

Lake Chad Basin, Multinational Joint Task Force and Boko Haram

Case prepared by Mr. Tadesse Kebebew, LL.M., student at the Geneva Academy of International Humanitarian Law and Human Rights, under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source:** African Union, Report of the AU Chairperson of the Commission on Regional and International Efforts to Combat the Boko Haram Terrorist Group and the Way Forward, available at: <http://www.peaceau.org/uploads/psc-484-rpt-boko-haram-29-1-2015.pdf>]

I. INTRODUCTION

1. At its 469th meeting held on 25 November 2014, Council considered the regional efforts being deployed to combat the Boko Haram terrorist group and agreed on steps to be taken by the Commission in support of the Member States of the Lake Chad Basin Commission (LCBC) and Benin. [...] At their 5th ministerial meeting held in Niamey, Niger, on 20 January 2015, the LCBC Member States and Benin requested me to, inter alia, submit to Council a report on the regional and international efforts being deployed in the fight against Boko Haram, particularly the Conclusions of that meeting, in order to enable it [to] authorize the deployment of, and mandate, the Multinational Joint Task Force (MNJTF).

2. This report is submitted in pursuance of Council's communiqué of 25 November 2014 and the Conclusions of the Niamey ministerial meeting. [...]

II. EVOLUTION OF THE SITUATION ON THE GROUND

3. During the period under consideration, the Boko Haram terrorist group has continued to carry out numerous attacks, targeting civilians, police, churches, mosques, and public facilities, including schools. In early January 2015, Boko Haram overran a military base in northeastern Nigeria that was the headquarters of the MNJTF located in Baga, Borno State. The group then forced thousands of people from the region, burnt and destroyed homes and businesses, and committed mass killings. Mention should also be made of the 10 and 11 January 2015 suicide bombings in Maiduguri, Borno State, and Potiskum, Yobe State, reportedly involving children coerced by Boko Haram to act as suicide bombers.

4. Since 2013, the Boko Haram terrorist group has frequently attacked towns and villages, security outposts and schools, and has also kidnapped civilians, foreign tourists and missionaries in the border regions of Cameroon. Recently, there has been an increasing number of attacks in the Lake Chad Basin region along Nigeria's borders with Chad and Cameroon and in the northern provinces of Cameroon.

[...]

7. [...] The Security Council demanded that Boko Haram immediately and unequivocally cease all hostilities and all abuses of human rights and violations of international humanitarian law, and disarm and demobilize. It also demanded the immediate and unconditional release of all those abductees who remain in captivity, including the 276 schoolgirls abducted in Chibok, Borno State, in April 2014. The Security Council recognized that some of these acts may amount to crimes against humanity and stressed that those responsible must be held accountable. [...]

8. At the Niamey ministerial meeting of the LCBC Member States and Benin of 20 January 2015, the participants noted that, since its emergence, the Boko Haram group has distinguished itself through violent attacks on civilians, summary executions, looting and destruction, abduction and continued attacks against the defense and security forces of the countries of the region. The participants strongly condemned the attack on Baga, which culminated in a large-scale massacre considered as a crime against humanity. [...]

9. As noted by the Niamey ministerial meeting, the attacks and other abuses committed by Boko Haram have resulted in massive internal displacement. [...]

III. REGIONAL AND INTERNATIONAL EFFORTS

[...]

11. Council will recall that, at its Summit meeting on terrorism and violent extremism held in Nairobi on 2 September 2014, the issue of Boko Haram was discussed extensively. More specifically, Council urged the countries of the region to take the necessary steps towards operationalizing the mechanisms agreed upon to address more effectively the threat posed by Boko Haram.[...] The countries of the region pledged to

contribute a battalion each to the MNJTF, while the partners committed to facilitate the early operationalization of the RIFU [Regional Intelligence Fusion Unit] and offered training to the Nigerian and regional forces engaged in the fight against Boko Haram and other terrorist groups. The meeting recognized that, in addition to law enforcement, military and intelligence cooperation, security and stability can be achieved only through an approach that includes respect for human rights, alleviating poverty and creating jobs, strengthening the rule of law, improving education and protecting the rights of women and girls.

[...]

14. On 14 January 2015, the Government of Chad pledged active support in the fight against Boko Haram. [...] Since then, Chadian soldiers have been deployed in Northern Cameroon. [...]

[...]

IV. AUTHORIZATION FOR THE DEPLOYMENT OF THE MNJTF

17. As indicated above, the Niamey ministerial meeting of 20 January 2015 requested Council to authorize the deployment of the MNJTF and mandate the Force. [...]

18. Furthermore, it will be necessary to develop a concept of operation that would outline the strategic objectives of the MNJTF and address all relevant aspects of the planned operation, including command and control, the support concept, the rules of engagement, and guidelines on the protection of civilians that mainstream the UN Human Rights Due Diligence Policy (HRDDP), which is a critical element for obtaining UN support for non-UN operations. [...]

19. While this process is underway, it is recommended that, in support of the efforts led by the LCBC Member States and Benin, Council authorize the deployment of the MNJTF, for an initial period of twelve months renewable at the request of the LCBC Member States and Benin. In line with the overall objective set by the countries of the region during their various meetings, as captured above, it is proposed that the MNJTF be mandated, within its Area of Operation (AoR) as will be determined in the concept of operation, to:

i. create a safe and secure environment in the areas affected by the activities of Boko Haram and other terrorist groups, in order to significantly reduce violence against civilians and other abuses, including sexual- and gender-based violence, in full compliance with international law, including international humanitarian law and the UN HRDDP;

ii. facilitate the implementation of overall stabilization programmes by the LCBC Member States and Benin in the affected areas, including the full restoration of state authority and the return of IDPs and refugees; and

iii. facilitate, within the limit of its capabilities, humanitarian operations and the delivery of assistance to the

affected populations.

20. Within the framework of the mandate outlined above and in its AoR, the MNJTF contingents deployed within their national territories, may carry out a number of tasks. These will include the following:

- i. conducting military operations to prevent the expansion of Boko Haram and other terrorist groups activities and eliminate their presence;
- ii. facilitating operational coordination amongst the affected countries in the fight against Boko Haram and other terrorist groups, including on the basis of the intelligence collected by the LCBC Member States and Benin and/or availed by external partners;
- iii. encouraging and facilitate the conduct of joint/simultaneous/coordinated patrols and other types of operations at the borders of the affected countries;
- iv. preventing all forms of transfer of arms and ammunition and other type of support to Boko Haram and other terrorist groups;
- v. ensuring, within its capabilities, the protection of civilians under immediate threat, IDP and refugee camps, humanitarian workers and other civilian personnel;
- vi. actively searching for, and freeing all abductees, including the young girls abducted in Chibok in April 2014;
- vii. undertaking effective psychological operations to encourage defections from Boko Haram and other terrorist groups;
- viii. supporting, as maybe appropriate, the initial implementation phase of strategies for disarmament, demobilization and reintegration of disengaged fighters into their communities;
- ix. contributing to the improvement and institutionalization of civil-military coordination, including the provision, upon request, of escorts to humanitarian convoys;
- x. supporting regional efforts to arrest and bring to justice all those responsible for war crimes and crimes against humanity;
- xi. ensuring the protection of the MNJTF personnel, facilities and equipment.

V. OBSERVATIONS

[...]

24. Boko Haram's horrendous abuses, unspeakable cruelty, total disregard for human lives, and wanton destruction of property are unmatched. The abduction of the Chibok young girls, the attack in Baga and the involvement of children coerced to act as suicide bombers, as was reportedly the case in Potiskum, mass killings of civilians, hostage taking, sexual slavery and other horrendous acts, are cases in point.

[...]

Discussion

I. Classification of the Situation and Applicable Law

1. How would you classify the situation between Boko Haram and Nigeria? Between Boko Haram and the other countries (Chad, Cameroon, Benin and Niger)? Or what additional information would you need to classify those situations? Does Boko Haram fulfil the requirements for being a party to a non-international armed conflict? Is a counter-terrorism operation regulated under the IHL or law enforcement paradigm? Does it amount to an armed conflict? If so, what is the geographical scope of that conflict? (GC I-IV, Art.3; PII, Art.1)

2. For the armed conflict between MNJTF and Boko Haram, who are the parties to the conflict? Does the fact that the MNJTF contingents are deployed within their national territories [para. 20] affect the classification of the conflict? How does the fact that the MNJTF operates under the leadership and control of the LCBC Member States and Benin affect the classification?

3. (Para. 14) Does IHL apply to the situation in Northern Cameroon where Chadian soldiers have been deployed? Is P II applicable? (GC I-IV, Art.3; PII, Art.1)

4. (Paras 17-20) Does the fact that the MNJTF has an African Union mandate change anything in terms of classification? If the MNJTF were mandated by the UN Security Council, would that have an impact on classification? Why/Why not? How do you compare the mandate of the MNJTF *vis-à-vis* obligations under IHL? Does the mandate have broader scope in terms of protection for civilians?

5. (Para. 7) How does the UN Security Council seem to classify the conflict with Boko Haram? Does the fact that reference only to crimes against humanity mean that there were no violations which would amount to war crimes?

II. Conduct of hostilities

6. (Para. 3) Was the attack on a military base in the northeastern Nigeria that was the headquarters of the MNJTF a violation of IHL? What elements would you need to answer this question definitively? Assuming the existence of an armed conflict, are the 10 and 11 January 2015 suicide bombings in Maiduguri, Borno State, and Potiskum, Yobe State by Boko Haram necessarily violations of IHL?

7. (Paras 3 & 4)

a. Are attacks directed against towns and villages and wanton destruction of property prohibited under IHL of non-international armed conflict? (CIHL, Rules 7-12)

b. Are the rules on forced displacement of the civilian population the same in international and non-international armed conflict? (PII, Art.17; GC IV, Arts.49 (1) and (6), 70 (2), 147; PI Arts.73 and 85 (4) (a); CIHL, Rule 129 (A) and (B), and 130)

c. Is Boko Haram bound to respect such rules? (GC I-IV, Art.3; PII, Art.1)

d. Are churches, mosques, and schools legitimate military objectives? Are they specially protected? Do they become such if they are used for military purposes? (PII, Art.16; CIHL, Rules 7, 8 and 9)

8. (*Para. 8*) Under IHL, are Boko Haram's attacks directed against the defense and security forces of the countries of the region prohibited?

9. (*Paras 3, 4, 8 and 9*) Do the acts of violence mentioned in these paragraphs qualify as acts aimed primarily as to spread terror against the civilian population? (PII, Art.13; CIHL, Rule 2)

III. Treatment of Persons

10. Is Boko Haram under obligation to respect civilians in areas under its control? Under IHL? Under international human rights law?

11. (*Para. 7*) What provisions of IHL would be violated by the abduction by Boko Haram of 276 schoolgirls in Chibok? Are the abductees hostages?

12. (*Paras 7, 8 and 20*) Which acts under these paragraphs could constitute war crimes? What is the difference between war crimes and crimes against humanity?

13. (*Paras 3 and 24*) By forcing children to engage in suicide bombings, what provisions of IHL are violated by Boko Haram? What provisions of international human rights law would be violated?

IV. Implementation

14. Who would be responsible for prosecuting violations of IHL committed by members of the MNJTF? (CIHL, Rule 158; GC I-IV, Arts.49/50/129/146)