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Harry K. Tiwari

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TAKING OFF THE BLINDFOLD: AN END TO IMPUNITY IN NIGERIA

“Many thought . . . that the horrors of the Second World War – the camps, the cruelty, the exterminations, the Holocaust – could never happen again. And yet they have. Our time has shown us that man’s capacity for evil knows no limits.”¹

INTRODUCTION

Following the catastrophic terrorist attacks on September 11, 2001, the international community has witnessed an expansion of terror groups depicting the jihadist ideology² in calculated regions.³ This trend has been acutely felt in the north-western region of Africa and is confirmed by the increase in violent attacks motivated by “ethnic, racial, religio[us], tribal, and national ideologies.”⁴ Nigeria, located in West Africa, has been ranked the third most terrorized country in the world, according to the 2015 Global Terrorism Index,⁵ which reported that “terrorist attacks are much more lethal in Nigeria than any other

1. Kofi Annan, *Advocating for an International Criminal Court*, 21 *FORDHAM INT’L L.J.* 363, 366 (1997).

2. The Muslim religious clergy has not established an authoritative doctrine on jihad. The Arabic word “jihad” means to strive, to endeavor, and to struggle. See M. Cherif Bassiouni, *Evolving Approaches to Jihad: From Self-Defense to Revolutionary and Regime-Change Political Violence*, 8 *CHI. J. INT’L L.* 119, 146 (2007). During the early stages of Islam, jihad represented a spiritual struggle to uphold the faith in a self-defense manner. *Id.* It was a basis for conquest. See *id.* During the World Wars, Muslim fighters called for religious unity against colonialism and called for jihad. See *id.* Recently, violent extremist groups have manipulated the meaning of jihad in a way that lacks theological qualification. See *id.*

3. See Lauren B. O’Brien, *The Evolution of Terrorism Since 9/11*, 80 *FBI L. ENFORCEMENT BULL.* 3 (Sept. 2011), <https://leb.fbi.gov/2011/september/leb-september-2011>.

4. YONAH ALEXANDER, *TERRORISM IN NORTH AFRICA AND THE SAHEL IN 2015*, at 6 (2016). Terror groups have successfully infiltrated North African countries of their “porous borders, vulnerable and corrupt central governments, under-trained and underequipped armies and booming drug trades that provide a steady source of income.” Tom Hundley, *A Country of Their Own*, *PULITZER CENT.* (Oct. 2, 2013), <http://pulitzercenter.org/blog/this-week-africa-mali-terrorism-malaria-united-states-russia-soviet-union-nuclear-energy-film>.

5. Ranked ahead of Nigeria are Iraq and Afghanistan. The closest ranked African country is Somalia at eight. Cletus Ukpog, *Nigeria Now Third Most Terrorized Country in the World– Report*, *PREMIUM TIMES* (Nov. 21, 2015), <http://www.premiumtimesng.com/news/headlines/193626-nigeria-now-third->

country.”⁶ The Nigerian terror group, Boko Haram,⁷ which has tormented the entire African continent, is responsible for the majority of terrorist attacks in Nigeria.⁸ Their assaults include kidnapping school children, attacking churches and government buildings, and using children as suicide bombers.⁹ As a result of these attacks, at least twenty thousand people have been killed, and thousands more have been displaced from their homes.¹⁰

Created by Islamic preacher, Mohammed Yusef, Boko Haram’s mission is to create “God’s kingdom on earth through sharia law”¹¹ and in accordance with the Qur’an.¹² Since the killing of its founder, however, Boko Haram has plotted to overthrow the

most-terrorized-country-in-the-world-report.html. In Nigeria, there were 662 terrorist attacks, 7,512 casualties, 2,246 injuries and 1,512 properties destroyed. *Id.* Accordingly, Boko Haram was responsible for eight of the twenty most fatal terrorist attacks in the world in 2014. *Id.* Another terror group in Nigeria, the Fulani militants, killed approximately 1,229 people in Nigeria. *Id.*

6. *Id.*

7. Boko Haram’s leader, Mallam Sanni Umaru, has stated that Boko Haram does not mean: “Western education is a sin.” FREEDOM C. ONUOHA, AL JAZEERA CTR. FOR STUDIES, BOKO HARAM: NIGERIA’S EXTREMIST ISLAMIC SECT 2 (Feb. 29, 2012). It actually means: “Western civilization is forbidden.” *Id.* The difference is that the first interpretation suggests the terror group is opposed to formal education coming from the West (which is false), while the second interpretation affirms their belief in the supremacy of Islamic culture (it includes education, but not one determined by Western education). *Id.*

8. *See generally id.*

9. Mohsin Ali, *Boko Haram Attacks*, AL JAZEERA (May 07, 2017), <http://www.aljazeera.com/indepth/interactive/2017/01/map-boko-haram-attacks-170116191820253.html>.

10. *See generally id.*

11. Sharia, or Islamic law, is a religious set of principles based on the four pillars of Islam: Qur’an (Islamic Holy text), the Sunna (teachings of the Prophet Mohammed), the Ulama (religious scholars), and the Qiyas (case law). *See* Pavani Thagirisai, *Historical Perspective of the Sharia Project & A Cross-Cultural and Self-Determination Approach to Resolving the Sharia Project in Nigeria*, 29 BROOK. J. INT’L L. 459, 478–86 (2003).

12. *See* Ryan Schmidt, *Absence of Northern Nigeria’s Social Development and the Rise of Boko Haram*, 15 SUSTAINABLE DEV. L. & POL’Y, no. 2, 2015, at 23 (describing the three unique characteristics of an “Islamic movement”—Umma, Dawa, and Jihad). The Umma attempts to unite all Muslims worldwide and restore Islam as a leading force in the world. *See id.* Dawa and Jihad are means to obtain Umma. *Id.* Dawa suggests that the means to fix Muslims society is through community education and unity. *See id.* Jihad attempts to accomplish Umma through various tactical approaches, including violence.

Nigerian government and establish an Islamic state in Nigeria,¹³ while specifically targeting “Western education”¹⁴ and “modern civilization”¹⁵ because of the group’s fundamental belief that Western education is contrary to Islam.¹⁶ Many have attributed the Boko Haram phenomena to Nigeria’s poor governance and eroded economy, where the gap between its social elite and the lower class has broadened.¹⁷ Children are often sent away by their parents at young ages to live with Islamic clerics because they are unable to provide for them.¹⁸ The clerics, however, teach them about the Qu’ran and then they are forced to go out and beg for food. Under these extreme conditions, children often turn to Boko Haram as they are promised food, shelter, and financial security.¹⁹ By many, Boko Haram is seen as a way to escape poverty.²⁰

Thus far, “Boko Haram’s campaign of violence has shattered lives, spread fear, displaced millions and destroyed the social order across . . . Nigeria.”²¹ Boko Haram has also indiscriminately targeted both Muslims and non-Muslims, attacking mosques and Muslim-majority towns.²² It has justified its heinous crimes,

13. See Lere Amusan & Samuel Oyewole, *Boko Haram Terrorism in Nigeria: A Reflection on the Failure of Democratic Containment*, 33 *POLITEIA*, no. 1, 2014, at 41.

14. Ufo Okeke Uzodike & Benjamin Maiangwa, *Boko Haram Terrorism in Nigeria: Causal Factors and Central Problematic*, 9 *AFR. RENAISSANCE*, no. 1, 2012, at 95.

15. *Id.*

16. *Id.*

17. Nigeria boasts a per capita income of \$2,700 USD and a healthy gross domestic product growth rate, yet Northern Nigeria has one of the poorest populations in Nigeria, which happens to be the center of Boko Haram’s network. Analysts suggest government officials embezzle and misappropriate funds instead of developing these regions. See Jidefor Adibe, *Explaining the Emergence of Boko Haram*, *BROOKINGS* (May 6, 2014), <https://www.brookings.edu/blog/africa-in-focus/2014/05/06/explaining-the-emergence-of-boko-haram/>.

18. Charlotte Alfred, *Why People Join Nigeria’s Boko Haram*, *HUFFINGTON POST* (Apr. 16, 2016, 2:31 PM), http://www.huffingtonpost.com/entry/boko-haram-recruitment-tactics_us_571265afe4b06f35cb6fc5951.

19. *See id.*

20. *See id.*

21. Salem Soloman, *Boko Haram: Terror Unmasked*, *VOICE AM. NEWS* (Feb. 2017), <http://projects.voanews.com/boko-haram-terror-unmasked/>.

22. Boko Haram is responsible for at least eighteen thousand deaths since 2009. In 2014, Boko Haram was the world’s deadliest terror group, killing

which include attacks on civilians, kidnappings of schoolchildren, and murders of “nonbelievers,” in the name of jihad.²³

As a result, the rise of Boko Haram has garnered international concern.²⁴ The U.N. chief humanitarian officer in the Sahel region of Africa proclaimed that Nigeria is the key to eradicating Boko Haram, but the eradication process requires international support and cooperation.²⁵ Moreover, the United Nations Security Council²⁶ (“U.N. Security Council”) has condemned Boko Haram’s terrorist acts and stressed the need for international cooperation to combat Boko Haram.²⁷ On behalf of the U.N. Security Council, Cristián Barros Melet, Chile’s Permanent Representative and President of the Council for the month of January 2015, denounced Boko Haram’s attacks and expressed deep concern for its blatant violations of international humanitarian law.²⁸

To prosecute international humanitarian law crimes, the International Criminal Court (ICC) was created with global jurisdiction to be a permanent judicial body for the international

6,644 people. *Id.* In 2015, it was the second-deadliest group, behind the Islamic State. *Id.*

23. *Id.*

24. *See generally International Community Must Join with Nigeria to Combat Boko Haram in Sahel*, INT’L PEACE INST. (Jan. 25, 2017), <https://www.ipinst.org/2017/01/toby-lanzer-on-nigeria-lake-chad#13>.

25. *See id.*

26. The U.N. Security Council is an organ of the United Nations, whose primary responsibility is to maintain international peace and security. *See About, UNITED NATIONS SECURITY COUNCIL*, <http://www.un.org/en/sc/about/> (last visited May 16, 2017).

27. *See* Press Release, Security Council, Security Council Al-Qaida Sanctions Committee Adds Boko Haram to its Sanctions List, U.N. Press Release SC/11410 (May 22, 2014).

28. U.N. President of the S.C., Statement, U.N. Doc. S/PRST/2015/4 (Jan. 19, 2015). The President of the U.N. Security Council condemned the suicide bombings in Maiduguri, Borno State and Potiskum, Yobe State, which resulted in the destruction of civilian homes and significant casualties. *See id.* The president cited some of Boko Haram’s violations of international humanitarian law including, violence against women and children, kidnappings, killings, hostage-taking, rape, sexual slavery and violence, and the recruitment of children. *See id.*

community.²⁹ The ratification of the Rome Statute of the International Criminal Court³⁰ (“Rome Statute”) in 1998 created the ICC, whose purpose is to prosecute heinous acts, including crimes against humanity, genocide, and war crimes through international jurisprudence.³¹ Almost twenty years later, however, the legacy of the ICC has been marred by substantive and procedural deficiencies, which have led to minimal results in regards to prosecutions,³² along with backlash and withdrawals from African member states due to its history of investigating African leaders.³³ These factors have eroded the ICC’s reputation in the international community, as it is now seen as an ineffective mechanism to prosecute terrorists.

On November 18, 2010, the Office of the Prosecutor (OTP) announced that it was conducting a preliminary investigation in Nigeria after its office received over sixty complaints in connection with the country.³⁴ In 2012, the OTP flew to Nigeria to

29. *What does the International Criminal Court do?* BBC NEWS (June 25, 2015), <http://www.bbc.com/news/world-11809908>.

30. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3 [hereinafter Rome Statute]. The Rome Statute establishes the jurisdictional borders, rules, and procedures and ensures extensive human rights safeguards for individuals during the litigation process. The Rome Statute has 124 signatory nations; however, the United States declined to ratify the treaty. *See The States Parties to the Rome Statute*, INT’L CRIM. CT., https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (last visited May 24, 2017).

31. The ICC is the only permanent, treaty-based court with jurisdiction over war crimes, crimes against humanity, crimes of aggression, and genocide. *See Rome Statute*, *supra* note 30, art. 5, 6, 7, 8.

32. Since its creation, the ICC has formally investigated twenty-eight cases and has only completed one. It has spent over one billion USD and produced only few verdicts. *See Amy Niang, International Criminal Court Politricks*, AFR. COUNTRY (Feb. 14, 2017), <http://africasacountry.com/2017/02/international-criminal-court-politricks/>.

33. African leaders have criticized the ICC for being too “Africa-focused” and, as a result, has failed to prosecute crimes committed by Western governments. *See id.*

34. *Preliminary Investigation: Nigeria*, INT’L CRIM. CT., <https://www.icc-cpi.int/nigeria> (last visited Mar. 27, 2017). Nigeria ratified the Rome Statute on September 27, 2001, however, the Rome Statute went into effect on July 1, 2002, and therefore, the ICC only has jurisdiction over Rome Statute crimes committed in Nigeria or by its nationals beginning on July 1, 2002. *See id.* Five years after its initial investigation, the Prosecutor of the ICC, Fatou Bensouda, issued a statement declaring that the ICC continues to gather information regarding violations of international humanitarian law, despite the ongoing es-

gather evidence and intel on the Boko Haram attacks.³⁵ Shortly after this trip, the OTP concluded that there was a reasonable basis to conclude that, since 2009, Boko Haram has committed crimes against humanity under Article 7(1)(a) of the Rome Statute.³⁶ Pertaining to war crimes, the OTP concluded that there was an armed conflict in Nigeria between the Nigerian military and Boko Haram and it was going to continue with its investigation into possible war crimes violations, as well as crimes against humanity.³⁷ Almost seven years later, the OTP continues to dwell upon the proper course of action while Nigerians suffer at the hands of Boko Haram.³⁸

Before the creation of the ICC, the U.N. Security Council successfully created two *ad hoc* tribunals³⁹—the International Criminal Tribunal for the Former Yugoslavia (ICTY)⁴⁰ and the International Criminal Tribunal for Rwanda (ICTR)⁴¹—whose

calating violence in Nigeria. See Press Release, Office of the Prosecutor, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda Following Reports of Escalating Violence in Nigeria (Jan. 20, 2015), <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-20-01-2015>.

35. ElSayed M. A. Amin, Mohamed E. Badar, Noelle Higgins, *The International Criminal Court and the Nigerian Crisis: An Inquiry into the Boko Haram Ideology and Practices from an Islamic Law Perspective*, 3 INT'L HUM. RTS. L. REV. 2 (2014).

36. See *id.*

37. See *id.*

38. See *id.*

39. See Christopher K. Penny, 'No Justice, No Peace?': A Political and Legal Analysis of the International Criminal Tribunal for the Former Yugoslavia, 30 OTTAWA L. REV. 259, 266 (1998) (defining an *ad hoc* tribunal as an international court created for a particular purpose).

40. The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established as an *ad hoc* tribunal to deal with war crimes that occurred during the 1990s Balkan conflicts, in which thousands of civilians were murdered, tortured, and sexually abused in detention camps. See About, UNITED NATIONS INT'L CRIM. TRIB. FORMER YUGOSLAVIA, <http://www.icty.org/en/about> (last visited Jan. 16, 2016). Those prosecuted by the ICTY included both high-ranking political and military leaders. See *id.*

41. The International Criminal Tribunal for Rwanda (ICTR) was the second *ad hoc* tribunal created by the U.N. Security Council and was established to prosecute those responsible for genocide and other international humanitarian crimes. See *The ICTR in Brief*, U.N. INT'L CRIM. TRIB. RWANDA, <http://unictr.unmict.org/en/tribunal> (last visited Jan. 16, 2016).

mandates were to convict perpetrators of international humanitarian law in each respective country.⁴² The U.N. Security Council established the ICTY to prosecute humanitarian crimes in the former Yugoslavia after years of civil war, which was filled with heinous acts by various heads of state, including, genocide, rape, and torture.⁴³ The ICTY “spearheaded the shift from impunity to accountability” by charging governmental leaders for these vicious crimes, ultimately seeking justice for their victims.⁴⁴ Through its prosecutions, the ICTY has also developed international humanitarian law by interpreting and analyzing abstract ambiguous multistate agreements and setting procedural and substantive legal precedents.⁴⁵

Using the ICTY as precedent, the U.N. Security Council established the ICTR to prosecute violators of humanitarian law that occurred in the 1994 Rwandan genocide.⁴⁶ Amongst its victories, the ICTR successfully prosecuted high-ranking individuals⁴⁷

42. See generally *About*, *supra* note 26; *The ICTR in Brief*, *supra* note 41.

43. Some of the notable cases tried by the ICTY include *Prosecutor v. Tadić* and *Prosecutor v. Erdemovic*. The *Tadić* case established that crimes against humanity did not have to derive from an international armed conflict. See *Prosecutor v. Tadić*, Case No. IT-94-I-T, Opinion and Judgment (Int’l Crim. Trib. for the former Yugoslavia May 7, 1997). In the *Erdemovic* case, the ICTY held that a soldier cannot claim duress when charged with crimes against humanity for killing innocent civilians. See *Prosecutor v. Erdemovic*, Case No. IT-96-22-T (Int’l Crim. Trib. for the former Yugoslavia Nov. 29, 1996).

44. Lana Ljuboja, *Justice in an Uncooperative World: ICTY and ICTR Foreshadow ICC Ineffectiveness*, 32 HOUS. J. INT’L L. 767, 773 (2010). The emergence of a “more complete historical record of the conflict in the Balkans” has been an additional benefit of the ICTY. *Id.*

45. The ICTY was the first independent tribunal that established legal precedent and expanded on the elements of genocide, enslavement, and crimes against humanity. In addition, the ICTY developed procedural law for security of states, guilty pleas, and affirmative defenses available to the accused. See *id.* at 774.

46. See *The ICTR in Brief*, *supra* note 41.

47. Trials of state officials include the former prime minister of Rwanda, Jean Kambanda, and former Rwandan mayor, Jean-Paul Akayesu, who were both convicted of genocide. Ljuboja, *supra* note 44, at 775–76. One of the most notable cases tried by the ICTR was *Prosecutor v. Akayesu*. Decided in 1998, the *Akayesu* case marked the first conviction for genocide since the adoption of the Geneva Convention in 1948. See *Prosecutor v. Akayesu*, Case No. ICTR 96-4-T, Judgment (Sept. 2, 1998); see also Leila N. Sadat, *The Legacy of the International Criminal Tribunal for Rwanda* 1–19 (Wash. Univ. Legal Studies Research Paper Series, Paper No. 12-09-05, 2012).

and further developed international humanitarian law by holding that rape with the intent to destroy a specific group of people constituted genocide.⁴⁸

The success of the ICTY and ICTR were powerful catalysts in the establishment of the ICC. Ratified on July 1, 2002, the ICC became the permanent international judiciary for investigations and prosecutions of international humanitarian crimes. Almost twenty years later, however, the ICC has only issued thirty arrest warrants, spent over \$1.6 billion USD, and still lacks credibility⁴⁹ due to the absence of three permanent members of the U.N. Security Council—China, Russia, and the United States—which have all refused to ratify the Rome Statute.⁵⁰ Moreover, African leaders have become skeptical of the ICC's motives and as a result have withdrawn from the ICC because an overwhelming majority of its investigations have focused on African leaders, leading to the court's diminished legitimacy.⁵¹

48. Aside from prosecutions, the ICTR has provided aid to the Rwandan people. It has established the Witness and Victims Support Section, which provides protection services to all witnesses and victims called to testify. Moreover, the ICTR has arguably received the most multistate cooperation, including states such as Tanzania, Cameroon, Kenya, Togo, Zambia, Mali, South Africa, Belgium, the Netherlands, and the United States. *See id.* at 776.

49. The ICC has failed to prosecute incumbent heads of state who have violated humanitarian law. Instead, the ICC has targeted middlemen, whose prosecution "was simply a coda to their military and political defeat by their enemies." Eugene Kontorovich, *The International Criminal Court Gives Up on Its Prosecution of Kenyan President Uhuru Kenyatta*, NAT'L REV. (Sept. 15, 2014), <http://www.nationalreview.com/article/387935/courts-collapse-eugene-kontorovich>. The lack of Member State cooperation is evident in the ICC's indictment against Sudan's president, Omar al-Bashir, for the Darfur genocide, which has not only been ignored by Sudan but also by other ICC Member States that al-Bashir regularly visits without fear of arrest. Moreover, the ICC has failed to secure the cooperation of Kenya, one of Africa's democratic countries, in the prosecution of Kenyan president, Uhuru Kenyatta, for abetting rape and murder during the 2007 Kenyan election. *See id.*

50. *See id.*

51. South Africa, Gambia, and Burundi have all decided to abandon the ICC, and Kenya and Uganda are prime candidates to follow. Every state that departs the ICC diminishes the court's jurisdiction. Elders, an organization made up of former world leaders, called for "urgent reform," stating that "the perception in parts of Africa . . . [is that] the [ICC] is not impartial, and that big powers who are not members apply double standards, is undermining its credibility and effectiveness." Somini Sengupta, *African Exits Threaten a Court*, N.Y. TIMES, Oct. 27, 2016, at 10.

Compared to the ICC, which has large gaps in its jurisdiction due to its failure to attract large state participants, inefficient investigative procedures, and alleged biases against the African continent, the ICTY and the ICTR have successfully prosecuted senior government officials, interpreted and established legal precedent in international humanitarian law, and are recognized by U.N. Member States as legitimate judicial bodies. As a result, while the U.N. Security Council intended for the ICC to build upon the *ad hoc* tribunals' success in prosecuting perpetrators accused of egregious international humanitarian crimes, the U.N. Security Council should instead create an *ad hoc* tribunal in Nigeria to prosecute Boko Haram members rather than rely on the ICC, which has failed to efficiently prosecute perpetrators. Doing so will hold Boko Haram members accountable for their crimes, bring justice to the Nigerian people, and further develop international humanitarian law.

This Note will analyze the persistence and accomplishments of the ICTY and ICTR in prosecuting international humanitarian crimes and will suggest that the U.N. Security Council establish a tribunal in Nigeria rather than rely on the ICC, which has become an inviable force in policing international jurisprudence and prosecuting violations of international law. Part I of this Note will examine the development and growth of Boko Haram, detailing some of its most gruesome acts. Part II will describe the ICC's development and its flaws, including its inability to try cases in an efficient manner and its procedural and substantive deficiencies. This Part will then compare and contrast the ICC to the ICTY and ICTR, which successfully prosecuted perpetrators in both the former Yugoslavia and Rwanda. Finally, Part III will recommend a preliminary strategy to prosecute Boko Haram members. This strategy includes promoting a campaign against Boko Haram and creating a criminal tribunal in Nigeria. First, as one of the world's deadliest terrorist organizations, the Boko Haram insurgency needs to garner more international support and cooperation. The international community, including non-governmental organizations (NGOs) and international state agencies, must dedicate resources to promote campaigns surrounding Boko Haram's heinous acts and its victims to prevent further Boko Haram expansion. In conjunction, the U.N. Security Council should propose a resolution to create an *ad hoc* tribunal, which would be binding on all its Member States and tai-

lored to prosecuting individual violators of international humanitarian law crimes committed by Boko Haram members, which include crimes against humanity, genocide, and rape. This two-step process will ensure that a strong judicial body will hold Boko Haram members accountable and bring justice to the Nigerian people.

I. BOKO HARAM'S REIGN OF TERROR IN NIGERIA

This Part will examine the evolution of Boko Haram's emergence in Nigeria from a peaceful rebellion group to a vicious terror organization. It will analyze the group's origin and shifting philosophies that align more with Islamic Extremism⁵² than with Jihad, which is more of a spiritual movement and not a declaration of war against other religions.⁵³ In addition, this Part will examine Nigeria's political corruption and the widening gap between the social elite and the poor, which has enabled the organization to grow and develop.

52. Islamic extremism derives from an interpretation of Islam that believes in a global Islamic state, which rejects Western philosophies and democracy. See Ryan Mauro, *Understanding Islamic Extremism*, CLARION PROJECT, <https://clarionproject.org/understanding-islamist-extremism/> (last visited May 24, 2017); see also Bassiouni, *supra* note 2. For an examination of the differences between Jihad and Extremism, see Mohamed Elmenshawy, *Jihadists vs. Extremists...When Language Matters*, HUFFINGTON POST (Dec. 21, 2015), http://www.huffingtonpost.com/mohamed-elmenshawy/jihadists-vs-extremists-w_b_8851224.html. Extremists believe it is their obligation to spread sharia law throughout the entire world, particularly in Muslim-dominated areas. See *id.* A goal of extremists is to eradicate non-Muslim political and military forces from their regions. Extremists often turn to terrorism, humanitarian crimes, and propaganda against the West to brainwash recruits. See *id.* To be clear, not all Islamic extremists participate in violent acts of terrorism. Most Islamic extremists adopt nonviolent schemes, including fundraising, political activism, and educating the public. See *id.* Conversely, Islamic terrorists rely on violence and terrorism to establish power and instill fear in civilians to achieve their purpose. See *id.*

53. See Elmenshawy, *supra* note 52.

A. Emergence of Boko Haram in Nigeria

Boko Haram⁵⁴ was founded in the Muslim-dominated northern region of Nigeria by a Sunni⁵⁵ cleric, Mohammed Yusuf, in 2002.⁵⁶ Described as a charismatic leader, Yusuf followed a strict, fundamentalist interpretation of the Qur'an and believed that the creation of Nigeria imposed an inappropriate "Western lifestyle."⁵⁷ Yusuf created his own mosque and Islamic school with the hopes that his followers would abandon Western education as well.⁵⁸ In his sermons, Yusuf was critical of the Nigerian government and wanted to establish an Islamic state in Nigeria with the implementation of sharia law.⁵⁹ His message ultimately resonated in poorer regions of Nigeria, where high rates of unemployment and poverty were commonplace and where youths were frustrated with their way of life, making them susceptible to extremism.⁶⁰

54. The group refers to themselves as Jama'atu Ahl as-Sunnah Li-Da'awati wal-Jihad. *Boko Haram: Abubakar Shekau Reappears Again After ISIS Name His Successor, Claims He was Deceived*, SAHARA REP. (Aug. 3, 2016), [boko-haram-abubakar-shekau-reappears-again-after-isis-named-his-successor-claims-he-was](http://www.sahararep.com/boko-haram-abubakar-shekau-reappears-again-after-isis-named-his-successor-claims-he-was).

55. Sunni and Shia comprise the two major sects of Islam. *See Sunnis and Shia: Islam's Ancient Schism*, BBC NEWS (Jan. 4, 2016), <http://www.bbc.com/news/world-middle-east-16047709>. Approximately 85–90 percent of Muslims are Sunnis, whereas about 10 percent of the total Muslim population is Shia. *Id.* These two sects recognize a multitude of fundamental beliefs but differ in doctrine, ritual, and practices. *See generally id.*

56. *See Who are Nigeria's Boko Haram Islamist Group?*, BBC News, (Nov. 24, 2016), <http://www.bbc.com/news/world-africa-13809501>.

57. *See id.*

58. Boko Haram has specifically targeted students and public officials because it opposes Western philosophies and teachings. David Stout, *Four Things You Need to Know About Nigeria's Boko Haram*, TIME (Sept. 30, 2013), <http://world.time.com/2013/09/30/four-things-you-need-to-know-about-nigerias-boko-haram/>. The terror group views Western education as a toxin to the mind and targets students and officers in its battle to establish a caliphate, which is a form of government led by a caliph that is regarded as a successor to the Islamic prophet Muhammad. *See id.*

59. *See id.*

60. Freedom C. Onuoha, *Why do Youth Join Boko Haram?* U.S. INST. OF PEACE, June 2014, at 5.

Eventually Boko Haram members isolated themselves from society and lived peacefully in a community dedicated to practicing sharia law.⁶¹ The community offered refugees shelter, job opportunities, food, and essentials for anyone that wanted to accept sharia law.⁶² At one point, Boko Haram successfully operated its own government, harvested food from its own farms, and even maintained its own police force.⁶³

Although radical, Boko Haram did not become violent until 2009, when its members refused to obey a law requiring motorcycle riders to wear helmets, claiming the law was un-Islamic.⁶⁴ The refusal to obey the law resulted in the arrest of several members, which spawned a riot that left over eight hundred people dead.⁶⁵ Subsequent to the riot, Yusuf was detained and interrogated by Nigerian forces.⁶⁶ After his interrogation, he was executed without trial, and the video footage of Yusuf's extrajudicial murder went viral and was used as a recruitment tool.⁶⁷

Since the execution of Yusuf, Boko Haram has evolved into a terrorist organization, engaging in guerrilla warfare, abductions, assassinations, and suicide bombings.⁶⁸ The group's growth, however, can be attributed to social underdevelopment and political corruption.⁶⁹

61. See Jenna McLaughlin, *Group That Kidnapped 200 Nigerian Girls Started Out Peaceful. Here's What Changed*, MOTHER JONES (Jan. 16, 2015), <http://www.motherjones.com/politics/2015/01/was-boko-haram-peaceful-group-violence>.

62. See *id.*

63. See *id.*

64. See *id.*

65. See *id.*

66. See *id.*

67. See McLaughlin, *supra* note 61.

68. See *id.*

69. See Heidi Schultz, *Nigeria's Boko Haram: Who Are They and What Do They Want?*, NAT'L GEOGRAPHIC (May 8, 2014), <http://news.nationalgeographic.com/news/2014/05/140507-boko-haram-nigeria-borno-state-maiduguri-mohammed-yusuf-abubakar-shekau-goodluck-jonathan-world>. In 2012, approximately 112 million Nigerians lived on less than one dollar per day. See *Nigerians Living in Poverty Rise to Nearly 61%*, BBC NEWS (Feb. 13, 2012), <http://www.bbc.com/news/world-africa-17015873>. Poverty makes people vulnerable to terrorism, and, as such, terror groups often recruit from this pool. See generally Binneh Minteh & Ashlie Perrie, Presentation at the Mid-West Political Science Association's Annual Conference, *Terrorism in West Africa—Boko Haram's Evolution, Strategy and Affiliations* (2013); Nnamdi Obasi, *Nigeria's Faltering Response Emboldens Boko Haram*, AL JAZEERA AM. (Jan. 31,

According to the International Fund for Agricultural Development (IFAD), Nigeria is ranked as one of the twenty poorest countries in the world, with over seventy percent of the population being classified as poor, and is also ranked as the most corrupt nation in the world.⁷⁰ A leading factor to the demise of Nigeria's economy has been oil.⁷¹ Soon after Nigeria began exporting oil, the government marginalized non-oil producing regions, pushing those economies into depression. For example, in the non-oil producing town of Borno, forty-six percent of boys are literate, compared to the oil producing state of Imo, where the literacy rate for boys is above ninety-eight percent.⁷² Boko Haram was able to successfully capitalize on the underdevelopment by offering financial support to these struggling regions in return for their allegiance.⁷³

Moreover, Nigeria has suffered from years of government corruption. For example, several of Nigeria's high-ranking government officials were accused and tried for stealing large sums of money from the military.⁷⁴ Sambo Dasuki, Nigeria's former security advisor stole two billion dollars in addition to bulletproof cars and assault rifles.⁷⁵ Furthermore, in 2012, two Nigerian

2015), <http://america.aljazeera.com/opinions/2015/1/nigerias-faltering-response-emboldens-boko-haram.html>. There are three main reasons that explain Nigeria's inability to contain Boko Haram. First, according to *Al Jazeera*, the Nigerian government has been "poorly informed, never grasp[ed] the gravity of the threat and failed to provide consistent and coherent policy guidance to drive an effective counterinsurgency." Obasi, *supra* note 69. Second, the military is ill equipped to battle the terror group, saying the military is not trained to fight an insurgency. *See id.* Lastly, it is reported that the battle against Boko Haram is handicapped by regional disagreements, centered on whether an international coalition should lead the battle or whether it should be led by Nigeria. *See id.* Furthermore, corruption in the government and military has impeded the country's ability to fight Boko Haram. *See id.* For example, corrupt officials are dedicating few budgetary resources to fight the terror group. *See id.*

70. Press Release, IFAD, IFAD President Visiting Nigeria, Press release IFAD45/01 (Dec. 7, 2001).

71. *Id.*

72. Hilary Matfess, *Here's Why So Many People Join Boko Haram, Despite its Notorious Violence*, WASH. POST (Apr. 26, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/04/26/heres-why-so-many-people-join-boko-haram-despite-its-notorious-violence/?utm_term=.fc472d1b2883.

73. *Id.*

74. *Nigeria's Sambo Dasuki charged over '\$68m fraud'*, BBC NEWS (Dec. 14, 2015), <http://www.bbc.com/news/world-africa-35093785>.

75. *Id.*

government officials were charged with negligence and conspiracy in the escape of a prominent Boko Haram leader.⁷⁶

These abysmal conditions in Nigeria, from government corruption and eroded economy to high illiteracy rates has hamstrung Nigeria's development and given Boko Haram a safe harbor to operate as it lacks the resources to effectively neutralize the organization.

B. Boko Haram's Reign of Terror

Subsequent to Yusuf's execution in 2009,⁷⁷ Abubakar Shekau, the new leader of Boko Haram, staged a campaign of terrorist attacks against schools, government buildings, churches, and villages, amongst others.⁷⁸ Shekau embraced violence as a sign of oppression against the Nigerian government and against anyone that threatened the group's objective of establishing sharia law.⁷⁹ Due to the immense growth and destruction caused by the terror group, Boko Haram was designated as a Foreign Terrorist Organization by the U.S. State Department in 2003, which triggers automatic sanctions against the group and criminal penalties for supporters of the group.⁸⁰

76. There have been hundreds of extrajudicial killings and public executions by Nigerian police that were uninvestigated by the Nigerian government. Former president of Nigeria, Olusegun Obasanjo, criticized the National Assembly police, calling them "rogues and armed robbers." See McLaughlin, *supra* note 61. Moreover, Nigerian political officials have been accused of embezzling a significant portion of the national budgets. See *id.*

77. See CORINA SIMONELLI ET AL., BACKGROUND REPORT: BOKO HARAM RECENT ATTACKS 6 (2014), https://www.start.umd.edu/pubs/STARTBackgroundReport_BokoHaramRecentAttacks_May2014_0.pdf.

78. Boko Haram's highest percentage of targets are private citizens and their property (twenty-five percent), followed by the police (twenty-two percent), and then the government (eleven percent). *Id.* at 3.

79. See *id.*

80. To be designated a Foreign Terrorist Organization (FTO), an organization must be: foreign, engage in terrorist activity, and the terrorist activity must threaten the security of U.S. nationals or national security. FTO designation halts any funding to the organization or people associated with it. See Glenn Kessler, *Boko Haram: Inside the State Department Debate over the 'Terrorist Label,'* WASH. POST (May 19, 2014), https://www.washingtonpost.com/news/fact-checker/wp/2014/05/19/boko-haram-inside-the-state-department-debate-over-the-terrorist-label/?utm_term=.8307ee7a452b. Boko Haram is ranked ahead of the Islamic State of Iraq and the Levant (ISIS) for deadliest terror group. In 2014, Boko Haram was responsible for 6,664 deaths, almost six hundred more deaths than those caused by ISIS. Dionne Searcey & Marc Santora, *Boko Haram Tops ISIS in Ranking Terror Groups*, N.Y. TIMES,

In August 2011, Boko Haram attacked the U.N. headquarters in the Nigerian capital of Abuja, killing twenty-five civilians.⁸¹ A suicide bomber detonated a vehicle filled with explosives, which was parked outside the U.N. headquarters, demolishing parts of the building.⁸² Celebrating its accomplishment, Boko Haram member, Abu Kakah, called the news station, BBC, in northern Nigeria to boast about the attacks and stated that its goal was to convert the entire region to sharia law.⁸³ According to Kakah, Boko Haram considered the United States⁸⁴ and the United Nations common enemies because they supported the Nigerian government, who continued to infringe on Muslim rights, and vowed to continue the attacks.⁸⁵ Shortly afterward, a Nigerian government official, Viola Onwuliri, proclaimed that Boko Haram was at war with the entire international community.⁸⁶ Subsequently, Boko Haram's attacks have increased in military sophistication, including the use of improvised explosive devices and the execution of coordinated cross-border raids and kidnappings.⁸⁷

Nov. 19, 2015, at A6. Together with ISIS, the two groups account for almost half of all the international deaths caused by terrorism. *See id.* In 2014, there was a 300 percent increase in the deaths caused by Boko Haram. *See id.*

81. *See* Senan Murray & Adam Noissiter, *Nigeria Shaken by Suicide Attack on United Nations Building*, N.Y. TIMES (Aug. 27, 2011), at A4.

82. *See id.*

83. *See id.*

84. The Subcommittee on Counterterrorism and Intelligence of the House Committee on Homeland Security cautioned the United States not to underestimate Boko Haram's ability to carry out an international attack. *See Boko Haram – Emerging Threat to the U.S. Homeland: Hearing Before the Subcomm. on Counterterrorism and Intelligence of the H. Comm. on Homeland Sec.*, 112th Cong. 1–24 (2011). History has shown that underestimating the capabilities of terror groups has backfired. Recently, the intelligence community was caught off-guard when Al Qaeda and the Taliban carried out attacks against the United States. *See id.* Prior to their attacks, both were deemed to be domestic terror cells. *See id.*

85. *See* Ibrahim Mshelizza, *Islamist Sect Boko Haram Claims Nigerian U.N. Bombing*, REUTERS (Aug. 29, 2011), <http://www.reuters.com/article/us-nigeria-bombing-claim-idUSTRE77S3ZO20110829>.

86. *See id.*

87. The increase in sophistication of Boko Haram's attacks has caused concerns that the terror group is receiving funding from Al Qaeda and other militant groups. *See Boko Haram*, STAN. U., <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/553?highlight=boko+haram> (last visited May 24, 2017); *see also Boko Haram Time: From Preachers to Slave Raiders*, BBC NEWS (May 15, 2013), <http://www.bbc.com/news/world-africa-22538888>

Boko Haram's deadliest attack, however, occurred in January 2015 when it ransacked and terrorized the town of Baga, Nigeria.⁸⁸ Over a period of days, militants torched the entire town after raiding the village and massacring approximately two thousand civilians.⁸⁹ Out of approximately 3,700 structures that were ruined, 620 structures were decimated in the region of Baga, and more than three thousand were destroyed in Doron Baga.⁹⁰

Further, since May 2011, there have been over fifteen thousand Boko Haram-related deaths that have been recorded by media outlets,⁹¹ and the group continues to use its gruesome assaults to generate fear in Nigeria.⁹² Aside from suicide bombings and mass murders, the terror group has also sieged schools and kidnapped schoolchildren to symbolize its opposition to Western education, particularly with respect to young girls.⁹³ For example, in April 2014, in the Nigerian town of Chibok, Boko Haram militants raided an all-girls school and abducted 276 students,

(discussing Boko Haram's evolution). Currently, however, Boko Haram receives most of its funding from looting, extortion, and ransoms from kidnappings.

88. See *Nigeria's Boko Haram: Baga Destruction 'Shown in Images'*, BBC NEWS (Jan. 15, 2015), <http://www.bbc.com/news/world-africa-30826582> [hereinafter *Nigeria's Boko Haram: Baga Destruction*].

89. Reports indicate that most victims were children, women, and elderly people who could not escape the insurgents. See Monica Mark, *Boko Haram's 'Deadliest Massacre': 2,000 Feared Dead in Nigeria*, GUARDIAN (Jan. 10, 2015), <http://www.theguardian.com/world/2015/jan/09/boko-haram-deadliest-massacre-baga-nigeria>. Prior to the Baga attack, the second deadliest attack carried out by Boko Haram occurred in the city of Maiduguri, where Boko Haram massacred six hundred civilians. See *id.*

90. See *Nigeria's Boko Haram: Baga Destruction*, *supra* note 88 (describing the satellite images showing "devastation of catastrophic proportions in two towns, one of which was almost wiped off the map").

91. This is a conservative estimate based on the number of deaths reported by the media. See John Campbell, *Nigeria Security Tracker*, COUNCIL ON FOREIGN REL. (Nov. 15, 2012), <http://www.cfr.org/nigeria/nigeria-security-tracker/p29483>.

92. See *The Nigerian City Living in Fear of Boko Haram*, BBC NEWS (June 27, 2014), <http://www.bbc.com/news/world-africa-28014260> ("[The Nigerian peoples'] greatest worry is for the people in the villages, who are being killed like ants—innocent people who are being murdered day and night.").

93. See Don Melvin, *Boko Haram Kidnapping of 200 Nigerian Schoolgirls, a Year Later*, CNN (Apr. 14, 2015), <http://www.cnn.com/2015/04/14/africa/nigeria-kidnapping-anniversary/>.

who were held captive by the group.⁹⁴ Recently, in 2017, the Nigerian government was able to free eighty-two of the school girls by negotiating a prisoner swap with Boko Haram.⁹⁵ Yet, more than 150 children remain in captivity.⁹⁶ Similar atrocities continue to occur daily, and, in total, at least two thousand women, girls, and boys have been kidnapped by Boko Haram since 2014.⁹⁷ As a result, approximately one million children have fled their homes in fear of the terror group.⁹⁸

Despite having its base in a poverty-ridden region of Nigeria, Boko Haram also boasts limitless artillery that it uses to carry out its heinous acts.⁹⁹ Boko Haram has benefited from black market dealings and funding from other terror organizations, including al-Qaeda and al-Shabaab.¹⁰⁰ Boko Haram has also benefitted financially through abductions, whereby they sell slaves

94. *See id.*

95. *See* Kristine Phillips, *Some Chibok schoolgirls are now free—but hundreds more abducted by Boko Haram are still missing*, WASH. POST (May 7, 2017), https://www.washingtonpost.com/news/worldviews/wp/2017/05/07/some-chibok-schoolgirls-are-now-free-but-hundreds-more-abducted-by-boko-haram-are-still-missing/?utm_term=.407f5a51d414.

96. *See id.*

97. *See Boko Haram Kidnappings: 1 Year Later, Still No Sign of the Schoolgirls*, CBC NEWS (Apr. 14, 2015), <http://www.cbc.ca/news/world/boko-haram-kidnappings-1-year-later-still-no-sign-of-the-schoolgirls-1.3031789>.

98. The conflict with Boko Haram has forced more than one million children to stop attending school and has closed over two thousand schools in Northern Nigeria and neighboring regions. *See* Melvin, *supra* note 93; Yinka Ibukun, *Boko Haram War Forces a Million Children from School, UN Says*, BLOOMBERG (Dec. 22, 2015), <http://www.bloomberg.com/news/articles/2015-12-22/boko-haram-war-forces-a-million-children-from-school-un-says>. Caught in the cross-hairs of battle, children are afraid to attend school while Boko Haram carries on with its battle against Western education. *See* Ibukun, *supra* note 98.

99. *See* Terrence McCoy, *This is how Boko Haram Funds its Evil*, WASH. POST (June 6, 2014), https://www.washingtonpost.com/news/morning-mix/wp/2014/06/06/this-is-how-boko-haram-funds-its-evil/?utm_term=.15eb81d10520.

100. *See id.* Boko Haram previously affiliated itself with a terror group in North Africa called “Al Qaeda in the Islamic Maghreb,” which trained Boko Haram members and financed its first suicide bombings in 2011. Peter Pham, *Boko Haram’s Pledge of Allegiance to ISIS: What It Means*, CNN (Mar. 10, 2015), http://www.cnn.com/2015/03/10/intl_tv/pham-boko-haram-isis/. Moreover, the terror group has merged with ISIS, sharing the ideology of inhumane civilian torture. *See id.* Boko Haram has also received financial aid and technological improvements from its alliance with ISIS. *See id.*

on the black market¹⁰¹ and hold hostages for ransom to raise capital.¹⁰² Furthermore, the organization has also raided banks¹⁰³ and engaged in gun smuggling to fund its enterprise.¹⁰⁴ Using illegal methods to fund its operation and its penchant for deadly attacks, Boko Haram remains one of the most deadliest terror organizations in the world.¹⁰⁵

II. GLOBAL GOVERNANCE BY THE ICC HAS BACKFIRED, DESPITE PREVIOUS SUCCESSES OF THE ICTR AND ICTY

In 1997, U.N. Secretary-General, Kofi Annan, stated that “peace and justice are indivisible. . . . [T]he International Criminal Court is the symbol of our highest hopes for this unity of peace and justice.”¹⁰⁶ For decades, the United Nations has documented the need for an international forum to prosecute international crimes.¹⁰⁷ Subsequently, in 2002, the ICC Statute was ratified, which vested the court with global jurisdiction to prosecute heinous international crimes, including genocide, war crimes, and crimes against humanity.¹⁰⁸ The ICC, unfortunately, has enjoyed limited success, spending over \$1 billion USD and convicting only two individuals since its inception,

101. See McCoy, *supra* note 99.

102. See Farouk Chothia, *Boko Haram Crisis: How have Nigeria's Militants Become so Strong?*, BBC NEWS (Jan. 26, 2015), <http://www.bbc.com/news/world-africa-30933860> (noting that U.S. officials estimate that Boko Haram is paid millions of dollars in ransom for the release of wealthy Nigerian hostages); see also David Blair, *Nigeria's Boko Haram isn't just Kidnapping Girls: It's Enslaving Them*, TELEGRAPH (Jan. 13, 2015), <http://www.telegraph.co.uk/women/womens-life/11342879/Nigerias-Boko-Haram-isnt-just-kidnapping-girls-its-enslaving-them.html>.

103. See Chothia, *supra* note 102 (stating that Boko Haram often loots banks when it raids towns).

104. Boko Haram has raided police stations and military bases, capturing artillery, including armored carriers, pickup trucks, rocket-propelled grenades, and guns. See Chothia, *supra* note 102. Sources indicate that Boko Haram has formed strong relationships with sellers on the black market, particularly in Libya, gaining access to weapons from Muammar Gaddafi's regime until it was overthrown in 2011. *Id.*

105. See *id.*

106. Press Release, Secretary-General, International Criminal Court Promises Universal Justice, Secretary-General Tells International Bar Association, U.N. Press Release SG/SM/6257 (June 12, 1997).

107. See *id.*

108. See William W. Burke-White, *Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice*, 49 HARV. INT'L L.J. 53 (2008).

while also facing coordinated withdrawals by African Member States, leading to a diminished legitimacy of the court within the international community.¹⁰⁹ Previous *ad hoc* tribunals, like the ICTR and the ICTY, which paved the way for the creation of the ICC, however, have effectively prosecuted individuals for violating international humanitarian crimes.¹¹⁰ This Part will analyze the ICC's creation and its downfalls and will compare its successes as an adjudicative body to the ICTR and the ICTY.

A. ICC

During the first half of the twentieth century there was a myriad of crimes against humanity. According to historians, during this time period, approximately 170 million civilians were subject to genocide, rape, and crimes against humanity in places such as Russia, the Congo, Germany, Vietnam, and Chile (amongst many others).¹¹¹ Formally recognizing these horrors, in 1948, the U.N. General Assembly passed Resolution 260, which stated that “to liberate mankind from such an odious scourge [such as crimes against humanity, genocide, and rape], international co-operation is required.”¹¹² Moreover, the U.N. General Assembly concluded that the creation of an international criminal court was both possible and advantageous to-

109. *Id.* at 54 (noting that, whereas the preamble to the Rome Statute anticipates the court “‘putting an end to impunity for the perpetrators of . . . [international] crimes,’ the capacity of the court and the limited resources made available to it suggest that it will, at best, make a far more limited contribution to ending impunity”).

110. The ICTY and the ICTR have demonstrated that international prosecution and comity are effective and are viable solutions to combat violations of international humanitarian law. Both tribunals have also added substantive precedent to international humanitarian law, more specifically in the crimes of sexual violence and rape. See Payam Akhavan et al., *Contribution of the Ad Hoc Tribunals to International Humanitarian Law*, 13 AM. U. INT'L L. REV. 1509, 1509–40 (1998).

111. *The Influence of the Nuremberg Trial on International Criminal Law*, ROBERT H. JACKSON CENTER <https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/> (last visited Jun. 2, 2017).

112. *Overview*, UNITED NATIONS, <http://legal.un.org/icc/general/overview.htm> (last visited Jan. 16, 2016). In the 1970s, the Khmer Rouge killed an estimated two million civilians. *Id.* In countries like El Salvador, Liberia, and Mozambique, there have been huge massacres of civilians, resulting in a genocide-level number of deaths. See *id.*

ward punishing violators of international humanitarian law, including genocide and egregious violations of human rights.¹¹³ Shortly afterward, the U.N. General Assembly called upon the International Law Commission¹¹⁴ to draft a proposal outlining the establishment of an international criminal court.¹¹⁵ At the fifty-second session, the U.N. General Assembly convened at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome, Italy in June of 1998 to “finalize and adopt a convention on the establishment of an international criminal court.”¹¹⁶ This conference ultimately led to the ratification of the Rome Statute and the creation of the ICC.

1. Ratification of the Rome Statute and the Creation of the ICC

On July 17, 1998, 120 states¹¹⁷ ratified the Rome Statute,¹¹⁸ submitting to a permanent judicial body with jurisdictional power to adjudicate violations of international humanitarian law.¹¹⁹ The court is composed of four branches: the presidency,¹²⁰

113. *See id.*

114. The U.N. General Assembly created the International Law Commission to oversee and develop various aspects of international law, including international humanitarian law. INT'L LAW COMM'N, <http://legal.un.org/ilc/>.

115. *See id.*

116. *Id.*

117. The United States has not signed the Rome Statute. President Bush's administration objected to the ICC's inadequate checks and balances regarding the court's prosecutor and a lack of preventive mechanism to prevent politically based prosecutions of U.S. political and military officials. *Id.* Countries, including China, India, Pakistan, Indonesia, and Turkey, have not signed the Rome Statute, while Egypt, Iran, Israel, and Russia have signed but not ratified the statute. *See The States Parties to the Rome Statute, supra* note 30.

118. *See* Lucy Martinez, *Prosecuting Terrorists at the International Criminal Court: Possibilities and Problems*, 34 RUTGERS L.J. 1, 62 (2002) (“The Rome Statute provides for an International Criminal Court to be based in The Hague, and has detailed provisions on; establishment of the Court; jurisdiction, admissibility and applicable law; general principles of criminal law; composition and administration of the Court; investigation and prosecution; trial; penalties; appeal and revision; international cooperation and judicial assistance; enforcement; assembly of states parties; and financing.”).

119. INT'L CRIMINAL COURT, UNDERSTANDING THE INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>.

120. The role of the presidency is to ensure efficiency and fluidity in the general administration of the court. *See The Presidency*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/presidency> (last visited May 24, 2017). The presidency is composed of three judges, elected by their fellow judges for three-year

the judges,¹²¹ the registry,¹²² and the OTP.¹²³ The OTP is independent from the ICC and does not require permission from Member States before initiating an investigation.¹²⁴ Its main responsibility is to conduct investigations and prosecute heinous crimes, such as genocide and crimes against humanity.¹²⁵

The ICC is funded through mandatory contributions by Member States, corporations, and individuals, however, it can only exercise its jurisdiction when a Member State is unable or unwilling to investigate a matter.¹²⁶ This means that a Member State has primary jurisdiction, and therefore, the ICC can only establish its jurisdiction where a Member State fails to carry out a good faith investigation or prosecution of the violation, which in essence means that the ICC will be barred from establishing jurisdiction on a matter once a Member State meets its burden of showing a good faith investigation.¹²⁷ Moreover, the Rome Statute does not provide for penalties when a Member State re-

terms. *See id.* The current president is Silvia Alejandra Fernandez De Gurmendi from Argentina. *Id.* The first vice president is Joyce Aluoch from Kenya, and the second vice president is Kuniko Ozaki from Japan. *Id.*

121. *See Judicial Divisions*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/judicial-divisions> (last visited May 24, 2017) (noting that the judicial division is composed of eighteen judges divided into the pre-trial division, the trial division, and the appeals division, and that each division of judges is responsible for conducting different stages of the trial).

122. *See Registry*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/registry> (last visited May 24, 2017) (noting that the registry handles the nonjudicial administrative duties of the court).

123. *Office of the Prosecutor*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/otp> (last visited May 24, 2017) (describing that the office of the prosecutor receives referrals on crimes that fall within the jurisdiction of the ICC for further examination before a trial can be held and whose current prosecutor is Fatou Bensouda, who was elected for a nine-year term).

124. *See id.*

125. *See id.*

126. All state parties to the Rome Statute, however, have an obligation to cooperate with all ICC arrest warrants. *Id.* at 19; *see also What does the International Criminal Court do?*, BBC NEWS (June 25, 2015), <http://www.bbc.com/news/world-11809908> (noting that the court does not possess retrospective jurisdiction, it can only prosecute crimes committed after the ratification of the Rome Statute).

127. *See id.*

fuses to cooperate with an ICC investigation or honor a warrant,¹²⁸ thus failing to provide a deterrent for Member States who choose to ignore the ICC's demands.¹²⁹

The ICC hears cases on violations of international humanitarian law committed by individuals, which include government and military officials and heads of states.¹³⁰ In order to hear a case, the court can only exercise jurisdiction over crimes that occurred in a contracting state to the Rome Statute or was committed by a citizen of a signatory state.¹³¹ Moreover, the ICC cannot prosecute a crime for which a signatory state has already initiated judicial action.¹³² Only if these requirements are satisfied can the ICC exercise jurisdiction in one of the enumerated ways listed in the Rome Statute.¹³³

2. ICC's Inability to Quell Boko Haram

According to Human Rights Watch, "while the ICC is not responsible for international criminal accountability, its daunting mandate and world-wide reach have made its flaws more visible."¹³⁴ Coupled with the negative backlash it has received from African countries, the ICC remains an ineffective mechanism to end the impunity in Nigeria because of its inefficient investigation process in trying to prosecute violations of international humanitarian law.

128. See Gwen P. Barnes, *International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir*, 34 FORDHAM INT'L L.J. 1584, 1588–609 (2011).

129. See *id.*

130. See Olympia Bekou & Robert Cryer, *The International Criminal Court and Universal Jurisdiction: A Close Encounter?*, 56 INT'L & COMP. L.Q. 49 (2007) (describing the ICC's jurisdiction over government officials as well as individuals).

131. See Rome Statute, *supra* note 30, art. 11–14; see also Dapo Akande, *The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits in the International Criminal Court*, 1 J. INT'L CRIM. JUST. 618, 622–25 (2003).

132. See Rome Statute, *supra* note 30, art. 17; see also Barnes, *supra* note 128.

133. See Rome Statute, *supra* note 30, arts. 13–15 (explaining that U.N. Member States and the U.N. Security Council may refer crimes to the ICC Prosecutor, or the ICC prosecutor may decide to initiate an investigation on his or her own); see also Barnes, *supra* note 128 (describing the ICC's lack of power because of its inability to capture president Omar al-Bashir).

134. *International Criminal Court*, HUM. RTS. WATCH, <https://www.hrw.org/topic/international-justice/international-criminal-court>.

One of the major reasons why the ICC has been unsuccessful in adjudicating disputes is the lingering belief that the ICC is biased against African states because thus far, it has primarily investigated only African-related matters.¹³⁵ Specifically, the OTP has investigated approximately thirty-nine cases since its creation, of which, thirty-eight have been related to violations occurring in Africa or by African individuals of ICC Member States.¹³⁶ Consequently, three former African Member States—South Africa, Burundi, and Gambia—have all withdrawn from the ICC.¹³⁷ This animosity has weakened the ICC's legitimacy, which is significant because it relies on Member States to enforce its arrest warrants.¹³⁸ Animosity with African states has thus weakened its ability to capture Boko Haram members on the African continent.

In addition, the ICC is ill-equipped to prosecute Boko Haram members because of its inefficient spending and perceived lack of legitimacy.¹³⁹ According to *Forbes*, the ICC spent over \$1 billion USD and thus far has only secured two convictions since it came into force.¹⁴⁰

The ICC's ineffectiveness in prosecuting humanitarian violations is best exemplified by its inability to capture the president of Sudan, Omar al-Bashir.¹⁴¹ On July 14, 2008, the ICC Prosecutor, Luis Moreno-Ocampo, issued an arrest warrant for President al-Bashir for his role in carrying out genocide in Darfur, Sudan and repeated violations of international humanitarian law¹⁴² and found that there was credible evidence to bring al-

135. Allison Simon, *African Revolt Threatens International Criminal Court's Legitimacy*, GUARDIAN (Oct. 27, 2016), <https://www.theguardian.com/law/2016/oct/27/african-revolt-international-criminal-court-gambia>.

136. *See id.*

137. *See id.*

138. *See id.*

139. *See* David Davenport, *International Criminal Court: 12 Years, \$1 Billion, 2 Convictions*, FORBES (Mar. 12, 2014), <https://www.forbes.com/sites/daviddavenport/2014/03/12/international-criminal-court-12-years-1-billion-2-convictions-2/#db0a04c24053>.

140. *Id.*

141. *See* Prosecutor v. Al Bashir, ICC-02/05-01/09, Warrant of Arrest Against for Omar Hassan Ahmad Al Bashir (Mar. 4, 2009) (noting that amongst al-Bashir's charges were five counts of crimes against humanity, two counts of war crimes, and one count for genocide).

142. *Id.* at 3.

Bashir to trial.¹⁴³ While there were several opportunities to detain President al-Bashir, the most notable occurred when he visited two signatory countries to the Rome Statute—Chad and Kenya.¹⁴⁴ Both countries, refused to arrest him, however, because they did not want to disrupt their relations with Sudan,¹⁴⁵ and consequently the warrant for President al-Bashir remained outstanding.¹⁴⁶ As evident from the al-Bashir catastrophe, it is unlikely that the ICC would be able to prosecute hundreds of Boko Haram members. As a result, a criminal tribunal would be more effective in prosecuting Boko Haram members, as tribunals, such as the ICTY and the ICTR, have successfully prosecuted hundreds of suspects in the past and provide a blueprint for how to prosecute individuals who commit international crimes.

3. International Response to Boko Haram

On several occasions, the U.N. Security Council, including the U.N. Secretary-General¹⁴⁷ and the president,¹⁴⁸ have issued

143. *See generally id.*

144. *See* Prosecutor v. Al Bashir, ICC-02/05-01/09, Decision Informing the United Nations Security Council and the Assembly of the States Parties to the Rome Statute About Omar Al-Bashir's Recent Visit to the Republic of Chad (Aug. 27, 2010).

145. *See* Julian Borger, *Commonwealth Chief Admonished by ICC over 'War Crimes' Remarks*, GUARDIAN (Oct. 27, 2010), <http://www.theguardian.com/world/2010/oct/27/commonwealth-international-criminal-court-bashir>.

146. *See id.*

147. *See Ban Urges Global Community to 'Never Forget' Nigerian Girls on Anniversary of Abduction*, UNITED NATIONS NEWS CENT. (Apr. 14, 2015), <http://www.un.org/apps/news/story.asp?NewsID=50568#.VpcWPDY4mRs> (describing how U.N. Secretary-General Ban Ki-moon demanded the immediate release of approximately 276 schoolgirls from Chibok, Nigeria on the one-year anniversary of their abduction, where they were kidnapped as a part of a terrorist raid of a school in April 2014). Ki-moon proclaimed: "Going to school should not have to be an act of bravery." *Id.*

148. Press Release, Security Council, Security Council Presidential Statement Condemns Boko Haram Attacks, Supports Joint Strategy to Combat Terrorist Group's Threats, U.N. Press Release SC/11983 (July 28, 2015) (noting that Council President, Gerard Jacobus van Bohemen of New Zealand, urged the international community not to associate Boko Haram with "any religion, nationality, or civilization").

statements condemning Boko Haram for its continuous violations of international humanitarian law.¹⁴⁹ The U.N. Security Council indicated that it would consider all courses of action against the group and has already imposed an arms embargo on the group.¹⁵⁰

On September 29, 2015, the U.N. High Commissioner issued a report on the human rights violations committed by Boko Haram and concluded that the mass killings, abductions, rape, and other forms of violence violated international humanitarian law.¹⁵¹ The U.N. High Commissioner recommended a thorough investigation and called for the prompt prosecution of Boko Haram members.¹⁵² It also called on the international community to provide aid to Nigerian victims and to strengthen the U.N. counterterrorism unit in an attempt to eradicate the terror group; however, this attempt has proven to be futile, as Boko Haram has continued to violate international humanitarian law.¹⁵³

In addition to the U.N. High Commissioner's report, the OTP received over ninety complaints regarding the situation in Nigeria and subsequently began its preliminary examination into Boko Haram on November 18, 2010.¹⁵⁴ According to the OTP, Boko Haram violated Articles 7 and 8 of the Rome Statute,

149. *Security Council Condemns Boko Haram Violence, Backs Regional Efforts to Counter Ongoing Attacks*, UNITED NATIONS NEWS CENT. (July 28, 2015), <http://www.un.org/apps/news/story.asp?NewsID=51513#.Vpvf4DY4mRt> (describing that, in January 2015, approximately eighty people, most of which were children, were kidnapped in Cameroon in one of the largest kidnappings by Boko Haram outside of the Nigerian border).

150. Statement by Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, on Security Council Action to Sanction Boko Haram (May 22, 2014) ("By adding Boko Haram to the UN's 1267 sanctions list, the Security Council has helped close off important avenues of funding, travel and weapons to Boko Haram, and shown global unity against their savage actions.").

151. Rep. of the U.N. High Comm'r for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries, A/HRC/30/67 (2015).

152. *Id.*

153. *Id.*

154. Nigeria ratified the Rome Statute on September 27, 2001. OFFICE OF THE PROSECUTOR, REPORT ON PRELIMINARY EXAMINATION ACTIVITIES 44 (2015), <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>. Before an investigation may begin, the OTP conducts a preliminary investigation to determine whether there is a sufficient basis to conduct a formal investigation. *Id.*

which prohibit crimes against humanity.¹⁵⁵ Despite being in contact with the Nigerian government, NGOs, and the United Nations for six years, the OTP continues to gather evidence and monitor the situation while the terror groups continue their reign of terror.¹⁵⁶

B. International Criminal Tribunals

The U.N. Security Council created international criminal tribunals to address violations of international humanitarian law during the breakup of Yugoslavia and the Rwandan genocide. In both instances, the U.N. Security Council drafted resolutions utilizing its authority under Chapter VII of the U.N. Charter,¹⁵⁷ which permits the U.N. Security Council to address threats to world peace.¹⁵⁸ These resolutions created tribunals to adjudicate atrocities in the respective regions.¹⁵⁹ With the cooperation of U.N. Member States, they have successfully prosecuted hundreds of perpetrators, and in doing so they have interpreted and developed legal precedent in international humanitarian law.¹⁶⁰

1. ICTY

In accordance with Chapter VII of the U.N. Charter, in 1993, the U.N. Security Council established the ICTY through Resolution 827,¹⁶¹ which gave the court jurisdiction over crimes against humanity, war crimes, and genocide that occurred during the breakup of the former Yugoslavia.¹⁶² The ICTY was vested with

155. *See id.* at 33, para. 128.

156. *See id.* at 51, para. 221.

157. Chapter VII of the U.N. Charter lays the foundation for dealing with threats to peace and acts of aggression and states that the U.N. Security Council shall decide what measures to take to restore international peace. *See generally* U.N. Charter arts. 39–51.

158. *See generally id.*

159. *See International Criminal Tribunal for the Former Yugoslavia (ICTY)*, PROJECT ON INT'L CTS. & TRIBUNALS, <http://www.pict-pecti.org/courts/ICTY.html> (last visited May 16, 2017).

160. *See id.*

161. *See* S.C. Res. 827 (May 25, 1993) (stating the circumstances in the former Yugoslavia required the creation of an *ad hoc* tribunal to prosecute persons responsible for violations of international humanitarian law).

162. *See About, supra* note 40.

primary jurisdiction over national judiciaries of the former Yugoslavia.¹⁶³ Its main objectives included deterring future crimes and bringing justice to victims.¹⁶⁴

The conflict in the former Yugoslavia entailed a battle between former republics of Yugoslavia.¹⁶⁵ After the end of World War II, the Republic of Yugoslavia consisted of the republics of Bosnia, Croatia, Serbia, Montenegro, Macedonia, and Slovenia, as well as the provinces of Kosovo and Vojvodina.¹⁶⁶ For years, the leader of Yugoslavia, Josip Tito, followed Marxist ideology, suppressing ethnic minorities and conflicts amongst Yugoslav republics.¹⁶⁷ Following the death of Tito in 1980, Yugoslavia spiraled into economic depression and government corruption.¹⁶⁸ By the late 1980s, extremist Serbian leader, Slobodan Milošević, rose to power and introduced a “Serbian nationalist agenda” in Yugoslavia, which caused tension amongst the non-Serbian republics because the agenda made them feel inferior.¹⁶⁹

Due to the Serbian agenda, in 1991, Croatia and Slovenia intended to secede from Yugoslavia but faced threats by the prime minister of Yugoslavia, Ante Markovic, who stated that the federal government would counter their secession “by all means” because Yugoslavia wanted to maintain control over all of the republics.¹⁷⁰ Soon after, Croatia and Slovenia declared independence, and on June 27, 1991, the Yugoslavian army attacked the states, which resulted in mass casualties.¹⁷¹

Backed by the Yugoslavian army, the Serbs raided towns and villages and subjected Muslim and Croatian civilians to continuous gun fire and explosives.¹⁷² The Serbs carried out ethnic

163. *See id.*

164. *See id.*

165. *See* Lilian A. Barria & Steven D. Roper, *How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR*, 9 INT’L J. HUM. RTS. 349, 350–57 (2005).

166. *See* Edina Slomic, *When Skeletons Come Out of the Closet: Implications of the Bosnian Genocide Decision for Serbia’s Eventual EU Accession*, 37 GA. J. INT’L & COMP. L. 621, 628–36 (2009).

167. *See id.*

168. *See id.*

169. *See id.*

170. *See id.*

171. *See id.*

172. *See id.*

cleansing to the point where only a few thousand Muslims remained in Serbian towns.¹⁷³ Moreover, the Serbs also utilized detention camps, where over six thousand Bosnian Muslims were held captive, and Serbian guards would "regularly and openly kill, rape, torture, or [humiliate them]."¹⁷⁴

In each of these confrontations, there were mass casualties.¹⁷⁵ During the Croatian conflict, approximately twenty thousand people died and over four hundred thousand civilians were displaced from their homes.¹⁷⁶ Soon after in the Bosnian conflict, an estimated two hundred thousand people died and over two million civilians became refugees.¹⁷⁷

In 1992, the U.N. Security Council created a Commission of Experts to investigate the situation in the Former Yugoslavia and report on whether there were violations of humanitarian law.¹⁷⁸ Shortly after the conflicts in Bosnia and Herzegovina between 1992 and 1993, the U.N. Security Council adopted a resolution for the U.N. Secretary General to submit a report detailing a proposal on how to create a tribunal, and within 100 days, the U.N. Security Council adopted Resolution 827, which resulted in the creation of the ICTY.¹⁷⁹

Established under Chapter VII of the U.N. Charter, the U.N. Security Council created the tribunal to restore international peace and security.¹⁸⁰ It was required to act independently of recommendations by any political party and the U.N. Security Council.¹⁸¹ Although its creation was opposed by the Republic of Yugoslavia, its establishment through a U.N. Security Council resolution meant that it was imposed on all parties, and a lack of cooperation by a party allowed the U.N. Security Council to impose sanctions on the noncompliant state.¹⁸²

The tribunal's creation under Resolution 827 also restricted the Republic of Yugoslavia's national sovereignty.¹⁸³ The tribunal statute stated that it would have primary jurisdiction over

173. See Slomic, *supra* note 166.

174. See *id.*

175. See *id.*

176. See *id.*

177. See *id.*

178. See *id.*

179. See *id.*

180. See Slomic, *supra* note 166.

181. See *id.*

182. See *id.*

183. See *id.*

national jurisdiction, allowing it to take over a national investigation whenever the tribunal's prosecutor felt it was plausible.¹⁸⁴ Moreover, double jeopardy did not apply, so if the tribunal was unsatisfied with a national trial it could repeat the trial.¹⁸⁵ Thus, the establishment of the ICTY represented a modern advancement of international jurisprudence in that it interpreted ambiguous international treaties and developed legal precedent pertaining to international humanitarian law.¹⁸⁶

2. ICTR

In 1994, the U.N. Security Council established the ICTR to address the atrocities committed during the genocide in Rwanda.¹⁸⁷ On April 6, 1994, an airplane carrying the presidents of Burundi and Rwanda was shot down in the capital of Rwanda, Kigali.¹⁸⁸ Although blame for the attack was never determined, ethnic tensions broke out between Rwanda's two biggest ethnic groups: the Hutus and the Tutsis, which stemmed from years of class jealousy as Tutsis are perceived to be wealthier than Hutus.¹⁸⁹ Less than four months after the plane crash, approximately eight hundred thousand Tutsis were killed in Rwanda.¹⁹⁰ The genocide in Rwanda left its legal system in shambles, as most of Rwanda's judges were murdered and its courts destroyed.¹⁹¹ As a result, the U.N. Secretary-General urged the U.N. Security Council to establish a tribunal under Chapter VII of the U.N. Charter.¹⁹² In November 1994, the U.N. Security Council adopted Resolution 955,¹⁹³ which allowed the ICTR to prosecute perpetrators responsible for genocide and other odious crimes committed in Rwanda and other neighboring regions.¹⁹⁴ With

184. *See id.*

185. *See id.*

186. *See id.*

187. *See Barria & Roper, supra* note 165, at 152–57.

188. *See id.*

189. *See id.*

190. *See id.*

191. *See generally* Paul J. Magnarella, *Expanding the Frontiers of Humanitarian Law: The International Criminal Tribunal for Rwanda*, 9 FLA. J. INT'L L. 421 (1994).

192. *See* Frank Dame, *The Effect of International Criminal Tribunals on Judicial Culture*, 24 MICH. ST. J. INT'L L. REV. 213, 237 (2005).

193. *See* S.C. Res. 955 (Nov. 8, 1994).

194. The ICTR was given broad jurisdiction over neighboring regions in anticipation that fugitives would migrate from Rwanda to allude jurisdiction. *See*

the support of U.N. Member States, the ICTR effectively captured several high-ranking government and military officials and further developed legal precedent in international humanitarian law by codifying systemic rape and the usage of media to incite violence as crimes against humanity.¹⁹⁵

3. Prosecutorial Impact of the ICTY and ICTR

Both the ICTY and the ICTR were created to be *ad hoc* through U.N. Security Council resolutions, and both had jurisdiction over all perpetrators of a specific conflict in a specific region.¹⁹⁶ These tribunals have displayed the strength of international accountability and the consequences of violating international law, including the prosecution of high-profiled political leaders.¹⁹⁷ Moreover, the tribunals were able to seek justice for the millions of individuals affected by the conflicts, either directly or indirectly.¹⁹⁸

In addition, both the ICTY and the ICTR have strengthened the rule of law internationally by showing countries how to address war crimes and how to prosecute perpetrators.¹⁹⁹ For example, the ICTR's prosecution of former Rwandan mayor, Jean-Paul Akayesu, established an international precedent when it ruled that rape committed during the Rwandan war constituted crimes against humanity.²⁰⁰ The tribunals have also played a significant role in rebuilding the infrastructure in post conflict states and developing a justice-oriented culture in society.²⁰¹ For example, the ICTY developed a verified factual record of the

Dame, *supra* note 192. Oddly enough, the only dissenting vote for the passage of the tribunal was Rwanda. Rwanda raised several objections. Most notably, the Rwandan government wanted the tribunal to be situated in Rwanda (the ICTR is located in Tanzania), it wanted to grant the ICTR the ability to issue the death penalty, and wanted the ICTR to have retroactive jurisdiction to prosecute earlier crimes. In the end, however, Rwanda agreed to implement the ICTR. See Bernard Muna, Navanethem Pillay & Theogene Rudasingwa, *The Rwanda Tribunal and its Relationship to National Trials in Rwanda*, 13 AM. U. INT'L L. REV. 1469 (1998).

195. *See id.*

196. Ivan Simonovic, *The Role of the ICTY in the Development of International Criminal Adjudication*, 23 FORDHAM INT'L L. J. 440 (1999).

197. *See id.*

198. *See id.*

199. *See id.*

200. *See id.*

201. *See id.*

events that took place in the former Yugoslavia, which were once debatable and contributed to peace in the region.²⁰² As a result, both tribunals have left a positive impact on the development of international law.

III. HOW SHOULD THE INTERNATIONAL COMMUNITY ADDRESS BOKO HARAM'S REIGN OF TERROR IN AFRICA?

The ICC has been tasked with prosecuting humanitarian atrocities worldwide.²⁰³ In regards to Boko Haram, the ICC Prosecutor, Fatou Bensouda, issued a statement saying: "Crimes committed by [Boko Haram] . . . must be thoroughly and impartially investigated and prosecuted [by the ICC]."²⁰⁴ Unfortunately, the inefficiencies of the ICC, coupled with the perception that the ICC is "anti-African," makes it evident that these humanitarian crimes must be investigated and prosecuted by an alternative judicial body: an *ad hoc* tribunal.²⁰⁵

The U.N. Security Council must create an *ad hoc* tribunal in Nigeria to stabilize Western Africa. To bring justice to African families affected by Boko Haram, a coalition of U.N. Member States is needed to effectively halt the terror group's attacks. Such an effort should take place in two stages. First, U.N. Member State agencies must work with NGOs and advocacy groups to acknowledge the terror in Nigeria and develop an effective social media campaign that will advocate for an international response. Second, the U.N. Security Council must adopt a resolution to establish a tribunal in Nigeria, where U.N. Member States would participate in investigations, prosecutions, and the enforcement of its judgments, which is required under the U.N. Charter. This two-step process will ensure that a unified judicial body will have sufficient resources to prosecute Boko Haram members and bring justice to the region.

202. *See id.*

203. *See id.*

204. *Id.*

205. The ICC is perceived to be "anti-African" because its investigations have focused solely on African countries and the defendants have been primarily African. *See generally* Simon Allison, *Is There an African Alternative to the International Criminal Court*, DAILY MAVERICK (Oct. 15, 2013), <https://www.dailymaverick.co.za/article/2013-10-15-is-there-an-african-alternative-to-the-international-criminal-court/#.WKKQ7xjMwy4>. African leaders also believe that there are racial biases amongst the officials in the ICC. *See id.*

A. Step One: Raising Awareness of Boko Haram Crimes

To bring justice to perpetrators responsible for violations of international humanitarian law, NGOs need to first raise social awareness about the heinous acts committed by Boko Haram. In the era of social media, it is relatively easy to cultivate a media campaign and raise worldwide public awareness.²⁰⁶ While it is true that a “hashtag” alone cannot prosecute criminals, social media is an effective tool to raise awareness and educate the general population, who may then join the movement and help increase the political pressure on politicians to act.²⁰⁷ In fact, history has shown the positive effects of successful media campaigns, including “#Kony2012” and “#BostonStrong.”²⁰⁸

Social media has the power to spread the message of the sorrows of those affected by Boko Haram. For example, in early 2014, social media raised awareness for the kidnapping of the schoolgirls in Chibok, Nigeria.²⁰⁹ The social media phenomenon,

206. See generally Steve Olensi, *The 3 Best Social Media Campaigns of 2015 (So Far)*, FORBES (Aug. 21, 2015), <https://www.forbes.com/sites/steveolensi/2015/08/21/the-3-best-social-media-campaigns-of-2015-so-far/#4c2d5cf52dad>.

207. See generally Megan Gibson, *Can a Social Media Campaign Really #BringBackOurGirls?*, TIME (May 7, 2014), <http://time.com/90693/bring-backourgirls-nigeria-boko-haram/>.

208. Erin Skarda, *What You Need to Know About the 5 Most Successful Social Media Campaigns for Social Change*, NATIONSWELL (Sept. 16, 2014), <http://nationswell.com/social-media-campaigns-successful-at-change/>.

209. See Suzanne Franks, *#BringBackOurGirls: The Verdict*, GUARDIAN (June 3, 2014), <http://www.theguardian.com/global-development-professionals-network/2014/jun/03/bringbackourgirls-nigeria-media-communications>. Nigerians expected the relative silence surrounding the kidnapping of the schoolgirls. For the most part, the story was largely ignored. In fact, most of the coverage came after the #bringbackourgirls was created. Pundits compared the media coverage of the Chibok school girls to a hypothetical kidnapping of school girls in the United Kingdom:

Imagine if a single teenage girl was abducted from her boarding school dormitory in the UK. There would have been a . . . media frenzy as soon as the news broke. . . . The comparative silence surrounding the original kidnapping of hundreds of girls from Chibok, in north-eastern Nigeria, might have seemed surprising, except that it happened in Africa. As a consequence, . . . the story was ignored or just told in a cursory and often inaccurate way. . . . Eight days after the abduction, a lawyer in Nigeria created the hashtag #bring-

“#bringourgirlsback,” increased public awareness, forced the Nigerian government to act, and caused other governments to react.²¹⁰ The viral phenomena prompted protests within Nigeria and around the world and inspired lobbyists to urge politicians to send military and negotiation officials to aid Nigeria.²¹¹ Without this campaign, the horrific kidnappings would have received minimal coverage, if any, and the Nigerian government would not have felt pressured to take greater action.²¹²

Aside from social media, NGOs have worked diligently to end the violent and discriminatory policies rooted in Nigerian society. For example, Human Rights Watch defends the rights of people worldwide and conducts an annual report on key human rights issues, including Boko Haram’s heinous acts in Nigeria.²¹³ Another prominent NGO, Put Nigeria First, has worked diligently to support Nigerian soldiers in their battle against Boko Haram.²¹⁴ The organization has worked to support widows and orphans of Nigerian soldiers who battled Boko Haram.²¹⁵ The NGO has also targeted Nigerian problems of ethnic bigotry and

backourgirls to express the growing anger at the woeful government response. Over the next 10 days, the twitter bandwagon gained momentum, soon passing a million tweets.

Id.

210. *Id.* (noting that numerous celebrities participated in the movement, including Michelle Obama, Nobel Peace Prize winner, Malala Yousafzai, and Hillary Clinton).

211. See Gibson, *supra* note 207.

212. See Charlotte Alter, *How We Failed the Lost Girls Kidnapped by Boko Haram*, TIME (May 2, 2014), <http://time.com/84414/how-we-failed-the-lost-girls-kidnapped-by-boko-haram> (“The kidnapping [of the schoolgirls] was mentioned for the first time on American TV on May 1, more than two weeks after the girls were abducted. . . . The story never made the front page of the national edition of the *New York Times*. CNN has had a bit more coverage, but nothing approaching the coverage of the missing Malaysia Airlines plane. . . . By contrast, when the Malaysia Airlines jet disappeared March 8, the story was the lead story on all NBC, ABC, and CBS news shows for eleven weekdays straight.”).

213. In its 2015 report, Human Rights Watch highlighted Boko Haram, the Nigerian government, and the Nigerian military as key human rights issues in Nigeria. See HUMAN RIGHTS WATCH, WORLD REPORT 2015: EVENTS OF 2014, at 401–07 (2015), https://www.hrw.org/sites/default/files/wr2015_web.pdf.

214. See Ehi Ekhatior, *Boko Haram: NGO Drums Up Support for Nigerian Soldiers*, NAIJA CENT. NEWS (July 1, 2014), <http://www.naijacenter.com/news/boko-haram-ngo-drums-support-nigerian-soldiers/>.

215. See *id.*

religious tensions with patriotic programs called "Operation Flag Flying" and "Our Anthem, Our Prayer" to unify the country.²¹⁶ Working in tandem, these NGOs should be able to raise awareness and commit greater resources to Boko Haram-affected areas.

It is also important for NGOs to work with government agencies to bring attention to Boko Haram and the destruction it has caused. Commendably, the U.S. Agency for International Development (USAID), a U.S. government agency, has supported an array of humanitarian and developmental programs in Northern Nigeria, which aim to increase food supply and provide other essentials for civilians.²¹⁷ USAID has already founded the Nigeria Regional Transition Initiative (NRTI), which works to improve the social, economic, and political conditions in Nigeria.²¹⁸ The NRTI has worked with local communities in Nigeria to counter terrorism,²¹⁹ including helping launch a radio program in Northeast Nigeria, sponsoring team-oriented activities for kids, and developing the infrastructure of government-neglected cities.²²⁰

With the infrastructure already established in Nigeria, the NRTI would be able to easily transition its efforts to the Boko Haram problem. First, given USAID and the NRTI's familiarity with the situation in Nigeria, they should create a campaign, which would include individuals from NGOs, grassroots groups, and members of the general public, to spread awareness about Boko Haram atrocities and a call for justice. According to Nicholas Rasmussen, director of the National Counterterrorism Center,²²¹ "[p]eople who are attracted to [terrorism] don't go to the

216. *NGO Decries Use of Religion as Weapon of Terror*, NIGERIAN OBSERVER, <https://nigerianobservernews.com/01072014/01072014/news/news27.html> (last visited Jan. 16, 2016) (describing the NGO's goals, which include "re-awaken[ing], infus[ing] and sustain[ing] the patriotic spirit of Nigerians" and having a country where citizens act in accordance with putting Nigeria first).

217. The U.S. Agency for International Development works to eradicate extreme poverty around the world. See *Who We Are*, U.S. AGENCY INT'L DEV., <https://www.usaid.gov/who-we-are> (last visited Jan. 16, 2016).

218. See *id.*

219. See *id.*

220. See Karen Attiah, *Nigeria's Worrisome Humanitarian Situation Demands More Attention*, WASH. POST (Nov. 13, 2015), https://www.washingtonpost.com/blogs/post-partisan/wp/2015/11/13/nigerias-worrisome-humanitarian-situation-demands-more-attention/?utm_term=.497f612d59bd.

221. The National Counterterrorism Center is responsible for providing the U.S. government with intelligence relating to counterterrorism analysis. *Who*

government for their guidance . . . they [are more likely to be] influenced by peers or cultural groups.”²²² As a result, the campaign should amplify the narrative of Boko Haram’s reign of terror by sharing firsthand pictures and stories of those that have suffered at the hands of Boko Haram to spread awareness of the atrocities committed by the terror group.²²³ This campaign should also challenge Boko Haram’s version of Islam by sharing interpretations of religious scholars that refute Boko Haram’s messages, which would avoid alienating the Islamic community.²²⁴ Another key element of this campaign would be to highlight Boko Haram’s hypocrisies, which include preaching about peace and purity, while its fighters engage in sexual abuse and slavery. Again, this campaign must call on government officials to hold perpetrators accountable and bring justice to the victims. Instead of trying to pinpoint potential extremists, a grass roots campaign would effectively combat Boko Haram because it would be able to spread antiradical messages through local establishments that are more closely connected to the youth than the government.

B. Step Two: Create an Ad Hoc Tribunal in Nigeria

Over the years, NGOs have developed strong relationships with U.N. Security Council members, including persuading the U.N. Security Council to use information it has gathered and meeting regularly with the international body.²²⁵ Most notably, NGOs played an intricate role in the establishment of the ICTY and ICTR by effectively lobbying government officials.²²⁶ In order to persuade the U.N. Security Council to establish another tribunal, NGOs must demonstrate to the U.N. Security Council that Boko Haram threatens international peace and security,

We Are, NAT’L COUNTERTERRORISM CENT., <https://www.nctc.gov> (last visited Mar. 30, 2017).

222. Adam Weinstein, *Here’s How the US Should Fight ISIS with Social Media*, WIRED (Mar. 12, 2015), <https://www.wired.com/2015/03/heres-us-fight-isis-social-media/>.

223. *See id.*

224. *See* Jessica Stern & J. M. Berger, *A 6-Point Plan to Defeat ISIS in the Propaganda War*, TIME (Mar. 30, 2015), <http://time.com/3751659/a-6-point-plan-to-defeat-isis-in-the-propaganda-war/>.

225. *See* James Paul, *NGOs and the Security Council*, GLOBAL POL’Y F. (2004), <https://www.globalpolicy.org/security-council/40406-ngos-and-the-security-council.html>.

226. *See id.*

and that the inadequacies of the ICC prevent that forum from being a realistic option for prosecuting Boko Haram members.²²⁷

After being convinced, the U.N. Security Council would need to adopt a resolution under Chapter VII of the U.N. Charter to create an *ad hoc* tribunal in Nigeria to prosecute international humanitarian crimes committed by Boko Haram members. Using the blueprint from the ICTY and ICTR,²²⁸ the U.N. Security Council should incorporate their rules of procedure and evidence, which have been developed and proven to be effective in their two previous uses.²²⁹ Unlike ICC officials, the U.N. Security Council would be able to order Member States to enforce indictments and trial orders under its inherent enforcement powers vested in the U.N. Charter, which would give the tribunal sufficient resources to capture and detain Boko Haram members.²³⁰

In order to pass a resolution to establish a tribunal, the U.N. Security Council would need to ask the U.N. Secretary-General to establish a commission to report on the evidence of grave breaches of international humanitarian law committed by Boko Haram.²³¹ Once established, the duration of the tribunal would be based on when the U.N. Secretary-General believes the threat to international peace would be resolved.

In the case of Boko Haram, an *ad hoc* tribunal would rely on Member State militias—which have played an active role in arresting, providing prison facilities, and financial and material assistance to such tribunals in the past—to prosecute Boko Haram members.²³² As a result, convicted Boko Haram members would be subject to criminal sanctions in the tribunal detention

227. *See id.*

228. *See id.* This caused resentment by the locals because they were unable to attend the trials and see justice being served. *See id.*

229. All Member States of the United Nations must comply with the tribunal's authority, which would avoid the issue of Nigerian consent. *See International Criminal Tribunal for the Former Yugoslavia (ICTY)*, *supra* note 159.

230. *See id.*

231. *See* Rome Statute, *supra* note 30, art. 53.

232. The ICTR prosecuted persons that were arrested in Tanzania, Cameroon, Kenya, Benin, Côte d'Ivoire, Namibia, Togo, Zambia, Burkina Faso, Mali, the Democratic Republic of Congo, South Africa, Belgium, Switzerland, the Netherlands, and the United States. *See International Co-operation With the Tribunal*, INT'L CRIM. TRIBUNAL RWANDA, <http://ictr-archive09.library.cornell.edu/ENGLISH/factsheets/6.html> (last visited May 16, 2017).

center located at the Hague.²³³ Larry D. Johnson, a professor and former Deputy Legal Counsel for the United Nations, once said: “U.N. based criminal tribunals show that when the constellation of the various factors and elements are right, a public order of human dignity can be achieved.”²³⁴ In fact, criminal tribunals with a narrow focus have shown to be an efficient mechanism in prosecuting international crimes compared to the ICC.²³⁵ The narrow focus of prosecuting Boko Haram members in Nigeria would suffice for a tribunal in Nigeria.

In effect, the ICTY and ICTR were able to hold individuals accountable for international humanitarian crimes, strengthen international accountability, and rebuild in post conflict states. Similarly, a tribunal established in Nigeria would have similar effects because it would be based off the legal precedents established by the ICTY and ICTR. With established legal precedent, a tribunal in Nigeria would be using developed case law, rules, and procedures, which have proven to work in the past.

CONCLUSION

The insurgency of Boko Haram has left more than one million Nigerians displaced from their homes. While the ICC and the Nigerian government mull over a response, the terror group continues to commit genocide, crimes against humanity, and rape against the Nigerian people. In sum, the ICC’s inefficient record of trying cases, questionable legitimacy, and backlash from Member States, makes it an ineffective mechanism for prosecuting Boko Haram members. Instead, an *ad hoc* criminal tribunal provides a more viable and effective option, given the track records of the two previous tribunals—the ICTY and ICTR. In order to establish a tribunal, the international community, including NGOs and international state agencies, must dedicate resources to promote a media campaign aimed at educating the general public about Boko Haram’s atrocities to prevent Boko Haram’s further expansion. The U.N. Security Council must also pass a resolution to create an *ad hoc* tribunal in Nigeria to prosecute violations of international humanitarian law crimes committed by Boko Haram members, which include crimes against human-

233. *Id.*

234. *Id.*

235. *Id.*

ity, genocide, and rape. Given the circumstances, the U.N. Security Council has a prime opportunity to develop international humanitarian law and provide justice to the victims of these vicious crimes.

*Harry K. Tiwari**

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