

Review

Leveraging Law to Counter Terror: A Critical Analysis of UN Security Council Resolution 1373 and the Emerging Concept of Lawfare

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This article reflects on and appraises the recent preventive approach to terrorism which is of a varied nature and which has to do more particularly with the United Nations (UN) Security Council Resolution 1373. The resolution is relatively new, yet it shows the way forward in tackling the menace of terrorism. It clearly points out areas where efforts should be geared towards if the fight against terrorism would be won. This article appraises these areas of the Resolution with a degree of clarity to show the light in the dark tunnel of terror network so that there will be no hidden place for both terror and terrorists and this is done with the aim of calling the attention of the member states of the United Nations to the possibility of using the law to successfully curb or curtail international terrorism. Whereas in warfare force is matched against force, in lawfare law is matched against crimes (including terrorism). This is what lawfare, which is relatively a new concept of law, is all about. The methodology employed in this work relates to books, case laws and internet materials.

Key words: United Nations Security Council Resolution, lawfare, terrorism, warfare.

INTRODUCTION

The insurgence of a calculated and systematic campaign of terror mounted against governments and peoples of the world is gradually increasing to an alarming rate. Dissatisfaction of those behind the terror facade has led to the disaffection which gives birth to such violence as has shaken the pillars of modern civilization and casts reservation on the acclaimed civility of man. Suffice it to say at this earliest point in this article, according to a general anecdote, that necessity is the mother of invention. The veracity of this rational assertion is not in doubt. What is rather in doubt is whether the invention would readily be made available to meet with the challenges thrown by the necessity. The challenge of arresting the

international and local network of terror is a daunting one which requires proactive measures to curtail. Using the law as an instrument of restraint on terrorism or any other vice qualifies as lawfare. In other words, lawfare is an application of the law as a legal tool used in fighting against a vice made on illegal act by a legal system. Doing of an act in the absence of legal backing makes the act an illegal act. In other words, it would be very difficult, if not impossible, to fight terror in any part of the world without the support of the law.

It is to be noted that the concept of lawfare is a new concept in international law which highlights the important part law plays in the prevention of crimes both in national

and in international criminal justice systems. For instance the United Nations Charter in order to discourage aggression of one sovereign state against the other made a provision banning the use of force by states. Article 2(4) forbids the use of force by states. The language of the text is said to be all-encompassing (D'Amato, 1995, p. 57). The relevance of this concept of lawfare in terms of legal development is mainly restricted to fashioning a new outlook about the nature of law in order to encourage its timely uses in arresting crimes both at national and international realms. Just as in warfare where force is matched against force until a weaker force bows to the superior firepower of the other force; so also in lawfare the force of the law is made to match the force of crimes of all kinds. In a situation where crimes prevail over the law, lawfare fails and to reverse this trend, more energy is to be dissipated in fashioning out laws that would be potent enough to arrest such crimes. It is important to note that the Crime of Aggression in the Rome Statute¹ has finally been defined yet the International Criminal Court has not been given the jurisdictional power to try offenders as it relates to the Crime. Lawfare could, therefore, be defined as the use of the law as a weapon of war. This is the approach taken in this article and it is related particularly to Resolution 1373 of the United Nations Security Council with regard to terrorism.

It takes lawfare to wage a legitimate warfare against terrorism or any other vice. It has been rightly observed that military alliances have political and economic consequences (Lasok and Bridge, 1976, p. 7) and these consequences may be overwhelmingly negative in the absence of legal backing. The fighting of terrorism requires budding alliances which would be predicated on a large variety of horizontal agreements (Goyder, 1992, p. 153) that would have an extra-territorial effect (North and Fawcett, 1987, p. 127). A prudent and skilful application of legal tools by multiplicity of nations in curbing the menace of terrorism reveals the comity approach in tackling the problem of terrorism. The comity theory (Morris, 1984, p. 504) suggests that there is power in a united effort. International law has, by virtue of the comity approach, provided a number of legal instruments designed to fight aspects of terrorism (Campbell Black, 1990, p. 143; Time Magazine, 2002, p. 33)² ranging from hijack of aircrafts to hostage taking, especially, of diplomats and other protected persons. Suicide bombing directed against locomotive machines³ like cars, trains and

aircrafts plunged into standing buildings are of relatively recent origin. The havoc caused by this new dimension of terror is of a mammoth magnitude which causes a serial devastation and destruction of lives and properties. This in turn takes a ravaging toll on social, political and economic fortunes of a sovereign state and even on federating units in a federation. The fund used to procure the lethal instruments for bombing purposes and the value of properties damaged and the incalculable or unquantifiable loss of human lives when combined together could be invested to improve the quality of life and the standard of living in a state.

It is worthy of note that most of the legal instruments⁴ employed to arrest the menace of terrorism are punitively structured. They make the commission of any act of terrorism a punishable offence and require states in which jurisdictions the perpetrators of terror are kept to ensure that they, through a local legislation, make the punishment for the act of terrorism to be of maximum degree. However, there is currently a palpable shift from this position of employing punitive measures to the application of preventive measures in order to effectively demobilize the terror network and efficiently ground its operations.

The above legal strategy is like that used in physical warfare, where commanding military officers employ effective means to demobilize the contingent of the enemy forces in order to gain a military advantage over them. The demobilization related to cutting off the supplies of the enemies in order to render them weak or powerless thus forcing the belligerents to sue for peace and opt for an unconditional surrender. In the same vein, employing the law as a tool used in cutting off the financial supplies which are the bedrock of sponsorship to the terror network is aimed at weakening the terrorists or rendering them powerless. This assumption is predicated on the fact that guns, bullets and bombs are costly. Again, those that carry out the terror attack require money to ease their mobility and compensate their loved ones in the case of suicide bombing⁵. Therefore, funding is of paramount importance to both the planners and executors of terrorist acts. This article reflects on and appraises the recent preventive approach to terrorism which is of a varied nature and which has to do more particularly with the United Nations (UN) Security Council Resolution 1373.

¹ Articles 5, 6, 7 and 8.

² Terrorism involves a violent act or an act dangerous to human life that is a violation of the criminal law of any state or that would be a criminal violation if committed within the jurisdiction of any state and appears to be intended to intimidate the civilian population or influence the policy of a government by intimidation.

³The Madrid Train bombing of 2004 depicted the resolve of terrorists to hit at anything containing human beings whether locomotive or aircraft in nature.

⁴ Such instruments include the Hague convention for the suppression of Unlawful Seizure of Aircrafts of 1970; the Montreal Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation of 1971; Convention on the Prevention and Punishment of crimes against Internationally Protected Persons Including Diplomatic Agents of 1973. These laws are employed as a tool for fighting various forms of terrorism. This is an example of what Lawfare is all about.

⁵ Suicide bombing reveals the type of atrocities that could be caused to humanity when terrorists learn how to manufacture nuclear weapons or even atomic bomb. Stretching protests to self-destruction could easily lend itself to genocide, destruction of a race with ease or the destruction of the entire humanity.

THE CONTENTS OF THE UN SECURITY COUNCIL RESOLUTION 1373

The text of Resolution 1373 reads, in the operative part, that the Security Council,

1. Decides that all States shall:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- (f) Afford one another the greatest measure of assistance

in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

- (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
- (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
- (c) Cooperate, particularly through bilateral and multi-lateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
- (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
- (e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
- (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;
- (g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious

challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations.⁶

The adoption of the above Resolution (Murphey, 1995, p. 247)⁷ on 28th September 2001, seventeen days after the September 11 2001 terrorist attack on the United States shows clearly the new global perception of terror as being such that threatens international peace and security. It is submitted that the said attack prompted the design of the preventive approach to terrorism as reflected glaringly in the text of Resolution 1373. The text reads, in part as follows:

That all member states prevent the financing of terrorism and deny safe haven to terrorists. States will need to review and strengthen their border security operations, banking practices, law enforcement and intelligence cooperation, and arms transfer controls. All states are called upon to increase cooperation and share pertinent information with respect to these efforts.

It is not a hidden fact that terrorism is the greatest security challenge of the twenty-first century. Law is employed in the tackling of this global menace just as the same legal instrument was employed in halting wars among sovereign states⁸ to the extent that the power to declare war is largely curtailed by the law. In fact, in international relations, war is not allowed to be used to settle international disputes⁹. This is courtesy of inter- national law which is becoming increasingly recognised globally as a valid law that should attract the same obedience that is attracted by municipal law within a municipal jurisdiction.

The contents of Resolution 1373 reveal laudable aspirations that all states should join hands to get accomplished. These aspirations are anchored on concerted efforts to cut off the financial tube supplying fund to sponsor terrorists' activities and stringent consular checks

⁶ U.S. Department of State Archive, UN Security Council Resolution 1373 available @ <http://2001-2009.state.gov/p/io/rls/othr/2001/5108.htm> last accessed on 07/08/13.

⁷ Resolutions are to the United Nations what case laws are to a judicial system. It is to be noted that it was the September 11 2001 terrorist attack on the United States that galvanized the Security Council into action in order to counter international terrorism. This is the foundation or historical basis of UNSC Resolution 1373.

⁸ See the Briand – Kellogg Pact of 1928 which is on the renunciation of the war by states; Art.2(4) of the United Nations Charter; the Montevideo Convention on the Rights and Duties of States of 1933; Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Technique of 1977.

⁹ Art. 2(4) of the United Nations Organization has foreclosed the issue of whether force could be used to settle International Disputes.

to ensure that terrorists do not receive visas in order to enhance their free domicile in states other than their own. These two main aspirations cannot be transformed into an objective reality or concretized without reviewing and strengthening immigration border checks, checking the activities and operations of financial institutions, beefing up the expertise and technology of the law enforcement agents; sharing of information on movements of terrorists and control of arms transfer through improved diplomatic channels. The above contents undoubtedly seek to provide an effective antidote to terrorism. They shall be reviewed in the subsequent paragraphs below.

Cutting off the financial tube sponsoring terrorism

The cutting off of the financial tube which supplies terrorism the cash needed to execute the operations by the foot soldiers of the sponsors who sponsor terrorism is a relevant step in the bid to arrest terror acts. No act of terrorism is without the attachment of this financial string¹⁰. The assumption underlying this singular approach is that when terrorists are starved of fund with which to procure the lethal weapons employed in the prosecution of terrorist activities, their power to operate against humanity is greatly restrained, thereby rendering their nefarious designs inoperative. However, the act of cutting off the financial tube cannot be initiated in a democratic setting or jurisdiction without the force of a valid law which provides a legal template for the act. For instance, the Nigerian law, an Act of the National Assembly on money laundering¹¹ provides a possible legal template for the cutting off of the financial tube of any organisation that promotes illegal activities in Nigeria or elsewhere. In a similar fight against money laundering, British law on money laundering acts as a weapon for the severing of the financial tube that waters illegality including terrorism. The recent case of the conviction of Mr. James Ibori, an ex-Governor of Delta State of Nigeria in a London Court points to the fact that, without an existing law or legal template, it would be difficult to starve terrorists of fund.

An act of money laundering entails the transfer of money above certain amount specified in a legal document or document ancillary to it. The transfer may

¹⁰ The cost of sponsoring terrorism is as significant as that of prosecuting a war. The way money is invested to buy weapons of war is the same way that money is invested to procure lethal weapons capable of causing a devastating effect as strong as that caused by an air raid or release of a missile in a single operation during an outright warfare or any other belligerent operation. Therefore, financial measures aimed at curtailing terrorism are steps in the right direction.

¹¹ The Nigerian Money Laundering Act prescribes how money transactions in banks are to be carried out without a veiled attempt to cover illegal transactions. Moreover, the Economic and Financial Crimes Commission Act (the EFCC Act), a Nigerian Legislation prohibits money laundering. In the same vein, the Independent Corrupt Practices Commission Act, another Nigerian Legislation provides against corrupt practices which include money laundering.

be done through the actual account of the transferor or may be done through a pseudo name account bearing a false name in order to deceive the public and the law enforcement agents who may raise an alarm against such transfer as to the true ownership of the account. The purpose of checking the act of money laundering is, first and foremost, to eschew corruption including all corrupt practices and secondly, to ensure that huge sum of money does not go into wrong hands that may use the opportunity to sponsor terrorism or to promote narcotic drugs related activities.

Money, indeed, "answers all things"¹². In other words, money can be used to pursue ends both good and evil. This utilitarian (Okeke, 2010, p. 146)¹³ quality is recognised by the UN Security Council Resolution 1373.

On the basis of this recognition, it enjoined states to prevent the utility of money to achieve a negative end particularly as it concerns terrorism. The September 11, 2001 attack¹⁴ on the United States by the Al Qaeda terror network was a negative end achieved through coordination of the activities of the terrorists that hijacked the aircrafts that hit the twin towers of the World Trade Centre¹⁵ in New York and the United States military headquarters, the Pentagon. Those that hijacked the aircrafts and used it for a suicide mission had before the fateful day of the incident undergone flying training where they paid great attention only to the taking off and flight of aircrafts but did not show a remarkable interest in landing aspect of the flying training. It is deducible from the foregoing, that money was invested in the training without which the training would be abortive.

The linking of a wealthy man of Afghanistan extraction, the late Osama Bin Laden to the terror attack on the United States speaks volume to support the position of Resolution 1373 on the prevention of financial support to terrorist as a legal means of fighting against terrorism. Recently, in Nigeria, a group known as Boko Haram has been using suicide bombing as a tool to destroy many lives and properties worth millions of Naira. The Group's leader, Late Yusuf was killed in an extra-judicial manner in the hands of the Nigerian security operatives thus prompting the group to be more aggressive in carrying out terror activities against security agents and other

¹² See the Holy Bible, Ecclesiastes 10:19. In other words, money could be used to do both good and evil. It could be employed as a defensive shield. (Also see Ecclesiastes 7:12).

¹³ Utilitarianism is one of Jeremy Bentham's postulations relating to the nature of law. He, Bentham posited that the society should seek the greatest pleasure for the greatest number of people.

¹⁴ This attack was traced to the Al Qaeda terror group led by the late Osama Bin Laden, a wealthy man of the Afghanistan nationality. The hunt by the United States authorities for his head lasted for years before he was killed in his home base by a contingent of the United States soldiers.

¹⁵ The attack was a new dimension in the operations of terrorists. Hitherto, terrorism had revolved around hijack of aircrafts and taking all or targeted passengers of certain nationalists hostage until a ransom is paid or a demand is met by the governments of those people.

Nigerians especially in the Northern part of Nigeria. It is generally believed that the sponsors of the group's activities have access to a fat financial treasure from which fund is secretly distributed for the procurement of arms and ammunitions on one hand and the secret recruitment of foot soldiers on the other hand. These foot soldiers swathe themselves with explosives and detonate the explosives once they are in contact with the target population. Moreover, they employ the use of cars packed with explosives to wreck havoc on lives and properties. The group's daring attacks have left devastating impact on places like churches, market places, public transport bus terminal and the Nigerian office of the United Nations in Abuja. Therefore, using the law as a weapon to control the disbursement of fund in order to check free access of fund by terrorist organizations, is part of lawfare.

Resort to strict consular restriction on grant of visa

The granting of visa to immigrants in any state is done by its consular mission¹⁶ which is established in the receiving state. A visa is a state's grant of authority to an applicant or applicants to enter into its territory and be domiciled for a specified period of time. It is an incontrovertible fact that the grant of visa to enter the territorial space of state goes with the duty of the state that granted such authority to protect legal immigrants in its territory. Terrorists could apply for visa to enter into a particular state with the latent intention of striking targets considered strategic by the sponsors of terrorism and wrecking havoc in such a domain. One of the plausible means of stopping the possibility of the occurrence of catastrophe is to tighten the noose in relation to issuing visas in such a way as to ensure that only personalities with unquestionable characters, links and background are issued with visas subject to their application for visas.

The tightening of the noose on matters connected with the issuing of visas cannot be legitimately done without resort to law. The law in question refers both to consular law and immigration laws. The consular law of a state is patterned after the Consular Convention while the immigration laws are based on states immigration policies. In this sense, generally, the law becomes an effective tool employed in the fight against international terrorism. The concept of lawfare (UNESCO, International Dimensions of Humanitarian Law, 1988, p. 73)¹⁷ is, thus, reinforced as a relevant concept and a weighty creative output of

¹⁶ Consular relations is regulated by the Vienna Convention on Consular Relations of 1963. In addition to the granting of visas, the Consular Mission in a receiving state takes care of the commercial interests of their citizens abroad; while consular officers are allowed to visit their citizens in prison, in the event of any criminal charge in order to render state services to them, where necessary.

¹⁷ Lawfare is a new concept in legal curriculum. The etymological structure of the word is simply derived from the observation and conclusion that the law as

the protagonists.

The relational basis of the consumer mission which encourages mutual benefits in consular relations could be used as an avenue of strengthening consular checks. For example, the Sending state's Foreign Affairs Ministry or any other relevant Ministry or Department of the state could be informed by its consular mission in the Receiving state of a terror baron on terrorist that is about to enter into its territory. This alert for surveillance on the person of the suspected terrorists may be based on the direct information accessible to the consular mission or based on the information received from an informant. In order to prevent an act of terror, the alert may not be about a suspected person but on a suspected lethal weapon like bomb.¹⁸

Justifying the above pronouncement becomes paramount to the acceleration of efforts geared towards freeing the world from the shackles of terrorism especially of such ones as can be cheaply carried out without any or much security counter measures. To buttress the point further, the recent prevention of an act of terrorism directed against the United States reveals the degree of mutual benefits that emanates from a thriving consular and diplomatic relations. The terror act was directed against a United States-bound aircraft which took off from Saudi Arabia. Before its arrival to United States, information¹⁹ had filtered in from Saudi Arabia alerting authorities of the United States of a bomb parcel hidden in the aircraft with the aim of prosecuting a terrorist agenda. On receiving such alert, the United States did not handle the matter with levity but with a commendable degree of carefulness, seriousness and expertise – and this handsomely paid off. The subsequent search predicated on the received alert led to the discovery of the bomb which was packaged and hidden in such a

a tool, when skilfully made and applied could bring an effective check on crimes, criminal activities and their negative effects on humanity and environmental well being. It has been observed in the light of buttressing the above assertion with particular reference to warfare control that the extensive codification of the law of war at the start of the 20th Century was the outcome of its approach to the central question of how to accommodate military needs to the dictates of humanity in the time of war. In some sense, that has been the perennial endeavour of those concerned with the progressive development of the law of war. Lying behind these ideas were fundamental questions about the proper treatment of man by man in warfare, maintenance of the standards of civilization, and the need to answer such questions by the use of reason.

¹⁸ See the Moratorium on the importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa.

Though the aim of the Moratorium is to curtail the spread of arms in conflict zones in West Africa, it strengthens the case for an effective monitoring of movement of lethal weapons and raising an alert in time to enable states to prevent their use in advancing a terrorist cause.

¹⁹ Freedom of information enhances both internal and external cooperation. The mutual benefits derivable from such cooperation are strong enough to canvas for a treaty on freedom of information just the same way a municipal jurisdiction dedicates on Act on freedom of information. The benefit of this legal instrument is to give protection to the source of an information considered to be against a state in the case of state sponsored terrorism. See Art. 2(7), the United Nations Charter.

manner as to beat easy and careless security checks.

It is evidently clear from the incident narrated above that the beneficial outcome of the prevention of the act of terrorism saved United States from monumental damages which proportion could be unfathomable in the conjecture of rational minds. It is also clear that this security exploit was done without any conduct of warfare but through the instrumentality of lawfare, that is, putting the legal strength to bear against the intended terrorist act without the release of a single bullet. Prevailing over crimes within or outside the jurisdiction of a state has, hitherto, been a thing that is strictly restricted to the traditional gun-and-bullet strategy, reminiscent of a combat raging in the theatre of warfare in the fight against criminality, terrorism being an aspect of criminality. It is to be noted that an escape route from consular checks is the existence of porous borders.

Strengthening border security operations

Strengthening Border Security Operations are efforts by law enforcement agents at securing international borders in order to prevent the prevalence of illegal immigrants²⁰ into the territory of a state. Borders that are porous serve as routes through which lethal weapons can be shipped into a state for the purpose of utilizing those weapons to achieve a terrorist objective. Again, porous borders are exploited by the terror personnel to gain access to a target state in order to conduct terrorist activities in that state or in order to use that state as a launching pad for terror purposes.

It is submitted that the securing of international borders should not be the work of a single state alone. Rather, joint border patrol²¹ involving the security personnel of the states sharing a common international border. For instance, Nigeria/Cameroun international border ought to be manned by the Nigerian and Cameroonian joint security operatives. While Mexico/United States of America international border should be manned by joint law enforcement personnel of both states.

It is to be noted that without the legal framework for carrying out the joint patrol, the exercise would emerge as a bloated futility and waste of scare on both human and material resources. The proper thing to do first

²⁰ Illegal immigrants are those immigrants who fail to obtain the visa of the state into which they have immigrated. Immigration could be on the basis of looking for a greener pasture which is a survival instinct of man; it could as well be for the aim of taking vantage positions in a territory in order to carry out a terrorist attack – in the territory.

²¹ The joint border patrol effectiveness depends on the commitment of the states entering into an agreement to set up the patrol. It is noted that in the event of national emergencies, international borders are closed until there is an abatement of the emergency situation. This reveals the importance of commitment on the part of the governments setting up a joint border patrol squad.

before floating the joint patrol would be the parties agreement to bind themselves to achieve the objective of using border security operatives to keep off or minimize the influx of terrorists into their territories. This agreement or treaty provides the nature of the joint patrol, a standing or ad hoc joint patrol, the command structure, the personnel contribution, funding, remuneration of personnel and provision of logistics – which includes the provision of surveillance vehicles, helicopters and speed boats, iron barbed wires and monitoring video cameras mounted at strategic locations around border areas.

The aspect of lawfare²² in the above arrangement is made manifest in the fact that the instrument of law is used to fight porous borders which in turn confronts the influx of illegal immigrants into the territory of a state from another state. The concept of lawfare is, therefore, becoming increasingly concrete as a veritable tool within every municipal or international jurisdiction employed in the fight against criminality in general and organised crime in particular.

A check on banking practices

Banks, no doubts, promote the economy of states when their activities and operations fall within laid down standard rules. The World Bank and the International Monetary Fund (IMF) have standard rules which regulate lending and other facilities of the bank so as to promote a growing world economy. The national banks of states, the Central Banks (*Trendtex Trading Corporation v. Central Bank of Nigeria*, 1977) regulate matters of fiscal nature²³ relating to deposits, interest rate, reserved fund and other banking transaction. This regulation is with the aim of making commercial banks in the territories of the states where they operate to comply with modern banking ethics which promote economic growth and development to a large extent.

Sometimes, commercial banks may be tempted to make quick gains and in doing so throw caution to the wind. The resultant effect of this practice is that nefarious people cash in on that to transfer huge sum of money to an account that could be used as a source of sponsoring terrorism. It becomes imperative, therefore, for states to strengthen banking practices by adopting proactive measures aimed at curtailing the volume of fund available

to a person or an organisation at a particular point in time. This enhances the control of circulation of currency notes in a state. Moreover, the requirement of banks relating to the personal details of their customers

²² Lawfare is an eclectic concept. Apart from its definition as the practice of using the law to arrest a crime or stop criminals from conducting criminal activities, it delves into the subjects of many substantive law relating to crime including international law.

²³ The Central Bank of Nigeria raises the reserved fund of every bank in Nigeria to twenty five billion Naira (₦25b) and this is the current position with respect to commercial banks reserved fund in Nigeria.

including the requirement for the inclusion of passports²⁴ in the applications to open accounts in the banks are efforts in the right direction as these requirements help to lift the veil off the faces of those with whom the banks transact business. It is even an act of double caution on the part of the banks when they require sureties to attest to the personality of those wishing to transact business with the banks.

However, there is need to review banking laws operating in every municipal setting in order to ascertain their utility level²⁵. Obsolete banking standards contribute to the advancement of the menace of terrorism. For instance, receiving huge sums of money from depositors who may be customers to the banks without asking any question as to the source of the fund has been in accordance with the old banking standard. However, the recent disposition of banks towards the depositors of huge sums of money into their accounts is to ask questions with regard to the source of money. In addition to this, there is the need to alert relevant security operatives in a state domain, the moment a depositor deposits a huge amount of money that is beyond certain specified limit. This would enable a security watch to be placed on the owner of the account wherein the lodgement is made as to ascertain the use that the money would be put into – and to deliberately prevent money laundering acts.

Banking laws directed against money laundering is part of lawfare. Such laws also act as great instruments for the prevention of terrorism. However, banking laws that are not enforced are sterile and impotent. This fact is coupled with the fact that the absence of common intelligence network on the lodgement of funds and related issues equally negates even best banking practices.

Law enforcement and information sharing

The legislators everywhere (Lowi et al., 2006, p. 165)²⁶ are specialists in law making. The best laws would be a mere mirage in a situation where they lack enforcement. Law enforcement is a duty of the executive arm of government which requires the operations of law enforcement agents. These agents are human and not divine. The implication of this is that they are not omniscient.

²⁴ Apart from the attachment of passports to applications relating to opening of accounts, it is a common banking practice to take a photograph image of a person to whom a huge amount of money is paid.

²⁵ Utility level refers to the degree of usefulness such laws maintain. In other words, where the laws do not meet up with current banking challenges or help to resolve current banking issues, they are adjudged obsolete and an amendment or amendments sought for.

²⁶ Legislators generally vary in the weight given to personal priorities and the things desired by campaign contributions and past supporters. Some see themselves as delegates elected to do the bidding of those that elected them, others see themselves as trustees selected by their fellow citizens to do what the legislator thinks is right; while others mix the two types above.

Therefore, they need information sharing to succeed in their task of law enforcement. The recent prevention of terror strike directed against a United States registered aircraft which left Saudi Arabia for the United States was based on information sharing. This prompted the United States law enforcement agents to intercept the parcel suspected to be a lethal weapon and apparently aimed at advancing a terrorist cause. Information sharing also helped Nigeria to check the menace of terrorism for a relative long time. The feat was achieved based on a security alert that Nigeria was in the terror list of the Al Qaeda terrorist group. Though in recent times, in Nigeria, a successful terror strike was carried out in the United Nations building in the Federal Capital Territory, Abuja²⁷ which caused a great damage to the building and led to the loss of lives of scores of people. The attack was more or less an unfathomable act judging the way and manner in which the suicide bomber gained access into the UN building. The bomber cruised into the compound housing the building, knocked open the gate and crashed into the building. This suggests a possible crack in the wall of the law enforcement operations within and around the UN building. The suspicion that trailed the terrorist act hinged on the premise that there must be an act of complicity on the part of the security operatives who were supposed to provide maximum security for the United Nations presence in Nigeria. In a relevant development, the President of the Federal Republic of Nigeria made an open statement to the effect that some members of his cabinet were sympathetic to Boko Haram group, a group that is daubed a terrorist group because of its antecedents²⁸.

In a situation where there exists an act of complicity on the part of the security agents or anybody that is in a position to access classified information on security, it is submitted that the existing laws' provisions in relation to such an act should be made operative in order to discourage such betrayal of trust and confidence. Where there is paucity of legal framework for the arresting of such act of complicity, efforts should be made to create enabling legal framework to act as a legal basis for prevention of the ugly trend or act. Lawfare showcases its essence and relevance by forbidding every thread of criminality in the fabrics of organised crimes.

Control of arms transfer

The use of arms to prosecute torture, terrorism and other

²⁷ Attacking anything associated with the United Nation (UN) is tantamount to attacking the General Assembly, the Security Council or any of the principal organs of the UN. Therefore, the Abuja attack on the United Nation building is a serious challenge to the comity of Nations to take stiffer legal measures aimed at tackling frontally the menace of international terrorism.

²⁸ Terrorist infiltration into a target state and terrorist sympathisers infiltration into government is a technical strategy of first class order. This revealed strategy has not been explored in the fight against terrorism. It is, therefore, a fertile ground for surveillance aimed at prevention of terrorism.

cruel, inhuman or degrading treatment is undoubtedly the most subsisting challenge in the fight against crimes generally. The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment of 1984 is desirous of making more effective the struggles against such crimes (Wallace, 1997). It is pertinent to note at this point that arms of different nature and sizes are employed by terrorists to conduct their strikes at targets. It is a very crucial thing to seek to get to the root of the solution to the problem. The Morinatum against light weapons transfer is a great regional device to control arms dealing and arms transfer. Until the sale of arms is brought under effective control by means of legal intervention or lawfare (Convention on the Prohibition of the Development, Production, Stockpiling Bacteriological and Toxin Weapons and their Destruction of 1972; Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1972), the continuation of terrorism on a global scale would increase.

Arms are made by persons both natural and corporate. Natural and corporate persons who are in the arms business could be made to keep a catalogue of arms manufactured in a given period; state the movements of arms and the purpose and address of the buyers. These data when properly kept and verified would enhance a definite degree of reduction in arms supplies to terrorist groups and other belligerent groups that commit similar crimes like genocide. In the *Advisory Opinion on Reservation to the Genocide Convention* (ICJ Reports, 1951, pp. 15, 23, 1993, pp. 3, 16) *genocide was defined as a crime which shocks the conscience of mankind, results in great losses to humanity ...and it is contrary to moral law and the spirit and aims of the United Nations.*

CONCLUSION

Resolution 1373 serves both as an international legal template for an effective combating of terrorism and a stimulating prompt to all states' legal jurisdiction to diversify their efforts in the fight against terrorism. The resolution not only advocates the means for curing the ailment of terrorism but also laid down the steps to preventive terrorism. It is therefore the position of this article that states should incorporate the resolution into their legal systems and embrace preventive approach to terrorism which the strict enforcement of the law would promote. Over the years laws have been used to control behaviour. It provides rewards for good behaviours and prescribes punishment for wrong behaviours. Indeed the law is an armament and a careful application of this armament in the conduct of warfare against terrorism would greatly pay off if the standards embodied in Resolution 1373 are promoted and maintained across national borders. Terror network could be significantly

curtailed or totally eliminated by resort to the above approach.

Conflict of Interests

The author have not declared any conflict of interests.

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