

**AN ANALYSIS OF THE IMPACT OF TRANSBOUNDARY
TERRORIST GROUPS ON THE LAW OF ARMED
CONFLICT. THE CASE OF THE ISLAMIC STATES IN IRAQ
AND SYRIA (ISIS) (2014-2016).**

BY

SUKAI TONGOGARA

(R145721M)

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Dedication

This work is dedicated to my husband and son Andy for their unconditional love and support.

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University of Zimbabwe

Abstract

The objective of this research was to investigate how the activities of ISIS are inimical or in conflict with the law of armed conflict. The central issue to the study was to analyse how the activities of ISIS affect the law of armed conflict. The questions looked at are: what is conflict? ; and had the law of conflict envisaged the ISIS scenario? The research looked at whether religious fundamentalism is a basis for waging a war and whether an armed group can claim statehood on the basis of religion. What are the implications of Boko Haram's allegiance to ISIS? Is the Anti-Coalition fighting a Just war? The scarcity of information about the impact of ISIS on the law of armed conflict inspired the researcher to add value. The research used qualitative research methods. A case study was used as a research design. The researcher used mainly secondary methods of collecting data. The secondary methods of collecting data used are books, journal articles, online articles and newspapers. In selecting these documents, the researcher used judgmental sampling which is a non-probability sampling technique. The data collected was analysed and presented in a thematic approach. The theories which were buttressing the study are the just war theory and Clausewitzan theory. The just war theory is an offspring of Liberal School of Thought while Clausewitzan theory is an offspring of Realist school of thought. Findings of the study support the hypothesis. The study revealed that ISIS is a threat to the law of armed conflict. This was buttressed by information from various reports. The use of terror by ISIS is inconsistent with the law of armed conflict. The inherent use of weapons of mass destruction by ISIS is also in conflict with the law of armed conflict. The means and methods of warfare used by ISIS are impermissible under the law of armed conflict. ISIS had also made international headlines for recruiting and enlisting children. The use of children as soldiers is prohibited by the law of armed conflict. A general analysis of ISIS activities reflects that, the group has violated peremptory norms under international law or jus cogens.

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Abbreviations and Acronyms

| | |
|--------|--|
| AQI | al-Qaeda in Iraq |
| CNN | Cable News Network |
| EU | European Union |
| GB | Guantanamo Bay |
| ICRC | International Committee of the Red Cross |
| IHL | International Humanitarian Law |
| ISIS | Islamic States in Iraq and Syria |
| JTWJ | Jama'at al-Tawhid wal-Jihad |
| POW | Prisoners of War |
| UN | United Nations |
| UNHR | United Nation Human Rights |
| UNHRC | United Nations Human Rights Council |
| UNICEF | United Nations Children Education Fund |
| UNSC | United Nation Security Council |
| US | United States of America |

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CHAPTER 1: INTRODUCTION

1.1 Background to the Problem

The end of the Cold War was followed by an unprecedented rise in terrorist groups this was caused by weakening or breakdown of State structures. The rise of non-state actors such as terrorist groups has a negative impact on international law. Huntington (1993:78) posits that, the clash of civilizations will dominate global politics, and the fault lines between civilizations will be the battle lines of the future. Uka (2005:21) encapsulates that the “Twenty First Century which ought to be the most peaceful century in the world history has turned out to be the most volatile period in human history and human development, consequently the experience of violence affects humanity adversely by creating a sense of insecurity in the life of all people and nations between global village” According to Cilliers (2003: 91) the events of the 11th of September 2001 are acknowledged as the watershed in international concern as they took terrorism to a new global level.

The focus shifted to the impact and potential threat of international terrorism on the dominant political-economic system. O’Connell (2005:2) further suggests that the declaration by the United States of a “global war on terrorism” meant that “the United States would act as if it were in an armed conflict in every part of the globe wherever a terrorist might be found.” According to the United States government “individuals fighting in Afghanistan and Iraq or who are members of organizations fighting in Afghanistan or Iraq are combatants wherever they are found.” This included home grown terrorists, terrorists sponsored by a foreign state, and terrorists belonging to an unsponsored non-state actor. Scholars such as O’Connell (2005: 3) have argued that this action clearly meant that the United States wanted war time privileges in a time of peace. Onell (2008:1) augments this statement arguing that the pronouncement by the United States of America (US) opened up debate among international scholars for a widely accepted definition of terrorism and armed conflict. “At that time, no extensively accepted definition of armed conflict was sanctioned by international law scholars. Nevertheless, there was a plethora of evidence awaiting examination on what definition international law undergirds”

ISIS is a terrorist group that operates in Iraq and Syria. According to the Clarion Project (2015) the group has also spread its operations to other countries in the Middle East Region. According to the US Council of Foreign Relations (2015:1), the self-proclaimed ISIS is a

militant movement that has conquered territory in Western Iraq and Syria, where it has made a bid to establish a state in territories that encompass some six and half million citizens. Caris and Reynolds (2014:4) posit that, ISIS is a group which wants to create a caliphate in the Middle East and in an endeavor to realise this vision it first established control of terrain through military conquest then reinforcing this control through governance. The group is a radical movement which wants to establish jihad and Shariah law. Esfandiari (2014:13) postulates that, ISIS now controls a swath of territories that stretches from Diyala in Iraq to Aleppo in Syria has committed many atrocities but its treatment of women has been barbaric.

Esfandiari (2014:14) postulates that, the establishment of this new caliphate was proclaimed from the pulpit by the ISIS leader Abu-Bakr al-Baghdadi, after the capture of Mosul which is Iraq's second largest city. It is clear that the capture of Iraq city was the genesis of ISIS violation of norms of Law of Armed Conflict as ISIS imposed a system of justice based on mass killing, beheading and forced conversion. Caris and Reynolds (2014:5) held that, ISIS has caused exodus from towns which it has conquered and this has created a massive refugee problem.

According to the Clarion Project (2015:32), ISIS is not only a terrorist group but a political and military organisation that holds a radical interpretation of Islam as a political philosophy and seeks to impose that worldview by force on Muslims and non-Muslims. ISIS is believed to be an off shoot of Al Qaeda that was later expelled from the group for being too extreme. It is clear that from its initiative to establish and promote its ideology ISIS use force in a manner which is inconsistent with the Law of Armed Conflict, United Nations (UN) Charter and peremptory norms (*jus Cogens*) of international law. Jones (2015:13) posits that, ISIS is using expansionist strategies as it tries to consolidate its hold on the Syrian city and Iraq city and it uses blitzkrieg. This is not compatible with the principles of the Law of Armed Conflict which stated explicitly that parties to conflict must use necessary means to achieve the end (Just War).

Cassese (2014:3) argues that, the Law of Armed Conflict evolved from customary international law, law treaties and is a peremptory norm under international law. According to The International Committee of the Red Cross (ICRC), International humanitarian Law (IHL), (2004:4) "International humanitarian law is also known as the law of armed conflicts or law of war and forms a major part of public international law, It comprises of the rules which in times of armed conflict seek to protect those who are not or no longer taking part in hostilities

and seeks to restrict the methods and means to warfare employed.” This view is also supported by the Joint Service Manual on the Law of Armed Conflict (2004:113), which states that the main purpose of the Law of armed Conflict is to protect combatants and non-combatants from unnecessary suffering and to safeguard the fundamental rights of persons who are not or are no longer taking part in the conflict such as Prisoners of War, the Wounded, sick and shipwrecked and civilians.

There is a distinction under the Law of Armed Conflict between international armed conflicts (hostilities between states) and non- international armed conflict (armed conflict within a state). Dugard (2011: 526) posits that, there is a distinction between *jus ad bellum* and *jus in bello*, the former refers to the right to go to war while the latter deals with how to conduct hostilities and treat civilians and combatants. The Law of Armed Conflict is premised on four major principles which are: distinction, proportionality, military necessity and unnecessary suffering. According to Article 48 of the Law of armed Conflict, in order to ensure respect of the civilian population parties to the conflict must distinguish between the civilians and combatants, the civilian object and the military objective. According to the International Committee of the Red Cross Report (2002), the Law of Armed Conflict is a branch of law which governs relations between states during armed conflict and it also applies to fighting within states.

According to O’Connell (2005:4) “a war or armed conflict, consists of two or more organized armed groups engaged in protracted and intense armed hostilities.” In *Prosecutor v. Tadic* 1995 the International Criminal Tribunal also defined “armed conflict” as existing “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.”

The additional Protocols to the Geneva Conventions also incorporate concepts of intensity and organized fighting for a situation to be an “armed conflict.” Additional Protocol II applies only to conflicts that have “more than situations of internal disturbances and tensions such as riots and isolated and sporadic acts of violence.” Based on these definitions O’Connell quoting Greenwood 1995 argues that “only when fighting reaches a level of intensity which exceeds that of such isolated clashes will it be treated as an armed conflict to which the rules of international humanitarian law apply.” Several scholars including Wallace (2005 :) have also questioned the legality and legitimacy in the use of threats or use of force against other States and non-State actors. This view by the United States also prompted scholars, social

scientist to study the meaning of armed conflict under international law as some specialists argued that the rights claimed by the United States touched on the territorial scope of armed conflict and were clearly in violation of international law. The use of force by states and non-state actors in the international system has also been broadly discussed by international scholars. Thus in this case the operation of ISIS is affecting civilian population and people who are not taking part to the conflict. Smith (2006:45) postulates that, in the Twenty First Century there was a kaleidoscopic change of events and the notable one was the decrease of interstate wars and the increase of intra state wars. It is clear that the rise of non-state entities like terrorist groups have exacerbated the violation of the principles of the Law of Armed Conflict thereby leading to anarchy.

According to the UN Counter Terrorism Committee Report (2014), terrorism remains a serious threat to international peace, security and international law. This is evidenced by an unprecedented rise in the number of conflicts between states and non-state actors as in the Islamic States in Iraq and Syria and this rise has been impacted by political instability, including that of terrorist activities. The phrase “one man’s terrorist is another man’s freedom fighter,” according to some scholars depicts the biases in the definition of the term ‘terrorism.’ Gabor (2003: 62) argues that it is important to distinguish terrorists from freedom fighters so as to establish whether the rules of international armed conflict or non-international conflict apply. Gabor (2003: 62) further argues that the reason for this distinction is that according to Additional Protocol 1 article 1(4) hostilities directed against a government and undertaken by a belligerent group seeking self-determination may qualify as an international armed conflict while the same conduct of a group with different aims will not. In essence, a terrorist group can be a party to an armed conflict however; due to lack of a commonly accepted definition is a challenge. According to Dinstein (2000: 93) the majority of scholars agree that the law of armed conflict traditionally recognized the contrast of transnational armed conflict applicable in normal framework regarding armed hostilities.

1.2 Statement of the Problem

The problem which is under investigation is that since the proliferation of terrorist groups, the law of armed conflict has been compromised and ensuring compliance to international humanitarian law is challenging. The rise to prominence of terrorist groups and parties to conflicts have fueled the violation of the Law of Armed Conflicts. This problem is triggered by non-state actors like ISIS and the response by the international community in fighting

terrorism. Dugard (2011: 531) quotes Harry Lauterpacht saying that, “if international law is at the vanishing point of law then international humanitarian law is more conspicuously at the vanishing point of law”. This problem is emanating from the fact that the environment in which the Law of Armed Conflict must be enforced is difficult because it will be during “peace time.” International law experts like Harry Lauterpacht are of the opinion that the Law of Armed Conflict is the most difficult branch of international law as there were a lot of violations of the norms of international law by ISIS.

The novel redistribution of power in the international system has triggered the breach of the Law of Armed Conflict as non-state entities violate norms of *jus cogens* and the Law of Armed Conflict. Smith (2006:74) postulates that, “wars of States are over and wars of people have begun”. This implies a tremendous shift from interstate wars to intra state wars. Those wars of people which are pursued in a terroristic manner had been cumbersome on the Law of Armed Conflict. What is also cumbersome about ISIS is that it is a non-state entity and therefore it is not party to the treaty Laws which deal with conducting of hostilities. The problem which is under investigation is that the operations of ISIS have led to gross human rights violations, illegitimate use of force, mass executions, beheading of opponents, abduction of civilians and abuse of women. According to the United Nations Human Rights (UNHR) Report (2015), ISIS has caused unnecessary suffering through public executions. This is problematic because it is not compatible with the Laws of Armed Conflict and IHL which states that, parties to a conflict must avoid unnecessary suffering on the civilian population.

1.3 Objectives of the study

The objectives of the research are

- To examine on how the law of armed conflict applies to ISIS.
- To investigate if the use of force by the anti ISIS Coalition is justified.
- To investigate the relationship between ISIS and other transboundary terrorist groups like Boko Haram and Al Shabab.
- To examine the role of the international community in the fight against ISIS and its impact on the law of armed conflict.
- To proffer recommendations on what the international community must do to promote norms of the Law of Armed conflict and International Humanitarian Law.

1.4 Research Questions

The trajectory of the study is to answer the following questions,

- How does the Law of Armed Conflict apply to ISIS?
- Is the use of force by the Anti-ISIS Coalition justified?
- What is the relationship between ISIS, Boko Haram and al-Shabaab?
- What is the impact of the Anti-ISIS coalition operation on the law of armed conflict?
- What must be done by the international community to protect the rules of the law of armed conflict from marauding terrorist groups like ISIS?

1.5Hypothesis

The resurgence of terrorist groups like ISIS has a negative impact on the Law of Armed Conflict.

1.6Justification of the Study

While the study of terrorism in the international system gathers momentum, there is still little interest on how the rise of terrorist groups has ramifications on the Law of Armed Conflict. It is this lack of interest by some academics which has ignited this researcher to focus on how ISIS affects the Law of Armed Conflict. The study is also unique as this is a new problem in the field of international relations. Hence the researcher finds it good to write about the aforementioned problem as the research is likely to add value to the field of international law, international peace and international security studies.

The study is also of paramount importance to foreign policy makers, academics, military strategists' and civic society on how to ensure the respect of the Law of Armed Conflict as the study will proffer recommendations. The study will also help to stimulate debate between legal experts on the Law of Armed Conflict and is likely to trigger some amendments on the Law of Treaties relating to the Law of Armed Conflict.

1.7 Preliminary Theoretical Framework

The study emphasizes a comparative analysis of the liberal theory and the realist theory so that the researcher can conceptualize and contextualise how ISIS is affecting the Law of Armed Conflict. The study will also explore the Just War Theory and Clausewitz Theory.

1.7.1 Liberal Theory

Daddow (2011:69) posits that, the liberal school of thought entered the lexicon of International Relations in the 14th Century. The major proponents of this school of thought are Erasmus (1466-1536), Hugo Grotius (1538-1635) and Abraham Lincoln (1809-1865). Jackson and Sorensen (2007:98) postulates that, the Liberal School of thought is optimistic, it sees peace, human advancement and progress as something which is possible. This theory is applicable to the study as it shows why and how states created the Law of Armed Conflict. Daddow (2011:71) posits that, a key player in the birth of liberalism was Woodrow Wilson who wanted to make the world, “fit and safe to live in...be assured of justice and fair dealing by the other people of the world as against force and selfish aggression”.

1.7.1.1 Just War Theory

The paradigm has become the most influential perspective on the conduct of war. Bailey (1972: 16) postulates that, the just war tradition has become prominent in international relations and it was ushered in by early Christian thinkers like, St Augustine (430), Grotius and St Thomas Aquinas (1267). The central argument of the Just war Tradition was that since war is a continuation of policy by other means there is need to fight in war with restraint and the purpose of war is to defeat your adversary and not to destroy. Johnson (1984:113) states that, in its origins just war theory is a synthesis of classical Greco-Roman, as well as Christian, values. The relevance of this tradition to the study is that it is a precursor of the law of armed conflict, in other words the starting point of understanding modern humanitarian law or law of armed conflict is to understand the just war theory.

1.7.2 Realism

In contrast the realists are pessimistic. Daddow (2011:81) posits that, where liberals see co-operation and the existence of international law as the likely outcome, realists see the perpetual threat of the conflict and war. In order to have a comprehensive understanding of the Realist School, the study will in-cooperate what Hobbes extrapolates about human nature. Hobbes (1968:332) extrapolates that, in the world human revert to animalistic behaviour because this is the world in which no-one is safe from the potentially harmful behaviour of

others. Jackson and Sorensen (2007:64) postulate that, in the world life is constantly at risk and nobody can be confident about his/her security and survival...people are living in constant fear of each other. The benign of the arguments proffered by the Realist is significant to the study as it explains why ISIS did not obey the Law of Armed Conflict and norms of international law.

1.7.2.1 Clausewitz Theory

Clausewitz theory is an escape route of the realist school of thought. The theory seeks to give the principles of wars. Clausewitz (1813) defines war as, large scale violence between two or more political organised groups. The proponent of the theory is Carl Von Clausewitz. According to Clausewitz (1813) the theory tries to discover how we may gain preponderance of physical forces and material advantages at the decisive point. It informs parties in wars to calculate moral factors, the likely mistakes of the enemy. The importance of the theory to the study is to find out if both ISIS and the Anti-ISIS Coalition are using the Clausewitzan strategy in their war. It is clear that, some of the principles enmeshed in the Clausewitz theory are not constituent with the Law of Armed conflict.

In order to have a greater appreciation of the Realist theory, the power theory will be analyzed in the study. The power theory which is a step child of the Realist Theory postulates that, the international system is characterised by anarchy and there is war for all against all, this is triggered by the struggle for power.

1.8 Preliminary Literature Review

Throughout the years various scholars have attempted to define terrorism, but still there is no agreed definition of the term. Hoffman (2013:54) posits that, the term is so loaded with conceptual problems that a totally accepted definition of the term does not exist. Schmid and Jongman (2014:34) define terrorism as “an anxiety-inspiring method of repeated violence action, employed by semi clandestine individual group or state actors for idiosyncratic, criminal, or political reasons whereby in contrast to assassination the direct target of the violence are not the main target”. Walter (2008:177) defines terrorism as, “the use or the threat of the use of violence, a method of combat, or a strategy to achieve certain targets...it aims to induce a state of fear in the victims, that is ruthless and does not conform to humanitarian rules and publicity is an essential factor in the terrorist strategy”. Deducing from various definitions put forward by different academics terrorism is the calculated use of

violence in order to inculcate fear to the civilians to achieve religious, political and economic goals.

Bradley (2015:22) posits that, ISIS is a Sunni Islamist militant group which nearly upended Iraq status as a fragile state. ISIS announced itself as a caliphate and it declared statehood and demanded allegiance from other Islamist groups. According to Amnesty International Report (2014:16), there has been a lot of political cleansing orchestrated by ISIS on a historical scale. According to the United Nations Report (2014), fighters from ISIL/ISIS may be added to a list of war crime suspects in Syria and by June 2014 ISIS had killed hundreds of Prisoners of War and over 1000 civilians. According to the United Nations Human Right Council (UNHRC) Report (2014), ISIS committed mass atrocities and war crimes including killing up to 250 Syrian Army soldiers near Tabqa Air Base. The United Nations High Commissioner for Human Rights (UNCHR) Report (2014) also dovetails the claim by the UNHRC and it went further to elaborate that ISIS was targeting women and Children. A report by a renowned whistleblower Human Rights Watch Report (2014: 3) also articulated that ISIS has crossed the line as it terrorised civilians in Syria and Iraq.

According to Human Rights Watch Report (2014), children as young as eight are recruited or kidnapped and sent to military training camps, where they practice beheading with dolls and those children are used as human shields on front lines and to provide blood transfusion for ISIS soldiers. This is not compatible with the Law of Armed Conflict, according to Article 77 sub article 2 of Additional Protocol II to the Geneva Convention, “the parties to a conflict shall take all feasible measures in order that children who have not attained the age of 15 do not take part in hostilities... and they shall refrain from recruiting them in their armed forces...”

Despite the views of different scholars on the subject of the Law of Armed Conflict and Trans- boundary terrorist groups the researcher noted that there are few scholarly articles or books on the problem under investigation. This literature gap stimulated the researcher to carry an extensive research so that the problem under investigation can be answered.

1.9 Methodology

In an endeavor to collect high quality data which is represented to the study, the researcher used the qualitative method. The method of a case study was used to analyse the impact of transboundary terrorist groups on the law of conflict. A case study of ISIS was used in order to fully understand the impact.

1.9.1 Research Design

The research used a qualitative method of collecting data. Neuman (2010:122) defines qualitative methods of collecting data as, methods of data enquiry which aim to gather an in-depth understanding of behaviour and reasons that govern such behaviour.

1.9.2 Case Study

The study used a case study, since it is focusing on the case of ISIS. According to Yin (2002:2) a case study research examines a contemporary phenomenon within its real life context and this method was chosen as it provides context and narratives behind particular results about what actually happened on the Law of Armed Conflict with the rise of ISIS.

1.9.3 Documentary Search

The study also used of documentary search, this involves the collection of available documents in this research documents on the law of armed conflict and ISIS will be surveyed. Scott (1990) cited in Smith (2011) defines a document as an artifact which has as its central feature an inscribed text. The study utilized both primary and secondary documents the former will enables the researcher to gather first-hand information while the latter help to collect data that has been refined. The overall advantages of documentary search is that is that it is cheap and the documents are readily available hence this lessened difficulties in accessing some information which will be important in the study.

1.9.4 Interviews

The researcher intended to utilize in-depth and structured interviews of experts in the study. An interview has been defined by Smith (2011:4) as a conversation between two people, an interview and an interviewee.

1.9.5 Enhancing Reliability and Validity

In order to enhance the credibility and truthfulness of the data to be collected, the researcher used triangulation and negative case analysis. The researcher also used member check and peer to peer research technique.

1.9.6 Data Analysis and Presentation

In the research data was analysed using thematic analysis which is a qualitative analysis method. Boyatzis, (1998) cited in Braun and Clarke (2006:6) defines thematic analysis as a method for identifying, analysing, and reporting patterns themes within data, which are themes which it minimally organises and describes the data set in rich detail. The issues linked and conveying similar meanings were categorized into same cluster in the process and conclusions were drawn by the researcher. Another data analysis method which was used is constant comparative which is a process where newly collected data is compared with previous data that was collected in one or two earlier studies.

1.9.7 Limitations

The study was affected by the inaccessibility of first-hand information and by the refusal of organisations linked to humanitarian work and other experts refusing to grant interviews. As a stop gap measure, the study used documentary search, informal discussions and YouTube interviews.

1.9.8 Delimitations

The study focused on the impacts of ISIS on the Law of Armed Conflict and it did not investigate how state actors respect the Law of Armed Conflict. It is also imperative to note that the focus of the study were only constrained to be on the activities of ISIS against the Law of Armed Conflict in the Middle East not in other countries outside the region. The study is also constrained to a time frame from 2014 to 2015 and therefore any period which is outside the purview of the aforementioned period will not be analysed in the study.

1.9.9 DISSERTATION OUTLINE

Chapter 1: Introduction

Chapter 2: Literature Review and Conceptual Framework

Chapter 3: ISIS and Law of Armed Conflict: An Overview

Chapter 4: Major Findings; Impacts of ISIS on the Law of Armed Conflict

Chapter 5: Conclusions, Recommendations and Implications for Further Studies.

CHAPTER 2: THEORETICAL FRAMEWORK AND LITERATURE REVIEW

2.0 Introduction

This is a review of relevant literature and theories which are applicable to the study. The theories which are integrated in the chapter are the liberal theory and the realist theory. The significance of the two theories is that the liberal theory is optimistic and therefore could serve to show the relevance of the Law of Armed Conflict. In contrast the realist theory is pessimistic and would be used in the study to explain how trans-boundary terrorist such as ISIS are threats to the Law of armed Conflict. The other significance of the theories to the study is that they explain how human beings behave in the international system. The cross cutting dichotomies of both the liberal and the realist theories were analysed in the study. Under the liberal school there is the Just War Tradition and under the realist there is Clausewitzan theory. This enables the researcher to find out the provenance of the theories to the study. The second phase of the chapter is an historical overview of different literature. Different literature were consulted in order to have an understanding on how the operation of ISIS is affecting the law of armed conflict, the nexus between ISIS and other terrorist groups like Boko Haram. The study scrutinised the literature in an endeavour to find out if their arguments are objective and if the literature will add value to the study. This phase will also show the gaps in the literature.

2.1. Liberal Theory

Cristol (2011:7) states that, liberal international relations are connected to, but divergent from the utopianism of the interwar era. The utopians presupposed that war could be ended either by perfecting the government or perfecting man. To augment on what Cristol says, Daddow (2011:69) postulates that, liberal international relations theory traces its roots back way beyond the establishment of the discipline in 1919. Influential liberal thinkers include Erasmus (1466-1536), Hugo Grotius (1583-1635), John Locke (1632-1704), Adam Smith (1723-1790), Immanuel Kant (1724-1804), Jeremy Bentham (1748-1832) and Abraham Lincoln (1809-1865). It can be noted that modern liberal thinkers includes Woodrow Wilson and Jim Carter. While the liberalists are optimistic about the nature of the international system, the influx of non-state actors in the international system such as terrorist groups has led to conflicts. Therefore this study will examine the feasibility of the liberal school of thought on the case of ISIS.

The liberal school of thought is intertwined by different themes which recur overtime. The major philosophical assumption proffered by the liberalist school of thought is that war is not the natural condition of international relations and peace is intrinsically normal. Daddow (2011: 70) posits that, the liberal school of thought perceived that states are not the only actors in the international system, human beings are perfectible and the liberals believe in progress in the international system. The assumptions made by the liberal school of thought are feasible given the proliferation of non-state actors in the new world order. The applicability of this theory to the study is that it seeks to explain how and why states create international laws. The law of armed conflict is therefore construed as a brain child of the liberal school of thought. Daddow (2011:70) states that, the liberals have faith in the power of human reason and have faith in the potential of human beings to realise their inner potentials. Jackson and Sorensen (2007:98) conclude that, the liberal tradition in international relations is optimistic and the unifying theme across all the liberal thinkers is that progress is possible via modernisation of economies, technologies, human morality and international law.

Cristol (2011:13) states that, all post war liberal theories share a few basic concepts that allow them to be called liberal. The key concepts found in liberal theory are absolute gains, international institutions, free trade, democracy and international law is vital in the liberal theory of international relations as it is seen as forming a major constraint on state behaviour. Knock (1995:132) concurs with Cristol as he posits that, liberal theory of international relations is based on the following assumption: states are the major actors in the international system but they are not outright and there are factors beyond leverages that constrain state behaviour. The link between this school of thought and the study is that non-state actors like ISIS are related to the theory and this makes the theory popular.

Sterling-Folker (2006: 56) postulates that, for the liberals, peace, progress and human advancement are all possible even in circumstance in which there are distinct entities known as states each with their own languages, traditions histories and political set up. This is linked to the study since the impetus of the researcher is to look on why is it that despite international co-operations human being lived in a perpetual fear due to the fact that, ISIS is affecting the law of armed conflict. The significance of the theory is to explain the creation of the Law of Armed Conflict.

Daddow (2011:71) postulates that, a key player in helping the liberal theory become central to the study of international relations was Woodrow Wilson a former political scientist and President of the United States of America. Daddow (2011:71) postulates that, Wilson wanted to make the world, “safe and appropriate to live in... predispose its own institution, be assured

of fair and justice dealing by the other peoples of the world as against selfish aggression and force”. The link between this school of thought and the study is that, the law of armed conflict is the precursor of the liberal school of thought. The study will also scrutinise if people are living in harmony, hence by the end of the research the study will ascertain the relevance of the liberal theory.

Knock (1995:154) states that, liberalism is a school that stresses the need for states to pursue moral goals and to act ethically in the international arena and liberalist believe that behaviour considered immoral on an interpersonal level is also immoral in foreign policy. Therefore, liberalism argues that dishonesty, trickery, and violence should be shunned. Daddow (2011:76) states that, the ideas and associated work in the realm of interdependence, international law, international institutions and international governance. Therefore, the theory has fertile grounds in the study since it focused on human nature, the organisation of the states, causes of conflicts and how to manage inter-state relations in an apparently conflict ridden states such as Syria and Iraq. The other significance of the study is to inform on what the international community can do to curb the negative impacts of ISIS on the law of armed conflicts.

The significance of the theory to the study is that it shows how the liberals influenced the creation of the Law of Armed Conflict. The theory will also be used to examine how the influx of non-state actors is in conflict with the liberal perceptions about the nature of the international system.

2.1.1 Just War Theory

According to Boucher (1998:54) the Just War Tradition is a step child of the liberal school of thought. The paradigm has become the most influential perspective on the conduct of war. Bailey (1972) postulates that, the just war tradition has become prominent in international relations and it was ushered in by early Christian thinkers St Augustine (430), Grotius and St Thomas Aquinas (1267). The central argument of the Just war Tradition was that since war is a continuation of policy by other means there is need to fight in war with kindness and the purpose of war is to defeat your adversary and not to destroy. Johnson (1984:113) states that, in its origins just war theory is a synthesis of classical Greco-Roman, as well as Christian, values. The relevance of this tradition to the study is that it is a precursor of the law of armed conflict, in other words the starting point of understanding modern humanitarian law or law of armed conflict is to understand the just war theory.

McMahan (1994: 1) argues that, the major proponents of the Just War tradition are St Augustine and St Thomas Aquinas who first encapsulates that there are principles that governs the prerequisite for the initiation of war (*jus ad bellum*). The doctrine was later expanded by Grotius who incorporated the rules of morality which governs the way war is conducted (*jus in bello*). Taking the Just War tradition there were no justification on the activities of ISIS. Sterio (2012: 209) extrapolates that, the principle of proportionality in *jus in bello* prohibits the use of more force than the one recommended. Therefore this study will scrutinise how ISIS is respecting the principles of the Just War Tradition.

Boucher (1998: 74) posits that, many of the norms created by the just war tradition have since been codified into contemporary international laws governing armed conflict, such as the Hague and Geneva Conventions and the UN Charter. The tradition has been influential in international law, dominating both legal and moral discourse surrounding war. It sets the parameters and the tones for the great debate. The relevance of this theory to the study is that the researcher will try to see if the just war tradition is applicable and if states are willing or able to comply with the principles of Just War theory. Kolb and Hyde (2008: 37) postulate that, throughout history, agreements and conventions about acceptable conduct have carefully circumscribed the waging of war and the conduct of warfare. These customs have later crystallised into binding rules of international relations through codification. It is worth noting that due to the influx of non-state actors the applicability of the rules which were created from the Just War Tradition is under pressure and severe critic from jurist.

To elucidate on the just war tradition, Johnson (1984: 34) extrapolates that:

Just war theory can be divided into three phases, which can be referred in literature, for the sake of amenity, in Latin. These parts are: *jus ad bellum*, which is premised on the justice of resorting to war in the first place; *jus in Bello*, which entails the justice of conduct within war, after it has begun; and *jus post bellum*, which entails the justice of the termination of the phase of war and peace agreements.

In summation it can be noted that, the overarching objectives of the Just War theory is to offer rules to guide decisions-makers on the appropriateness of their conduct during armed conflicts, conducting during war and the termination phase of the conflict. As Childress (1978:431) notes, the just war theories overarching objective is to try and assure that wars are waged only for a very narrow set of truly defensible reasons, that when wars break out they are fought in an accountable, responsibly controlled and targeted manner, and that the parties involved in war terminate their war in a speedy and responsible way that respects the fundamental requirements of justice. Therefore, the theory will harmonise the problem to the

researcher as the researcher will analyse if the operations of ISIS are within the principles of the Just War Theory.

The significance of this theory to the study is to ascertain how states and non-state actors are complying with rules of the just war tradition which is the precursor of the law of armed conflict and IHL. The study will also identify gaps within the Law of Armed Conflict and IHL for future changes.

2.2 Realist Theory

The other theory which will be used in the study is the realist theory of international relations. Daddow (2011:81) posits that, while liberal theorists of international relations are optimistic, the realists are pessimistic as they explain state behaviour in an international anarchy. The proponent of the theory includes, Thucydides, Clausewitz, Hobbes, Machiavelli, Morgenthau and Carr among others.

According to Hobbes (1968: 154), the international system is characterised by anarchy, where life is short, brutish, nasty and solitary and there is war for all against. Daddow (2011:82) postulates that, in such a human world, human being reverted to animalistic behaviour because this is the world in which no-one is safe from the potentially harmful behaviour of others. This is supported Jackson and Sorensen (2007: 65) as they state that, life is constantly at risk and nobody can be confident about his security and survival for any reasonable length of time and people are living in constant fear of each other. The theory is plausible in the study since ISIS has caused the Hobbesian nightmare in the international system this is emanating from its breach of the law of armed conflict. The theory has provenance since it explains the behaviour of states in an anarchic environment.

Hobbes (2007: 64) gave international relations theorists two key concepts which are 'self-help' and the 'security dilemma.' Daddow (2011:82) extrapolates that, for the realist anarchy is exacerbated by the problem of human nature, human beings are viewed as selfish, not peace loving. Daddow (2011:82) encapsulates that, the realist questions the avenues which will stop human beings from being aggressive. The relevance of this theory to the study is that it explains the operation of ISIS and how the Anti-ISIS Coalition conducts its military operations. The aforementioned operations have an impact on the law of armed conflict.

To elaborate on the Realist School, power is central for the Realist paradigm. Daddow (2011: 84) states that, for the realist if you are living in the original state of nature in the international system, it is obviously useful to have power of some kind to help you out, either to protect

you from the aggression of other humans or states or to enable you to extract what you want from other human beings. This makes the theory relevant to the study as the issue of power is central in the study. Firstly, the ISIS has caused mayhem because it has power and the Anti-ISIS is also trying to use its power to deal with ISIS. While the issue of power is vital for the realist school of thought, in the study the issue of power has been problematic as both the operations of ISIS and the Anti-ISIS coalition has compromised the law of armed conflict and this has ramifications on human security.

In order to have a comprehensive understanding of the realist school of thought it is imperative to understand the ideas of the Realist after the end of the Second World War. Morgenthau (1985:6) who is one of the godfather of realism developed a plethora of six principles of political realism which are:

- (a) Politics has its root in human nature
- (b) Foreign policy thinks and acts in terms of interests
- (c) Human are basically self-interested as are state
- (d) We can only judge the morality of leaders actions on the basis of a careful examination of the choices open to him at a particular point in time.
- (e) No nation has the right to claim its moral code as the world's moral code, or to impose its ideology onto others
- (e) Restatement of the autonomy of the political sphere with examples of how it works.

2.2.1 Clausewitz Theory

Clausewitz theory is an escape route of the realist school of thought. The theory seeks to give the principles used during warfare. Clausewitz (1813) defines war as, large scale violence between two or more political organised groups. The proponent of the theory is Carl Von Clausewitz. According to Clausewitz (1813) the theory tries to discover how we may gain preponderance of physical forces and material advantages at the decisive point. It informs parties in wars to calculate moral factors, the likely mistakes of the enemy. The importance of the theory to the study is to find out if both ISIS and the Anti-ISIS Coalition are using the Clausewitzan strategy in their war. It is clear that, some of the principles enmeshed in the Clausewitz theory are not constituent with the Law of Armed conflict.

The major principles of war which are enmeshed in the Clausewitz theory are the utmost use of force and the ends and means in warfare. Clausewitz (1813:11) propounds that:

..Now, benefaction may easily think there is a skillful method of overcoming and disarming an enemy without shedding a lot of bloodshed, and that this is the appropriate tendency of the Art of War. However feasible this may appear, still it is a mistake which must be extirpated; for in such dangerous things as War, the mistakes which come from a spirit of benevolence are the worst. As the exercise of physical power to the utmost extent by no means excludes the co-operation of the

intelligence, it follows that he, who uses force unsparingly, without reference to the bloodshed involved, must obtain superiority if his adversary uses less vigour in its application....

This is applicable to ISIS which is targeting the centre of gravity in its war. The ISIS uses maximum force in Syria and Iraq so that it can achieve its objective of establishing a caliphate in the Arab world. The significance of the Clausewitz theory is that it shows that parties in armed conflicts tries to outmaneuver each other. This is problematic as the parties end up violating the law of armed conflict.

The importance of the theory to the study is that to some extent both ISIS and the Anti-ISIS Coalition are using the Clausewitzan strategy in their warfare, yet some of the essential principles of the Clausewitzan theory are in conflict with the Law of Armed Conflict and IHL. For instance ISIS is targeting the centre of gravity in its war in Syria and Iraq and other Arab states so that it can achieve its objective of establishing a caliphate.

2.3 Literature Review

2.3.1 Historical Overview of the Law of Armed Conflict and Terrorism

Houston (2006:37) states that, the law of armed conflict forms a large part of the body of international law. The law is based on three principles of military necessity, avoidance of unnecessary suffering and proportionality. William and Gillman (2012:15) postulate that, in times of war the law of armed conflict is silent. William and Gillman (2012:15) posit that, historically, the applicability of the Law of armed conflict often depends upon a State subjectively classifying a conflict as a “war.” Recognition of a state of war is no longer required to trigger the LOAC. William and Gillman (2012:18) state that, the law exists to either prevent conduct or control conduct. These characteristics permeate the law of armed conflict, as exemplified by its two major prongs. *Jus ad Bellum* serves to regulate the conduct of going to war, while *Jus in Bello* serves to regulate conduct within war. The significance of the arguments of the literature above to the study is that it galvanises awareness on what is the law of armed conflict and when and how the law is applied. Although the scholars gave a comprehensive description of the Law of Armed Conflict, it is imperative to take note of changes which had been promulgated on the Law of Armed Conflict such as the adoption of Additional Protocol II on the protections of victims of non-international armed conflict as historically the Law of Armed Conflict focused on international conflicts.

The European Commission Report (2012:2) extrapolates that, the fundamental values of the law of armed conflicts are, balance between military necessity and humanity and the distinction between civilians or civilian objectives and military objectives. The other guiding

principles of the law are that reciprocity is prohibited and parties to conflicts are treated equally in their rights and obligations. To elucidate, it is clear that under the law of armed conflict, there is a distinction between international armed conflict and non-international armed conflict. Schmitt (2006:2) states that, non-international armed conflicts are construed as armed confrontations occurring within the territory of a single state and in which the armed forces of no other states are engaged against the central government. It is clear therefore that terrorist aggression can be construed as non-international armed conflict. Schmitt (2006:2) states that, non-international armed conflicts do not include conflicts in which two or more States are engaged against each other. Nor do they encompass conflicts extending to the territory of two or more States. According to the ICRC Report (2011:48), while the law of armed conflict and acts of terrorism are different forms of violence governed by different bodies of law, some academic perceived them as almost synonymous due to the constant conflation in the public domain. A general analysis of the above arguments shows that, a non-international armed conflict is an “intra” conflict this means that it is a conflict that takes place in a single territory in the form of a civil war, rebellion or protest.

Dugard (2011: 529) states that, in the past wars generally followed a declaration that states in question were at war, however today such declarations are highly unusual with the result that the Geneva Conventions of 1949 in terms of common article 2 applies to all cases of declared war or of any other armed conflict which may arise between states even if the state of war is not recognised by one of them. Chadwick (1996: 37) states that, a tremendous change of events and nature of conflicts has triggered interest in the issue of how the law of armed conflict in today’s situations of violent confrontation this is mainly coming from terrorism. The above literature has provenance as his arguments add value to the study. The ICRC which is a precursor of the law of armed conflict vehemently condemns acts of violence or confrontational which is indiscriminate and spread “terror” among the civilian population and there are a lot of occasions in which the ICRC condemns acts of terrorism. According to the International Criminal Tribunal for the Former Yugoslavia in *S v Basson* (2007) SA (S82),

Any armed conflict exists whenever there is a resort to armed forces between states or protracted armed violence between government forces authorities and organised armed groups or between such groups and within a state and humanitarian law applies from the initiation of such armed conflict and extends beyond the cessation of hostilities.

From the information above the law of armed conflict is now holistic as it now covers non-international armed hostilities but there is need to further broaden the law of armed conflicts so that it can apply to non-state actors.

There is no agreed definition of terrorism in the international system. The ICRC (2015:3) states that, the law of armed conflict intrinsically prohibits and condemns measures of terrorism and acts of terrorism. According to Article 33 of the fourth Geneva Conventions, collective penalties and measures of intimidation or of terrorism are prohibited. This article is cemented by Article 4 of the Additional Protocol II which prohibits acts of terrorism initiated against persons who are not or have ceased from taking part in hostilities. The ICRC Report (2015:3) posits that, the aim of these legal principles is to emphasise that neither the civilian population nor the individual may be subjected to collective punishment which among other things seeks to terrorise. Additional Protocols I and II also prohibit acts aimed at inculcating terror among the civilian population. Acts or threats of violence the fundamental purpose of which is to spread terror among the civilian population are outlawed. These provisions do not outlaw lawful attacks on military targets, which might spread fear among civilians, but they prohibit attacks that specifically seek to terrorise.

Kersten (2014: 7) articulates that, since the time ISIS reached its zenith, there have been reports of indiscriminate killing of civilians, rape of women and girls and the alleged massacre of eighty Yazidi men in Northern Iraq by ISIS militants. The Centre for Criminal Justice and Human Rights (2014) postulates that, ISIS has claimed sovereignty over the entire Levant regions, incorporating Iraq, Syria, Lebanon, Israel, Palestine, Jordan and Cyprus as well as portions of Turkey and Egypt in which they seek to establish a caliphate. Kersten (2014) postulates that, the rise in influence of ISIS has ramifications on the law of armed conflict as it ignited the involvement of international players in the conflict. The crisis has crystallised into an armed conflict and has generated some notable impacts in politics and international law. The Centre for Criminal Justice and Human Rights (2014) reinforced the arguments of Kersten as it posits that, in June 2104 ISIS scored a major victory in taking control of Iraq's second largest city Mosul, the actions of ISIS militants have triggered a surge in violence in Iraq leading to over 2400 deaths. The mass killing of the civilians by ISIS are in conflict with the law of armed conflict.

Kfir (2015: 241) states that,

... in the case of Iraq, ISIS intensifies its criticism on the policies of the Iraqi government, which it labelled as a Western-imposed relic of the Sykes-Picot Agreement..Sees and paints as fundamentally a Western-friendly, Shi'a-dominated entity. Thus, the first policy propagated by ISIL is a rejection of non-Islamic territorial division, with the border between Syria and Iraq..

The literature which has been included above adds value to the study as it gave a historical over view of the law of armed conflict and terrorism.

2.3.2 The Anti-ISIS Coalition and the Law of Armed Conflict

The Anti-ISIS Coalition is a co-operation of states to avert the humanitarian crisis which was triggered by ISIS. The Meir Amit Terrorism Information Centre (2015:2) states that, to implement the campaign against ISIS within a relatively short period of time the US puts together an international coalition of Western and Arab countries for active support. Barry (2014:3) states that, the campaign is already a complex undertaking. It will probably take years and become more complex still, and its success depends on the new Iraqi government regaining the confidence of Iraq's Sunni communities, the campaign just like the US War on terrorism is likely to affect the law of armed conflicts. The views of the aforementioned scholars had significance to the study as it will ignite the research to carry out scientific research in an endeavour to establish how the Anti-ISIS Coalition had affected the law of armed conflict. To buttress the arguments put forwards by the scholars, the influx of ISIS has affected the Law of Armed Conflict in two ways first by its direct use of terror and secondly during the fights against ISIS the international community breached the Law of Armed Conflict as will be discussed in Chapter 4.

Johan (2015: 24) states that:

within the confines of the law of armed conflicts the airstrikes in Iraq by American and other national armed forces are clearly lawful because they were approved, and indeed requested, by the Government of Iraq. The airstrikes in Syria are most likely not lawful under the existing laws and practices of international humanitarian law, because they were not invited by the Government of Syria. The judgment of the ICJ in *Nicaragua v. the United States of America* can be cited in support of these assessments. The United States allegedly informed Syria of its intended airstrikes and requested the Syrian Government not to intervene and Syria as a matter of fact did not intervene. Could this be interpreted as implied consent? Probably not!

The Meir Amit Terrorism Information Centre (2015:2) stipulates that,

Some of the Western allies (particularly) France and Britain) joined the United States in carrying out airstrikes in Iraq, while a number of Arab countries (Saudi Arabia, the UAE, Jordan and Bahrain) carried out airstrikes in Syria. Jordan also joined in attacking ISIS targets in Iraq after the captured Jordanian pilot was burned to death by ISIS operatives. Egypt carried out airstrikes against ISIS in Libya after 21 Egyptian Copts were beheaded.

The Centre for American Progress (2015:1) states that, U.S. airstrikes in Iraq against the Islamic State of Iraq and al-Sham, or ISIS, have been an important step to contain the rise of the extremist group, respond to immediate threats to U.S. citizens in Iraq, and prevent possible acts of genocide. These airstrikes enabled Iraqis to resist ISIS and bought time for the Iraqi government to begin building a more inclusive and robust security system. The Meir Amit Terrorism Centre (2015: 6) postulates that:

the Anti-ISIS coalition is a military strategy which had several aspects such as intensive airstrikes in Syria and Iraq; strengthening local forces in Syria and Iraq (the Iraqi army, the Kurdish forces, the so-called moderate Syrian rebel organizations) damaging ISIS's sources of power (especially its financial resources); and improving the methods used by the United States and the international community to cope with the incidence of foreign fighters joining ISIS.

Hary (2014: 3) states that, the US involvement against ISIS in the form of targeted air strikes has resolved the problem of whether ISIS activities can be regulated under the law of armed conflict or not. Under the law of armed conflicts, the use of air strikes will undoubtedly qualify the application of the law of armed conflict. The significance of the above literature is that it ignited the researcher to do an inquiry to find out if the airstrikes which were launched by the campaigns are consistent with the core principles of the law of armed conflict. Although the literature gave a detailed account on the campaigns initiated by Anti-ISIS Coalitions, it fails to give empirical evidence on how the campaigns affected the law of armed conflict. Although the United Nation Security Council (UNSC) under resolution 2170 authorised military actions against ISIS there have been widespread reports that members of the coalition used breached the *jus of bello* during their military campaigns against ISIS. Therefore, this study will be carried to unearth how the anti-ISIS Coalition airstrike breached the law of armed conflict.

2.3.3 The Use of Force by ISIS

Hary (2014: 3) states that, *jus in bello* is distinct from *jus ad bellum*. Regardless of the legality of the use of force, IHL, because it is applicable, will apply. This means that individuals behind ISIS, regardless of where they may be found, will be prosecuted for war crimes. Blanchard (2014: 22) states that:

The Islamic State (IS, aka the Islamic State of Iraq and the Levant, ISIL/ISIS) is a trans boundary Sunni Islamist movement and terrorist group that has enlarged its control over areas of north-eastern Syria and north-west Iraq since 2013, portending the security of both countries and drawing large attention from the international community.

The Independent (16 June 2014) postulates that, the strategy of ISIS is to make a surprise attack, inflict maximum casualties and spread fear before withdrawing without suffering heavy losses. It is crystal clear that from the modus operandi of ISIS, the law of armed conflict is now being threatened. The literature is credible and is important to the study as it gives an insight about the problem under investigation. It can also be noted that, there is a vacuum which was left by the literature as it fails to give quantitative data on how ISIS has affected the law of armed conflict. This gap is likely to be filled by the study as the researcher will do an extensive research in order to find empirically how ISIS has affected the law of armed conflict.

Lewis (2014:6) states that,

ISIS also regenerated the capacity to execute a combined arms attack against a fixed site, such as a prison. In September 2012, ISIS achieved its first victory on this front, breaking 38 former AQI leaders from Tikrit Tasfirat prison. At the end of the “Breaking the Walls” campaign in July 2013, the newly expanded ISIS successfully broke 500 prisoners from Abu Ghraib prison.

The significance of this view is that it shows how targeting the centre of gravity in warfare affects the law of armed conflicts. The methods

2.3.4 The Nexus between ISIS and Other Terrorist Groups

In the international system there has been a rapid increase in the interconnection of extreme groups. Rasmussen (2014: 1) extrapolates that, extremist groups Boko Haram and ISIS are growing increasingly connected in ways that could magnify their abilities to inflict violence and terror. The significance of the argument is that it might ignite the researcher to find out if the rapid connections between Boko Haram and ISIS are affecting the law of armed conflict. Rasmussen (2014: 1) posits that, these extremist groups were broadening their reach through mutual contact. (ibid) states that, “all of that just adds to the image of an intertwined terrorist network with the capacity to share tradecraft, personnel, resources and expertise in a way that serves as a multiplier to their own capabilities, and that is a vexing and disturbing trend,” The impacts of the link between jihad network is that it will led to humanitarian catastrophe thereby compromising the law of armed conflict. The scholars’ argument might be credible, however there is need to carry an extensive research so that, the researcher can accentuate how and to what extent did the interconnection of ISIS and Boko Haram is affecting the law of armed conflict.

Lewis (2014: 8) states that, Boko Haram has long been known to mirror the so called Islamic States Online media campaigns and push for a land grab in a way calculated to pave way for the future coordination between extreme groups. The above arguments dovetail the claims by Rasmussen that an alliance between extreme groups is likely to pose threats in the international system. Wood (2015: 5) states that, ISIS is a religious group with carefully considered beliefs; it is a key agent of the coming apocalypse.

Wood (2015:7) states that:

...Boko Haram and ISIS sound similar, and they have expressed mutual admiration. But, there exist significant differences beyond their differing geographies and circumstances. Among them is the emphasis that ISIS places on holding territory as the basis for a caliphate, and that a universal caliphate is a requirement for the End of Times. Hence, Woods argues that for ISIS, there can be only one caliphate...

The Guardian (12/03/2015) states that, the ISIS spokesperson spoke of “the diffusion of the caliphate to Africa, West Africa in particular”, the Islamic States welcomed a pledge of allegiance made to it by Boko Haram and promised to push for its expansion, according to a recording purportedly from its spokesperson. The Guardian (2015:1) quotes ISIS spokesman Abu Muhammad al-Adnan saying, “We declared to you to the good news of the enlargement of the caliphate to west Africa because the caliph ... has accepted the loyalty of our brothers of the Sunni group for spreading and teaching jihad,” The significance of this argument to the study is that they will ignite the research to find out how the alliance of ISIS and Boko Haram is affecting the law of armed conflict. The Guardian (2015:2) states that, Boko Haram leader Abubakar Shekau said, “We declare our loyalty to the caliph of the Muslims, Ibrahim ibn Awad ibn Ibrahim al-Hussein al-Qurashi,”

2.4 Conclusion

The chapter is a review of the theories that were utilised in the study. The theories which were utilised in the study are the liberal theory and the realist theory. Liberalist are optimistic and realistic are pessimistic. The significance of the two theories is that the liberal theory inform how and why the law of armed conflict was created, in contrast the realist comprehends how ISIS is violating the law of armed conflict. Realism focused on power politics and therefore it explains why the Anti-ISIS Coalition is affecting the law of armed conflict. The chapter reinvigorates the study as it includes the views of different scholars on how ISIS is inimical to the law of armed conflict. The chapter also includes the views of different academics on how the Anti-ISIS coalition is also hindering the law of armed conflicts. The chapter also identified gaps within the aforementioned literature and recommends further research to cover the academic vacuum. The provenance and credibility of the views of the authors was assessed in an endeavour to enhance reliability and validity of the views of scholars.

CHAPTER 3: THE ISLAMIC STATES IN IRAQ AND SYRIA AND THE LAW OF ARMED CONFLICT: AN OVERVIEW

3.0 Introduction

The objectives of the study are to examine how the law of armed conflict applies to ISIS and to examine the nexus between ISIS and other Jihad networks like Boko Haram. In order to make sense of ISIS, this chapter focused on the innate problem of terrorism in the aftermath of the 9/11 attacks. The general factors which exacerbate terrorism were discussed in this chapter. The chapter examined the beginning of ISIS and how it had evolved. The operations of ISIS fall under the fourth wave of modern terrorism. The chapter also does an in-depth analysis of the relationship between ISIS and Boko Haram. The chapter explores how the law of armed conflict applies to transnational terrorist groups. The chapter used the data collected through documentary search and interviews.

3.1 The Fourth Wave of Modern Terrorism

There is no agreed definition of terrorism in the international system. Ganor (2009:13) postulates that there are perhaps a hundred and six different definitions of terrorism all of which tend to reflect the political world of the definer. The researcher used the definition of terrorism which was enmeshed by Forest and Giroux (2001:3) who assert that terrorism can generally be defined as a tactic that uses violence or the threat of violence as a coercive strategy to cause fear and political intimidation. It is a feature with resistance movements, military coups and political assassination. Terrorism therefore is a calculated use of violence to inculcate fear in an endeavour to attain or promote religious, economic and social goals. Therefore the researcher will be guided by the terrorist actions which were articulated by the scholars. The researcher noted that up to date terrorism has taken five waves.

Mark (2003: 12) states that, ever since the evolution of terrorism in the 1st century it has taken different waves. Rapoport (2003: 46) terrorism has taken four waves and the first wave of terrorism is the anarchist wave, the second is the anti-colonial wave, the third is the new left wave and the last wave of terrorism is the religious wave. ISIS operations fall under the fourth wave of terrorism. Rapoport (2003: 46) predicted that, the religious wave of terrorism which

is the fourth wave of terrorism will come to an end in 2025 and this will mark the beginning of the fifth wave of terrorism According to the Terrorism Research (2008) the fourth wave of terrorism started in 1979 and it reached its climax on 11 September 2001. Hoffman (2002:303) states that, what differentiate terrorism after the new millennium with terrorism before the 9/11 attacks is the enormity and sheer scale of the attacks which greatly eclipse anything previously seen in terrorism. It is visible that the fourth wave of terrorism is perceived as a threat to peace, security, international law and human rights. Hoffman (2002: 303) encapsulates that, since 1968 when modern terrorism was invented the US had perhaps less than 1000 Americans killed by terrorists overseas and even within America itself but in less 90 minutes nearly three times that number of people were killed. The researcher noted that the fourth wave of terrorism has been ignited by different in civilisation/religion. The international system has been bedeviled by the inherent problem of terrorism that intensify after the 9/11 attack. Lauren (2011: 2) posits that, 10 years after the 9/11 attack the world faces a more diverse, yet not less formidable terrorist than that of 2001. A general criticism of the different waves of terrorism shows that the modern wave of terrorism is the most tremendous because of the number of casualties it had claimed.

Laqueur (1999:4) postulates that, there has been a tremendous transformation, if not a revolution, in the character of terrorism, a comparison of old terrorism and new terrorism revealed that old terrorism strikes or hit at selected targets while new terrorism is indiscriminate and this caused a lot of casualties. It can be noted that the other waves of terrorism were petty or trivial because the target will be assassinated and this is different from the last wave of terrorism which targets the civilian. Nesser and Stenersen (2014: 27) state that, the modus operandi of modern terrorist groups includes the use of suicide bombs, armed assaults, road side shootings and kidnapping. A synthesis of the findings of the study reveals that extreme indiscriminate violence is one of the methods of operations initiated by terrorist groups in the 21st Century.

Kaplan (2008: 54) posits that,

...the modern wave of terrorism can be summarised as a radical quest for purity, racial, tribal, ecological, belief in human perfectibility and chiliastic utopia and a chiliastic in nature deeply religious with eclectic or syncretism of religious tropes assembled and interpreted by the leaders in support of a millenarian dream to be realised through a campaign for apocalyptic violence...

Laqueur (1999: 6) postulates that, the new terrorism is different in character, aiming not at clearly defined political demands but at the destruction of society and the elimination of large sections of the population. Therefore in Laqueur's New Terrorism is the aspect of everyone being vulnerable and living in animosity unlike in old terrorism whereby the target would be killed. This resulted in the civilians suffering from post-trauma disorder (PTSD)

The dramatic and traumatic changes in terrorism have led those who fight the terrorist groups to reinvigorate and radicalise their strategy. The researcher noted that the traumatic change on the modus operandi of terrorist groups have negative impacts on the law of armed conflict. Laquer (1999: 4) posits that, new terrorism hence takes into account the possibility of terror on all facets of human security ranging from environmental security, political security to personal security and even socially security. Terrorism in the 21st century is at complete destruction of an ideology and people who support the ideology for instance in Iraq and Syria ISIS once to create a caliphate is fighting Christian ideologies and in the process annihilating any object and subject linked to Christian ideologies.

Masud (2006) states that,

On September 11 2001, an American Airlines Flight 11, a Boeing 767 out of Boston for Los Angeles was hijacked. Mohammed Atta and other hijackers commandeered the plane and crashed it into the north tower of the World Trade Centre between the 95th and the 103rd floors in New York at 8:48 a.m. Eighteen minutes after the incidence, another US airline the United Airlines Flight 175, a Boeing 657, which was coming from Boston to Los Angeles, crashed into the south tower at about the 80th floor,. Again American Airlines Flight 77, a Boeing 757 heading from Washington's Dulles International Airport bound for Los Angeles, rammed into the Western Wall of the Pentagon at 9:40 a.m. Another plane, the Boeing 757 operated and owned by United Airlines Flight 93, a Boeing 757 flying from Newark to San Francisco, rammed near Pittsburgh. This became to be known as the 9/11 attacks whereby 19 terrorists hijacked and plunged planes into the World Trade Centre and Pentagon buildings killing an estimated 3000 people.

The significant of the 9/11 attack to the study is that, this is when the fourth wave of modern terrorism reached its zenith and in order to understand ISIS one must have an understanding of the 9/11 attacks.

3.2 ISIS: The Creation Epic

In order to have a comprehensive understanding of what is ISIS one needs to understand why the group exists, what it wants and why the group commits terrible violence. Graeme Wood (2015: 1) postulates that, ISIS is no mere collection of psychopaths but it is a religious group with carefully considered beliefs, among them it is a key agent of becoming an apocalypse. ISIS is a radical group which believes in the Shariah law and it wants to create a caliphate in Islamic states. Wood (2015: 1) further elaborates that, much of the activities of ISIS looks ridiculous. From the findings it can deduced that, ISIS resembles the fourth wave of modern civilisation as it thrives to promote the Islamic religion.

The Meir Amit Intelligent and Terrorism Centre (2015: 2) postulates that, ISIS took root in the new period created in Iraq after the Americans took control of Iraq in 2003. The invasion of Iraq by the US in the Second Gulf War led to the ouster of Saddam Hussein's regime, the removal and dismantling of the Iraq army and the annihilation of the existing governmental structures. This resulted to a security conundrum in Iraq and governmental vacuum and the state's fragile social fabric in the middle was severely damaged. The Meir Amit Intelligent and Terrorism (2015: 2) states that, for almost nine years from 2003-2011 the US army was stationed in Iraq and the Americans failed to establish effective Iraq army and security forces to fill the newly created security vacuum. The Americans encouraged the establishment of what was supposed to be a democratic government Shiite regime led by Nouri al-Maliki and the regime alienated the Sunni population which had traditionally controlled the country even though the population was a minority. An analysis of the above data shows that, the formation of ISIS is linked to the problem of a weaker army in Iraq. Hashim (2014: 4) states that, an erroneous belief by the Bush administration that Iraq would stabilise and move towards democracy after the toppling of Hussein led to the rise of radical Islamist in Iraq. Hashim (2014: 4) states that, by the summer of 2003 the Sunni minority ousted from their power in Iraq with the fall of Saddam Hussein launched a deadly insurgency which consisted of five groups. Four of the groups were predominantly composed of Iraq's from the former regime, local Islamist fighters, tribal elements and nationalists. The rise of ISIS is therefore related to the 9/11 attacks and the global war on terror.

Bunzel (2015: 4) states that, the predicaments marking the Islamic State's tremendous rise from obscurity were unforeseen and sudden. The ideologies of the group, however, were well within view for nearly eight years. Although there is a plethora of literature on the formation

of ISIS, the factors which led to the formation of ISIS remain cumbersome. In support of the mystery that shrouds the formation of ISIS, Major General Michael K Nagata who is the Special Operations Commander for US Central Command states that, “We do not understand the group called the Islamic State, and until we do, we are not going to overcome it... We have not yet defeated the idea. We do not even understand the ideology of the movement”

Beauchamp (2015: 2) gave the link between ISIS and al-Qaeda; he states that, the group began, in a very different form, in 1999. In the sixteen years since, it has been shaped by and has at moments helped to shape the conflicts, physical and ideological, of the Middle East. The scholar further elaborates that, in-order to ISIS one need to understand al-Qaeda and the history they share as well as the differences, there at the beginning that would ultimately divide them. An analysis of the above data shows that ISIS is an off shoot of al-Qaeda, al-Qaeda originated from the invasion of Afghanistan by the then Soviet Union and this is when founders of the al-Qaeda took advantage of the insecurity caused by the Soviet Union in Afghanistan. Hashim (2006: 4) states that, ISIS has its origin in an obscure militant group.

Rabil (2014: 5) states that, in 2000 a Jordanian one-time criminal turned Islamist named Abu Musa'b al-Zarqawi (AMZ) stood up a group called Jama'at al- Tawhid wal-Jihad (JTWJ) to fight the Jordanian government. After his failed expedition in Jordan, Zarqawi travelled to Afghanistan to join forces with Afghan Mujahidin resistance in the jihad or holy war against the Soviets, he arrived immediately after the repatriation of the Soviet soldiers and he soon returned to his homeland. His desire to fight the Jordanian monarchy was futile and he returned to Afghanistan where he ran an Islamic militant training camp near Herat. After the US invasion of Afghanistan in 2001 al-Zarqawi moved to Iraq where he developed extensive links with Ansar al-Islam which means partisan of Islam which is a Kurdish Islamist group based on the northeast of Iraq.

According to Aaron Zelin who is a fellow at Washington Institute of Near East where Osama Bin-Laden (leader of the al-Qaeda) and his cadres from al-Qaeda grew up in at least the upper middle class and had a University education, Zarqawi (leader of ISIS) and his closest aides came from down trodden and less educated backgrounds. Zelin further stressed that, Zarqawi's criminal past and extreme views on takfir which means accusing another Muslim of heresy and justify killing created a major friction and distrust with bin-Laden when they first met in Afghanistan in 1999.

3.2.1 The Rise and Demise of al-Qaeda in Iraq (AQI)

Beauchamp (2015: 2) postulates that, the rise and fall of al-Qaeda in Iraq led to the creation of ISIS, when Zarqawi returned from Afghanistan in 1999 he formed his group in Jordan called JTWJ or the organisation of Monotheism and Jihad and during the formative years the group was a bit player among jihadists, overshadowed by al-Qaeda and this group later on transformed to be called ISIS. When the US invaded Iraq in 2003 it changed the world for Jihadists, by destroying the Iraq states the Americans left the Iraq state in a fragile status. There was an influx of foreign fighters and extremists into Iraq, assisted by Bashar al-Assad's regime in Syria, which sought to bog down the US. Zarqawi and his group were among the extremist groups that flocked to Iraq.

When the Zarqawi group arrived in Iraq it becomes popular thereby courting the attention of al-Qaeda. In 2004 Zarqawi pledged allegiance and loyalty to al-Qaeda and he would receive access to al-Qaeda's funds and fighters. Aaron Zelin states that, his group was later renamed al-Qaeda in Iraq (AQI), and it became the country's leading Sunni insurgent group. Beauchamp (2015: 4) states that, AQI did not just fight the Americans but it also carried attacks targeting fellow Iraq's, it bombed Shia mosques and annihilated Shia civilians hoping to provoke mass Shia reprisal against Sunni civilians and thus force the Sunni to rally behind AQI, it worked and this is strategy which it still use even today this led to the civil in Iraq between the Sunni and the Shia.

At the dawn of 2006 AQI extremism began to vanish and backfire. McClure (2010: 19) extrapolates that, the Shia group called Jaish al-Mahdi had declared a unilateral cease fire and it was now convinced that the ballot box was the only way to initiate change and galvanise for awareness on change. AQI was on the run and hounded by both indigenous Sunni insurgents and the Sunni population at large. Beauchamp (2015: 4) supports McClure when he states that, starting in 2006, AQI's extremism began to backfire, Sunni tribal leaders who had always hatred to live under AQI's harsh and often repressive rule became convinced that the Shia's were starting to win Iraq's sectarian civil war and to avoid being on the losing end of a bloody war they took arms against AQI in a movement known as the Awakening. To explain this avalanche of theories have been offered, ranging from what could be considered the surge theory to the Awakening theory. The leader of AQI Zarqawi was killed in 2006 by a US airstrike and the US as a result increased the presence of its troops and its surveillance in Iraq in 2006 and 2007. In an attempt to clarify the cacophony of voices attempting to determine

the immediate cause of the decline in Iraq's insurgency and AQI, the researcher concludes that, it was more than anything else but the Awakening that defeated al-Qaeda in Iraq.

Beauchamp (2015: 4) states that,

...by 2009, almost all of AQI's fighters were dead or in prison, and the group was a shadow of itself. But it had learned a valuable lesson: Dissent from Sunnis under its rule could be disastrous. That's why, years later, ISIS has slaughtered members of Sunni tribes, such as Iraq's Abu Nimr, en masse. It sees brutality as the best way to prevent a replay of the 2006 uprising that led to its downfall...

AQI later resurfaced in 2010 in Iraq and, Beauchamp (2015: 6) states that, ISIS was able to rise from AQI's ashes in no small part because of Iraq's catastrophic internal politics. By the time AQI resurfaced it had a new leader Abu Bakr al-Baghdadi, an Iraqi who had a background in serious religious scholarship. Beauchamp (2015: 6) states that under the stewardship of Baghdadi, AQI began allying with former officers from Saddam Hussein's army and recruited disgruntled Sunnis. Iraq's own government, unintentionally, gave them exactly the opening they needed to regain strength. Fred Hof who once served as the Obama administration special adviser for the transition in Syria who states that, Iraq was the essential incubator for the pre-eminence of ISIS as it provided fertile grounds for the proliferation of terrorist groups. Hof concludes that raw political sectarianism in Iraq was the main causal factor in ISIS rise.

In August 2011, Baghdadi sent his closest aide, Abu Mohammad al-Joulani, to Syria to set up a new branch of the AQI in the country. McClure (2010: 23) states that, Joulani mission in Syria was successful and he established Jabhat al-Nusra in January 2012. Joulani's fighters quickly proved themselves to be some of the most effective fighters on the Syrian battlefield, swelling their ranks with new recruits. According to the Global Terrorism Index (2014) at the moment ISIS is the world's richest terrorist group, its funding coming mostly from various extortion schemes in the territory it controls. But back in 2012, foreign donations played a crucial role in growing the group from the poor organization it was then into the monster it is today. Beauchamp (2015: 8) states that, in 2012, money flew into Syria from the Gulf Arab states places like Kuwait, Saudi Arabia, and Qatar. The key investments in ISIS didn't come directly from those countries' governments, but rather from private individuals living there who wanted to see the Assad regime fall and perhaps to promote extremism itself.

3.3 The Nexus between ISIS and other Jihad Networks

The data gathered by the researcher revealed that, there is a link between ISIS and other Jihad networks such as Boko Haram. Grey (2015: 2) states that, radical groups such as Boko Haram, ISIS, al-Qaeda have been wracking havoc in most parts of the world. Grey (2015: 2) states that, Boko Haram have been causing untold suffering in Africa's most populous state, Nigeria. The Nigerian militants are responsible for a six year campaign of targeted bombings, assassinations and abduction. The group's name can be translated as "Western education is forbidden" and since it has become infamous for kidnapping hundreds of girls as well as vicious acts that claimed the lives of thousands. In 2014 the group rebranded, swearing its allegiance to ISIS and renaming itself as the Islamic State's West Africa Province. Grey (2015: 2) posits that, the alliance grants Boko Haram legitimacy in the world of Islamic extremism, a world where recruiting, funding and marketing are as important as in any corporation. Wall (2015: 4) posits that, both ISIS and Boko Haram shared a similar Salafist ideology an affinity for violence against non-Muslims and Muslims alike and the desire to establish a global caliphate uniting all the Muslims.

According to the Cable News Network (09/03/2015), Boko Haram which is a Nigerian based terrorist group pledged its allegiance to ISIS, according to an audio message which was purported to be from Boko Haram's leader, Abubakar Shekau. The speaker encapsulates that, "Boko Haram is declaring its fealty to the caliph of the Muslims, Ibrahim ibn Awad ibn Ibrahim al-Husseini al-Quarashi" which is another name for ISIS leader Abu Bakr al-Baghdadi. In response the leader of ISIS Baghdadi went on to congratulate Boko Haram and labelled the group as "our jihadi brothers in West Africa. According to Peter Pham who is the director of the Africa Centre of the Atlantic Council, the alliance between ISIS and Boko Haram is a close to a marriage of equals as we have ever seen and it has been a courtship that has been a long time coming. An analysis of the above data shows that, the alliance between Boko Haram and ISIS will compromise the law of armed conflict and international humanitarian law. As Cook (2014: 3) concludes that, it is now a misrepresentation of facts to speak of Boko Haram and other Jihadist as being merely "an insurgency" since the beginning

of 2014 it has become albeit unacknowledged by the Nigerians authorities Nigeria Second civil war.

Apart from Boko Haram, ISIS had formal relations with other terrorist groups. Gambhri (2015: 2) states that,

ISIS's leadership is most closely linked to its regional governorates, or wilayats, in Algeria, Libya, the Sinai, Saudi Arabia, Yemen and Khorasan (Afghanistan-Pakistan). ISIS claims to communicate with local leaders and approve operational concepts in each area. ISIS likely funneling strategic resources and military training to its most robust wilayats. The groups that constitute wilayats are directly affiliated to ISIS. There are other associated groups and actors worldwide, however, that also appear to align with ISIS and respond to ISIS's messaging. These actors include cells in the Near Abroad and the Far Abroad that contain foreign fighters returning from Iraq and Syria

3.4 The Anti-ISIS Coalition

The researcher also finds that in response to the vexing problem the international community formed the Anti-ISIS coalition which seeks to annihilate ISIS and the alliance is led by the US. Eisenstadt (2014: 3) extrapolates that, President Barack Obama's plan to launch a campaign to degrade and eventually destroy the radical caliphate established in the heart of the Middle East by ISIS was a great milestone in US foreign policy towards the Middle East region. The US led Anti-ISIS was formed in August 2014 to unite dozens of nations, international organisations such as NATO, the Arab League and the European Union (EU). Eisenstadt (2014: 3) encapsulates that, formally the coalition consisted of 62 participants with the majority of coalition members making extreme contribution. The data shows that, the formation of the Anti-ISIS Coalition affects the law of armed conflicts. A detailed account of how the Anti-ISIS Coalition is affecting the law of armed will be available on chapter 4.

3.5 Sources and Nature of Law of Armed Conflict

The law of armed conflict has its roots in tradition and religion. Lindstrom (2012: 9) states that, the sources of the law of armed conflict are not only written rules found in conventions and treaties but also customary law inferred from state practice or behaviour (*usus*) in combination with *opion juris sive necessitatis*. When tracing about the source of law of armed conflict it is imperative to take cognisant of Article 38 of the International Court of Justice statute of 1945 which states that the sources of international law are; international conventions, international customs, judicial decision and teachings. The law of armed conflict

can be separated into two distinct branches which are Geneva Law and Hague Law. Lindstrom (2012: 9) extrapolates that, the law of Hague protects people that are affected by an armed conflict and the law of Geneva regulates the means and methods applicable during hostilities such as the use of certain weapons and conduct of hostilities.

The essential pillars of the Hague law are the Hague Conventions of 1899 and 1907 which governs the conduct of hostilities on sea, land and in air. The law of Hague are interpreted as embodying rules of customary international law this is stipulated by the Convention II with respect to the laws and Customs of war on land. Schindler and Toman (1988: 93) state that, the laws of Hague are also binding on states who are not formally parties to them.

The Geneva Convention denotes the agreements of 1949 signed and negotiated after the end of the Second World War and updated the terms of the first three treaties of 1864, 1906 and 1929. Burgion (2002: 7) stipulates that, this agreement which encompasses four convention and three additional protocols became the foundation of modern international law. These conventions and protocols are the mirror of modern efforts to protect people during armed conflicts. The most paramount provision of the convention is article 36 of additional protocol of 1997 which seeks to prevent and impose restrictions on the use of means and methods that would violate international law in all circumstances. The two laws are the major pillars of modern law of armed conflict.

There are some provisions of the law of armed conflict which have a peremptory character. These provisions are aimed at protecting of states and individuals. Meurant (1987: 237) posits that, the law of armed conflicts has essential elements which make it different from other branches of international law. The law of armed conflict has been accepted as one of the great charters of humanity having a declaratory value. However, the enforcement mechanism of the law of armed conflict shows that it is cumbersome and it remains a serious problem to enforce as there is no transparency during hostilities. Dugard (2011: 532) quotes Hersch Lauterpacht in 1952 attesting that the enforcement of the law of armed conflict is different. He states that, “if international law is in some ways at the vanishing point of law, the law of war is perhaps even more conspicuously at the vanishing point of international law.”

3.6 How the Law of Armed Conflict Applies to Trans Boundary Terrorism

The ICRC which is a precursor of the law of armed conflict and international humanitarian law vehemently denounced acts of violence which are indiscriminate and which seek to

inculcate terror and fear among the civilian population. After the 9/11 attack the ICRC condemned the act of terror. Pfanner (2005: 150) states that, the fateful events of 11 September 2001 epitomised a situation that confronts the ICRC in its work in many conflict areas all over the world, namely asymmetrical warfare. The ICRC (2006) states that, it is a fundamental principle of the law of armed conflict that persons fighting in armed conflict must at all times distinguish between the civilians and combatants. The law of armed conflict is an anatomy of international law which is applicable when armed violence reaches the level the level of armed conflict and this branch of international law is applicable in both international and non-international armed conflicts. The data gathered by the researcher shows that, the Law of Armed Conflict does not provide a proper definition of terrorism but it outlaws acts committed in armed conflict that would be seek to inculcate fear and considered terrorist in nature.

During armed conflict, there is no legal implication in describing calculated acts of violence against civilian objects and civilians as "terrorist" because such acts would already be construed as war crimes. Under the principle of universal jurisdiction, those suspected of war crimes may be criminally prosecuted not only by the state in which the war crimes or crime occurred, but by all states. The researcher also noted that the laws of armed conflict specifically mention terrorism and it actually prohibits measures of terrorism and acts of terrorism. According to Article 33 of the fourth Geneva Convention of 1949, collective penalties and likewise all measures of intimidation are prohibited. Additional Protocol II prohibits acts of terrorism against persons not or who had ceased to take part in hostility. An analysis of the above data shows that, the objective of the Law of Armed Conflict is to ensure that neither the civilian population nor the individual may be subject to collective punishment which induces a state of terror, given that the above provision appears *mutatis mutandis*.

To augment the above data, both the additional Protocols to the Geneva Conventions prohibit acts which are calculated at spreading terror among the civilian population. According to Article 51 of the Additional Protocol I, the civilian population shall not be the object of attack. These provisions are an essential component of IHL principles and rules governing the conduct of armed conflicts such as the way military operations are carried out. They outlaw acts of violence during armed conflict that does not enable a proper military advantage. It is imperative to note that even a lawful attack on military targets can sometimes spread fear among civilians. However, these provisions only prohibit attacks that specifically seek to

terrorise civilians, for instances sniping of civilians in urban areas and campaigns of shelling.

The Law of Armed Conflict also stipulates that, states have the obligation and right to protect and defend their citizens against terrorist attacks. The states affected may take a plethora of actions which includes the arrest and detention of the person suspected of terrorist crimes, but this must be done according to clearly articulated national and international legal framework. Persons who are detained in relation to an international armed conflict involving two or more states as part of the fight to avert terrorism are protected by the Law of Armed conflict and international humanitarian law. This can be inferred from what happened in Afghanistan in 2001 after the US has launched operation endure freedom. The third Convention stipulates that, if the Prison of War status of a prisoner is in doubt a competent tribunal should be established to determine the status of the prisoner.

The law of armed conflict further provides that, captured combatants must be granted POW status and may be respected until the end of active armed confrontations in that international armed conflict. Therefore, POWS cannot be prosecuted for mere participation in hostilities but may be liable for any war crime they have committed. The Third Convention of the Geneva Convention states that, if the status of a POW is in doubt a competent tribunal should be established to look at the issue and rule and contrary to POW such persons may be tried under the domestic law of a detaining state for taking up arms as well as for any criminal act they may have committed. The convention provides that, they may be imprisoned until any sentence imposed has been served.

Dugard (2011: 531) states that, Additional Protocol II on the protection of victims of non-international armed conflicts develops and supplement common article 3 of the 1949 Geneva Conventions. The protocol contains more detailed provisions on fundamental guarantees, treatment of the wounded and sick and protection of the civilian population, however it is more restricted than common article 3. Dugard (2011: 531) postulates that, whereas common article 3 applies to any armed conflict within a state, the Additional protocol II applies only to armed conflicts which take place in any party to protocol II between its armed forces and dissident forces. An analysis of the arguments of Dugard shows that Additional Protocol II broadens fundamental rights of POW, how the sick and the wounded should be treated in a non-international armed conflict. Prior to the promulgation of Additional Protocol II the Law

of Armed Conflict was silent on how the sick and the wounded are treated in a non-international armed conflict.

Article 3 which is common to the Geneva Conventions postulates that, persons detained in a non-international armed conflict or in relation to a non-international armed conflict waged as part of the fight against terrorism are protected. An inference can be drawn from what happened in Afghanistan in June 2002. The rules of international human rights and domestic law also apply to the person detained in a non-international armed conflict. If the detained person or persons is or are tried for any crimes they may have committed they have the right to fair trial of international humanitarian and human rights law. All persons detained outside the purview of an armed conflict in the fight against terrorism are also protected by the domestic law of the detaining state and by international human rights law. However, if tried for any crimes they are deemed to have committed they are protected by the fair trial guarantees of these bodies of law. What is essential to understand is that no person arrested or captured in the fight against terrorism can be considered outside the law. There is no such thing like "black hole" in terms of legal protection of detainees of non-international armed conflict.

Dugard (2011: 531) states that, the traditional dichotomy between international armed conflicts and non-international armed conflicts manifested in the punishment of those who violated humanitarian law. According to article 50 Chapter VIII of the first convention of the Geneva Conventions, the high contracting parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed and of the grave breaches of the present conventions enmeshed in the convention. An analysis of the wording of the convention shows that the above paragraph seeks to repress, minimise abuses of the convention and address infractions. Article 85 of the convention declares that grave breaches of the 1949 Conventions and Protocol I shall be construed as a "war crime" and therefore those who violated the convention will be legal liable. To buttress the argument, in the *Prosecutor v Tadic*, the Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia carefully examined this practice and concluded that customary international law today imposes criminal liability for the violation of the laws and customs of war in both international and non-international non-armed conflict.

The ICRC which is a precursor of the law of armed conflict has the right to inspect places in which POW are detained and access to persons detained in an international armed conflict and

examine whether they are POW or persons protected by the Fourth Geneva Convention. An inference can be made from the ICRC repeated challenge for the determination of the rigid legal status of each individual detained at Guantanamo Bay (GB) and legal groundwork which is appropriate to all persons detained in the war against terrorism. It is in this background that the ICRC has been visiting a number of persons detained, for example, as a result of the international armed conflict in Afghanistan, both in Afghanistan and at the US naval base in GB, Cuba. The ICRC has tremendously called for a determination of the rigid legal status of each individual detained at GB, as well as for a determination of the legal groundwork which can be applied to all persons detained in the fight against terrorism by the US government.

In the event that the fight against terrorism crystallise into a non-international armed conflict, the ICRC can offer its humanitarian assistance to the parties to the conflict and gain access to persons detained with the consent of the authorities who detained the people concerned. Outside of armed conflict context, the ICRC has a right of humanitarian assistance to POW under the Statutes of the International Red Cross and Red Crescent Movement. Thus, many persons occasionally visited by the ICRC have been detained for security apprehension during peacetime. Some of the present international conventions on terrorism include specific provisions which states that, states may give ICRC or ICRC authorities access to persons detained on suspicion of acts of terrorism. These existing provisions, as well as the ones incorporated in IHL treaties and in the Statutes of the International Red Cross and Red Crescent Movement take cognisance of the unique assistance and role played by the ICRC, premised on its principles of impartiality and neutrality.

3.7 Conclusion

To conclude the chapter, in accordance with the objective of the study the chapter contains in-depth information on ISIS and the Law of armed conflict. The chapter gave a summary on how the law of armed conflict and international humanitarian law apply to transnational terrorist groups. The chapter also looked on the relationship between the jihad networks. The chapter also provides a detailed account of the Anti-ISIS coalition. The next chapter will provides a detailed analysis of how ISIS, the Anti-ISIS coalition are affecting the law of armed conflict. Chapter 4 will discuss how ISIS is instilling terror, the rights of states to defend and protect their citizens against ISIS and how the right can be exercised under the law of armed conflict. The Chapter will also look on POW under the Anti-ISIS Coalition, if the

treatment of POW is compatible with the law of armed conflict and international humanitarian law, inter alia

CHAPTER 4: MAJOR FINDINGS AND ANALYSIS: IMPACTS OF ISIS ON THE LAW OF ARMED CONFLICT

4.0 Introduction

This chapter is premised on presenting, analysing and discussing research findings which concern the impact of ISIS on the law of armed conflict and international humanitarian law. The data scrutinised in the chapter was collected through primary and secondary sources in particular key documentary searches. What is essential to this chapter is “To examine the impact of ISIS on the law of armed conflict”. The chapter started by restating the hypothesis of the study, methodology of the study, research questions, scrutinise ISIS use of terror and force against the civilians(how it is incompatible with IHL prohibition on terror), how the Anti-ISIS Coalition which is a response to ISIS has affected the law of armed conflict, the issue of the Anti-ISIS Coalition was discussed against the backdrop of the position of international law on the rights of states to defend and protect their citizens against terrorist attacks. The chapter also examined how the Anti-ISIS Coalition is failing to respect the peremptory norms of IHL and the Law of Armed Conflict which are the principle of proportionality and discrimination. This ushered in a debate on whether the Anti-ISIS Coalition has been able to protect detainees and give the ICRC access to persons detained as encapsulated by the IHL and the Law of Armed Conflict.

4.1 Data Presentation and Analysis of Research Findings

The hypothesis that buttresses the study is “the operation of ISIS has negative ramification on the law of armed conflict and IHL”. The study pursued the following objectives:

- To critically examine how the law of armed conflict applies to ISIS.
- To scrutinise how the law of armed conflict applies to the Anti-ISIS coalition.
- To investigate how ISIS has negative ramifications for the law of armed conflict and IHL.
- To investigate the nexus between ISIS and other terrorist groups.

In an endeavour to achieve the aforementioned objectives which were guided by the above hypothesis, the study adopted a qualitative methodology as a research design and was using a case study research design. The data collected was mainly through qualitative methods, the

tools used to collect the data were mainly documentation review. The researcher intended to use informant interviews however; the researcher encountered a major drawback as key informants were reluctant to grant interviews. A number of reasons were given as the reason to reject the interviews. Some organisations like the American Embassy, The International Committee of the Red Cross who cited the sensitivity of the matter. However as a stop gap measure the researcher utilized discussions and You Tube interviews that were done by other researchers with key informants. The researcher also utilised You Tube presentations and interviews by some think tanks and academics. The data was analysed using thematic approach this was used in order to enable the researcher to come up with essential themes. Word summaries were used to present the data gathered.

4.2 An Analysis of Summary of Major Findings

The findings which were unearthed during the research supported the hypothesis that the operations of ISIS have negative repercussion on the law of armed conflict and IHL. The findings also show that the Ant-ISIS Coalition just like the global war on terror had also breached the law of armed conflict and IHL. The findings of the study were guided by the principle of proportionality and discrimination. The study also found that ISIS recruited children to participate in hostilities. The following is a detailed discussion of the findings of the study.

4.3 ISIS and the Use of Terror against Civilians

Cockburn (2015: 17) argues that, ISIS differs from any other terror group that has emerged before. Firstly, the group poses a bigger threat to other countries due to the fact its goals and aims are not limited to a specific area or region, as it claims to be fighting for a new world order. ISIS fighters therefore do not belong to a particular nationality, and come from various countries such as the US, UK, Norway, Syria, and Yemen. In the last few years the group rose from being an unknown terror group to a famous terror group which challenges the security of the world and international law. The group has spread its wings in vast areas of Syria and Iraq and self-declared itself as a caliphate. Mah-Rukh-Ali (2015: 4) states that, the leaders of ISIS have reinvigorated a specific interpretation of the Shariah law, one that is brutal, one sided and with little regard for human life. Muslim scholars across the world condemn this theological interpretation, and underline that phrases taken by ISIS from Quran or Hadith to justify their law are used without context.

The controversy that shrouded the issue of ISIS and the law of armed conflict is that since ISIS is not a sovereign state how then is the law of armed conflict going to be applied against ISIS. The law of armed conflict is now applied during international and non-international armed conflicts. The law seeks to minimise the effects of armed conflicts and protect individuals who are not or no longer taking part in hostilities. The law also seeks to restrict and restrain the means and methods of warfare. The law of armed conflict applies to those who commit acts of terrorism. In this case ISIS is not the sovereign government of Syria, Iraq or any other state in the Arab world but the law applies nevertheless. Mah-Rukh-Ali (2015: 3) states that, the second phase of ISIS which is cumbersome is that it is a terror group of a contemporary nature meaning that they use modern technologies such as social media to achieve their goals. They are therefore capable of presenting advanced propaganda material to a larger audience than previous terror groups such as Al-Qaeda who due to their geographical limitations and less inclination towards modern means of communication, reached much fewer. An analysis of the above data shows that a comparison of terror groups revealed that ISIS has more negative repercussion on the law of armed conflict.

Mah-Rukh-Ali (2015: 3) states that, the group endorses physical and sexual exploitation of women and children. They torture and kill non-believers. Muslims who belong to other sects or disagree with the definition of faith by ISIS are declared as apostates, and as such can be killed. All this is done in the name of Allah. A confidential source postulates that, ISIS claims political, religious and authority on all states in the Muslim world and its adoption of the name Islamic State and the idea of a caliphate have been vehemently denounced by the international community and most of the Muslims groups rejected its caliphate or statehood. As of December 2015 the group has control over a plethora of landlocked countries in Syria and Iraq with a population ranging from 3 million to 10 million where it uses fears to enforce its interpretation of Shariah Law. The use of terror to achieve political and religious goal is prohibited under the law of armed conflicts.

According to the World Post (03/11/2015), many groups have declared their allegiance to ISIS and it has affiliates which also control swaths of territories in Afghanistan, Libya, Nigeria and other parts of the world including North Africa and South Asia. The allegiance between ISIS and other Jihad networks had also compounded the law of armed conflict. In October 2014 about 1000 militants gained partial control over Libyan city of Derna and they used force to gain control of the territory. During the carnages carried out by the groups they were reports of brutal killings of the civilians. According to the Australian Broadcasting

Corps (ABC) (11/09/2015), in August 2015 Usmon Ghazi the leader of the Islamic Movement of Uzbekistan pledged that the Central Asian militant group is loyal to ISIS. The group was accused of causing havoc in Central Asia and the use of terror by the group is inconsistent with the law of armed conflict.

According to Amnesty International (2015), in February 2015 the ISIS militants in Libya captured the West of Sabha and later on it was reported that a territory encompassing the cities of Sirte Nofolia and a military base which is located to the South of Nofolia and Sirte was also captured by ISIS. It was also reported that on 7 March 2015 Boko Haram registered its formal allegiance to ISIS thereby officially inviting ISIS to operate in Cameroon, Chad, Nigeria and Niger. Cockburn (2015: 17) suggests that, the paradox remains that despite their perceived brutality, ISIS continues to successfully recruit young people to join them from all around the world. This was reinforced by the UN report (2015) which recorded an increase in foreigners joining the terror group with 25 000 people coming from more than 100 countries of these 4 000 foreigners are identified in International Police (Interpol) database. Mah-Rukh-Ali (2015: 3) postulates that, terror cells from neighbouring countries, such as previous Al Qaeda members from countries such as Afghanistan and Libya are joining ISIS.

ISIS has used terror to establish control over the Al-Anbar province, possibly a step in a campaign against Baghdad in 2014. Cockburn (2015: 18) states that, ISIS forces cleared pockets of resistance in the Al-Anbar province which is Iraq's largest Sunni district. At that moment ISIS carried out crusades of suicide bombings attacks in Baghdad mainly in the Shiite neighbourhoods. The use of the suicide bombs by ISIS is inconsistent with the law of armed conflict. According to Human Rights Watch Report (2014) immediately after Mosul fell and ISIS army stormed south towards Baghdad, videos of the massacre which was executed by ISIS went viral on the social media and according to the videos about 560-770 innocent civilians were killed in Tikrit over a three day period. It is noted that ISIS boasts that it had massacred more than 1700 people. The massacre of civilians by ISIS was in conflict with the principle of proportionality and discrimination which are essential principles of the law of armed conflict. During the incidence Iraq soldiers who had been freshly recruited into the Iraqi army and who had barely finished training soldiers were also executed by ISIS.

Donatella Rovera a Senior Crisis Response Adviser at Amnesty International (2014) states that, in its brutal campaigns to destroy all traces of non-Arab and non-Sunni Muslims ISIS has carried out despicable crimes, torture and mass killing and has transformed rural areas in

Sinjar into blood-soaked killing fields. To support this assertion Christians in other places where ISIS is active have been slaughtered. On 22 September 2014, ISIS in Libya released videos beheading 30 Ethiopian Christians and 30 Egyptian Christians on separate occasions. Human Rights Watch (2014) states that, in August 2014 the Yazidi's ancient minorities indigenous to Northern Iraq were massacred by the marauding fighters of ISIS. Tens of thousands were driven from their homes and were trapped on Mount Sinjar without food and water and all the sides of the mountain were sealed off the jihadist militants leaving no escape. The Clarion Project (2015: 25) stressed that, ISIS reputation for brutality on innocent civilians is well founded; it had shown no compunction about immediately killing anyone who disagrees with it, who is of the wrong religious sector or who is perceived as an opponent apart from the enemies in the battle. The group targets those they perceive to be takfir (heretics) which includes all Shiites, Alawites and other "deviant" sects of the Islam and Sunnis that they presume are not following Islam correctly. Hence this shows that ISIS violated the law of armed conflict as it was exercising targeted and deliberate killing on the civilians.

Rovera (2014) stressed that, the massacres and the abductions carried out by ISIS explicitly provide harrowing evidence that a wave of ethnic cleansing against minorities is sweeping across Northern Iraq. Amnesty International (2015) released a full report on the atrocities which were carried out by ISIS. According to the Reports on January 2015 ISIS members infiltrated the EU and disguised themselves as civilian refugees who were emigrating from the war zones of Iraq. ISIS officials claimed that, ISIS had successfully smuggled more than 4 000 fighters and the smuggled fighters were contemplating attacks in Europe in retaliation of the airstrikes carried out against ISIS targets in Iraq and Syria. Amnesty International (2015) spells out that, in 2015 and 2016 ISIS claimed responsibility for a number of high profile attacks outside Iraq and Syria including mass killings at a Tunisian tourist resort that claimed the lives of 38 European tourists. The activities of ISIS in that incidence again contravened the law of armed conflict as deliberate killings of civilians is prohibited by the law of armed conflict.

The civilians who find themselves as the subjects of the nascent ISIS have to obey the Shariah law or face death penalties. Cockburn (2015: 18) states that, in Mosul fighters of ISIS shot a female doctor for refusing to put on a headscarf. Two weeks after the incident the group killed two female doctors this time for refusing to treat ISIS fighters in a purge of suspected collaborators. Amnesty International (2015) also outlined that, ISIS was also responsible for

the Suruc suicide bombing in Turkey that claimed the lives of 33 leftist and a pro-Kurdish activist. To buttress the arguments which were put forward by Amnesty International, Letta Tayler who is the Senior Terrorism and Counter Terrorism Researcher at Human Rights Watch (2015) states that, armed militants who are believed to be members of ISIS deliberately targeted people they knew were civilians in a June 25 2015 attack in and around the Northern Syrian city of Kobani. The Syrian Kurdish authorities and local human rights groups stressed that, around 270 civilians were killed during the carnage carried by ISIS and around 290 civilians were wounded. An analysis of the above data shows that the *modus operandi* which is used by ISIS during warfare is inconsistent with the law of armed conflict as ISIS strategy is hinged on deliberate killing of civilians.

Amnesty International (2015) extrapolates that, ISIS was also responsible for the Tunisian National Museum attack which claimed the lives of 24 foreign tourists and Tunisians. From the report, ISIS was also responsible for the Sana'a Mosque bombings that claimed the lives of 142 Shia Civilians. ISIS was also responsible for the Metro Jet Flight 9268 that claimed the lives of 224 Russian tourists and also the suicide bombings in Ankara that claimed the lives of 102 pro-Kurdish and leftist activists. ISIS was also responsible for the suicide bombings in Beirut that claimed the lives of 43 Shia civilians. Human Rights Watch Report (2015: 6) states that, "the skirmishes between ISIS and the international community dominated the political debacle in 2015. ISIS executed hundreds of civilians and forced girls into sexual slavery... on one hand pro government militias engaged in a wanton destruction of homes and shops after the battle with ISIS, the group also prevented civilians from leaving conflict zones and government forces sometimes prevented people fleeing from ISIS access to safe areas or prevented the civilians from returning to their homes.." The carnage which is outlined in this paragraph is in conflict with the principles of law of armed conflict. The acts which were perpetrated by ISIS are also in contradiction with the *jus cogens* or peremptory norms principles.

Human Rights Watch (2015) states that, the French authorities held ISIS responsible for the Paris attack which occurred on 13 November 2015 and claimed the lives of 130 people. During the Paris attacks suspected ISIS militants used suicide bombers and mass shootings. According to the Cable News Network (CNN) (14/11/2015) these attacks were the deadliest attacks in France since the end of the Second World War and the deadliest in Europe since the Madrid Train bombings in 2004. The 13 November Paris attack followed the 17 January 2015 attacks by ISIS on Charlie Hebdo offices and a Jewish Supermarket in Paris that claimed the

lives of seventeen people and wounded twenty two people including civilians. ISIS claimed responsibility on all the aforementioned occasions and it stressed that it was initiating the attacks in retaliation to the French airstrikes on ISIS targets in Iraq and Syria. Hence, an assessment of the above activities confirms that there is no compliance with International humanitarian laws and little respect for any principles of the law of armed conflict. There is no legal justification by ISIS for the bombings in Paris. There was no conflict between ISIS and the French.

The Clarion Project (2015: 29) postulates that, rape is routinely practised as both a “weapon” and as a means of humiliating and subjugating conquered population. It is also used to “reward” fighters for services rendered. Women as young as fourteen are given as “gifts” to ISIS commanders while others are sold as slaves in the market place. It is unknown how many women have been captured by ISIS but it is estimated that thousands have been beaten, tortured and raped multiple times a day. Most of the women and girls who were raped by members of ISIS are the Assyrians and the Yazidi. Haleh Esfandiari (2015) who is the director of the Middle East Program at the Woodrow Wilson International Centre for Scholars states that, “fighters from ISIS usually take the older women to makeshift slave market and try and sell them whilst the younger girls are raped or married off to fighters, it is based on temporary marriages and once these fighters have had sex with these young girls they just pass them on to other fighters”. The use of women and girls as “sex slaves” and as a source of “sexual gratification” during and after armed conflict clearly contravenes the *jus in bello* and the *jus post bellum* principles which are the essential pillars of law of armed conflict.

4.3.1 The Implications on the Methods of Warfare

The operations which are carried by ISIS have ramifications on the means of warfare which are outlined by the law of armed conflict. The law of armed conflict unequivocally limits the methods and means used during hostilities. These restrictions can be inferred from the types of weapons which are to be used, the way there are to be used and the general conduct of the parties who are engaged in hostilities. According to ICRC (2014) the principle of distinction requires that parties to an armed conflict must at all times distinguish between combatants and military objectives on one hand, civilian persons and objects on the other hand and must attack legitimate targets. The main treaties which spell out the type of weapons which are permissible are the Hague Convention of 1907 and 1977, and 1977 Additional Protocols to the Geneva Conventions and crusades of agreement on specific weapons. The Ottawa Convention on the Prohibition of anti-personnel mines also regulates the types of weapons

which can be used during armed conflict. Notwithstanding the prohibition on the use of certain types of weapons that can harm the enemy and the civilians, ISIS use suicide bombs, artillery tanks and anti-craft missiles.

Kleferer (2010: 1) posits that, the law of armed conflict considers means of warfare that cause death or injury whereas there are other means that can not necessarily cause death or injury such as sticky form, stink and sound bombs or in short non-lethal weapons. However, due to advanced technologies which culminated in the new world order, the law of armed conflict did not explicitly discuss about those means of welfare which are associated with technologies especially non-lethal information. Human Rights Watch (2015) states that ISIS has a large arsenal of weapons and most of the weapons were plundered from Iraqi and Syrian armies. The weapons include light arms, various types of rockets and mortars, anti-tank and anti-aircraft missiles. ISIS is also in possession of heavy arms and advanced technologies usually found only in regular national armies. Other weapons which are used by ISIS are artillery tanks, armored vehicles, drones and shoulder fired anti-aircraft missiles. The possession of such deadly weapons is not permissible under the law of armed conflict, since the use of such weapons by ISIS shows the ruthless and stealthy of the group as it seeks to “destroy” rather than defeat its adversaries. Early Christian thinkers like St Augustine who promulgated the idea of just war stated that, “war must be fought with kindness as the objective of war is to defeat rather destroy the enemy.”

There were also widespread reports that ISIS used mustard gas on several occasions in Iraq and Syria and the group also used other types of chemical weapons such as chlorine gas. Chemical weapons were used to attack the Kurdish militias in Ayn al-Arab (Kobani) in Northern Syria and against the Iraqi security forces. There were also reports which stressed that ISIS also has at least one scud missiles technically flawed in ITIC assessment. The Clarion Project (2015: 28) states that, during the fight between ISIS and Kurdish forces hundreds of civilians died of exposure, thirst, bullets and chemical weapons which were used by ISIS.

Dubois who is head of ICRC regional delegation in Southern Africa suggests that there is need to establish a tribunal that holds anyone responsible for any wrongful harm these weapons might cause. The Institute of the Study of War (2014: 10) states that, the strategies which are used by ISIS includes the polarisation of Muslim communities and isolating supporters in the Far Abroad while attracting its adversaries into a global war. The use of such

means in warfare by ISIS shows that it is failing to abide by the principle of discrimination therefore it is breaching the law of armed conflict. In its endeavour to establish a caliphate in the Middle East the group's defense and expansion are focused upon the interior and Near Abroad rings and ISIS terrorism is focused upon Far Abroad Ring. The group also engages parallel and interlocking strategies in each ring.

4.3.2 The Methods of Warfare

Making an inference from the Manual of International law Applicable to Air and Missiles (2008), the concept of methods of warfare entails any specific ways of conducting hostilities, whether tactical or strategic in manner, to out manoeuvre and weaken the adversary and it is not particularly related to weapons but includes specific tactics used for attacks which are indiscriminate or destruction. The methodologies used by ISIS include the use of the social media to disseminate its ideologies and activities. Amnesty International (2015) identifies unorthodox and unlawful practices used by ISIS and those practices led to civilian casualties and destruction of civilian objects. The watchdog stressed that there was widespread use of road shootings, mass shootings, cluster munitions and suicide bombs that endangers the civilian because of their broad dispersal and today there are still some people who were affected by the suicide bombings thereby posing civilian life at danger.

The modus operandi which is used by ISIS is also inconsistent with the law of armed conflict. Boutruche (2010: 24) states that, the expression "means and methods" can be found in several norms of the law of armed conflict meaning that there are common rules to both the means and methods. Traditionally the provision on the means of warfare integrates both the weapons and weapon system or platforms, whereas the methods designate the way weapons are used. Human Rights Watch (2015: 12) states that, in Syria both the Assad regime and ISIS has been using nefarious tools such as barrel bomb, an oil drum or similar container filled with high explosives and metal fragments. The way in which those weapons were used has been causing untold suffering to civilians in Syria. The watchdog also outlined that, the barrel bomb is typically dropped from a helicopter hovering at high latitude to avoid anti-aircraft fire. From that height the barrel bomb is impossible to target with any precision and the bomb simply tumbles to earth making its dreaded swishing sound as its contents shift back fourth.

Boutruche (2010: 25) states that, in some circumstances weapons may not be lawful by nature but the way in which they are used maybe considered unlawful. In the case of ISIS, the group has become notorious for using weapons which were outlawed by the law of armed conflict.

For instance during the Paris attack on 13 November 2015 that claimed the lives of 130 civilians the group used mass shootings and suicide bombs to achieve its objectives. ISIS also carried mass shootings at Tunisia Tourist resort that claimed lives of 38 European tourists. Not only that the use of explosives by ISIS is in conflict with the law of armed conflict but it also cause post stress trauma disorder in the civilians. Camus and Kolawonski (2010: 9) note that, in a discussion which was done by lawyers, military officers, engineers and scholars on whether the law of armed conflict needs to be supplemented with an international treaty which explicitly prohibits these new technologies that have entered the contemporary battlefields.

The International Court of Justice in its advisory opinion on the legality of the use of and threat of nuclear weapons (1996) also stressed that, during hostilities parties must refrain from using weapons that can inflict unnecessary injuries on the adversary. In the context of ISIS the UN holds the group responsible for human rights abuses and war crimes. Amnesty International has charged the group with impunity and ethnic cleansing in Northern Iraq. To augment on the above discussions, one of the modus operand of ISIS is the internet in which the group shows its abhorrent videos of beheading of soldiers and civilians including journalists and aid workers. The videos also show the group destructing the cultural heritage of Christians, Sunnis and other Muslims which are perceived as enemies of the group. This strategy is calculated at inculcating fear in the adversary and therefore it is prohibited under the law of armed conflict.

4.3.3 Implication on the use Child Soldiers

Article 77 (2) of the Additional Protocol I to the Geneva Convention of 1949 relating to the protection of victims of international armed conflict which was adopted in 1997 states that, “the Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.”

During ISIS activities children are used to assist in carrying the carnage as they play support roles during hostilities or they act as shields of ISIS militants. The prohibition on the use of children in armed conflict is now an essential principle of the law of armed as this was confirmed by trials which were done by the international court on warlords who violated the

provision during the conflicts in Sierra, East Africa and Africa Great Lakes Region. In Sierra Leone Charles Taylor was tried by the ICC for war crimes that included the use of children during the civil war in Sierra Leone. A warrant of arrest has been issued against Joseph Kony, leader of the Lord Resistance Army (LRA) for war crimes that also includes the use of children in armed conflict, in Democratic Republic of Congo (DRC) Thomas Lubanga Dyilo was convicted for war crimes and using children in armed conflicts. ISIS is not part to the convention but it is compelled to abide by the principles since they are jus cogens. The United Nation Security Council through resolution 1261 of 1999 also outlawed the involvement of children in armed conflicts.

ISIS has also been accused of violating the law of armed conflict by using children during hostilities. The use of children during armed conflict constitutes a war crime and is vehemently prohibited under the law of armed conflict. According to the preamble of the Optional Protocol to the Convention of the Rights of the Child on the Involvement of the Children in armed conflict (2000), the rights of children require special protection and the convention calls for the continuous improvement of the conditions of children without distinction. Save the Children (2015) states that, ISIS has recruited children as young as 10 to participate in hostilities. Thousands of young boys and girls were/are used by ISIS in armed conflicts in the Middle East. Many of the children particularly from Iraq and Syria were abducted and forced into submission by ISIS militants, while others join ISIS to escape poverty and defend their families. United Nations Children Education Fund (UNICEF) also articulated that children were used as suicide bombers by ISIS while others take direct part in hostilities.

ISIS has boasted of the practice of recruiting and training children. Article 1 of the aforementioned protocol states that, states parties shall take all feasible measures to ensure that members of the of their armed forces who have not attained the age of 18 do not take a direct part in hostilities. Article 3 (3) spells out that, states parties that permit voluntary recruitment in their armed forces under the age of 18 years shall maintain safeguards and ensures that such recruitment or recruitments is or are genuinely voluntary and such recruitment or recruitments is or are carried with the informed consent of the person's parents or legal guardian. The challenge is that only States can be parties to protocols and ISIS has not been recognized as a State by any other State and this makes it difficult to enforce this protocol on ISIS. Therefore ISIS is continuing to use children in armed conflicts despite the

fact that its actions are in conflict with the law of armed conflict as the prohibition of on the use of children in armed conflict is a peremptory norm.

ISIS revealed through photos and videos that went viral on the internet that it was training and recruiting children. They were videos and photos with titles such as “Cubs of the Islamic State” and this refers to children which were trained and recruited by ISIS. The child soldiers were taught how to clean and shoot machine guns. According to an official from Iraq who was quoted by CNN (28/05/2015), “ISIS teaches the child soldiers how to use Ak47 and they use dolls to teach them how to behead people, then they watch a beheading and sometimes they force them to carry the heads in order to cast the fear away from their hearts” Some of the graduates from the camp are used as human shields and suicide bombers while others were used as warrior checkpoint, hoist heavy weapons and act as enforcers. Charlie Winter (2015) of the Quilliam Foundation, a London based anti-extremist think tank stressed that, “it is being done for the same reasons that Hitler had the Hitler Youth that is effectively what we are seeing here, military training and ideological training”

4.4 The Anti-ISIS Coalition Response to ISIS and the Law of Armed Conflict

In reaction to the human catastrophe caused by ISIS members of the international community formed the Anti-ISIS Coalition inspired by the objectives of countering and thwarting the activities of ISIS. The study discovered that although the coalition was formed with the blessing of the UNSC which is the architecture of peace and security there were widespread reports of the breach of the law of armed conflict by members of the coalition. Amnesty International (2015) stressed that, the Saudi led coalition which is fighting ISIS in Yemen was held responsible for war crimes and crimes against humanity. The Saudi-led coalition fighting ISIS in Yemen carried unlawful airstrikes and some of the airstrikes were tantamount to breaching the law of armed conflict. As a result Amnesty International unequivocally advocated for the suspension of arms transfers to coalition members. An analysis of the above shows that members of the coalition are not adhering to the principle of distinction as they are failing to distinguish between the combatants and the civilians and the military objects and the civilian objectives. The airstrikes claimed more than forty civilians and around seventy civilians were wounded.

To augment the discussions, Amnesty International (2015) said that it had examined about thirteen deadly airstrikes which were carried by members of the coalition and the airstrikes

has resulted in the death of hundred civilians including fifty nine children. During the airstrikes more than two hundred civilians were wounded. The watchdog also held members of the coalition responsible for the use of cluster bombs. The use of cluster bombs is prohibited under the law of armed conflict as cluster bombs are considered as deadly to the civilians. Rovera (2015: 2) posits that, “the Amnesty International Report covers yet more evidence of unlawful airstrikes carried out by the Saudi Arabia led coalition, some of which amount to war crimes,” it demonstrates in harrowing detail how essential it is to stop arms being used to commit serious violation of this kind. Some of the means and methods used by members of the coalition to halt ISIS are in conflict with the law of armed conflict as they seek to destroy rather than defeat the enemy yet the law of armed conflict vehemently stipulates that the objective of war is to defeat rather than destroy your adversary.

Human Rights Watch (2015) said that after the Yemen airstrikes its researchers found remnants of two types of internationally banned cluster bombs as it investigated attacks on Soada. The watchdog stressed that Saudi forces used the cluster bombs while fighting ISIS. The impact of cluster bombs to civilian lives is they indiscriminately scatter smaller sub munitions often called bomb lets or bombers across a wide geographical area which can remain buried unexploded decades after a bombing campaigns end. The use of such type of weapons is in violation with the Ottawa convention of 1997 which prohibits the use of landmines during hostilities. The use of indiscriminate type of weapons has resulted in a surge of cases of civilians who were not directly involved in armed conflict but were killed or injured whilst asleep or carrying out their daily activities.

Barely two months after the Anti-ISIS Coalition started pummeling ISIS in the Middle East there were widespread reports that civilians were killed during airstrikes in places like Homs, Hama, al-Hasakah, Aleppo, al-Raqqa and dez-Ezzor. According to Aljazeera (28/10/2015), the F16 warplane which belongs to the anti-ISIS coalition targeted two power plants in al-Radwanye area which is in the east of Aleppo on 10 October 2015. The attacks at Aleppo power plant caused mass black out. According to the aforementioned news agent, the forces carried the attacks after the Syrian army and the Lebanese Movement (Movement) with the support of the Russian forces recaptured twenty-one regions in Aleppo regions. The attack led to electricity cut off for 2.5 million Syrians. The attack shows that the anti-ISIS coalition breached the law of armed conflict as it failed to distinguish between a military target and a civilian objective and it targets its operation on a civilian objective which is not permissible by the law of armed conflict.

4.5 Conclusion

This chapter presented and discussed the findings of the study that was premised on examining the impact of ISIS on the law of armed conflict. Findings of the study revealed that ISIS has had repercussions on the law of armed conflict and the discussion unfolded from the use of terror by ISIS. The operations of ISIS breach the principles of proportionality and discrimination which are the core principles of the law of armed conflict. The study unearthed that the activities of ISIS have implications on the means and methods of warfare as well as the use of children in hostilities. The study also discussed that members of anti-ISIS coalition violated the law of armed conflict as they use weapons which were prohibited by the law of armed conflict. The following chapter will focus on discussing the recommendations and conclusions of the study.

CHAPTER 5: CONCLUSIONS, RECOMMENDATIONS AND IMPLICATIONS FOR FURTHER RESEARCH

5.0 Introduction

This chapter is a follow up of chapter four and it serves as a general conclusion of the study. The chapter will also present recommendations and implications for further study. The conclusions of the study are centred and drawn from the answers to research questions gathered through data collection. The conclusion is a mirror to all research questions in chapter 1. The recommendations of the study integrate all the responses to the last questions. The last phase of the chapter will proffer recommendations for further study in an endeavour to fill the gaps which have been unearthed by the study.

5.1 Conclusion

The conclusions of the study dovetail with the hypothesis of the study as there was empirical data which shows that actions of ISIS has had serious consequences on international humanitarian law and the Law of armed conflict. The activities of ISIS are inconsistent with the law of armed conflict as ISIS employs terror to achieve its objectives and disseminates its messages through the internet which is utilised by ISIS to post its videos and photos of beheading of opposition. The use of the internet is calculated at inculcating fear on the civilians. This shows that ISIS relied on fear and terror in its objective to establish a caliphate in the Middle East. Amnesty International (2015) and Human Rights Watch (2015) documented a plethora of incidences in which ISIS used suicide bombs and mass shootings that resulted in the death of civilians. ISIS was held responsible for the Paris attack of November 13, the Sana'a Mosque bombings and other incidence that resulted into the death of civilians.

The study also unearthed that ISIS used the means of warfare which are prohibited by the law of armed conflict. The law of armed conflict stressed that war must be fought with certain restraint whilst protecting the lives, integrity and dignity of individuals. The purpose of war is to defeat rather than destroy your adversary. From the findings the means of warfare used by ISIS exhibited that it seeks to terminate the enemy in a Clausewitzan style rather than defeat the enemy. During its attacks, for instance the mass shootings at the Tunisian tourist resort, ISIS failed to use proportional force and it also failed to distinguish between combatants and

civilians and military objects and the civilian objectives. Human Rights Watch (2015) documented that ISIS is in possession of a large arsenal of weapons that includes mortars, rockets and cluster bombs. Some of the weapons are prohibited under the law of armed conflict. The Ottawa Convention of 1997 also prohibits the use of landmines as they have future effects on the civilian's lives even after the strikes have ended. Overallly the means of warfare used by ISIS remonstrates that it seeks to destroy and annihilate its adversary rather than defeat its enemies.

The methods of warfare employed by ISIS also reveal that it is a monster as the group fails to distinguish between civilians and combatants. There were widespread reports which show that the modus operandi used by ISIS is unorthodox and unlawful as the group targets the civilians as well as the civilian objectives. In a style which is reminiscent of Clausewitz of targeting the "centre of gravity" the group destroyed civilian properties in the Middle East and this left some people homeless. Some of the modus operandi used by the notorious group is road side shootings, mass shootings and suicide bombs. The use of such strategies is in conflict with the law of armed conflict and it is also in conflict with peremptory norms. Suicide bombs were used during the Paris attacks in November 2015 and the attacks at Charlie Hebdo offices in Paris. This resulted in the death of civilians, left some civilians wounded and some with post stress trauma disorder. The group also used cluster bombs and chemical weapons which were also outlawed by the law of armed conflict and are essential pillars of *jus cogens*.

The study also discovered that, there was widespread outcry from human rights activists and watchdogs that ISIS recruited and trained children so that they can take part during hostilities. The involvement of children by ISIS during hostilities in the ongoing carnages was a breach of Additional Protocol I of the Geneva Convention of 1949 relating to the protection of victims of international armed conflict. Save the Children (2015) extrapolates that, ISIS used children as suicide bombers and they take direct part in hostilities. Children were also used as human shields during hostilities and there were reports that children as young as ten were recruited and trained by ISIS and most of the children were from Syria and Iraq. The Convention on the Rights of Children also vehemently denounced the use of children during hostilities.

The Anti-ISIS coalition which was a response to counter ISIS was also nailed by watchdogs for breaching the law of armed conflict. Members of the coalition were accused of using cluster bombs which are prohibited by the law of armed conflict, if a state uses such cluster

bombs this will constitute serious war crimes. The Saudi led coalition which was fighting ISIS in Yemen was accused of using cluster bombs and landmines which was a serious breach of the Ottawa Convention of 1997. Members of the coalition also failed to adhere to the principles of proportionality and distinction as in some instances they targeted the civilians and the civilians objectives and this resulted in civilian casualties.

5.2 Recommendations

The recommendations are addressed to scholars, international institutions, international lawyers and academics with particular regards to the multifaceted nature of the international community. The aforementioned actors are key players in the formulation and implementation of international law. The following are recommendations of the study;

- (a) There is need to broaden the law of armed conflict so that it can explicitly cover terrorism.
- (b) There is need to oil the enforcement mechanism of the law of armed conflict so that there will be transparency in the prosecution of cases on the violations of the law of armed conflict. The response and readiness of the international community to avert the humanitarian emergencies in situations in which the law of armed conflict is violated is very lackadaisical and therefore the international community must be efficient in order to save the civilians from human catastrophes caused by terrorist groups.
- (c) The study also recommends that, the international community must come up with a consensus definition of terrorism as in some instances lack of a unanimous definition of terrorism is triggering disunity among members of the international community and at the end there will be disharmony.
- (d) The international community must steer the world into development as underdevelopment and poverty are some of the factors which triggers terrorism development is also essential in ending hostilities behaviour which is also inter linked with the rise of terrorism.
- (e) The last recommendation proffered by this study is hinged on commitment, there must be commitment by states by means of unilateral declaration or any other appropriate means to respect the law of armed conflict and States must come together to end terrorism.

5.3 Implications for Further Research

There is also need for further research on the factors which exacerbates terrorism for it is assumed that apart from hostilities, state sponsored violence and group grievances there are other factors which trigger terrorism. In future there is need for a research that explores whether the anti-ISIS coalition is respecting POW and is giving the ICRC access to person detained for war crimes.

5.4 Conclusion

This chapter was the hallmark of the study as it presented conclusions, recommendations and implications for further research on the topic which was under investigation. The major conclusion of this study shows that ISIS operations are inconsistent with the law of armed conflict. The conclusion was inferred from the use of terror by ISIS as well as its implications on involvement of children in hostilities, implications on the means of warfare, implication on methods of warfare. The implication of the anti-ISIS coalition on the law of armed conflict was also discussed in the study. The chapter also outlined recommendations of the study and it also hinted on the implications for further research.

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