

AN ASSESSMENT OF THE NATURE, SCOPE AND RESPONSES TOWARDS ADDRESSING THE SCOURGE OF ASYMMETRIC WARFARE

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Abstract

Humanitarian law is the law of war. At best, it is the law of armed conflict¹. The increasing growth in technology in armed conflict has created the need for improvement on the body of law and rules regulating warfare. Asymmetric warfare appears to be but not a new form of armed conflict and without mincing words, it has proved the body of law relating to armed hostility to be very inadequate and incapable of the innovations, methods and approaches in this form of warfare. This paper aims at finding out the nature and scope of asymmetric warfare and further to ascertain the possible responses adopted by states, regional domains and at global arena towards addressing this specie of warfare. The paper also works at looking at the strategies adopted by parties to the war and the content of the body of law prevailing in other warfare distinct and different from asymmetric and the challenges why such body of laws may not be viable or why such body of laws may be necessary for it to be adopted in this class of warfare. Conclusions and recommendations are also made to the extent that it is suggested that asymmetric warfare being special specie of warfare should be approached dynamically for positive result towards realizing the landable goals of humanitarian law.

Keywords: Asymmetric Warfare, Strategy and Asymmetric Actors

Introduction

Asymmetric warfare has an old history and background and it has been observed that on various occasions, there is marked difference in the military power and strategy adopted by states². The character and nature of war is not static but changes³. This is so particularly with the growing incidences of war between the state and non-state actors⁴. This include the use of unconventional tools and tactics be it guerrilla warfare or terrorism or irregular warfare or other forms which becomes more synonymous with non-state entities. In all the above, non-state actors use asymmetric methods to target the state's vulnerabilities to achieve disproportionate effect⁵. The scenario above can be likened to the activities of non state actors in Nigeria like the Boko Haram Militias, the Fulani herders, the bandits and terrorists in the northern part of Nigeria as well as the Islamic Society of West African Province (ISWAP) terrorizing Nigeria and the latest group in the Southeastern Nigeria known and described as the "Unknown Gunmen". Much as these groups are arm bearing non-state actors, their method of warfare and strategies are seriously disproportionate and beyond that of state actors and this have no doubt paved way for their successful onslaughts against number of vulnerable persons in Nigeria under the protection of

¹A.U. Abonyi "International Humanitarian Law; A Handbook" (Nnewi, 2019).

²W. H. Heinegg "Asymmetric Warfare: How To Respond", International Law Studies, Vol 87, Pedrozo And Daria Editions.

³Ibid.

⁴Ibid.

⁵Ibid.

the weak state actors. The various instances or cases of attacks on installation of multinational co-operations, schools and cultural properties in the face of helpless state forces are indeed worrisome but laughable. The case in mind is the recent attack of Kuje Correctional Center, a federal government maximum prison facility and freeing of inmates alleged to be members of ISWAP and other inmates as well as the attack of the Nigerian railway facility along Kaduna rail road and subsequent abduction of "prominent" Nigerian politicians and citizens presents a serious cause for concern on the changing nature of method and strategy of warfare to the disadvantage of the enemy and other non-participating actors in the warfare.

In Nigeria and like in other climes, the means and methods of warfare adopted by the non state actors in confrontation with state forces is highly more sophisticated. Not only that the weapons used are far and more superior than that of the state organized armed forces, the level of military skills, expertise and intelligence, and tactics demonstrated and applied by the non state armed bearing groups is far beyond that of the regular state conventional forces. In Nigeria, while the state openly profess to have committed a large percentage of national budgetary allocation to internal defence and security, there is nothing on ground to show that the Nigeria military is equipped with the modern military infrastructure to justify the claim of government and to enable the Nigerian military to take up the non state actors including the Boko Haram, the Fulani herders, the bandits and the dreaded unknown Gunmen on one on one battle. The government agents and particularly men of the presidency boast of having decimated the non-state armed bearing groups like the Boko Haram Militias and the ISWAP Jihadists and not too long after the said announcement, one successful attack or the other will take place and the groups will take responsibilities. There are cases of such attacks, namely the attack and bombing of the private military helicopter of the Former Chief of army staff before Gen. Irabor, the attack of the NDA(Kaduna), the attack of the passenger train at Kaduna Abuja rail road and abduction of prominent Nigerians and others too numerous to mention. The Nigerian government and her military has been helpless because:

1. Not only that the means and method adopted by the non-state actors and terrorists are beyond and above that of the regular forces.
2. There is also perceived political infiltration by those dissidents and members of these non state actors into the mainstream of administration of governance of Nigeria. There are facts on ground justifying this:
 - a. Sheik Gumi, the Islamist cleric is now more or less seen as a licensed or recognized government negotiator with the terrorists Boko Haram and herders and is seen mostly in photos with these bandits and nobody sees anything bad in him and he works free in the streets and is seen effortlessly advocating for amnesty for the bandits and the Boko Haram members, these people have openly taken up arms against the state and Gumi sees nothing bad but rather suggest that these persons should be treated with kid gloves for there to be peace and rather suggests that instead of being prosecuted, they should be reintegrated and rehabilitated and recruited into the Nigerian army and other forces. This is unfortunate.
 - b. Prominent persons established to have links with terrorists are given exalted positions and more spaces are opened for them. Nigerians criticized the appointment of Minister of Communication, Alhaji Pantani because of his

philosophy and orientation and support for terrorism, the government saw nothing bad in Pantani and continued till date to accommodate him. The running mate of APC Presidential candidate Alhaji Shettima is widely believed to be one of the strong sponsors of Boko Haram Terrorists and it is not a hidden secret that the most wanted terrorists "Kabiru Sokoto" was arrested from his governor's lodge, yet the government of Nigeria under its watch as a ruling party saw no other Nigerian as competent and suitable for the APC Vice presidential ticket than Shettima, all these show that warfare and conflict between Nigerian forces and non-state actors has been highly compromised and is indeed inflicted by our leaders for their selfish reasons.

Thus, the gap shall continue to widen because as positive efforts are being made bywell meaning Nigerians at their minimal levels of leadership hierarchies for improvement in our national military and security infrastructure, the cabals firing theshots in terms of making day to day decisions of government are romancing with non-state actors to cripple such efforts.

Conceptual Terms:

For effective and better understanding of the subject matter of this paper, the following terms must be defined:

1. Asymmetric warfare
2. Strategy
3. Asymmetric actors.

Asymmetric Warfare:

Past efforts to define asymmetric warfare has not been very helpful nor has it yielded any positive result⁶. Asymmetric warfare used to be defined as "a conflict involving two states with unequal overall military and economic resources. The old attempt above recognized asymmetric warfare as one between two States having unequal military and economic strength and capabilities meaning that one of the parties is far beyond the other in terms of military might and economic status or ranking. Nonetheless, the terrorist attack of 9/11 in the United States of America changed the definition of asymmetric warfare to a new narrative and dimension. Asymmetric warfare according to a known scholar⁷ became modified and is now seen as "leveraging inferior tactical or operational strength against the vulnerabilities of a superior opponent to achieve a disproportionate effect aimed at undermining the opponent's power to achieve the objective of the asymmetric actor's strategic objectives. The asymmetric actor is the weak party who does all it can to pull down opponent. From the above, asymmetric warfare is war between two warring parties that are of unequal status in terms of military and economic disposition where the weaker party works assiduously to weaken and leverage with the operational strategy and power of the opponent power. Thus, the superior power has

⁶Ibid.

⁷Ibid.

more sophisticated strategy, means and power than the other part/. While the definition above has the advantage of not being limited to inter-state armed conflicts, nothing has been added as almost all armed conflict have been asymmetric. Asymmetries in warfare include: Asymmetries of:

- i. Power
- ii. Means
- iii. Methods
- iv. Organization
- v. Values and
- vi. Time.

Thus, in consideration of asymmetric warfare, so many variables are considered namely the strength of the powers in the war, the means which can be looked at from the financial resources or economic standing of the parties, the methods adopted in terms of strategy (expertise) military infrastructure/technology, the organization of the army or forces i.e professionalism and engagement, the values (the ethics) and time management. All these variables when utilized effectively or poorly enhance or undermine the success of a force against the other. Asymmetry can also be participatory, technological, normative or moral hence, one or two of the above can be combined and adopted effectively and the definition of asymmetric warfare can be based on such. Take for instance the war executed by United States can be seen from the asymmetry of technology of United States armed forces, same applies to wars executed by non-state actors, be they partisans, resistance fighters, rebels or terrorists.⁸ Moreover, in every war or conflict, it must not be forgotten that there is considerable element of surprise that makes it impossible to predict its course or outcome. The enemy may employ methods and means, strategies or tactics never envisaged by the opponent and aimed at opponent's vulnerabilities⁹ the enemy can put up a surprise to the. opponent and the opponent is left devastated and the end may be difficult to predict.¹⁰ A look at the Russian/Ukraine war will show clearly that though it appears the Russian forces have relied extensively on her high and strong military technology against Ukrainian forces, Ukraine and her forces has put up stiff resistance and used strategies that have unsettled the Russian side and targeted at their vulnerabilities with much reliance on active international co-operation and support from NATO allies like the United States, countries in the European league and others and have extensively hit Russia through sanctions from the financial and economic fronts which is causing excruciating suffering among the Russians¹¹. From the above, it is clear and evident that asymmetric warfare is not novel nor is it a new phenomenon in armed conflict. It has always been used and it involves the use of means and methods and other realities by an enemy to defeat and take advantage of the opponent. From the beginning, the law of armed warfare even up to the modern times has been based on the approach called "West phalian perspective" i.e the fact that war is conducted predominantly under state control and between combatants in which civilians and their objects are spared¹² thus different asymmetries i.e considerations are adopted and force is used but limited to lawful targets and the parties are expected to abide by the rules promoting

⁸Ibid.

⁹Ibid.

¹⁰A.U. Abonyi "Humanitarian Law Lecture Series On Asymmetric Warfare, COOU, 2021/2022, Anambra State.

¹¹Ibid.

¹²Ibid.

humanity than violence and destruction¹³. The placement of rules of armed conflict has abolished the prevalence of military necessity over humanity but creates a balance between the rules of war and the war itself, the fact that though the rules exist, war is inevitable "kriegersranson gebt vor kriegsmanier" i.e. though the law and the rules limits the methods and means of warfare, it does not make warfare impossible to occur.¹⁴ Finally; it is important to conclude that asymmetric warfare is an irregular and unconventional warfare and unconventional means and methods are adopted by a party to the disadvantage of the opponents.¹⁵ Asymmetric approaches by a force against the other are attempts to undermine the strength of a superpower or stronger power while exploiting their weakness using methods that differ significantly from that of the opponent which are expected methods of operations.¹⁶ It includes use of or seeking to use psychological impact such as shock or confusion that affects opponents initiative, freedom of action or will.¹⁷ Asymmetric methods requires an appreciation of the opponents vulnerabilities involving innovative, non traditional tactics, weapons and technologies.¹⁸

Strategies:

Asymmetric warfare involves the use of strategies to put the opponent to a disadvantage. The strategies refers to tactics or wisdom, style adopted to weaken the opponent. Strategy can be in the form of psychological warfare, propaganda and use of other variable even outside the battle field and theatre of war.

Terrorism is a part of strategy or tactics used by the weaker side in an asymmetric warfare. Strategies may involve use of "spies" and mercenaries who may appear as non-actors in the conflict but they penetrate the strong holds of the opponent and gets useful information about the weak points of the opponent which are subsequently used against such opponent to the advantage of the enemy.

Asymmetric Actors:

The asymmetric actors are persons who has a stake in the warfare. They are also called participatory asymmetries. Among these actors, some participate actively in the conflict while others do not participate and by the rules of armed conflict, they are not subject of military objective or attack. The asymmetric actors include the combatants, the individual civilians and civilian population as well as their properties. The combatants are actively participating in the war and are prone to be attacked; the civilians and civilian population are not in active participation and are protected. The means, methods, technologies and other asymmetries in the warfare are designed and applied only for military objective and not against the non-military actors or targets. However sometimes, due to use of unconventional and dissimilar means, methods and technologies in asymmetric warfare, those protected

¹³Ibid.

¹⁴W.H. Heinegg (Ibid).

¹⁵Ajey Lele "Asymmetric Warfare: A State Vs Non State Conflict" Institute Of Defence Studies, India..

¹⁶Ibid.

¹⁷Ibid.

¹⁸Ibid.

above like the civilians and civilians population may be attacked and with such, those affected are left in dilemma as to whether the old law of war "Humanitarian Law" should apply or whether it has a place in asymmetric warfare, whether it has not and if it has no place, should it be applied or a new law be developed. It is reasoned that the law has potentials to regulate asymmetric warfare and should be applied as asymmetric war is not a novel phenomenon in warfare only that systematic approaches should be adopted to address the new concerns of this specie of warfare.

Asymmetric Warfare And Strategies Applied In Conducting The War.

Asymmetric warfare has always been challenged by problem of definition. However, looking at it from the historical perspective of old method and new methods of war, the word asymmetric war has not changed from being a war between two unequal parties with dissimilar and irregular use of means and methods, technologies and other asymmetric to the disadvantage of the opponent. According to Robert J. Bunker, asymmetric warfare is warfare other than conventional conflict put up by an army of a state.¹⁹ In the above context, asymmetric warfare is mostly covert war waged at low intensity by guerrilla groups, religious groups, religious cults, drug cartels and even special force components of a regular armed force.²⁰ Previous studies clearly suggest that asymmetric war is war of will and sometimes involves issue of "tangible and intangible resources, "social and territorial defence, physical versus psychological attrition, colonial and non-colonial guerrilla wars. Importantly, psychological defeat in war is more damaging and long lasting than battle field reverses.²¹ Arguably, the easiest way to achieve this is to attack the enemy where it feels comfortable and confident and the attack will unsettle the enemy and create confusion in its camp or territorial enclave.

Many scholars insist that the world has witnessed a revolution in political affairs and with major powers unlikely to go to war with each other. They are likely to intervene in conflicts involving weak states, militant groups, drug cartels and terrorists. The theory holds well not only for big powers but also for developing powers that understand the limitations of wars in conflict resolution. Some other times, some weak states have challenged the state's authority and succeeded. A good example is the Vietnam-America war. During the last decades however, a new phenomenon has been observed where in some weak powers/failing states have started challenging the authority of strong powers by covertly supporting non-state actors.²² Asymmetric warfare is not synonymous with terrorism and should not be confused. However, the continuous use of the words interchangeably and the continuous use of terrorist tactics or terrorism as a tactic in asymmetric wars is the aspects that creates the confusion as to the distinct meaning of the two concepts.

Indeed, without mincing words, from the above review of the thinking of scholars, our candid understanding of the interchange and interrelationship between asymmetric warfare and terrorism is that terrorism is a part of tactics used by the weaker side in an asymmetric conflict.

¹⁹Ibid.

²⁰Ibid.

²¹Ibid.

²²Ibid.

Nonetheless, terrorism may also be described as asymmetric war by advocates for partisans using terrorist methods, to avoid confusion occupying powers often label partisans as terrorists as a planned propaganda campaign to maintain support in their home country and to win over the occupied people so as to cut off the partisans support base. This is the root of the phrase "one man's terrorist is another man's freedom fighter". One may seriously look at asymmetric warfare both within the context of international armed conflict where two states with definite territories are in war and their forces are fully engaged. Usually and very often, one may be stronger than the other or they may have strong forces adopting different methods and technologies, each trying to use dissimilar methods to weaken the enemy sometimes to the extent of violating the rules of war and engaging in unlawful acts and going beyond prohibited boundaries leading to the intervention of United Nations. There is also the case of non-international armed conflict where the warfare is between the organized military power or forces of a state with non-state arm bearing actors as well as non-state actors seamlessly without arms but uses tactics that weaken the organized state forces and put them in a confused state both within the armed forces itself and among the leaders in the government of such states.

Coming to Nigeria which is similar to the situation in some other African states, the government in the states deploys the armed forces against perceived terrorists but who are seen and recognized by their home people as freedom fighters fighting for the liberation and emancipation of their people against deprivation and marginalization. General Olusegun Obasanjo as president of Nigeria deployed members of the Nigerian army against members of the Niger Delta Militants who are target terrorists for alleged disappearance of some security personnel in Bayelsa one of the states in South South Nigeria. Much as there was no constitutional support of the president's action as the alleged disappearance was a crime in which the police than the army are empowered to investigate, the people of South South do not see the militants as terrorists but rather see them as freedom fighters and persons dedicated to the emancipation of the region from the continued degradation of the environment and deprivation of the people of many amenities of life notwithstanding the huge resources from the region used to sustain and develop other parts of Nigeria. Similarly, the current administration of General Mohammed Buhari which has been rated as the most nepotic and tribalistic in Nigerian history has not hidden her hatred against the Igbos in the South East and this has been clearly demonstrated in his lopsided appointments against the Igbos, in the security architecture of Nigeria, not only that it is dominated by northerners and specifically Hausa Fulanis, there is no one single Igbo among the service chiefs and other security portfolios. The people from southeast have suffered in the hands of leaders of Nigerian state, past and present and Buhari is the worst in history inclined to this marginalization of the Igbos, some persons started different organizations ranging from "MASSOB" IBM and the "IPOB". Much as the groups have shown commitment to peaceful agitation for secession which is recognized by international law, they have adopted all principles within the letters of international law and diplomacy including sensitization and awareness creation, advocacy on Biafran liberation within and outside Nigeria. Instead of engaging the 'IPOB' constructively, the Buhari led government and its Cabals saw nothing good in the agitation and rather cowardly used the lame ducks in the judiciary and nations law office controlled and dominated by Hausa Fulanis and secured an "Exparte order" proscribing the group as terrorist group. Amidst the proscription of IPOB as a terrorist group, the same government treats the "Fulani herdsmen" perpetrating all forms of crimes and terrorist activities in Benue and

other parts of Nigeria with kidgloves and has not declared them as terrorists even when the herders have been declared terrorists in other climes. In addition, the federal government that knows members of the Boko Haram as terrorists as well as members of ISWAP has not faced the groups with the harshness and impunity it uses for the "IPOB" members who are mere freedom agitators. The laxity and liberality shown by federal government for the Boko Haram and ISWAP members and the tough and strong misguided impunity on "IPOB" by Buhari himself and his Nigerian military leaves much to be desired, the invasion of the military of the country home of IPOB leader leading to the death of many innocent civilians in 2016, has no legal justification. The hunting of IPOB leaders and members by the state military forces and the free hand given to the Fulani herders to operate in the south east and other parts of Nigeria has made the "IPOB" as an organization to establish its security wing the "ESN" Eastern Security Network to secure the Biafran land. Since then, it appears that the stage is set for an armed conflict where different tactics and strategies are applied. The "IPOB" has no doubt adopted many asymmetric including propaganda, psychological strategy as well as strong technologies. The climax is the abduction and detention of its leader Nnamdi Kanu by the Nigerian authorities which the UN working Group on Human Rights has considered as serious infringement on his human rights protected by the UN charter on human rights and other international instruments which Nigeria is a party to and owe obligation to observe its provisions and mandates. The body has also called for the release of the detained freedom fighter. It is noted that following the heinous abduction of Kanu and his "so called extradition to Nigeria from Kenya without due process of global best practices, there has been global condemnation of the Nigerian state and Kenyan authorities both within and outside the states. Nigerians have also criticized the high handedness of Nigerian authorities and the treatment extended to him in the DSS custody especially with respect to limitations and restrictions against him from access to his visitors, family members, doctors, lawyers including his foreign attorneys etc. The IPOB however has not rested and has utilized the social media spaces to launch campaigns against the Nigerian authorities regarding the impunity against its leader. The "sit at home" order and declarations being imposed in all Biafran lands and the strict compliance in the five states in the eastern Nigeria and the recent noticeable compliance by Biafrans in their different places of business in other parts of Nigeria no 'doubt has created national and global attention about the struggle and there is no day that passes for the Nigeria authorities not to make one official statement or the other about "IPOB". This is a big success for the group because/ it means the approach or strategy adopted by the group is creating confusion in the camp of the Nigerian authorities.

Asymmetric engagements are battle's between dissimilar forces. These engagements can be extremely lethal especially if the force being attacked is not ready to defend itself against the threat. It is a war between two sides with dissimilar goals which the fight is highly asymmetrical from the start²³ Asymmetric warfare is non-traditional kind of warfare. This is so because, it does not use the traditional methods of big armies facing each other in the battlefield and using similar methods and weapons. Asymmetric warfare uses new technology to defeat the superior but with inferior technology.²⁴ In simple parlance, asymmetric warfare involves attacking an adversary's weaknesses with unexpected or innovative means while avoiding his strength. Thus, the superior power seen as the enemy is attacked by the inferior power who takes the

²³Ibid.

²⁴Hughes "studies on asymmetric warfare" (see A. U. Abonyi, lecture series, international humanitarian law, COOU, 2020/2021/2022).

unexpected action capitalizing on the weaknesses of the superior power and not forgetting the strength of the superior powers but does what it plans to do to weaken the strength of the superior power or at best unsettle them by either creating confusion or raise a surprise.

Asymmetric strategies from the above, attack vulnerabilities not appreciated by the target (victim) or capitalize on the victims' limited preparations against any possible threat. The strategies adopted is usually different from the strategies of war adopted by the victims or even the ones adopted in the recent history. The strategies serve some objectives that are political in nature and very distinct from that of the victims.

The summary of the above is that asymmetric warfare encompasses and combines everything and achieve the main purpose of bringing these methods, strategies, tactics, weapons and personnel that alters the battlefield to negate the other's advantages. Asymmetric warfare is a form of warfare where non-state actors' uses unconventional tools and tactics against a state's vulnerabilities to achieve disproportionate effect and undermine state's will to achieve its strategic objective. This view which is pioneered by Ajey Lele is quite clear and shows clearly that this specie of warfare is deliberately staged by an inferior actor against a superior actor using tactics and methods that makes it practically difficult if not impossible to achieve its objective. The "Punic War" was declared by Rome to extend its empire to Spain. It ended up being the most classic case of asymmetric war in history. The attack by the Young Carthaginian General, Hannibal on Saguntium, a Spanish Town claimed by Rome in an unconventional manner by speed matching about 40,000 men with even about 9000 Calvary troops and a detachment of African elephants across the Alps into Italy in 14 days even though led to loss of some of his men but yielded good results.

Hannibal defeated the Romans; numerically, Hannibal's army never matched the ones that the Romans had²⁵. Hannibal's unconventional tactics using raids and threat to contest paved way.

In the sixties, the Americans chose Vietnam as a place to draw a line for communist expansionism. In 1964 in particular, a presumed North Vietnamese attack on the cruiser Maddox led to an American retaliatory strike. In 1965, an attack on American's adviser's barracks in the central high land city of "pleiku" triggered a retaliatory raid. Subsequently, the US combat units were fully committed and the presence of their troops began to grow up to about 543,000, by early 1969 as confirmed by Kissinger²⁶, many Americans were killed and many became wounded either physically or mentally.²⁷ This war that lasted for many years can be classified as a classic form of asymmetric war in recent times. If one compares the strength of American forces, it cannot be equated in any manner with that of Vietnam but the Vietnamese used unconventional tactics of the raid which caught the Americans to sizes. In strict sense of it, during the said war, the US forces were superior in all departments from firepower to manpower. What cost them dearly was their underestimation of the opponent. The North Vietnamese lacked technology and financial resources but they were focused and committed and had the tenacity²⁸. The

²⁵Ibid.

²⁶Kissinger "On Asymmetric War" Kissingeronline.Edu.com. War (Also AjeyLele (Supra).

²⁷Ibid.

²⁸Ibid .

Vietnamese were ready to pay any price to achieve their goals and they did and succeeded in killing many Americans leaving many also badly wounded.²⁹

Another war of interest is the Persian Gulf War in 1991. It was asymmetric in nature. Iraq Launched Acid Missiles and the coalition used stealth aircraft to fire precision weapons against the Iraqis. American air strikes on mobile scud launchers during this war were aimed at wrecking Iraqis tactical capability to launch ballistic missiles. Air power helped and assisted America to achieve her goals of immediate complete and unconditional withdrawal of Iraqis forces from Kuwait and restoration of Kuwait legitimate government. The Persian Gulf War proved that it is not always the weaker power that gains victory due to asymmetry but they do occasionally. The stronger power also can due to asymmetrical advantage in its technology and other variables including firepower. The above examples show how asymmetric warfare is using something extra ordinary never seen or used before to gain advantage.

Thus, in asymmetric warfare, both the strong and the weak power or side can or may win. The ultimate decider of who wins is dependent on how each side the stronger power or the weaker power uses her asymmetry or asymmetries to its advantage against the opponent. The asymmetry or asymmetries might be the means and method adopted, it can also be the technology, it can equally be the psychological tactics or any other design that put up a shock and surprise to the opponent leaving her in a state of confusion and crisis and by this ensure that the opponents is destabilised to sustain the tempo of the war and by this fall prey into the hands of opponent irrespective of how strong or inferior its power may be.

Responses to Asymmetric Warfare and the State of the Law:

In Nigeria as is the case in many other developing countries, there is growing tendency of growth of non-state actors bearing sophisticated and this has led to intra state conflicts that are often premised on religion or tribal or ethnic affiliations. Such intra state conflicts become more volatile and violent such that the peace and stability of such parts affected are not only threatened but also, the security of the entire state becomes endangered.

In Nigeria, there are several non-state actors bearing different categories of arms including the Fulani herdsmen, under the aegis of Miyeti Alah Cattle Breeders Association (MACBAN), the Boko Haram Islamist Sect, the ISWAP, the Odua People's Congress (OPC) and very recently the Security Wing of the indigenous peoples of Biafra (IPOB) called the Eastern Security Network (ESN).

The said non-state actors no doubt have been actively involved in what looks like intra state conflict using means and methods and asymmetries that make some of them to be regarded as terrorists. The Boko Haram and ISWAP have adopted guerrilla tactics and involved asymmetries that mostly devastate the state actors. This has led to their successful attacks and operations against state institutions and military facilities and security based outfits unreel by the state forces. A good example is the bombing of the UN Office in Abuja, the bombing of churches in Abuja and other parts of Nigeria, the

²⁹Vietnam history 3 (Vietnamese history.Com.online).

successful attacks of schools and abduction of students of the Chibok Girls saga, and so on, the recent attack of the Kaduna Rail Facility, the attack of the Nigerian Defence Academy (NDA) and most recently the attack of the Maximum Federal Correctional Facility at Kuje where many inmates were freed and where many past governors and members of the nations parliament are serving their jail terms.

In the presence of all the above, the questions that come to mind are many and their answers are far to be seen namely:

- a. Is asymmetric warfare only known to international armed conflict?
- b. Is asymmetric methods and tactics applied in non international armed conflict?
- c. Are non-state actors permitted under contemporary international law to adopt asymmetric tactics or technology in the execution of intra-state conflict?
- d. Can International Humanitarian Law be used to regulate intra state conflict orchestrated mainly by non-state actors against the state actors and ones between one non-state actor and another non-state actor?
- e. Is any lesson or impact in place from the local legislations to address the challenge posed by asymmetric conflict?
- f. What should be the better response or options towards addressing asymmetric warfare whether in international and non-international armed conflict?

It is noted that in asymmetric conflicts; there is seemingly no dividing line between combatants and civilians resulting in attacks on civilian population and-even individual civilians. The situation is the same whether the conflict is international among states or non-international armed conflict between state forces and other non-state arm bearing actors.

As Heinegg reasoned, one of the core problems posed by asymmetric warfare is intentional violation of the law of armed conflict by asymmetric actors³⁰. The asymmetric actors do not observe the rules of humanitarian law regarding the means and methods of warfare, and also the rules relating to attack on civilian targets and cultural properties and other rules regarding those captured and even the wounded and those participating but no longer in active participation in conflict.

Asymmetric actors in armed conflict either intentionally violate the principle of distinction or endeavour to incite their opponent to act in violation of that intransgressible principle of the law of armed conflict.³¹ The law of armed conflict provides a rather clear response to any form of asymmetric warfare that aims at blurring the principle of distinction whether by disguising as civilians, by abusing civilian objects for military purposes or by direct attacks against civilian population or individual civilians³². The problem practically persist. Where non-civilians disguise as so and the decision not to attack civilians remain, it will be a suicide mission for the enemy who regards those combatants that disguised as civilians and fail to identify that they are not or discovered very late that they are not. The situation becomes even worse where attack against civilians is prohibited and an enemy in

³⁰W. H. Heinegg (supra)"Asymmetric Warfare: How To Respond", International Law Studies, Vol 87, Pedrozo And Daria Editions.

³¹Ibid .

³²Ibid.

observance of the rule prohibiting the attack falls victims into the hands of the opponent. Combatants who do not distinguish themselves properly when engaged in hostilities do not enjoy combatant immunity nor do they enjoy prisoner of war status when captured. Though such combatants may be prosecuted for their conduct, prosecution alone without more is considered by many military commanders to be an insufficient response to their practical problems.³³ We share the views expressed by the military commander because mere prosecution of such combatants cannot be compared nor can it be equated with grave consequences of their action leading to deaths of civilians and destruction of civilians and cultural properties i.e "proportionality principle". Similar problems exist with principle of proportionality. The law of armed conflict prohibits attacks that result in the incidental loss of civilian life, injury to civilians or damage to civilian object. Such "collateral damage is a violation of the law of armed conflict only if it is excessive in relation to the concrete and direct military advantage anticipated. In view of the prohibition, and in view of the consideration of the civilian losses in armed conflict, an asymmetric actor will either seek and attempt to provoke the opponent into an attack causing excessive collateral damages or to make the public to believe that an attack has been disproportionate³⁴ where the violation of the principle of distinction is systematic, it portends considerable risk that the opponent applies different standards for the assessment of proportionality.³⁵ If this systematic tactics are employed for strategic purpose, the enemy no doubt will feel a compelling and overriding necessity to attack irrespective of the anticipated civilian casualties and damage.³⁶ This is even though that prohibition on excessive collateral damage is clear and unambiguous.

It is noted that usually military necessity is considered and play important part especially when the military advantage is considered but no matter, the military necessity or advantage, such cannot justify the violation or deviation from the well established humanitarian standards of the rules and law of armed conflict. We agree completely that no matter how the enemy may assess and attempt to justify the attack on the basis of military necessity or the otherwise, there is significantly no basis why it should take advantage in pretence of military necessity and cause excruciating suffering and damage that is proportionately unjustifiable against civilian population or individual civilians or their objects. This violation of humanitarian law of armed conflict no doubt will be seen as unwarranted, baseless and the damage must accounted for. In some instances, asymmetric actors deliberately act contrary to their obligation as well as rules of engagement when they use civilians as shield and cover and do not take precautionary measures to protect the civilians and more often expose the densely populated civilian enclaves to military objective which no doubt lead to colossal damage. The opponent is prevented from attack if it appears it will result in collateral damage and by implication, it may be seen which is true that the law of armed conflict itself condones and provides privilege for unlawful conduct³⁷. Unlawful conduct in the sense that, those using the civilians as a shield are prohibited to do so but they go ahead and do it and will be the people that will raise alarm that the civilians should not be touched.

³³Ibid.

³⁴Ibid.

³⁵Ibid.

³⁶Ibid.

³⁷Ibid.

Another problem envisaged is the obligation on the attacker to do everything within her disposal to limit or reduce attack of lawful targets and minimize damages but it is still confusing why a party with sophisticated weapons will be subjected to choose which and which weapon to be used and others not to be used. The purport of the above is that even though such advanced weapons exist, it does not rule out the possibility of using less sophisticated ones. The sophisticated weapons are highly expensive and should better be reserved for attacks on more important targets. However, advanced weapons by law should be handled with precaution.

It is observed and well reasoned too that the "Law of Armed Conflict" and "Arms Control Law" which is increasingly merging into a single regime called "Humanitarian

Arms Control Law" provides a set of rule that either prohibit the use of certain weapons or restrict their use in certain circumstances.³⁸

In asymmetric warfare, the weaker party may be inclined and ready to disregard such prohibitions or restrictions and attempts to justify her deviation from the rule by reference to the superiority of the opponent. Thus, the weaker party seeks to gather sympathy and sentiments and emotion to its advantage. However, the international committee of the Red Cross has always taken a stand that where a party to a conflict in violation or deviation from the rules takes immediate and undeserved military advantage, the opponent in self defence may resort to similar measures. Such justification has no basis in law in the sense that it is elementary that the mere fact that a party take for instance United States has a superior power will not make the Iraquaian forces to use weapons that are prohibited under the law of international and non-international armed conflict. Thus, threat to imminent defeat does not permit the weak party to resort to the use of weapons or method prohibited by law. The confusion becomes very wide and elastic considering the advisory opinion of the international court of justice in its nuclear weapons when it held that the use of nuclear weapons is contrary to the law of armed conflict unless the "very survival of a state is at stake". The term "imminent threat of defeat" can also be interpreted as an act or situation affecting the very existence of the state, it is considered that any act that amounts to "threat of defeat" can also be seen as capable of touching the very survival of the state", if threat of defeat does not stand as a valid ground to use prohibited method or weapons, then an act touching on the very existence of a state should equally not be regarded as a sufficient ground for a state to use method or weapons prohibited.

After all, if there is threat of likely defeat, it shows amounts that something that shall affect the foundation of the state is about to happen and if it happens, the state can no longer survive but will come to an end.

The main features of asymmetric warfare are:

- i. Suicide bombings
- ii. Use of human shields.

³⁸Ibid.

It is interesting to note that the law of armed conflict does not prohibit suicide attacks unless conducted in the most perfidious means. Importantly, by the provisions of Article 5(1,9,7) of Additional Protocol 1, the use of the presence and movement of civilian population or individual civilians to disrupt military objective or military operations or create immunity from military attacks is prohibited. Thus, attempts to shield military objective from attacks, or to shield favour or impede military operations reflects customary international law.³⁹ The law of armed conflicts provides solution (though not complete) to cope with issue of human shields by distinguishing between involuntary human shields,

- i. Voluntary and
- ii. Involuntary.

Human shields is voluntary where the civilians on their own decides to be used as shields and provides themselves to be used by combatants as shields to deceive the enemy and carryout a successful military objective or military objective taking the enemy as a surprise. Involuntary shields may be referred to as shields that are compelled, the civilians are used as shields against their choice and wish and they are doing it because they are mandated to do it. For the former, the civilians involved are prone to attack because they are regarded and recognized to be taking active part in the hostility and participating completely in the conflict and are not immune from any attack nor are they entitled to protection nor do they enjoy immunity from being attacked and the law of armed conflict prohibits such practice. Attacks against a shield military objective will be prohibited especially considering the direct military advantage anticipated. Whatever the case may be, it has also been argued by scholars⁴⁰ that using voluntary and involuntary shield as solution may not provide last solution because:

- i. It is difficult and practically unrealistic to determine whether a person freely or willingly or deliberately decided to serve as human shield or
- ii. Whether he was forced to act as human shield.

Invariably, where as the law of armed conflict may not necessarily prohibit a "shielded lawful agent" e.g. voluntary shield, this will make it difficult to prove or provide defence for death of civilians politically. In asymmetric warfare, the weaker party consciously uses the tactics of human shield to exploit the opponent's dilemma and this situation take advantage. Thus, the use of law as solution is neither here or there.

Findings and conclusion:

a. Findings:

Asymmetric warfare is a complex and complicated form of warfare. We concede completely that the application or adoption of law as solution to asymmetric warfare is obviously difficult and inestimably impossible. The reasons is not unconnected with the fact that state and non-state asymmetric actors involve many and different kinds of asymmetric to their advantage and to the detriment of the other party, it has been observed that some asymmetric actors engage

³⁹Ibid.

⁴⁰Ibid.

in the deliberate and continuous violation of the law and principles of armed conflict and owing to which it is not possible nor is it realistically believable that the tendency of one actor or group of actors respect and observance or adherence to the law will increase where as the other actor or actors inclination to violate the laws remain steadfast and unchanging.

As Heinegg posited, reciprocity is an important factor in monitoring the continued effectiveness of the law of armed conflict. If one party to an armed conflict intentionally and systematically disregards its rules and principles to achieve a military or political objective, the opponent's readiness to-comply with the law may steadily decrease⁴¹ no one person has the monopoly of violence or monopoly of arbitrary disrespect of the law to its advantage, if "A" systematically and deliberately continues to go against and act contrary to the law to his advantage, the tendency for "MR B" to continue to comply with the law will decline or decrease. This is also in accord with natural law principles, even the natural individual instincts does not oppose the above response or reaction.

It is observed that law of armed conflict is flexible to respond to the asymmetric actor's conduct. Whereas it is true that much burden exist on the law abiding party to bear when the law is intentionally and deliberately violated, the thinking is that we should not overlook and abandon the achievements made over the years in the back with the law and destroy it because of the actions of the actors disobeying the laws.

According to Grange⁴², strategists define asymmetric warfare as conflict deviating from the norm or it is an indirect approach to affect a counter-balancing of force. Combatants negate or avoid the strength of others while applying ones strength against another's weakness⁴³ a group or state can defeat US in conventional warfare but this becomes possible when adversaries turn to asymmetric strategies.⁴⁴When conventional tactics are used unexpectedly, according to the situation, they take on the element of surprise and increase in strategic value.⁴⁵

At present time, the US has no identified conventional war-making peer as we had prior to desert storm, the absence of this global peer competitors makes the world more uncertain, more unstable and difficult to anticipate⁴⁶. As the sole superpower, and with US presence round the world, the country has become a big and inviting target⁴⁷ the US engages in humanitarian assistance, peace keeping and enforcement of UN or NATO sanctions and maintains bases for force projection worldwide. It is notable that the adversaries of US confront their power with range of asymmetric actions that take them by surprise but US have responded with a cold war mentality. A look at the Russian invasion of Ukraine leading to Ukraine war has shown this, whereas the United States have condemned the invasion and clearly made its stand known, it has not openly

⁴¹Ibid.

⁴²D. L. Grange "asymmetric warfare, old method, new concern national strategy forum review, winter 2000.

⁴³Ibid.

⁴⁴Ibid.

⁴⁵Ibid.

⁴⁶Ibid

⁴⁷D.E. Long "Countering Asymmetrical warfare in 21st century" A Grand strategic vision centre for contemporary conflict, bimonthly electronic journal, California.

taken up arms against Russian but it is within public domain that the US has given part on the back of Ukraine. Practically,, the strongest weapon that US adopt is diplomacy and it has worked out for them.

It is also a serious discovery that while asymmetric warfare has come to stay, there is little or no lesson learnt now on how to counter its threats.

While it is heard that asymmetric combatants are deranged or mentally sick and morally depraved, many argue that asymmetric warfare is founded on the extremist ideology and extremism is the motivating factor in convincing people to do evil just like the Islamic jihadism that imbibes hatred on the people towards the perceived enemy and such enemy cannot be spared and every method or strategy is adopted to get rid of such perceived enemy.⁴⁸

In conventional warfare, the belligerents deploy methods of similar type and the outcome can be predicted. This is not the case of asymmetric war⁴⁹ however this prediction may not be easy as stated above as was seen during the French revolution and Napoleonic wars where the French army and UK's Royal Navy stood side by side in a war described by Napoleon Bonaparte as one between the elephant and the whale.

In asymmetric warfare, tactical basis may prove a difference and many asymmetries may be used by a party to put the enemy at a disadvantage to its own advantage including technological advantage, unconventional advantage, prohibited tactics are used by the weak party against the stronger power with corresponding attitude to obey the law and refrain from such prohibited tactics.⁵⁰

Parties especially the weak party uses terrorism tactics and use terrain tactics i.e method and strategy that limits mobility such as forests and maintains "difficult terrains and even urban areas can be difficult terrains where "rubbles" are used to block the good roads and make them inaccessible especially when the rubbles are prolonged. Finally, it is common understanding that civilians play great role in asymmetric warfare either in issue of getting and passing information or also in either being used as shields or voluntarily submitting to be used. War by proxy is also adopted where sympathizers of a state actor attack the enemy and the state denies knowledge of the attack even though they may know. This is the principle of attack and deniability. It is also creates a problem.

Conclusion:

Asymmetric warfare is more devastating than the conventional war. War should be regulated but a situation where some asymmetric actors intentionally engage in prohibited actions, the law of armed conflicts and humanitarian law control should make for a liberal ground granting opportunity for the party inclined to obey the laws should be allowed to defend itself using proportionate military action to come against the international law breaker.

⁴⁸Ibid .

⁴⁹Wikipedia on line "Vietnam war" Wikipedia.html.

⁵⁰Ibid .

Recommendations:

Having reviewed the above, it is recommended:

1. That the law of armed conflict should be strengthened to ensure that the intentional violation of law of armed conflict faces great sanction than allowing the party complying with the law to be helpless in a bid to respect the sanctity of the law while confronted with such violation. Whereas the law must be protected and respected, minimal provision of opportunity for defence must be permitted.
2. Voluntary choice of civilian shields for military objective and operations should as it is under the law not be accorded protection as such civilians involved should be seen to be actively participating in conflict and are not immune and should not be immune from attack.
3. The seeming hasty and vague interpretation of act amounting to "threat to defeat the enemy" and act likely to affect national security has to be resolved. The two phrases should be seen as of grave and serious concern to the survival of a state and none should be seen to be less dangerous to the other.
4. Parties in asymmetric warfare should not undermine the power and potency of the adversary no matter the superiority of its technology or other asymmetries because both the weak party and stronger party stand chances of defeat at any time and chance to win too.