
The place of international criminal court in the global fight against terrorism in Africa: An Overview

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Abstract

The International Criminal Court (ICC) has been a major driver of peaceful coexistence and just global society. However, its roles in curtailing the spread and increased activity of insurgencies in African by bringing to book the perpetrators of the inhumane deeds is worrisome and raises incessant questions over its functions as part of the 'world police'. Also, the continuous escalation and bourgeoning activities of the insurgents group has left the dispensation of justice and deterrence of the ICC in doubts.

This study investigates the ability of the ICC to curb the continuous spread of the insurgent groups like the Al-Shabaab dominant in Somalia and Kenya, Al-Qaeda in the Maghreb and Boko Haram in Nigeria through its legitimate and implied roles in the realization of world peace. A qualitative research methodology is adopted to carry out the study using credible sourced secondary data that are descriptively analysed. The study reveals that factors, such as state autonomy, political leaders' immunity, lack of enforcement agents amongst others, weakens ICC's capacity for positive impact in promoting global peace and justice. Therefore, we recommend that clauses that can strengthen ICC and present it as transnational superstructure should be inserted in the law that set it up.

1. Introduction

Globally, terrorism has been seen to be a major factor that accounts for high devastation and tragic circumstances resulting in loss of lives and properties in the society. This is as a result of perennial terrorism incidents which became prominent when the world woke to the bombing of the World Trade Center in the United States of America (popularly referred to as 9/11) and the activities of the Al-Shabab insurgents in Somalia, Al Qaeda in the Islamic Maghreb (AQIM) in Niger, Talibans in Pakistan, Hamas in the Gaza strip, Boko Haram in North-Eastern Nigeria and very recently, the ISIS insurgency in Northern Iraq and Syria. Terrorism has raise its ugly head and being proliferated in Africa, hence, continuous activities of terrorists, tales of woes, horror, and devastation are its concomitants. As a result, other states such as Ireland, Spain, Turkey, and Colombia which have also felt the consequences of terrorism have been engaged in combating various terrorist groups within their various states (The Institute for Economics and Peace, 2016).

Consequently, extremism in Africa becomes dominant, and not a new phenomenon as the existence is daily witnessed in the continent. Meanwhile, the war on terrorism in Africa did not begin on September 11, 2001 but it began in Sudan in the 1990s, where Osama bin Laden operated and organized an attack against Egyptian President Hosni Mubarak. Consequently, the United States deployed a contingent of troops to Africa with the establishment of combined joint task force in Djibouti. In the same vein, European military command facilitated some training and support operations for the military in Africa.

Accordingly, the network operations of terrorist groups have shown that no single country can address the threat of menace called terrorism alone. Nor can this threat be resolved solely through military power; rather it requires a comprehensive approach including continual exchange of ideas and

engagement with the international community. At the United Nations Security Council High-Level Meeting on the Threat of Terrorism to Global Peace and Security in September 2014, world leaders observed that the world must act instantly to stop the troubling new phenomenon of terrorists and foreign fighters attacking and trying to hold parts of sovereign nations. Accordingly, going by the trend of terrorist activities around the globe, it suggests that the international community needs to do more to support countries that are leading the fight against insurgent groups. This appears expedient in order to address issues of transnational funding and supply of weapons to terrorists operating in the regions. In this regard, can one argue that International Criminal Court (ICC) is being positioned to take up this all-important role today?

However, studies over the years have shown that terrorist acts constitute a crime to humanity and hence it can be prosecuted as crimes against humanity. The expansion of terrorist behavior and the crime against humanity from the extremist insurgencies groups have led to the establishment of institutions which were to raise the bar of justice in a society that is affected with the consequences of crimes and conflicts (Hamza, 2010).

Although the establishment of the International Criminal Court which became operative on July 1, 2002 does not have jurisdictions over crime of terror but solely on crimes of genocide, war crimes and crimes against humanity, states are still saddled with the responsibility for the trial of crime of internal terror even when such crimes remain unpunished. Meanwhile, the United Nations Security Council in its Resolution, referred to "criminal acts against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public. Yet terrorism has the following elements: the use (or threat) of violence, political objectives and the intention of sowing fear in a target population as a means of achieving these political objectives that reflect part of roles within the ambit of ICC. This paper, therefore, aim to ferret out the prospect and challenges of ICC in fighting and prosecuting crimes that are related to terrorism.

This paper is divided into six different segments which encompasses the introduction and background to the study, the framework used for bringing the research into theoretical perspective, a conceptual analysis of terrorism in Africa, the roles of the ICC from a general outlook, an interrogative analysis of the place of ICC within the context of terrorism in Africa and finally the conclusion and recommendations of the research.

2. Theoretical Framework

This study adopts the role theory as framework for its analysis. Role theory affords different perspective for studying diverse social issues (Biddle, 1986). Its multi-field capacity and capability informed the choice for this work. The theory came into existence in 1920s and 1930s and gained prominence in Sociological discourse through the work of George Herbert, Jacob Moreto, Talcott Parsons and Linton (Elif, 2015).

Role theory is concerned with the triad concept of "Patterned and characteristics social behaviour, parts of identities that are assured by social participants, and scripts or expectations for behaviours that are understood by all and adhere to by performance (Biddle, 1986)". From this submission, the theory offers insight on features and trends of social interactions, actors and their presumed roles in the society with expected pattern of behaviour envisaged by actors and observers. It seems the three are interwoven or interrelatedly connected, however, it bridges individual roles dictated by social and social interaction in different parts and social structure. Moreover, Role theory is underpinned with four basic assumptions vis-a-vis role taking, role consensus, role compliance and role conflict (Packer, M; Wickham, M;, 2012). Role taking depicts acceptance of role conferred on individuals or organization while role consensus admits agreement by actors on expected roles and their relational interaction. The role compliance underscores predefinition of behaviour that either individual or organization must adhere to while role conflict emphasizes the tendency for conflict between expected roles of actors (individuals, countries or organizations).

In addition, (Biddle, 1986) identifies five discriminated perspectives: functional role theory that focuses on characteristic behaviour of a person occupying a position; symbolic interactionist which stresses revolution of roles via social interactions; structural role theory that pays attention to social

structural constitution; organizational role theory interested in the roles formal organization performs and cognitive role theory that places premium on social relationships existing between role expectation and behaviour. In the real sense, the diverse perspectives advance by different scholars, though presents non-consensus regarding conceptualization and application of role theory, offers possible analytical framework for the theory. Therefore, it justifies its multiple disciplinary applicability strength.

Nonetheless, as noted, role theories origin is traceable to sociological and psychological studies but can be employed to unite theories of state socialization in international relations (Thies & Marijke, 2012). As such, it can be utilized as an extension to offer plausible explanation of International Criminal Court's role in the fight against terrorism in Africa. Firstly, members countries' signatory to the ICC has a shared understanding of expectation of its roles as global legal institution assigned to adjudicate between states and individuals or state and state. Thus, it defines state's perception of character behaviour of the ICC in the course of their relationship. Secondly, the four basic assumptions of role taking, role consensus, role compliance and role conflict elucidate and underline likely determinants of memorandum of understanding on which agreement to accept ICC's organizational membership by individual states are based, and in turn shape their perception and expectations of the latter from the former.

Interestingly, role theory argues that to change behaviours, roles are necessary to change (Elif, 2015). Therefore, it takes a change of ICC's roles for its behaviour to follow suit. Moreover, the discriminated perspectives give additional dimension to the understanding of ICC's role in combating insurgency in Africa. Different perspectives harbour at least an insight on role theory's applicability to relationship between ICC and member states. For instance, functional role theory helps to capture ICC's behavioural pattern while structural theory exposes the likelihood of ICC's performance of her role on its member country's perception and relevance to the larger society.

3. The Role of the International Criminal Court

The International Criminal Court was created by the Rome Statute of the International Criminal Court. The Rome Statute came into operation in July 2002. It is governed by the Rome Statute as the first permanent international court which is treaty based. Up to date, out of 122 state parties to the Rome Statute, 34 of them are African states. Article 1 of the Rome Statute of the International Criminal Court states that the ICC has the power to exercise its jurisdiction over persons for the most serious crimes of international concern. The functions and powers of the ICC to prosecute come into play when state parties cannot or are unwilling to prosecute accused persons. The ICC has jurisdiction only in relation to crimes that were committed after its inception in 2002. Article 13 provides for the ICC's exercise of jurisdiction which includes the following: a state party referring a situation to the prosecutor, referral of a situation by the Security Council, and where the prosecutor initiates an investigation on his own initiative.

The International Criminal Court is designed to prosecute, and bring to justice those responsible for the worst crimes, including genocide, crimes against humanity, and war crimes, committed anywhere in the world (Hebel, 2018) The ICC an independent international organization with 122 members, separate from the United Nations system (Q&A:International Criminal Court, 2011). It is the court of last resort, based out of Hague, Netherlands, and is only used when national authorities cannot or will not prosecute. The uniqueness of its purpose, structure, jurisdiction, and significance make its understanding essential to those studying public justice. The main court of the ICC is in the Netherlands, but proceedings from the ICC may occur elsewhere in the world.

The court is divided into four sections, Presidency, Judicial Divisions, Office of the Prosecutor, and the Registry (Q&A:International Criminal Court, 2011). The Presidency is responsible for the overall administration of the court, except for the Office of the Prosecutor. It consists of three judges elected to three-year terms. The Judicial Divisions consists of eighteen judges organized into the Pre-trial division, Trial Division, and Appeals Division; The Office of the Prosecutor is responsible for receiving referrals and any documented information on crimes within jurisdiction of the court, for examining them and for conducting investigations, and prosecutions before the court; and lastly, the Registry is responsible for the non-judicial aspects of the administration and servicing of the court (Q&A:International Criminal Court, 2011). The Registrar is elected by judges and serve five-year terms. As stated, the International Criminal Court handles crimes against humanity, war crimes, crimes of aggression, and genocide (Hebel, 2018). While crimes of this

nature have gone on for centuries, the court has no retrospective jurisdiction. It only deals with crimes after July 1st, 2002, when the 1988 Rome Statute came into force. However, there are several steps that must be completed before ICC can get involved in a matter. These steps revolve around the concept of jurisdiction, defined by as the power of a court to decide a dispute.

Moreover, generally, a court's jurisdiction can be further classified according to four subcomponents: geographical jurisdiction, hierarchical jurisdiction, subject matter jurisdiction, and personal jurisdiction (Scharf, 2014). First, before the ICC can act, its jurisdiction must be accepted by the Territorial State or The State of Nationality of the Accused. Next, the crime must be recognized by the ICC as something it handles. The ICC has automatic jurisdiction only for crimes committed on the territory of a state which signed the treaty, by a citizen of such a state, or upon presentment of a case by the United Nations Security Council. The ICC shall not admit any case that is being investigated or prosecuted within that country. That is like the concept of double jeopardy. If the person has already been tried for the same conduct, the case is not sufficient enough to justify further action (Hebel, 2018). Next, is the Preliminary Ruling on the 'Initiation of a Case'. The ICC Prosecutor must notify all states with jurisdiction of any investigations started (Schabas, 2010). Afterward, the prosecutor begins his investigation. Also, the prosecutor must make a reasonable decision if a crime is within the jurisdiction of the court, the case is or would be admissible under article 17 having considered the severity of the crime/interests of victims (Scharf, 2014). After the investigation, the pre-trial chamber decides upon the issuance of orders and warrants requested by the prosecutor for purposes of investigation. Lastly, there is a conformation of charges before the trial. The court secures the arrest and try suspects by relying on national police services to make arrests. It is worthy of note that ICC outlook for conviction is well-organized and easy to understand. The primary punishment is imprisonment with the possibility of parole, because they believe that people can be rehabilitated. The death penalty is not an option in the ICC, because most people who commit such crimes see the death penalty as the easy way out (Schabas, 2010).

Moreover, as it stands, the main purpose of the ICC is to seek justice for countries and people who cannot fight the crimes occurring in their countries. Whether the ICC is living up to this billing or expectation is still subject to excessive scrutiny.

4. Terrorism and Terrorist Acts in African States

This section takes a summarised and closer look at terrorist groups with their operational tactics in Africa. Though, there are some kinds of these groups in Africa, this study focuses on Boko Haram in Nigeria, al-Shabab in Somalia and Kenya, and Al-Qaeda in Maghreb in Mali. We undertake this review with a view to elucidating the extent of their activities.

The experience of terrorist and terrorism in Africa and helpless conditions the ordinary citizens are subjected to require an appraisal of mode of operations of the ICC, an international criminal court. While terrorist in Somalia and Kenya (al Shabab) have eliminated thousands of people, Boko Haram in Nigeria had killed and is still killing people in the most horrendous manners. Moreover, none of the terrorist members apprehended in Nigeria have been made to face severe penalty (Sani, 2012). Aside terrorist acts carried out by al-Shabab, it also involved in sea pirate and other organised crimes against humanity. Al-Qaeda in Maghreb in like manner, not only loot and robbed people of their properties, they also commit heinous crime against human dignity such as raping and kidnapping, yet none was apprehended to face charges for crime against humanity. While the state flagrantly displayed lack of political will to prosecute and sentence terrorist suspects because of retaliatory or reprisal attacks tendency, the government seems to surreptitiously cover up their atrocities from public domain including inhuman treatment of state security operatives under the disguise of fighting terrorism and terrorist groups.

From the foregoing, it is obvious that terrorist activities in sub-Sahara Africa is beyond state capacity control and terminal power. Hence, external allied forces intervention in form of assistance seems to be ineluctably required. Thus, ICC as a multilateral institution with core mandate to deter war of terror needs to arise for a rescue mission in the most appropriate manner in tandem with its constituted power.

5. International Criminal Court and Terrorism in Africa: An Interrogation

Having advanced that terrorism is a global phenomenon with transnational consequences, it is expedient to appraise ICC contributions to its fight, more importantly, in Africa with high level of

presence of terrorist acts and citizens' high level of vulnerability. Though, it is noted that ICC is disempowered from investigating crimes already taken up by the states, but those unattended to or improperly tackled by states are left without consideration in the statute. This became worrisome when terrorist assault was huge with catastrophic and harrowing experience on the nationals of member countries of ICC. It implies the populace, for whose purpose and interest the institution was established, are indirectly deprived of its core benefits.

However, while Nigeria and Kenya battling with Boko-haram and Al-Shabab terror groups respectively are member of ICC (ICC, 2018), Somalia is not which makes her an outlier of the beneficiary of ICC role. In this context, Nigeria and Kenya experience for example, seems to require probing in relationship with ICC role in both countries' efforts at curtailing insurrection. This is informed, in addition, by the expected roles of ICC on which their shared understanding motivates the decision of membership. In the light of this circumstance, what are the contributions traceable to ICC in their fight against the Boko haram and Al-Shabaab terrorist monster? The seemingly unrelenting actions of the terrorist groups for almost two decades with largely unsuccessful effort by the Nigerian and Kenyan Government to decimate them further raises this concern and questioning.

In Nigeria, Boko haram reported attack by the media in 2013 alone totaled 90 (Enojo, 2016). Sadly, lives lost to serial of Boko haram assault can be estimated around 200,000,000. With these happenings in a country not under civil war, or during peace time so to say, how can one rationalize non-interference of the statute caveat as basis for ICC handicapping because of the country ongoing prosecution of arrested culprits. This suggests a declining value for human lives and welfares in the face of rising death tolls, refugees and increasing number of the internally displaced persons with implications for social, economic, psychological and even political spheres of the populace living standard. Situations as this is suffice for ICC to review her statute such that will forego or set aside non-interference restraint when lives lost has risen above a considerable number. In fact, a set standard should be made to be prescribed as genocide which will enable the crime to be situated within ICC coverage and such inserted as amended version of ICC statute.

Furthermore, Al-Shabab in Kenya has made not-far-from Nigeria experience negative impact on the nationals, especially residents in the north-eastern region of the country. Killings via suicide bombing, community attack and other means appear to continue unchecked by the government. ICC, as observed, has not been able to prosecute any of the terrorist members in the country. To worsen ICC incapacitation, the incumbent president, Jomo Kenyatta, formally threatened to withdraw the state membership. This, in our opinion resonates the challenge of the state sovereignty and political immunity of some state political leaders that must be respected as entrenched in the National Constitution on ICC and most multilateral organizations. Although the president was being tried for war against humanity before assuming office, his office privilege was seized as escape route out of prosecution and likely prevalence of justice. In response, ICC formally dropped the charges against Kenyatta (Q&A:International Criminal Court, 2011) probably because of similar threat by some African countries to follow suit, but without mincing words, we argue that it is a drawback to ICC capacity for performance of her role of prying crime against humanity and genocide in the wake of threats to global peace. On this note, revision of ICC statute to accommodate disregard for immunity conferred by state on political leaders or carryout the trial after expiration of office term is imminent and expedient. Hopefully, if this clause is also inserted in as part of amendment to ICC statute, she will be positioned better for meaningful contributions to promotion of global peace and justice.

6. Conclusion and Recommendations

This paper takes an insightful look at ICC roles vis-à-vis combating terrorism in Africa, especially in Nigeria and Kenya. It found out that ICC appears to be handicapped going by the clause in the statute establishing her, which disallow non-interference into any conflicts or crisis being handled by the state and need to wait for petition from affected citizen even where state is non-active. These challenges are complicated with state sovereignty and the immunity clause enjoyed by some political leaders as stipulated in their countries constitutions.

From the identified challenges, we argue as recommendation that ICC statute should be reviewed to give allowance for intervention into any state ridden with terrorist assault with considerable level of lost of lives, human displacement and refugees. It is our belief that this will display high level of responsiveness and value for human lives by ICC if the amendment is inserted.

Also, immunity clause should be circumvented by amendment of the ICC statute. Expectedly, it will instill discipline on political leaders in Africa and other countries as well. We strongly hold the view that when these measures are backed up with actions, ICC roles will be re-defined to accommodate dynamics of crime against humanity and preparedness to tackle such head-on.

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