the State, and whatever its nature as an organ of central government or a territorial collectivity of the State".

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[87] See: Rule 149, in https://ihl-databases.icrc.org Consulted in 04.26.2022

[88] See art.03 Convention (IV) concerning the laws and customs of war on land and its Annex: Regulation concerning the laws and customs of war on land. In http://www.western-armenia.eu/ Consulted 04.27.2022

[89] See: DRAFT ARTICLES ON STATE LIABILITY FOR INTERNATIONALLY UNLAWFUL ACTS AND RELATED COMMENTS. Text adopted by the Commission at its fifty-third session in 2001 and submitted to the General Assembly as part of its report on the work of that session. The report, which also includes comments on the draft articles, will be reproduced in the Directory of the International Law Commission, 2001, vol. II (2) with a correction. In http://www.eydner.org consulted in 04.23.2022.P.87.

3.2.2 Imputing to the State acts or omissions of armed opposition groups

Imputation in this case is possible only, when this group of insurrection, ends up organizing itself in the state. This is the summary of the special report[90] of the UN Commission on Human Rights in Sudan. This report declared the Sudan People's Liberation Army (SPLA) to be responsible for the murders, kidnappings of civilians, and other atrocities. These facts are committed by the local military leaders.

In order to remain in the cards of our research subject, we have chosen to remain within the framework of the acts and omission of the State, facing the international principles of IHL.

3.3 Characteristics of the State's International Responsibility in International Law

In general, the international responsibility of the State is characterized by the following characteristics:

3.3.1 The international responsibility of the State is essentially of customary origin

The International Law Commission (ILC)[91], whose essential mission is to promote the progressive development of international law by means of codification. The international responsibility of the State, is therefore purely produced by customary law, whose work of codification, is in full realization at the level of the CID.

3.3.2 The international responsibility of the State is essentially the prerogatives of the State

Contrary to the international responsibility in the matter of DIDH, which benefits from a direct effect, in that an individual can directly seize the international judge, and make himself heard in his claims; the international responsibility of the State, cannot be triggered, the State, even where there is a dispute involving a natural person. This was the

[90] See: United Nations Commission on Human Rights, Special Rapporteur on the situation of human rights in Sudan, Interim Report P.O. Box 53. In https://www.ohchr.org/ Consulted in 04.24.2022

[91] See: Article 01 of the Statute of the International Law Commission In https://legal.un.org/ilc. Consulted on 04.27.2022

position of the Permanent Court of International Justice (CPJI) in the Mavromatiss Concession case in Palestine[92]

3.3.3 The international responsibility of the State[93] is essentially jurisprudential in nature

For his part, Professor Alain Pellet.[94] asserts that the law of international responsibility is the production of the court. So it was the arbitral tribunals that laid the foundation for it, and CPJI has frozen its value and legal weight. And then the codification was done by the CID.

3.4 The international responsibility of Nigeria vis-a-vis the States victims of the atrocities of Boko Haram

As we have just demonstrated in the preceding lines, the main element, which makes possible the commitment of the State's responsibility at the international level, is the link of accountability. With regard to imputation, the draft law on the international responsibility of the State, I quote:

Imputing harm or loss to an unlawful fact is in principle a legal process and not just a historical or causal one. Many terms are used to describe the link that must exist between the unlawful act and the harm in order for the obligation to repair to arise. For example, it may refer to losses "attributable to the unlawful act" as an immediate cause, or to damage that is "too indirect, too remote and too uncertain to assess", or to "any direct loss, damage, including damage to the environment and the destruction of natural resources, and any other direct damage suffered by foreign States and foreign natural persons and companies" by the unlawful act. Thus, the existence of a causal link is in fact a necessary but not sufficient condition of reparation. Another factor

[92] See the Mavromatiss case in Palestine in https://icj-cij.org Accessed on 04.27.2022

[93] Nicksoni Filbert Kahimba (2021) *Human Trafficking Under International and Tanzanian Law*. International Criminal Justice Series Volume 27 Series Editors Gerhard Werle, Berlin, Germany. P.23-30. https://doi.org/10.1007/978-94-6265-435-8

[94] Alain Pellet (2021) Remarks on recent ICJ jurisprudence in the field of international responsibility, Blends offered to Christian Dominicé, Perspectives du droit international au 21ème siècle, ed. Nijhoff, page 321 and s.

helps to exclude compensation for harm that is too «distant» or «indirect» to give rise to compensation. In some cases, it is the "direct" nature of the harm that is targeted, in others, its "foreseeability" or "proximity".[95]

In this section, we will work to demonstrate the causality that links the Federal State of Nigeria, and the terrorist group Boko Haram.

3.4.1 The causal link due to the existence of the terrorist group Boko Haram and the international responsibility of the Federal State of Nigeria at the international level in the face of collateral damage suffered by Chad and Cameroon

3.4.1.1 ***In terms of national law.*** The predictability of the training, logistical and material organization of the terrorist group Boko Haram, is the most decisive, in this legal approach, to establish the accountability of the illegal acts and facts of the terrorist group Boko Haram, to the Federal Republic of Nigeria.

Indeed, in terms of domestic law, the Federal Republic of Nigeria is bound by the constitutional obligation to ensure the security of the population, and to organize, the free movement of persons and goods. Thus the appearance of a terrorist group, of the size and importance of the terrorist group Boko Haram, is an admission of failure of the State of Nigeria. Because the duty to maintain an intelligence service is the responsibility of the Government.

In addition to this predictability of illegal acts, as defined in the draft law on the international responsibility of the State, the ministers of the European Union (EU), in a document entitled Human Rights and the Fight against Terrorism, the European Council on Terrorism argues and cites the need to ensure the cohesion of society as an effective means of combating terrorism. Here is the extract of this argument which we reproduce in its entirety:

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[95] See: Comments in DRAFT ARTICLES ON STATE LIABILITY FOR INTERNATIONALLY UNLAWFUL ACTS AND RELATED COMMENTS. Text adopted by the Commission at its fifty-third session in 2001 and submitted to the General Assembly as part of its report on the work of that session. The report, which also includes comments on the draft articles, will be reproduced in the Directory of the International Law Commission, 2001, vol. II (2) with a correction. In http://www.eydner.org consulted in 04.23.2022.P.245.

"Bearing in mind that the fight against terrorism involves long-term measures aimed at preventing the causes of terrorism, in particular by promoting the cohesion of our societies and multicultural and interreligious dialogue."[96]

Nigeria has a cultural problem that makes it an unfinished state in terms of cohesion. Because, in fact, the North-South divide, of the national territory, which is made up of the same people, but which are separated on the question of religions constitutes a weakness, due to the lightness with which the Federal State of Nigeria managed the question of its cohesion.

The consideration of the place where the terrorist group Boko Haram is located is an element, which indicates, the weakness of the State of Nigeria, to carry out effectively, its obligation of the management and control of its national territory. Indeed, it is based in Maiduguri in the outlying region of Borno[97], on the border of Niger, Chad and Cameroon. A location very far from the capital of Abuja, image, of freedom from any control on the administrative level, as well as on the security level.

3.4.1.2 ***In terms of international law.*** There is no doubt that the neighbouring states of Nigeria, which are close to the headquarters of Boko Haram, have paid for the latter's terrorist acts.

The bill on the international responsibility of the State sets out a very precise criterion in these terms, I quote:

"(…) For example, it may refer to losses "attributable to the unlawful fact" as an immediate cause", or to damage that is "too indirect, too remote and too uncertain to be assessed", or "any direct loss, damage, including damage to the environment and the destruction of natural resources, and any other direct damage suffered by foreign States and natural persons and foreign companies" by the unlawful act"..[98]

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[96] See: Human rights and the fight against terrorism In https://www.echr.coe.int consulted in 04.23.2022

[97] Pérouse M, et Marc-A. (2012) *Boko Haram, Terrorism, and Islamism in Nigeria: A Religious Uprising, a Political Contest, or a Social Protest?* Research Questions, Centre d'études et de recherches internationales Available at SSRN: https://ssrn.com/abstract=2282542 or http://dx.doi.org/10.2139/ssrn.2282542 Consulted in 04.28.2022

[98] See: Comments in *DRAFT ARTICLES ON STATE LIABILITY FOR INTERNATIONALLY UNLAWFUL ACTS AND RELATED COMMENTS*. Text adopted by the Commission at its fifty-

The heaviest tribe that the neighboring states of Nigeria have paid, is the fact of seeing, the children, its convert into active elements, in the enterprise of terrorism. This produced a reflection in international law, led by Chris Yan[99]. In particular, it questions the question of the criminal responsibility of Cameroonian children, perpetrators of criminal acts, in the context of terrorism.

Thus, the State of Nigeria, in view of the above, it is in the indisputable position to answer for the unlawful acts of the terrorist group Boko Haram. Indeed, in the case of Nigeria, two of the essential conditions for the international responsibility of the chosen State are fully satisfied in the face of the terrorist acts of Boko Haram. The first is the condition for linking internationally unlawful acts, and the second is the violation of an international obligation.

3.5 The Legal Nature of a Terrorist Group Subject or Actor of International Law

The interest of this question is related to the legal regime applicable to acts of terrorists.

In his book THE 100 WORDS OF TERRORISM, Alain B [100], situates the appearance of the term TERRORISM around the years 1793. And Gérard C [101]., claims that the first acts of terrorism took place, in the Middle East, in Palestine, around the first century of our era, perpetrated by the sect of zealots (Jew), against a draft census of the Roman Empire.

3.5.1 International definition of terrorism

The clear and universally accepted definition of terrorism does not exist until now. This is the main reason that is stopping the progress of international legislation on the issue of terrorism.

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third session in 2001 and submitted to the General Assembly as part of its report on the work of that session. The report, which also includes comments on the draft articles, will be reproduced in the Directory of the International Law Commission, 2001, vol. II (2) with a correction. In http://www.eydner.org consulted in 04.23.2022.P.245.

[99] Chris Y. (2018) The issue of the criminal responsibility of children involved in the terrorist acts of Boko Haram in Cameroon, Master's thesis in Law, University of Montreal. p.3.

[100] Alain BAUER (2016), The 100 words of terrorism, 2nd ed. Paris, PUF p. 3.

[101] Gérard CHALIAND and Arnaud BLIN (2006), History of terrorism: from antiquity to Al-Qaeda, Paris, Bayard, PP. 63 -114.

However, this term, is seen as a way to use in order to describe chaotic situations.

In her address at the 17th Bruges Colloquium 20-21 October 2016, Sandra Krähenmann [102], stresses, however, the existence of international and regional legal instruments, which serve at the time of a legal basis on in order to settle the question of terrorism.

In addition to the definition question, Sandra noted,"The main stumbling blocks remain, even today, the question of the definition and elements constituting a terrorist act as well as the debate around the scope to be reserved for the convention, particularly in view of the difficulty of its application in the context of an armed conflict already covered by other legislation, including international humanitarian law (IHL)».[103]

Looking at the question of international legal instruments on terrorism, the doctrine agrees, to recognize, that globally, there are two categories of texts of rights at the international level, addresses the question of terrorism. On the one hand, there are universal treaties such as the texts of IHL, and on the other hand, we have the various resolutions of the United Nations Security Council (UNSC). On his behalf Professor Marco S[104]., affirms that in international law, there are currently no fewer than thirty universal and seven regional instruments for the prevention[105] and punishment of terrorism.

3.5.2 The Regional Definition of Terrorism

There are certain legal instruments of a regional nature, which define terrorism according to the realities relating to the dominant way in which this act of terrorism is manifested.

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[102] See: Proceedings of the Bruges Colloquium Terrorism, Counter-terrorism and International Humanitarian Law. In https://www.coleurope.eu Consulted in 04.23.2022. P.16.

[103] See: Proceedings of the Bruges Colloquium Terrorism, Counter-terrorism and International Humanitarian Law. In https://www.coleurope.eu Consulted in 04.23.2022. P.16.

[104] Sassòli, M. (2007). *La définition du terrorisme et le droit international humanitaire*. In https://www.semanticscholar.org Consulted in 04.28.2022.

[105] See on : legal.un.org. Consulted in 02.04.2022.

3.5.2.1 ***The European Union's legal instrument against terrorism.*** The EU's approach to the issue of terrorism is addressed in Directive 2017/541 of 31 March 2017 on the fight against terrorism [106].

This text is regarded as the main text, which serves to bring the States closer to the Union.

However, the text is rather preventive, rather than defining the offence of terrorism. With this text, the EU manages to oblige the Member States to criminalize a category of offences, which is as follows:

- Common law offences committed for the purpose of carrying out a terrorist attack;
- Organizing and leading a group for terrorist purposes.

With the example of Europe, on the question of the definition of terrorism, we see clearly that the approach to be taken is rather, to take preventive measures, instead of a reflection to clearly define the concept of terrorism, at the level of the European region.

3.5.2.2 ***The African Union's legal instrument against terrorism.*** Coming after the Organization of African Unity (OAU), the African Union (AU) stood out in particular by its determination, to take in hand, the issue of security at the continental scale. Insecurity has just been added to Africa's long list of problems.

And to cope in the most effective way possible, the AU, to proceed by taking a series of laws in the field of security. And we will, we will focus on the law the Algiers Convention on the fight against terrorism.

The analysis of its first article also shows us that the approach was also oriented towards prevention, rather than in that of providing a clear and uniform definition of the concept of terrorism.

[106] Alejo Fernández M. La définition juridique du terrorisme, In https://www.academia.edu/. Consulted in 04.28.2022

Article 1[107]

Is “Terrorist Act”:

"(a) Any act or threat of an act in violation of the criminal laws of the State Party that is likely to endanger the life, physical integrity or freedoms of a person or group of persons and that causes or may cause damage to private or public property, to natural resources, the environment or cultural heritage, and committed with the intent to intimidate, to cause a situation of terror, to force, pressure or bring any government, agency, institution, population or group of that-undertake any initiative or refrain from taking, adopting, renouncing any particular position or acting in accordance with certain principles; or disrupt the normal functioning of public services, the provision of essential services to populations or the creation of a crisis situation within populations; the creation of a general insurrection within a State Party.
(b) Any promotion, funding, contribution, order, assistance, incentive, encouragement, attempt, threat, conspiracy, organization or equipment of any person with intent to commit any act referred to in subsection (…)”

The lack of a clear and uniform definition of the term terrorism makes it very difficult to define an adequate legal regime in order to organize an effective response to this question of terrorism. This is the main reason why, the texts of IHL, find difficulties for a direct and effective application, with regard to the question of terrorism.
Moreover, this lack of definition of terrorism downgrades the terrorist group from the list of subjects of international law. Because the terrorist group, does not fulfil the primary conditionality, to exist and act as a subject of international law (have the opportunity to meet its obligations and be able to claim its rights).

3.5.3 Inappropriate application of IHL principles to terrorist group Boko Haram

[107] See: Article 01 of the Algiers Convention on Combating Terrorism. In ttps://www.peaceau.org Consulted in 04.28.2022

With regard to the fight against terrorism, seen from the angle of IHL, common article three expressly recognizes that no non-State party to the armed conflict will be granted any status, simply because IHL norms are applied in armed conflict.

The hypotheses in which the norms of IHL are applicable in cases of terrorism are clearly defined in the principles of IHL. The problem relating to the question of the application of the norms of IHL is contextual. The appearance of new forms of atrocities requires new thinking on the legislative and doctrinal level, in order to find solutions to the new forms of problem, which currently trouble the world. We should avoid the trap that lies in wait for the thinking of scientists on this point. This trap consists in finding an opportunity in the principles of IHL, in order to apply it to problems that did not exist when the said principles were in gestation.

3.5.4 Textual difficulties relating to the application of IHL norms to stem acts of terrorism

The IHL standards are designed for a specific purpose, in order to regulate the balance of power between the warring parties. The context of the regulation of war at the time was that in which, war was a luxury reserved only for the regular armed. The profound logic that governs the texts of IHL, is a logic, borrowed by the concern to see war, to be conducted, in the classic of the epoch of symmetrical wars.

The greatest difficulty is relative to the fact that the texts of IHL, does not meet by a definition the concept of terrorism. Then the context being that of the war. The war seen from the angle of IHL, has a major objective, that of protecting both the people who participate in the combat, the wounded as well as the civilians, who do not participate in the fighting. It is therefore purer to protect these people there, than the texts of IHL, addresses the question of terrorism, of which he did not take a priori the care to fix the notion by a clear definition. See on the one hand Article 33 of Convention IV[108], The main title deals with the issue of protected persons in times of hostilities during international armed conflict (IAC). And on the other hand, Article 4(2)(b) of Protocol II on the protection of persons not participating or no longer participating in the armed, non-international (CANI) conflict.

[108] See: The Geneva Conventions of August 12, 1949. In https://www.icrc.org. In 04.27.2022

3.5.4.1 ***The need to evolve IHL legislation in the face of terrorism.*** The only way for IHL to be applied in the face of terrorism is the technique of reasoning by analogy, which seems to us unjustified, in view of the importance of the subject of terrorism, on all aspects of the social life of humanity.

One of the leading lights of this way of proceeding is Professor Marco S. who expresses himself clearly in these words:

"From the Ferenda perspective, it would be possible to define terrorist acts committed in peacetime by analogy with what is prohibited by IHL.[109]

We think that, one of the things that makes law and the law useful in human life, that law and the law, are a reaction to man's living environment. For a good legislator is one whose work consists in reacting to the evolution of society, proceeding by the creation of new norms of law.

We fully share Doswald-Beck's view on the issue of moving the legislation forward, and I quote:

"This is also true of public international law. In the humanitarian field, it is particularly clear how the international community has reacted to changes in the nature of conflicts. The 1925 Protocol prohibiting the use of asphyxiating gases and the 1929 Geneva Convention reacted to the use of toxic gases and the treatment of prisoners of war during the First World War. The unprecedented level of suffering inflicted on the civilian population during the Second World War led to the 1949 Geneva Convention on the Protection of Civilians in Time of War; the 1977 Additional Protocols derive in part from the national wars of liberation in the 1960s and 1970s of the last century." [110]

[109] Sassoli, M. (2007). The definition of terrorism and international humanitarian law. In https://www.semanticscholar.org Consulted in 04.28.2022.

[110] Doswald-Beck, L., & Vité, S. (1993). International Humanitarian and Human Rights Law. International Journal of the Red Cross, 75(800), 99-128. doi:10.1017/S0035336100084495

Not being met by legal doctrine, by means of a definition, which would place it at the rank of subjects of international law, terrorist groups, remain in the category of actors and not subjects of international law. However, the legal regime applicable to the latter will be defined on a case-by-case basis. And when the latter, had to infringe the rights to protect a subject of international law, the best interest of the latter, must therefore serve as a point of reference for the reactions of the State, in the face of the acts of the actors of the international scene, that are not subjects of international law.

3.6 The and the international responsibility of the State

3.6.1 The elements constituting the international responsibility of the State vis-à-vis the IHRL

Even at the international level, the question of liability is always relative to one element of a subjective nature and another of an objective nature. The international illegal act consists of two elements, namely: a subjective element and an objective element.[111] When we speak of the subjective element, we refer to the conduct by which international regulations are not respected and can be attributed to the State, considering that this subject of international law is a legal person acting through its bodies, individual or collective, which generates an event attributable to the State. And the objective element of the international illegal act is conduct that constitutes a violation of an international obligation of the State. The violation of an international obligation lies in the lack of conformity between the conduct that this obligation requires of the State and the behaviour that the State actually observes, that is, between the requirements of international law and the reality of the facts.

Applying in times of peace as well as in times of war, the DIDH constitutes a set of international rules of conventional or customary origin, on the basis of which individuals or groups can to expect and/or demand certain behaviour or benefits from States. For a brief definition, I would say that human rights are rights that find their value in the fact of the human being.

[111] MACÊDO, K. V. (2020). International Responsibility for State and Human Rights . In: https://www.nucleodoconhecimento.com.br/droit/responsabilite-internationale,DOI: 10.32749/. consulted in 04.25.2022

3.6.1.1 **The sources of the IHRL** [112]The main treaty sources of IHRL are the International Covenants on Economic, Social and Cultural Rights (ICESCR) (1966) and Civil and Political Rights (1966), as well as the Conventions on Genocide (1948), the Elimination of Racial Discrimination (1965), Discrimination Against Women (1979), Torture (1984) and Children's Rights (1989). The main regional instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Declaration of the Rights and Duties of Man (DADH) (1948), the American Convention on the Rights of Rights (ACHPR) (1969), and the African Charter on Human and Peoples' Rights (ACHPR) (1981).

As we have demonstrated that the Federal Republic of Nigeria must be held responsible for the acts of the terrorist group Boko Haram, following the foreseeable nature of both the formation, the organization and the outbreak or manifestation of such a criminal organization. Because having broken out on the national territory, of a State, which is regularly organized, the effects of terrorist acts must be repaired by the State, which has failed in its responsibility to control and organize its national territory. Jacques LENOBLE[113], States that the international responsibility of the State, will be withheld against him, due to the failure to prevent the unwanted act that would occur.

3.7 The IHRL and the international responsibility of the Federal Republic of Nigeria following the terrorist acts of Boko Haram against the victim population of Nigeria in Cameroon, Chad and Niger

As an institution of international law, international responsibility originates in customary law and is linked to the figure of the state as the sole subject of public international law, on which it was originally based on damage caused to nationals of one State in another. [114]

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[112] See: International Humanitarian Law and International Human Rights Law Similarities and Differences https://www.icrc.org/ . Consulted in 04.29.2022

[113] Jacques LENOBLE (1981) INTERNATIONAL RESPONSIBILITY OF STATES AND TERRITORIAL CONTROL. Revue Belge de Droit International P.19.

[114] MACÊDO, K. V. (2020). International Responsibility for State and Human Rights . In: https://www.nucleodoconhecimento.com.br/droit/responsabilite-internationale,DOI: 10.32749/. consulted in 04.25.2022

3.7.1 Boko Haram's atrocities against the people of Nigeria, Cameroon, Niger and Chad and the responsibility of the Federal State of Nigeria

Barbarism by firearms is the bloodiest form of social unrest. Human society will never suffer such a profound and profound loss as that that, that only death; comes to him inflicted. Reports from the International Non-Governmental Organization (NGO Int) report on the situation, in terms of the damage that the civilian population of the Federal State of Nigeria has suffered since the beginning of hostilities by the terrorist group Boko Haram.

According to the International Society for Civil Liberties and the Rule of Law, an NGO working in Nigeria,[115] the Federal Republic of Nigeria (and its authorities) emerged at the end of 2021 as the most hostile country in the world to practice freedom of faith or freedom of worship and to peacefully display ethnic identity. Nigeria has truly become "the greatest enemy of the Christian faith and its faithful or members in the world" and "a country with the greatest Christian deaths in the world for the year 2021 with the hacking to death by Islamic radicals and radicalized Islamic members of the country's security."

3.7.1.1 ***Cases of child abduction.*** Based on a report by the NGO FIDH [116] In 2015, on 14.04.2015, 276 schoolgirls from the city of Chibok, in the state of Borno, were kidnapped by the terrorist group Boko Haram. Some of them were taken by force of marriage, others were raped, and still others were subjected to sexual slavery.

2012 also sees the multiplication of kidnappings or assassinations of foreigners who were not until then priority targets. Thus, on January 26, 2012, a German engineer was kidnapped in Kano; on March 8, 2012, two British and Italian engineers kidnapped in May 2011 were killed by their captors; on December 19, 2012, French engineer Francis Collomp was kidnapped in Katsina State. Yet none of these actions is claimed by Boko Haram.

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[115] See in : https://intersociety-ng.org/who-we-are/ consulted in04.29.2022

[116] See : The Mass Crimes of Boko Haram Nigeria. In https://www.fidh.org/ consulted in 04.25.2022

3.7.1.2 ***The cases of attacks.*** [117] The offensive carried out by Boko Haram in the first days of January 2015 against the city of Baga and 16 localities along the shores of Lake Chad would be the most deadly offensive in 5 years of insurrection of the Islamist group which during nearly 4 days killed hundreds of people, see over a thousand.

January 3, 2015, Boko Haram [118] Launches a major offensive on the city of Baga and several neighboring localities. The main target is the major military base in Baga, which is the headquarters of the Multi National Joint Task Force (MNJTF). 34 In the absence of neighbouring Nigerian and Chadian soldiers, Nigerian soldiers and Islamist fighters "overwhelmed the troops and forced them to abandon the base," Usman Dansubbu, a Baga resident who fled to Gubuwa, Chad, told AFP. They then massacred all the inhabitants who had failed to escape and burned down and destroyed nearly 90% of the city of Baga and Doron-Baga.

3.7.1.3 ***Recruitment cases.***[119] Since the abduction of Chibok in April 2014, Boko Haram has also multiplied the abduction of young boys in northern Nigeria as in the week of 16 June 2014, during the attack on several isolated villages including Kummabza (locality of Damboa - Borno state) where some 60 women and girls and 31 boys were abducted or in the village of Gaidamgari in July 2014 where 60 people were killed by Boko Haram after the villagers refused to deliver the boys aged 15 to 20.

3.8 Nigeria's responsibility in the face of civilian victims of Boko Haram atrocities in Cameroon, Chad and Niger

[117] Ibidem.
[118] Ibidem.
[119] Ibidem.

3.8.1 The foundation of child protection

The protection of human rights is based on the idea of State responsibility, understood as the obligation to ensure that these rights are not affected or infringed, and this is particularly worrying when States may be perpetrators of violations of the law, the rights of their citizens and individuals within their borders.[120]

3.8.2 Reparation by the Federal Republic of Nigeria

As a result of his failure to warn the organization, and the demonstration of the terrorist group Boko Haram, on its national territory, the Federal Republic of Nigeria, is bound to reparation for the damage caused by the terrorist group Boko Haram. The basis for this remedy is laid down in several ICJ decisions, the best known of which is the Case of the Chorzów Plant[121]. The same logic was reiterated in the case between the Democratic Republic of Congo and Uganda [122]. In fact, the International Court of Justice has issued the judgment, which deals among other things with violations of international humanitarian law and international human rights law, it therefore recognises that the harm caused to individuals must be taken into account in determining the extent of the compensation due by Uganda. In addition, the ICJ has clearly confirmed that a State that has violated a rule of international law and therefore caused damage to persons, has «the obligation to repair all damage caused to all the natural or legal persons concerned».

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[120] MACÊDO, K. V. (2020). International Responsibility for State and Human Rights . In: https://www.nucleodoconhecimento.com.br/droit/responsabilite-internationale,DOI: 10.32749/. consulted in 04.25.2022

[121] See: Case concerning the Chorzów plant (Germany v. Poland) (1928), C.P.J.I., Series A, No 17, p.125 (where it is further specified that: 'Restitution in kind, or, if it is not possible, payment of an amount corresponding to the value of the restitution in kind; allocation, if any, of damages -interest for losses incurred which would not be covered by the restitution in kind or the payment which takes the place thereof; these are the principles on which the determination of the amount of compensation due because of a fact contrary to international law must be based»).

[122] See: Case of armed activities in the territory of the Congo (Democratic Republic of the Congo v. Uganda), judgment, I.C.J. Reports 2005, p.257, para.259.

4 CHAPTER IV

General Summary and Conclusion

We will conclude our research by emphasizing the need for the State to allow itself to be led by its best interests, when it is confronted by difficulties caused by an international actor, who does not hold the status of subject of international law. In addition, we will justify the accountability of the internationally illicit facts of Boko Haram to the Federal State of Nigeria

4.1 The international legal underpinnings confirming the accountability to the Federal State of Nigeria of the internationally illicit acts of the terrorist group Boko Haram

At least two international legal texts, allows to directly impute to the State of Nigeria, the internationally illegal acts perpetrated by the terrorist group Boko Haram.

4.1.1 International legal provisions

4.1.1.1 ***The UN Charter.*** The conduct of the State of Nigeria as described is contrary to Article 1 of the UN Charter which states:

"To maintain international peace and security and to this end, to take effective collective measures to prevent and avert threats to peace and to suppress any act of aggression or other breach of peace, and to achieve through peaceful means, in accordance with the principles of justice and international law, the adjustment or settlement of disputes or situations of an international nature, likely to lead to a breach of peace"[123]

[123] See: Art 01 of the United Nations Charter.

4.1.2 Regional legal provisions.

4.1.2.1 ***EU Council of Ministers.*** We share the position of the [124]Committee of Ministers of the Council of Europe when it states:

"In the face of terrorist acts and threats, the temptation for governments and parliaments is to react forcefully immediately, putting aside the legal guarantees that prevail in a democratic state. Let this be clear: it is in crisis situations such as those caused by terrorism that respect for human rights is even more important. Any other choice would play into the hands of terrorists and undermine the very foundations of our society. But respect for human rights is not an obstacle to an effective fight against terrorism."[125]

Thus, the international responsibility of the Federal State of Nigeria, being triggered by its own fault, to have not reacted appropriately to this event, that is, the organization and the breakup of the terrorist group, with all the consequences as we have emphasized in this work. Its response to the neighboring States victims of the atrocities of Boko Haram, will essentially have to be in accordance with the DIDH's prescriptions on the question of the international responsibility of the State.

[124] See on: legal.un.org. Consulted in 02.04.2022

[125] See: *Human rights and the fight against terrorism Council of Europe guidelines* in https://www.echr.coe.int. Consulted 04.26.2022

4.1.2.2 ***The position of the Brazilian Human Rights Court in the case of Maria Da Penha Maia.*** As in the case of Maria Da Penha Maia [126], the international responsibility of the Federal State of Brazil was retained following its omissions which were contrary to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, ratified by Brazil, In 1995, the responsibility of the Federal State of Nigeria was triggered by its failure to notify the organization and the demonstration of the terrorist group Boko Haram on its national territory. This omission is totally contrary to the conduct of a State which has ratified the various treaties both regional and international on peace.

4.1.2.3 ***The provisions of the AU Charter.***[127] The conduct of the Federal State of Nigeria is also contrary to the legal provisions at the regional level. Thus, in its capacity as a member of the AU, the failure to prevent the organization and the demonstration of the terrorist group Boko Haram, is totally contrary to the provisions of the African Charter of Human and Peoples' Rights, article 23 of which states:

"Peoples have the right to peace and security both at national and international level. The principle of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by the Charter of the Organization of African Unity must govern relations between States."[128]

4.2 The Supreme Interest of the Federal State of Nigeria as a leitmotif of its reaction to the International Illicit Actors of (Terrorist Group) perpetrated in a Peace context.

We have just seen that, in the face of terrorism, IHL does not have a clear approach that would allow States, the subject par excellence of international law, to have a response to the terrorist group, framed by international legal instruments. Because the problem already arises from the lack of a clear and uniform definition of terrorism in

[126] MACÊDO, K. V. (2020). *International Responsibility for State and Human Rights*. In: https://www.nucleodoconhecimento.com.br/droit/responsabilite-internationale, DOI: 10.32749/. consulted in 04.25.2022

[127] *Abdulqawi Y. Fatsah O. (2012) The African Union: Legal and Institutional Framework , Publishers Martinus Nijhoff, P. 25.*

[128] See: Art 23 of the African Charter on Human and Peoples' Rights.

both the universal treaties and the resolutions of the United Nations Security Council, is the main question on the legal nature of terrorist groups. There is no international law, let alone domestic law, that defines or specifies the legal status of a terrorist group. This state of affairs opens the door to the State whose rights are recognized and well protected, and which will be troubled by the actions of actors not subject to international law, in the international scene, to react, on the basis of the priority of its best interests. And on the relative security of its population, the State must react vigorously. Because indeed, the sense of sovereignty that States are called upon to protect is materialized by, in particular, the well-being of its population. The population being one of the essential elements, if not the most decisive in the constitution of a State. In addition, the absence of a clear and uniform definition of terrorism allowed us to confirm our hypothesis, by answering our research question consisting of: How should the Federal Republic of Nigeria organize itself in order to deal effectively with this multidimensional issue, requiring an effective response to the problem relating to the protection of children's rights, and to the problem raised by the impact of the terrorist group Boko Haram, in neighbouring countries in terms of respect for International Human Rights Law. Thus, the Federal State of Nigeria, will have to respond internally, to the question relating to the protection of the rights of child victims of the crisis caused by the attacks of the terrorist group of Boko Haram, by the full observance of the prescriptions of international law. Humanitarian. And faced with the collateral damage that neighbouring States, including Chad and Cameroon and Niger, have suffered, the Federal Republic of Nigeria will have to comply with the requirements defined by DIDH. And finally in the face of the Boko Haram terrorist group, the Federal Republic of Nigeria will have to respond to the atrocities perpetrated by the terrorists, allowing itself to be inspired by the higher interest of the Nation. And on this aspect of things, the higher interest must be understood as the duty to protect human lives, by taking measures likely to discourage any terrorist enterprise of whatever nature and form they may take.

4.3 Conclusion

According to the UN Charter. The conduct of the State of Nigeria in handling the protection and violation of the right of children in the face of armed conflict specifically the atrocities of the terrorist group Boko Haram as described is contrary to Article 1 of the UN Charter which states:

"To maintain international peace and security and to this end, to take effective collective measures to prevent and avert threats to peace and to suppress any act of aggression or other breach of peace, and to achieve through peaceful means, in accordance with the principles of justice and international law, the adjustment or settlement of disputes or situations of an international nature, likely to lead to a breach of peace" Therefore, the international responsibility of the federal state of Nigeria is been triggered by its own force. Which has to do with how it has handled the matter of Boko Haram so far. As a matter of fact, Nigerian state should be held responsible for reparation by the internationational legal system.

In a more vivid framework, armed crisis proliferation in all the regions in Nigeria has greatly affected children and eventually causing a line-up of hoodlums for the future of the Nigerian society. This is duly as a result of governmental negligence and politicking of who get what, when and how of the scarce resources that s available in the society

4.4 Recommendation

- IL and IHL principles do not have a clear cut response to the effective dealing of terrorism. These bodies of law should intensify effort on designation the concept of terrorism and how to effectively counteract it with minimal effects on the civilians
- Nigerian state is a failed state but should utilize it international arsenal and halt the activities of terrorism in its region.
- Children are the future of the world and therefore needs to be protected at all cost. Therefore the protection of children must be intensified by the state and

international reinforcement by the international legal bodies by holding the Nigerian state responsible for reparation

- Another issue this studies tried analyzed is the problem of the appropriateness and applicability of the principles of IHL on subject that has not been clearly defined by the international legal system for example terrorism; until know, the concept of terrorism does not have a definite meaning and that is why it is only an actor in the international scene but not a subject of international law. If terrorism has certain qualities of armed conflict why is it not a subject? What is required for the subject to be attributable to IHR, ICL and IHL? Terrorism is spreading faster than the United States had envisaged after the 9/11 event. Terrorism has taken a new leave and counter terrorism has not duly dealt with the existence of the menace. The Nigerian State can effectively manage this menace if they put the need of the masses first. And also ensure that the territorial sovereignty of the state is safeguarded from internal and external aggression.

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