



PRINCIPLE OF DISTINCTION IN ASYMMETRIC
ARMED CONFLICT: A CASE STUDY OF THE
CONFLICT IN NORTHERN NIGERIA

BY

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ABSTRACT

The conflict in Northern Nigeria has been a devastating conflict that has resulted in the death of innocent civilians and destruction of civilian objects. The asymmetric strategies employed by Boko Haram such as guerrilla warfare, suicide attacks, acts of terrorism and population-centric warfare have blurred the distinction between combatants and civilians. This has created a terrain that is difficult to distinguish civilians who are taking a direct part in the hostilities from civilians who are not taking an active part in the conflict. As a result, thousands of innocent civilians were killed and civilian objects worth millions of Nigerian Naira were destroyed. Thus, this research examines and analyses the nature of the conflict in Northern Nigeria with a view to ascertaining whether the situation has reached the legal threshold for an armed conflict, which triggers the application of IHL. The research further examines whether the parties involved in the conflict have observed their respective obligations of distinguishing between combatants and civilians, and whether the failure of the parties to respect the principle of distinction amounts to serious violations of IHL. Multiple methodologies are employed in order to carry out the research effectively. The research uses doctrinal methodology in order to appraise the position of the principles law. It uses comparative methodology in trying to examine whether Boko Haram has been respecting Islamic rules of warfare since the group claims to be an Islamic sect. Case study methodology is also used in order to fit in the argument and observations of the research to the facts of the conflict in Northern Nigeria. The research findings show that the conflict in Northern Nigeria has reached the required legal threshold for an armed conflict, which prompts the application of IHL. It further reveals that the parties involved in the conflict have failed to observe the basic principles of IHL and the armed group has in addition, failed to observe the Islamic rules of warfare. The failure of parties to the armed conflict to comply with the fundamental norms of IHL particularly principle of distinction amounts core international crimes. The research suggested that since the conflict in Northern Nigeria has reached the required legal threshold for an armed conflict, IHL applies and the parties thereto should respect their obligations in terms of civilian protection by distinguishing combatants from civilians.

خلاصة البحث

إن الصراع في شمال نيجيريا بسبب جماعة بوكو حرام صراعًا مدمرًا، أدى جراء هذا العنف إلى وفاة المدنيين وتدمير الممتلكات العامة والخاصة. والاستراتيجيات التي تستخدمها جماعة بوكو حرام هي حرب العصابات، والهجمات الانتحارية بالأحزمة الناسفة، وغيرها من أعمال الإرهاب والتخريب، ويتخفون في شكل المواطنين حتى لا تكاد تميز بينهم وبين المدنيين المسلمين. وقد أحدث هذا الإيهام صعوبة في التمييز بين أعضاء الجماعة المشاركة في أعمال العنف بشكل مباشر وبين المدنيين الذين لا يشاركونهم مشاركة فعلية في أعمال العنف. ونتيجة لذلك، تم قتل الآلاف من المدنيين الأبرياء ودمرت ممتلكاتهم العامة والخاصة على حدٍ سواء، ويبلغ قيمتها ملايين النيرات النيجيرية. وتناول هذا البحث طبيعة الصراع في شمال نيجيريا بهدف التأكد مما إذا كان الوضع قد وصل إلى حد النزاع المسلح الذي يتطلب تطبيق القانون الدولي الإنساني. كما سيكشف هذا البحث عما إذا كانت الأطراف المشاركة في العنف قد التزمت بالقانون الدولي الإنساني أم لم تلتزم، وفي حالة عدم التزام الأطراف المتحاربة مبدأ التمييز بين المحارب والمسلم فإن ذلك قد يؤدي إلى انتهاكات خطيرة للقانون الدولي الإنساني. والمنهج المتبعة في البحث هي المنهج التحليلي: لتقييم مدى التزام الأطراف بمبادئ القانون الدولي. والمنهج المقارن: لمقارنة القانون الدولي الإنساني ومبادئ الشريعة الإسلامية. والمنهج الميداني لدراسة حالات ووقائع النزاع والعنف في شمال نيجيريا. أهم نتائج البحث: أن الصراع وأعمال العنف في شمال نيجيريا وصلت إلى حد النزاع المسلح بين الأطراف المشاركة في أعمال العنف وأنهم لم يلتزموا بتطبيق القانون الدولي الإنساني. هذه الانتهاكات وعدم الالتزام بالقانون الدولي الإنساني يشكل جريمة دولية. أوصت هذه الدراسة بضرورة التزام الأطراف المتحاربة بالقانون الدولي الإنساني واحترام مبدأ حماية المدنيين، وذلك لتأزم الحالة الأمنية في شمال نيجيريا.

APPROVAL PAGE

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*This work is dedicated to my beloved parents Alhaji Haruna Lawan Duhu and Hajiya
Hauwa Haruna and my precious children Hauwa, Khadija and Muhammad.*

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LIST OF INTERNATIONAL INSTRUMENTS

African Charter on Human and Peoples' Rights (ACHPR), entered into force October 1986.

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, October 2009, entered into force December 2012.

Control Council Law No. 10, 20 December 1945, 3 Official Gazette Control Council for Germany 50 (1946).

Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field, entered into force October 21, 1950, 75 U.N.T.S. 31.

Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at the Sea, entered into force October 21, 1950, 75 U.N.T.S. 85.

Convention for the Suppression of Unlawful Seizure of Aircraft [Hijacking Convention], 860 U.N.T.S. 105, entered into force October 14, 1971.

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by General Assembly Resolution 2391 (XXIII) of 26 November 1968 and entered into force on 11 November 1970.

Convention on the Suppression and Punishment of Apartheid 1015 UNTS 243, entered into force 18 July 1976.

Convention Relative to the Protection of Civilian Persons in Times of War, entered into force on October 21, 1950, 75 U.N.T.S. 267.

Convention Relative to the Treatment of Prisoners of War, entered into force October 21, 1950, 75 U.N.T.S. 335.

Declaration Renouncing the Use, in Time of War, of certain Explosive Projectiles under 400 Grammes Weight, adopted 29 November 1868.

International Convention Against the Taking of Hostages 1316 UNTS 205, entered into force June 3, 1983.

International Covenant on Civil and Political Rights (ICCPR), entered into force March 1976.

International Covenant on Economic, Social and Cultural Rights (ICESCR), entered into force March 1976.

Organisation of African Unity (OAU) Convention on the Elimination of Mercenarism in Africa, adopted on 3rd July 1977 and entered into force on 22nd April 1985, OAU Doc CM/817 (XXIX).

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005.

Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, entered into force Dec. 7, 1978, 1125 U.N.T.S. 3, reprinted in 16 I.L.M. 1391 (1977).

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, entered into force Dec. 7, 1978, 1125 U.N.T.S. 609, reprinted in 16 I.L.M. 1442 (1977).

Protocol II to the Convention on the Prohibition and Restriction of the Use of Certain Conventional Weapons that Cause Unnecessary Suffering or Have Indiscriminate Effect, adopted on 10 October 1980 and entered into force on 2 December 1983.

Statute of International Criminal Tribunal for the Former Yugoslavia, adopted 25 May 1993.

Statute of the International Criminal Court, adopted on 17 July 1998 and entered into force on 1 July 2002.

The Hague Convention Relative to Opening of Hostilities, signed 18 October 1907, entered into force on 26 January 1910

The Hague Convention Relative to the Laying of Automatic Submarine Contact Mines, signed 18 October 1907, entered into force on 26 January 1910

The Hague Convention Respecting the Laws and Customs of War on Land, signed 18 October 1907, entered into force on 26 January 1910

The Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, signed 18 October 1907, entered into force on 26 January 1910

Vienna Convention on the Law of Treaties, entered into force on 27 January 1980, 1155 U.N.T.S. 331.

LIST OF STATUTES

Criminal Code, CAP C38, Laws of the Federation of Nigeria, 2004.
Geneva Conventions Act, CAP G3, Laws of the Federation of Nigeria, 2004.
Instructions for the Government of Armies of the United States in the Field, General Order No.100 (Lieber Code 1863)
Penal Code (Northern States) Federal Provisions Act, CAP P3 Laws of the Federation of Nigeria, 2004.
Terrorism (Prevention) Amendment Act, 2013.
The 1999 Constitution of the Federal Republic of Nigeria (as amended).

LIST OF CASES

- Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*; Merits, International Court of Justice, 27 June 1986
- Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, ICJ, General List No. 121, February 14, 2002
- Germany v Poland, (Chorzów Factory case)*, Claim for Indemnity, Merits, Judgement No 13, (1928) PCIJ Series A No 17, ICGJ 255 (PCIJ 1928), 13th September 1928, Permanent Court of International Justice [PCIJ]
- Germany, Spanish Civil War Pension Entitlement Case*, Case No. 58, Federal Social Court, Decision of December 14, 1978
- Guatemala Genocide Case*, Judgement No. STC 237/2005 (Tribunal Constitucional September 26, 2005)
- Hamden v. Rumsfeld*, 126 S. Ct. 2749 (2006)
- Inter-American Commission on Human Rights*, Report No. 55/97, Case No. 11.137
- Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening)* (Merits), Judgement of 10 October 2002, Summaries of Judgements, Advisory Opinions and Orders of the International Court of Justice
- Loayza Tamayo v. Peru*, Judgement of 27 November 1998, 43 Inter-American Court of Human Right (1998)
- Prosecutor v Akayesu*, Case No. ICTR- 96- 4- T, ICTR Judgement (Trial Chamber) (1998)
- Prosecutor v Radislav Krstic*, Case No. IT-98-33-T, ICTY (Trial Chamber), (2 August, 2001)
- Prosecutor v Tihomir Blaskic*, Case No.: IT-95-14-A, ICTY Judgement, Appeal Chambers, (29 July, 2004)
- Prosecutor v Zejnil Delalic et al*, Case No. 96-21-A, ICTY Judgement, (20 February, 2001)
- Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, ICTR Judgement, (2 September, 1998)
- Prosecutor v. Bošković*, Case No. IT-04-82-T, ICTY Judgement, (10 July 2008)
- Prosecutor v. Delalic*, Case No. IT-96-21-T, ICTY Judgement, (16 November 1998)
- Prosecutor v. Hadžihasanovic*, Case No. IT-01-47-T, ICTY Judgement, (15 March, 2006)
- Prosecutor v. Halilovic*, Case No. IT-01-48-T, ICTY Judgement, (16 November, 2005)
- Prosecutor v. Haradinaj, et al.*, Case No. IT-04-84-T, ICTY (Trial Judgement) (2008)
- Prosecutor v. Kordic*, Case No. IT-95-14/2-A, ICTY Judgement, (26 February, 2001)
- Prosecutor v. Kunarac et al.*, IT-96-23/1-A, ICTY Judgement, (12 June, 2002)
- Prosecutor v. Limaj*, Case No. IT-03-66-T, ICTY Judgement, (30 November, 2005)
- Prosecutor v. Martić*, Case No. IT-95-11-T, ICTY Judgement, (12 June, 2007)
- Prosecutor v. Milošević*, Case No. IT-02-54-T, ICTY Decision on Motion for Judgement of Acquittal, (June 16, 2004)
- Prosecutor v. Musema*, Case no. ICTR-96-13-T), ICTR Judgement and Sentence, (27 January, 2000)
- Prosecutor v. Rutaganda*, ICTR-96-3, ICTR Judgement, (6 December, 1999)

Prosecutor v. Stanislav Galic, IT-98-29, ICTY, Trial Chamber Judgement, (5 December, 2003)

Prosecutor v. Strugar, Case No. IT-01-42-T, ICTY Judgement, (31 January, 2005)

Prosecutor v. Tadic, Appeal on Jurisdiction, Case IT-94-1-AR72 (2 October 1995)

Public Committee Against Torture in Israel v. Government of Israel, (Targeted Killings case) (2006) HCJ 769/02

Public Committee Against Torture v Israel, Supreme Court of Israel, Judgement, HCJ 769/02

Río Frío Massacre v. Colombia, Case 11.654, Report No. 62/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 758 (2000).

Situation in the Republic of Kenya, Case No. ICC-01/09, 31 March 2010

The Legality of the Threat or Use of Nuclear Weapons, ICJ Advisory Opinion, [1996]

The Prize Case, Supreme Court of the United States, Case No. 57, US, 1862

The Prosecutor v. Clement Kayishema et al., Case No. ICTR-95-1-T, ICTR Judgement, (21 May 1999)

The Prosecutor v. Drazen Erdemovic, IT-96-22, ICTY Judgement, Summary of Trial Chamber Judgement, (29 November, 1996)

The Prosecutor v. Omar Hassan Ahmad Al-Bashir, Case NO. ICC- 02/05- 01/09 (2009) ICC Decision on the Prosecutor's Application for a Warrant of Arrest (Pre-Trial Chamber)

The State of Israel v. Eichmann, Cr.C. (Jm) 40/61, 45 P.M. 3, part II, (1961), 11

Trial of Wilhelm List and Others, United States Military Tribunal, Nuremberg, (The Hostages Trial) (1949) Law

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AQLIM	Al-Qaeda in the Land of the Islamic Maghreb
ATA	Afghan Transitional Administration
CAN	Christian Association of Nigeria
CAN	Computer Network Attacks
CID	Criminal Investigation Division
CSDG	Conflict, Security and Development Group
DSS	Department of State Security
FCT	Federal Capital Territory
FRSC	Federal Road Safety Commission
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDP	Internally Displaced Person
IED	Improvised Explosive Devices
IHL	International Humanitarian Law
ILC	International Law Commission
IMT	International Military Tribunal
INSCT	Institute for National Security and Counterterrorism
JTF	Joint Task Force
LFN	Laws of the Federation of Nigeria
MANPADS	Man-Portable Air-Defense Systems
NATO	North Atlantic Treaty Organisation
NCFRMI	National Commission for Refugees, Migrants and IDPs
NEMA	National Emergency Management Agency
NPC	National Population Commission
NSA	National Security Adviser
OAU	Organisation of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs
PBUH	Peace Be Upon Him
PCIJ	Permanent Court of International Justice
PLC	Public Limited Company
POW	Prisoner of War
RPG	Rocket Propelled Grenade
UCDP	Uppsala Conflict Data Program
UK	United Kingdom
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
UN	United Nations
USA	United States of America

TABLE OF TRANSLITERATION

Before using this Table, you must first install the AHT Times New Arabic fonts.

Table of the system of transliteration of Arabic words and names
used by the International Islamic University Malaysia.

b	=	ب	z	=	ز	f	=	ف
t	=	ت	s	=	س	q	=	ق
th	=	ث	sh	=	ش	k	=	ك
j	=	ج	ṣ	=	ص	l	=	ل
ḥ	=	ح	ḍ	=	ض	m	=	م
kh	=	خ	ṭ	=	ط	n	=	ن
d	=	د	ẓ	=	ظ	h	=	ه
dh	=	ذ	‘	=	ع	w	=	و
r	=	ر	gh	=	غ	y	=	ي

Short: a = اَ ; i = اِ ; u = اُ

Long: ā = آ ; ī = يِ ; ū = وِ

Diphthong: ay = اِي ; aw = اُو

CHAPTER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

Principle of distinction is one of the rules regulating conduct of hostilities during armed conflicts and is a fundamental principle of warfare under International Humanitarian Law (IHL) and Islamic Law. The principle simply obliges parties to an armed conflict to distinguish between combatants and civilians, and between military objectives and civilian objects, and accordingly shall direct their operations only against military objectives. Civilians and their objects enjoy immunity from direct attack so long as they do not participate in the hostilities or their objects have not been used for military purpose. Where civilian participates or a civilian object is used for military operation, they lose their immunity and automatically become legitimate military targets.

Recently, technological advancement has created asymmetry in the sophistication of weapons. There is no symmetry in terms of weaponry and military might, especially in cases of conflict involving state and non-state actors. Generally, this inequality often leads to an imbalance in military capabilities of the parties. The weaker party which is usually the non-state actor is forced to employ a mischievous method of warfare such as indulging in indirect offensive, guerrilla warfare or the use of civilian population as a shield in order to get the opportunity of carrying out concerted attacks as well as protection against counter attack.¹ This emerging structure of asymmetric conflict is characterised by scattered transnational, ethnic, religious, or

¹ Michael John-Hopkins, "Regulating the Conduct of Urban Warfare: Lessons from Contemporary Asymmetric Armed Conflicts" vol. 92, No 878 (2010) *International Review of the Red Cross*, at 471.

special interest groups carrying out indiscriminate attacks against symbols of western norm, schools, market places, places of worship, etc. creating difficulty in the application of traditional laws to the situation.² Consequently, it creates a terrain that is difficult or even impossible for the parties to the conflict to distinguish combatants for the purpose of attack from civilians who should be spared against direct attack.

This depicts the picture of the conflict that has been rocking the northern part of Nigeria. The conflict has been characterised by blatant abuse of rules protecting civilian and civilian population during armed violence. There has been serious breached of fundamental guarantees contemplated by IHL, human rights law and Islamic law for the safety of the protected categories of persons in armed conflicts. The aftermath of this abuse has led to the death of thousands of civilians, forced displacement of civilians, enforced disappearances and destruction of civilian objects. Sadly, the overwhelming majority of the victims are innocent civilians who deserve to be protected from the dangers and effects of hostilities if proper method of warfare is employed.

Unfortunately, the abuse of rules of engagement and fundamental guarantees that has been taking place in the conflict in Northern Nigeria has been largely attributed to the Nigerian Armed Forces (Joint Task Force [JTF]) that were deployed to protect civilians and their property, and to assist in restoring peace and order in the northern part of the country. Amnesty International which has been keenly following events during the conflict, in its 2012 report on the security situation in Nigeria, blamed the government security agents for the abuse of citizens' rights, forced

² Francois-Bernard Huyghe, "The Impunity of War" vol. 91, No.873 (2009) *International Review of the Red Cross*, at 30.

displacement and destruction of civilian property.³ Similarly, Human Rights Watch in its 2012 report on Boko Haram⁴ attacks and the Security Forces abuses in Nigeria has also lamented over the state of affairs in Northern Nigeria and associated the deteriorating situation in the region to the deployment of the armed forces (JTF).⁵

On the other hand, the armed group (Boko Haram) which is fighting the government of Nigeria and its agencies also contributed to the wanton destruction of civilian lives and property.⁶ The group has engaged in the use of unconventional methods of warfare such as suicide attacks, guerrilla warfare, abduction of female teenagers and population-centric warfare. These methods of warfare have added to the blurring line of the distinction between combatants and civilians in the conflict in Northern Nigeria, which has led to serious violations of the laws and customs applicable in armed conflicts. On several occasions, Boko Haram has carried out direct attacks against the civilian population and destroyed civilian objects that were not used for military purposes. As such the reports of both Amnesty International and Human Rights Watch have indicted the armed group for human rights violations and for the indiscriminate attacks that may amount to crime against humanity.

Therefore, the general civilian population is at the centre of the dilemma of attacks from both the parties involved. In an ideal situation of internal disturbance and

³ Amnesty International, *Nigeria: Trapped in the Cycle of Violence*, London: Amnesty International, 2012, at 21-23 (hereinafter 'Amnesty International Report').

⁴ "*Jamā 'atu Ahlus-Sunnah Lidda'wati wal Jihād*" which literally means "people committed to the propagation of the Prophet's teachings and Jihad" is the name of the group involved in the conflict in Northern Nigeria. However, the group is popularly known as Boko Haram in Hausa language, which means western education is prohibited. Boko Haram is an Islamic group that believes politics in northern Nigeria has been dominated by a cabal of corrupt, false Muslims. The group wants to wage a war against them, and the Federal Republic of Nigeria generally, in order to create a "pure" Islamic state ruled by shari'ah law. See Haruna Muhammad Salihi, "Governance Failure and Political Violence in Nigeria: The *Jamā 'atu Ahlus-Sunnah Lidda'wati wal Jihād* in Perspective" in *Nigeria's Convulsive Federalism: Perspectives on Flash-Points of Conflict in Northern Nigerian*, edited by Habu Mohammed, Ibadan: Cypress Concepts and Solutions Ltd., 2012, at 217-218; Andrew Walker, "What is Boko Haram" Special Report 308 (June 2012) United States Institute of Peace, at 11.

⁵ Human Rights Watch, *Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria*, USA: Human Rights Watch, 2012, at 38 (hereinafter 'Human Rights Watch')

⁶ Ibid.

tension, human rights law protects the citizens against degrading and inhumane treatment which are also protected under international human rights instruments and the Constitution of Nigeria. However, where the situation of the conflict has escalated beyond internal disturbance and tension, it automatically falls into the jurisdiction of IHL in order to properly protect civilians and civilian objects. It is important to mention that the application of IHL to a particular situation can only be made by ascertaining an individual cases and based on the available indicators for determining whether such a situation has qualified as an armed conflict or not.

In the case of the conflict in Northern Nigeria, human rights law ought to govern the situation but for reasons to be discussed in this research, the situation has reached the required legal threshold for an armed conflict. The application of IHL in the conflict would provide better protect and confidence to the civilians. Application of Islamic law of warfare may also play a vital role in curbing the menace of Boko Haram since it has been claiming affiliation with Islam. The application of IHL and Islamic law in the conflict will create a perfect obligation on both parties to the conflict and Boko Haram should be made to observe Islamic norms in addition to its IHL obligations.

1.2 STATEMENT OF THE PROBLEM

In recent times, the use of unconventional methods of warfare in contemporary asymmetric armed conflicts coupled with the emergence of sophisticated weapons has endangered the protection of civilian population. The civilian population is used as a shield either for the purpose of carrying out concerted attacks or as protection against counter attacks. Likewise, lack of clear status of members of organised armed groups has also contributed in blurring the distinction between combatants and civilians in

conflicts involving non state actors. These have created a terrain that poses a serious challenge as to who is a legitimate target for the purpose of attack and who should be spared against the dangers of hostilities. In such circumstances, military commanders are put in a state of dilemma as to how to effectively apply the principle of distinction in carrying out their military operations. Thus, same problem characterised the conflict in the northern part of Nigeria. The armed group involved in the conflict has been using unconventional methods of warfare. This has resulted in the wanton killings of innocent civilians who are not or no longer participating in the hostilities. In addition, application of IHL to the conflict as a legal regime during armed conflict remains a controversial issue since its application centres largely on ascertaining whether the conflict has reached the intensity envisaged by the law. Therefore, the researcher poses the following questions, which this research addresses:

- a. Does the conflict in Northern Nigeria meet the legal threshold for an armed conflict that triggers the application of IHL?
- b. What class of armed conflict does asymmetric armed conflict belong and what is the legal regime applicable in the armed conflict?
- c. Does principle of distinction provide protection to civilians against direct attack in asymmetric armed conflict?
- d. What is the position of Islamic law with respect to principle of distinction as a method of warfare and has Boko Haran been observing the principle in the conflict in Northern Nigeria?
- e. Do the parties to the armed conflict in Northern Nigeria commit serious violations of IHL that amount to war crimes, crimes against humanity and genocide?
- f. What is the way forward?

1.3 OBJECTIVES OF THE RESEARCH

The objectives of the study are to:

- i. Examine the conflict in Northern Nigeria with a view to determining the nature of the conflict and the applicability of IHL in the conflict.
- ii. Examine asymmetric armed conflict with a view to determining the legal regime applicable in the armed conflict.
- iii. Examine and analyse principle of distinction as a rule of warfare that accords protection to civilians against direct attacks in asymmetric armed conflict.
- iv. Examine principle of distinction under Islamic law and determine whether Boko Haram has been observing the principle during hostilities.
- v. Examine whether serious violations of IHL have been committed in the conflict in Northern Nigeria and whether such violations amount to war crimes, crimes against humanity and genocide.
- vi. Suggest and recommend how to effectively provide protection to civilians and civilian objects in the conflict in Northern Nigeria.

1.4 HYPOTHESIS

Considering the intensity of the conflict in Northern Nigeria coupled with the nature of the armed group Boko Haram, the researcher posits that:

- i. The conflict in Northern Nigeria has reached the required legal threshold for a non-international armed conflict that triggers the application of IHL.
- ii. Asymmetric armed conflict is a species of non-international armed conflict that is regulated by Common Article 3 of the Geneva Conventions of 1949,