AMNESTY AS ANTIDOTE TO TERRORISM: LEGALITY OR OTHERWISE UNDER INTERNATIONAL AND ISLAMIC LAWS

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ABSTRACT

The menace of terrorism is increasing geometrically across the globe. Many lives and properties have been lost in the process and the losses are still counting. Many countries of the world have been affected including Nigeria. In Nigeria, Bokoharam have established themselves as dreadful terrorists in the North Eastern part of the country. They have claimed many lives, destroyed many properties and left other permanently maimed for life. This has caused for serious concern with a view to finding a lasting solution to the unfortunate situation. This made the Federal government of Nigeria to propose granting amnesty to the dreadful Bokoharam with a view to laying their menace to rest. Hence, this study, which is essentially literature based with particular emphasis on the relevant international legal framework on the concept of terrorism and amnesty as antidote for the menace of terrorism as well as various relevant injunctions from the Holy Qur'an, examines the subject matter of this research both under the international law and Islamic law. The study also examines the effect of amnesty and its impact on terrorism under the two areas of law. The paper argues that amnesty is a valid solution to act of terrorism both under the International and Islamic Laws. The article further stated that if the identified and highlighted conditions stated for sincere repentance by the terrorists are met, amnesty stands a better chance of eradicating the menace of terrorisms in Nigeria. The study recommends that the federal government should strictly ensure that the Bokoharam terrorists meet the conditions of repentance before they could be granted amnesty as was done in the West in the past.

Key words: Terrorism, Amnesty, International Law, Islamic Law, Bokoharam.

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INTRODUCTION

Terrorism is not an ordinary crime. It is not even an ordinary cross border crime. It is viewed as heinous crime across the globe. Although the term "terrorism" has no international legal definition.[1]This is because, there is no permanent or universal definition accorded to the word 'Terrorism' under the International law.[2]However, under Islamic Law, the word terrorism enjoys a clear description as spelt out in the Quran and Sunnah which is recognized as the primary sources of Islamic Law. Thus, there is no ambiguity on what constitute Terrorism or who is to call terrorist under Islamic Law. Allah, the Law giver commands Muslims through Quran to avoid committing evil, oppression, cruelty, murder and blood-shedding. He describes those who fail to obey these commands as following the Satan's footsteps and adopting a posture that is openly revealed to be sinful in the Qur'an.[3]

Linguistically, Amnesty is a pardon extended by the government to a group or class of persons usually for political offences. It is the act of a sovereign power officially forgiving certain classes of persons who are subject to trial, but have not yet been convicted. It is the action of a government by which all persons or certain groups of persons who have committed a criminal offence, usually of a political nature that threatens the sovereignty of the government, are granted immunity from

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[1] Morris, Madeline (2003) 'Terrorism and Unilateralism: Criminal Jurisdiction and International Relations,'*Cornell International Law Journal*, Vol. 36: Iss. 3, Article 4. Available at: http://scholarship.law.cornell.edu/cilj/vol36/iss3/4 Accessed on 23rd March, 2019

[2] In 1994, United Nations General Assembly defined the word "Terrorism" to mean "Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoke to justify them. See generally, the 1994 United Nations Declaration on Measures to Eliminate International Terrorism annex to Un General Assembly resolution 49/60 available at http://www.un.org/aboutun/charter/index.html. Accessed on 24th March, 2019 and 25th April, 2019

[3] Quran Chapter 13 verse 25 and Quran 7 verse 56.

prosecution.[4]This concept has a significant root both under Islamic Law and the Conventional International Law. Under the Shariah, there are certain conditions slated for the offender before he/she can benefit from what is regarded as Amnesty (Afw).[5]

In view of the foregoing, this paper seeks to examine the menace of terrorism both under the International Law and Islamic Law. It will also examine the concept of Amnesty vis-à-vis its employment as antidote to terrorism as well as its propriety or otherwise within the context of the International Law and Islamic Law with a view to drawing lesson for Nigeria.

CONCEPTION OF TERRORISM IN INTERNATIONAL LAW

As rightly stated above that, there is no general consensus on the definition of terrorism. The difficulty of defining terrorism lies in the risk it entails of taking position. The political value of the term currently prevails over its legal one. Left to its political meaning, terrorism easily falls prey to change that suits the interests of particular states at particular times. For example, the Taliban and Osama bin Laden were once called freedom fighters (*Mujahideen*)[6] and backed by the CIA when they were resisting the Soviet occupation of Afghanistan. Now they are on top of the international terrorist lists.

The definition of the offence in criminal law treaty plays several roles. First and foremost, it has the symbolic, normative role of expressing society's condemnation of the forbidden acts. Second, it facilitates agreement. Since states tend to be reluctant to undertake stringent

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[4]<htpp://www.Vangardng.com/2013/10/Concept-Amnesty-Place-Human-Rights-Discourse>/Accessed on the 23rd March, 2019

[5] Mohammad Hashim Kamali; Amnesty And Pardon in islamic law with special refrence to post-conflict justice

[6] The real meaning of Mujahideen is people fighting in the course of Allah. These are the people calling people to the way of Allah. However, most people claiming to fight in the course of Allah in this period are nothing but those people causing and spreading mischief over the land and Almighty Allah in a number of verses seriously prohibits any act amounting to spreading of mischief on earth.

obligations in matters related to the exercise of their domestic jurisdiction, a precise definition of the crime, which restricts the scope of those obligations, makes agreement less costly. Third, it provides an inter-subjective basis for the homogeneous application of the treaty's obligations on judicial and police cooperation.[7] This function is of particular importance in extradition treaties because, to grant an extradition, most legal systems require that the crime be punishable both in the requesting state and the requested state. Fourth, it helps states to enact domestic legislation to criminalize and punish the wrongful acts defined in the treaty in conformity with their human rights' obligations. The principle of *nullumcrimen sine lege* requires, in particular, that states define precisely which acts are prohibited before anyone can be prosecuted or punished for committing those same acts.[8] It is on the above explanation that it is necessary to give a comprehensive definition of what constitute Terrorist act both under international law and our domestic laws.

The term "terrorism" comes from French *terrorisme*, from Latin: *terror*, "great fear", "dread", related to the Latin verb *terrere*, "to frighten". The *terror cimbricus* was a panic and state of emergency in Rome in response to the approach of warriors of the Cimbri tribe in 105 BCE[9]. Although the Reign of Terror was imposed by the French government, in modern times "terrorism" usually refers to the killing of people by non-governmental political activists for political reasons, often as a public statement.[10]The word "terrorism" was first recorded in English-

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[7]Ben Saul, "Defining 'Terrorism' to Protect Human Rights" in Sydney Law School Legal Studies Research Paper, No. 08-125 (2008) p. 11. Accessed on the 16th April, 2020

[8]See U.S. Dep't of State, International Terrorism Conventions (August 17, 1998), available at <http://www.state.gov/www/global/terrorism/980817_terror_conv.html>(last accessed 16 April 19).

[9]See "Early History of Terrorism", Available at <htpp://Terrorism-Research.com> Accessed on 23rd March, 2019

[10]*Williamson, Myra (2009). Terrorism, war and international law: the legality of the use of force against Afghanistan in 2001. Ashgate Publishing. p. 43. ISBN 978-0-7546-7403-0. Accessed on 24th April,2019*

language dictionaries in 1798 as meaning "systematic use of terror as a policy.[11]

The international community has worked on two comprehensive counter-terrorism treaties, these are League of Nations' 1937 Convention for the Prevention and Punishment of Terrorism, which never was entered into force, and the United Nations' proposed Comprehensive Convention on International Terrorism, which hasn't been finalized yet.[12]

In the late 1930s, the international community made a first attempt at defining terrorism. Article 1.1 of the League of Nations' 1937 Convention for the prevention and punishment of Terrorism, defined "acts of terrorism" as "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public". Article 2 included as terrorist acts, if they were directed against another state and if they constituted acts of terrorism within the meaning of the definition contained in article 1, the following:

1. *Any willful act causing death or grievous bodily harm or loss of liberty to:*

    a) *Heads of State, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;*
    b) *The wives or husbands or the above-mentioned persons;*
    c) *Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.*[13]

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[11]U.N. Security Council Res. 1368 (2001) available at <http://www.un.org/Docs/scres/2001/res1368e.pdf> (last accessed 16 April 19)

[12]*Ibid*

[13] League of Nations'1937 Convention for the Prevention and Punishment of Terrorism

2. *Willful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.*[14]
3. *Any willful act calculated to endanger the lives of members of the public.*[15]
4. *Any attempt to commit an offence falling within the foregoing provisions of the present article.*[16]
5. *The manufacture, obtaining, possession, or supplying of arms, ammunition, explosives or harmful substances with the view to the commission in any country whatsoever of an offence falling within the present article.*[17]

Comprehensive Convention on International Terrorism of the United Nations General Assembly gave the definition of the crime of terrorism as follows:

1. Any person who commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:
   (a) *Death or serious bodily injury to any person; or*
   (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
   (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.[18]

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[14] Ibid
[15] Ibid
[16] Ibid
[17] Ibid
[18] United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Sixth session (28 January-

In 2004, United Nations Security Council Resolution 1566 condemned terrorist acts as:

> *Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.*[19]

It is necessary to state that a different definition of Terrorism was given in 2005 by United Nations International Convention for the Suppression of Acts of Nuclear Terrorism, wherein Article 2 of the convention defines the offense as follows:

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

   (a) Possesses radioactive material or makes or possesses a device:

   (i) With the intent to cause death or serious bodily injury; or

   (ii) With the intent to cause substantial damage to property or to the environment;

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1 February 2002), Available at http://www.un.org/aboutun/charter/index.html (last accessed 16 Sept 01)., Accessed on 24th March, 2019.

[19]U.N. Charter (1945) available at <http://www.un.org/aboutun/charter/index.html> (last accessed 16 March, 2019).

(b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment; or

(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act[20]

In the same vein, European Union defines terrorism for legal/official purposes in Article 1 of the Framework Decision on Combating Terrorism (2002).[21] This provides that terrorist offences are certain criminal offences set out in a list consisting largely of serious offences against persons and property that:

> *...given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.*[22]

More so, North Atlantic Treaty Organization (NATO) defines terrorism in the AAP-06 NATO Glossary of Terms and Definitions, Edition 2014 as:

> *"The unlawful use or threatened use of force or violence against individuals or property in an attempt to coerce or*

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[20] Nuclear Terrorism Convention, Article 2

[21] Sami Zeidan, Desperately Seeking Definition: The International Community's Quest for Identifying the Specter of Terrorism, 36 Cornell International Law Journal (2004) pp. 491-92

[22] *Ibid*

intimidate governments or societies to achieve political, religious or ideological objectives"[23]

Apart from the definitions given by the international communities, individual country has described and defined what term as terrorist act in their country. For instance, country like Argentina define terrorist act as "not only who set bombs and carry guns, but also those who spread ideas opposite to Christian and western civilization.[24] This type of definition shows that each country has different way of classifying what constitute terrorist act in their respective State. In Pakistan, terrorist act is defines in the Pakistan Anti-Terrorism (Amendment) Ordinance, 1999 which states:

A person is said to commit a terrorist act if he,

(a) *in order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or such fire-arms or other lethal weapons as may be notified, or poisons or noxious gases or chemicals, in such a manner as to cause, or be to cause, the death of, or injury to, any person or persons, or damage to, or destruction of, property on a large scale, or a widespread disruption of supplies of services essential to the life of the community, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties; or*

(b) *commits a scheduled offence, the effect of which will be, or be likely to be, to strike terror, or create a sense of fear and insecurity in the people, or any section of*

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[23]htpp://nso.nato.int/nso/zpublic/ap/aap6/aap-6.pdf> last accessed 16 March,2019

[24]https://en.wikipedia.org/wiki/Definitions_of_terrorism accessed 16th day of March, 2019

the people, or to adversely affect harmony among different sections of the people; or

(c) commits an act of gang rape, child molestation, or robbery coupled with rape as specified in the Schedule to this Act; or

(d) commits an act of civil commotion as specified in section A[25]

In Nigeria, what constitute terrorism is widely stated and defined in the Terrorism Act 2011.[26]The law states that it is an act of terrorism for any person to knowingly does an act, attempts or threatens to do an act preparatory to or in furtherance of an act of terrorism,[27]commits to do anything that is reasonably necessary to promote an act of terrorism;[28] or assist or facilitate the activities of persons engaged in an act of terrorism commits an offence under this Act.[29] It is also an act of terrorism under the Nigeria Law to unduly compel a government or international organization to perfume or abstain from performing any act.[30] More so, is a terrorist act to destabilize or destroy the fundamental political, constitutional, economic or social structure of a country or an international organization.[31] Seriously intimidate a population,[32]Kidnapping of a person has also been recognized as an act of terrorism under this Act.[33]

Furthermore, destruction of government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, public place or private

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[25]Pakistan Anti-Terrorism (Amendment) Ordinance, 1999 Available at <https://en.wikipedia.org/wiki/Definitions_of_terrorism>Accessed on 24th March, 2019

[26]Terrorism (Prevention) Act, 2011. Act no 10.

[27] Terrorism (Prevention) Act, 2011. Act no 10. Prohibition of act of terrorism, section 1 (a)

[28]*Ibid*; section 1 (b)

[29]*Ibid*; Section 1 (c)

[30]*Ibid*; Section 2 (I)

[31]*Ibid*; Section 2 (III)

[32]*Ibid*; Section 2 (ii)

[33]*Ibid*; Section 2 C (ii)

property, likely to endanger human life or result in major economic loss[34] has also been categorize as an act of terrorism.

In the same vein, the seizure of an Aircraft, Ship or other means of public or good transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b)(iv) of this subsection is a terrorism.[35]

Furthermore, manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of biological and chemical weapons without lawful authority has also categorize as an act of terrorism.[36]

PUNISHMENT OF TERRORISM UNDER INTERNATIONAL LAW

International law is important to the prosecution and punishment of terrorists. Although, terrorist acts are criminal under the law of the state in which they occurred, but there is no agreement that Terrorist acts are also criminal under international law. Most crime is prosecuted at the national, not the international, level. This is true even of cross-border crime. For the most part, states criminalize conduct domestically. Where states need to cooperate with other states to enforce their domestic criminal law, they do so through mutual legal assistance agreements, extradition treaties, coordination of investigations, and the like.[37]

Since terrorism has political motives, states are typically the targets and, not infrequently, the sponsors of terrorism. This fact enormously

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[34] *Ibid*; section 2 C (iii)
[35] *Ibid*; Section 2 C (iv)
[36] *Ibid*; Section 2 C (v)
[37] Morris, Madeline (2003) 'Terrorism and Unilateralism: Criminal Jurisdiction and International Relations,' *Cornell International Law Journal*, Vol. 36: Iss. 3, Article 4. Available at: http://scholarship.law.cornell.edu/cilj/vol36/iss3/4 Accesses on 24th March, 2019

complicates the issue of criminal jurisdiction over terrorism. The likely involvement of states as targets or sponsors of terrorism creates an impetus to resort to some authority above the state for the handling of terrorist offenses.[38]

Internationally, three states have jurisdiction to try and punish the terrorist for terrorist act; namely, country on whose the act was done, country who's the offender came from if there is no evidence to the effect that those act were carryout and sponsored by that state know as State sponsored Terrorism. And the Third state is the neutral state or third party state. This means that Terrorist can be punished if apprehended by the government on whose territory the act was done, but that other government must either extradite captured terrorist for punishment elsewhere or rely on some extra territorial basis for criminal Jurisdiction.[39]

Article 3 of the Convention to prevent and punish the acts of terrorism reads as follows:

> *Persons who have been charged or convicted for any of the crimes referred to in Article 2 of this convention shall be*

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[38]See Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105; Montreal Convention, supra note 3; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention of Sept. 23, 1971, Feb. 24, 1988, S. Treaty Doc. No. 100-19; Convention and Protocol on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, 27 I.L.M. 668; International Convention Against the Taking of Hostages, Dec. 17, 1979, TIAS No. 11,081, 1316 U.N.T.S. 205; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T. 1975, 1035 U.N.T.S. 167; Convention on the Safety of United Nations and Associated Personnel, Dec. 15, 1995, U.N. GAOR 49th Sess., Supp. No. 49, Vol. 1, at 299, U.N. Doc. A/49/49 (1994), 34 I.L.M. 482 (1995); International Convention for the Suppression of Terrorist Bombings, 37 I.L.M. 249 (1998); International Convention for the Suppression of the Financing of Terrorism, Jan. 10, 2000, 39 I.L.M. 270 (2000).

[39] Daniel G Partern, "Terrorism: An international offence" Available at https://heinonline.org/HOL/LandingPage?handle=hein.journals/conlr19&div=36&id=&page=75> Accessed on 25th April, 2019

subject to extradition under the provisions of the extradition treaties in force between the parties or, in the case of states that do not make extradition dependent on the existence of a treaty, in accordance with their own laws.[40]

By the interpretation of the above provision, it is clear that the only punishment provided for the person charged or convicted with terrorism act is for the country affected to extradite the offender to the state of the offender for proper punishment and in case of state that do not make extradition, the offender will be punish with the law of the state in which the act of terrorism was committed. It is necessary to establish that each State even a signatory to the above convention has right to determine the punishment for the terrorist or terrorist organization according to their own law. For example, in Nigeria the punishment for the person who arranges, manages or assists in arranging or managing or participates in a meeting or an activity which he knows is connected with an act of terrorism[41] or provides logistic, equipment or facilities for a meeting, or an activities which he knows is connected with an act of terrorism; [42]or attends a meeting, which he knows is to support a proscribed organization, or to further the objectives of proscribed organization, commits an offence and shall on conviction be liable to imprisonment for a maximum term of 10 years.[43]

Twenty years (20) imprisonment is provided as a punishment for anyone who solicits or renders support for an act of terrorism or

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[40]Convention To Prevent And Punish The Acts Of Terrorism Taking The Form Of Crimes Against Persons And Related Extortion That Are Of International Significance.

[41] Section 3(a) of Terrorism Act 2011 Provides as follows: Any person who intentionally murders, kidnaps or commits other attacks on the person or liberty of an internationally protected'

[42]"Any person who intentionally carries out a violent attack on the official premises, private accommodation or means of transport of an internationally protected person in a manner likely to endanger his person or liberty", or Section 3(a) of Terrorism Act 2011

[43]See Section 3(c) of Terrorism Act 2011

proscribed organization or an internationally suspected terrorists group,[44] and death sentence where death is results as a result of the act of terrorism.[45]

Harbouring of a person suspected to have committed an offence of terrorism attracted 10 years imprisonment.[46] While a person who agrees to provide training or instruction in the making or use of explosive or other lethal devices; or in carrying out a terrorist act shall be liable upon conviction to 10 years imprisonment.[47] It is an offence and an act of terrorism for any person to fails to disclose to a law enforcement officers any information on the act of any person or organization reasonably believed to have committed the act of terrorism or about to commit an offence of terrorism, the person shall be liable upon conviction to 10 years imprisonment[48]. In the same vein, obstruction of terrorism investigation either by disclosing to another person anything which is likely to prejudice a terrorist investigation or interferers with material which is likely to be relevant to a terrorist investigation attracts 10 years imprisonment[49].

AMNESTY TO TERRORISM UNDER INTERNATIONAL LAW

Like terrorism, International law has no agreed definition of amnesty, largely because state practice on defining and using amnesties differs enormously. Amnesty, refers to measures adopted by states to release categories of individuals or offenses from criminal liability. States adopt amnesties for different purposes depending on context. These purposes can be both positive and negative. Amnesties can remedy human rights violations by releasing those who have been arbitrarily detained or removing obstacles to refugees returning home. In contrast, amnesties can create impunity for perpetrators of international crimes and gross human rights violations. Most commonly, they are enacted to facilitate

[44] *Ibid* Section 4(b)
[45] *Ibid* (2)
[46] *Ibid* Section 5
[47] *Ibid* Section 6 (a) (b)
[48] *Ibid* Section 7 (b)
[49] *Ibid* section 8(b)

political transitions and, in post-conflict settings, to encourage combatants to disarm, demobilize, and reintegrate. Over the past two decades, international law has gradually imposed restrictions on applying amnesties to perpetrators of genocide, war crimes, and crimes against humanity.[50]

Since 2004, the United Nations (UN) has proclaimed that amnesties are impermissible for gross violations of human rights, such as torture, enforced disappearance, extrajudicial executions, and sexual violence. These restrictions primarily highlight conflicts that can arise between states' duties to prosecute international crimes and serious violations and the role of amnesty in preventing prosecutions. Where amnesties' legal effects also extend to preventing civil liability or truth recovery, they can impede states fulfilling their obligations to investigate and provide a remedy for violations. These conflicts between amnesties and states' obligations to investigate, prosecute, and provide reparations arise most forcefully where these obligations are enshrined in international treaties[51].

Ascertaining the international legal status of amnesties is further complicated by the fact that international courts have only had to grapple with broad, unconditional amnesties for international crimes and there is no international jurisprudence on the legality of conditional amnesties that require perpetrators to participate in processes to deliver peace, truth, accountability, and/or reparations, or which are designed to provide testimony to support selective prosecution strategies.[52] Traditionally, the use of amnesties was viewed primarily as a matter of domestic law and policy. At the international level, they regularly featured in agreements to end interstate armed conflicts, but their use in such settings was subject to negotiations between states rather than international legal regulation.

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[50] http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0172.xml Accessed on the 30th of March, 2019

[51] *Ibid*

[52] *Ibid*

By way of definition, Amnesty is a pardon extended by the government to a group or class of persons usually for political offence, the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet being convicted. It is the action of a government by which all persons or certain groups of persons who have committed a criminal offence usually of a political nature that threatens the sovereignty of the government are granted Immunity from prosecution. Examples of such offences are treason and sedition.[53] Amnesty allows the government of a nation or state to "forget" criminal acts, usually before prosecution has occurred. Amnesty has traditionally been used as a political tool of compromise and reunion following a war. An act of amnesty is generally granted to a group of people who have committed crimes against the state, such as treason, rebellion, or desertion from the military[54].

The history of amnesty dates back to 403 B.C. according to Greek and Roman law. One of the documented ones was the long-term civil war in Athens which was ended after a group dedicated to reuniting the city took over the government and arranged a general political amnesty. The amnesty which was effected by loyalty oaths taken by all Athenians, and only later made into law, the amnesty proclaimed the acts of both warring factions officially forgotten.[55]

It would be noticed that the application of amnesty by a State in some situations, transcends domestic crimes into the sphere of International law. This happens where the offence for which immunity against prosecution is provided are so atrocious that they deeply shock the conscience of humanity and are regarded as being of concern to the International community as a whole. The Rome Statute establishing the International Criminal Court in Article 5 lists the offences regarded as

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[53]Prof Epiphany Azinge, SAN,'*The* Concept of Amnesty and its Place in Human Rights Discourse Available at https://www.vanguardngr.com/2013/10/concept-amnesty-place-human-rights-discourse/ Accessed on 24th March, 2019

[54]*Ibid*

[55]*Ibid*

being of concern to the International community as crime of genocide, crimes against humanity, war crimes and crime of aggression.[56]

EFFECT OF AMNESTY UNDER INTERNATIONAL LAW

The Effect of amnesty includes: immediate release of all political prisoners, right of political exiles to return home, relinquishment of civil and political rights, reinstatement in their jobs of persons dismissed for political reasons, right of victims of inhuman treatment or their families to compensation and importantly, restoration of peace to the society.[57] The declaration of amnesty laws is not only a recognition that crimes against humanity and war crimes have occurred, but that also no one should be investigated and held accountable. Amnesty laws therefore, that purport to expunge criminal liability for war crimes and crimes against humanity, appear to be illegal under both customary and treaty international law.[58]The position of international law, therefore, is that *jus cogens* crimes cannot be amnestied.[59]

Further, the founding treaty of the ICC has established that amnesties are not a bar to the prosecution of egregious crimes. For example, the preamble to the treaty suggests that deferring a prosecution because of the existence of a national amnesty would be incompatible with the purpose of the court, namely to ensure criminal prosecution of persons who commit serious international crimes.[60]

Amnesty also occurred during the transition from an authoritarian regime to democracy, authoritarian regimes usually grant themselves

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[56]*Ibid*

[57] Refugee Law Project 2005. Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-term Reconciliation. Working Paper No. 15, February 2005.

[58] Rawls, J. 1986. *A Theory of Justice*. Oxford: Oxford University Press

[59] For The Four *Jus Cogens* Crimes Of Genocide, Crimes Against Humanity, War Crimes And Torture, There Should Be No General Amnesty

[60] Refugee Law Project 2005. Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-term Reconciliation. Working Paper No. 15, February 2005.

amnesty in order to avoid prosecution during the approaching democratic dispensation. In Argentina, by promulgating an amnesty law known as the "pacification law" on 25 September 1983, the Argentine military junta attempted to obviate any possibility of criminal or civil proceedings being constituted against those responsible for serious violations of human rights committed during operations designed to restore public order and Amnesty can also serve to neutralize opposition groups. The purpose of amnesty is to seek social tranquility less by consensus than by a reduction of tensions, and thus of the opposition's scope for action by forcing it to adopt a passive role. The aim is normalization rather than reconciliation through both persuasion and dissuasion. Such was the aim of the Polish Amnesty Law of 20 September 1984, enacted after the lifting of martial law, whose effects it was designed to alleviate. The goal of reducing tensions was achieved given the large number of individuals benefiting from the amnesty.[61]

Sometimes State sees amnesty laws as a means of dealing with the overcrowding of prisons, a situation which may prejudice the human rights of prisoners while in some cases, the purpose of an amnesty is strictly humanitarian. For instance, in Zaire, the Act of 17 November 1981 covers disabled persons. In Syria, Act No. 26 of 12 March 1978 covers incurable or chronically ill prisoners. In the Eastern European countries, each humanitarian measure appears to be traditional, particularly in respect of children, women, the aged and the sick.[62] In a nutshell, Amnesty is a concept recognized under International law and various States has adopted the policy in their municipal law of their respective State. The concept has effect of treating and recognizing the offender as somebody who has not committed an offence before. It is a policy uses to restore peace in a society and achieve political stability. And the offender usually retains his /her freedom.

CONCEPTION OF TERRORISM IN ISLAMIC LAW

What constitute terrorism under Islamic are well spelt out in the holy Quran and unlike Common law, there is no ambiguity in the definition

[61] *Ibid*
[62] *Ibid*

of terrorism and punishment under Islamic law. Murdering a person for no reason is one of the most obvious examples of mischief and act of terrorism under Islamic Law. God repeats in the Qur'an a command He formerly revealed to Jews in the old Testament thus:

> ....if someone kills another person-unless it is in retaliation for someone else or for causing corruption in the earth, it is as if he had murdered all mankind. And if anyone gives life to another person, it is as if he had given life to all mankind.[63]

As the verse suggests, a person who killed even a single man, "unless it is in retaliation for someone else or for causing corruption in the earth", commits a crime as if he had murdered all mankind. This being the case, it is obvious what great sins are the murders, massacre and attack, popularly known as "suicide attack", committed by terrorists. God informs us how this cruel face of terrorism will be punished in the hereafter in the following verse:

> There are only grounds against those who wrong people and act as tyrants in the earth without any right to do so. Such people will have a painful punishment.[64]

All these reveal that organizing acts of terror against innocent people is utterly against Islam and it is unlikely that any Muslim could ever commit such crime. On the contrary, Muslims are responsible for stopping people, removing "mischief on earth" and bringing peace and security to all people all over the world.

PUNISHMENT OF TERRORISM UNDER ISLAMIC LAW

Terrorism is one of the Hudud offences under Islamic Law. Definition and the punishment for the offence are well stated in the Quran and explained by the Sunnah. Infliction of punishment on the offender is

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[63]Qura'an 5 vs 32

[64] Qur'an 42 vs 42

always judged by the intention of the offender. That is where the crime is willfully and maliciously committed, it attracts severe punishment on the offender.[65]

In Islam, Punishment is of two folds for the terrorist. There is Punishment for him/her in this world which must be carried out after the crime has been established against him/her, and punishment in the hereafter.[66]

Killing a person for no reason is one of the greatest sins related in the Qur'an:

> ..... if anyone kills another person unless it is in retaliation for someone else or for causing corruption in the earth-it is as if he had murdered all mankind. And if anyone gives life to another person, it is as if he had given life to all mankind.....[67]

As the verse suggests, a person who kills innocent people for no reason is threatened with a great torment. God informs us that killing even a single person is as evil as murdering all mankind on earth and punishment for this death sentence.

Another punishment awaits the terrorist is the punishment for committing suicide. In Islam killing oneself and other people are prohibited. It is forbidden for anyone to kill himself or herself, for no matter what reason. Allah said "Do not kill yourselves."[68] The Prophet reveals suicide to be a sin in a parable, when he says that those who commit suicide will be punished:

> "Whoever throws himself down from a mountain and kills himself will be throwing himself down in the Fire of Hell

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[65] Y.Y. Bambale, *Crimes and Punishments under Islamic Law*, (Mathous Land Books, Second Edition) p. 127

[66] Ibid

[67] Quran Chapter 5vs 32

[68] Quran Chapter 4vs 29

> forever and ever. Whoever drinks poison and kills himself will be sipping it in the Fire of Hell forever and ever. Whoever kills himself with a piece of iron will have that iron in his hand, thrusting it into his belly in the Fire of Hell forever and ever."[69]

Also in another narration, it was revealed as follows: It was narrated from Thaabit ibn Dahhaak (may Allaah be pleased with him) that the Messenger of Allah (blessings and peace of Allah be upon him) said: "Whoever kills himself with something will be punished with it on the Day of Resurrection."[70]It is also forbidden for Muslim to hasten his or her death, the prophet explained that paradise will be forbidden for such person. It was narrated that Jundub ibn 'Abd-Allah (may Allah be pleased with him) said: The Messenger of Allah (blessings and peace of Allah be upon him) said: "A man among those who came before you was wounded. He panicked and took a knife and cut his hand, and the bleeding did not stop until he died. Allah, may He be glorified and exalted, said: 'My slave hastened his death; I have forbidden Paradise to him.[71]As this makes clear, committing suicide, and thus carrying out suicide attacks, and causing the deaths of thousands of innocent people while doing so, is a total violation of Islamic morality. The person may escape the punishment of this world but prophet has revealed that his or her punishment in the hereafter is hell fire.[72]

AMNESTY (AFW) TO TERRORITS AND ITS EFFECT IN ISLAMIC LAW

Afw literally means omission (isqāṭ) or waiver and it is defined as exempting the wrongdoer by not taking him to account. Another Arabic synonym of Afw is al-ṣafḥ, which means to turn away from someone but also to widen the space and incline toward reconciliation. In this sense al-ṣafḥ involves taking a step beyond Afw. In fiqh terminology, Afw

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[69]M. F. 'Abdul-Baqi, (ed) *Sahihu Muslim*,Beirut, Darulhya'i t-Turathi 'l-Arabi, vol. 2, p. 704, no. 1017

[70]ibid p. 710, no. 5700

[71]Ibid p.710 no.3276

[72] Ibid

means a waiver of a duly warranted punishment for wrongdoing – this being the special meaning of Afw as afw does not always lead to omission of punishment.[73]

Amnesty, pardon and forgiveness are the means, in Islamic theology and law, as also in most other world traditions, of relieving someone from punishment, blame, civil liability or religious obligation. The same result is often achievable by recourse to certain other methods such as reconciliation, arbitration, and judicial order.[74] Afw is a major theme of the Qur'ān and takes a high profile in the Islamic order of values, being the subject of over thirty verses in the Qur'ān that subsume legal, religious, moral and cultural dimensions. Punishing the wrongdoer is the normal course enjoined by the Shariah, but amnesty may be preferable at times. Allah thus praises: Those who spend in the way of God, in times both of prosperity and hardship, and those who control their anger and forgive their fellow humans. Truly God loves the muhsinin (those who persist in ihsan.[75]

Elsewhere the Qur'an speaks of proportionality and equivalence in punishment, but espouses it with a recommendation for forgiveness:

Whoever transgresses against you, your response should be proportionate to the transgression committed against you.[76] And the recompense of an evil is an evil equal thereto, but he who forgives and seeks reconciliation, his reward shall be with God, and God does not love the wrongdoers. [77]

The Qur'an often speaks in praise of those who take a forgiving attitude toward people.

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[73] Mohammad Hashim Kamali; Amnesty And Pardon in islamic law with special refrence to post-conflict justice

[74] Ibid

[75] Quran Chapter 3 vs 134

[76] Quran Chapter 2 vs 194

[77] Quran Chapter 42 vs 40

Afw is designated as a manifestation of iḥsān (beauty and goodness).[78] Then also God associates His illustrious self with forgiveness and speaks of His love and affection for those who forgive without vindictiveness, especially when they are overwhelmed with the urge for revenge.[79] Pardoning is especially meritorious when granted by someone who can avenge but chooses to exonerate and forgive.

The Prophet himself strongly praised the virtue of Forgiveness, as in the ḥadīth: "forgiveness does not fail to bring honour to a servant of God when he grants it (for His sake)."[80]

Almighty Allah also admonished Prophet Muhammad (SAW) through the Holy Quran to hold to forgiveness, enjoin kindness and turn away from the ignorant.[81]Thus, in Islamic jurisprudence, there are certain conditions for the offender to establish before he/she can enjoy amnesty. The offender must satisfy three conditions of repentance before he/she can be forgiven by Allah and four conditions if it is offence against human being. The conditions include (1) to desist from committing the offence, (2)to feel sorry for committing the offence or regretting committing the offence and (3) to sincerely decide not to recommit the offence again.[82]

Any repentance failing to meet any foregoing conditions would not be sound. But if the sin involves a human's right, it requires a fourth condition, i.e., to absolve oneself from such right. If it is a property, he should return it to its rightful owner. If it is slandering or backbiting, one should ask the pardon of the offended.

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[78]Quran Chapter 2 vs 178

[79]Quran Chapter 3vs 134

[80] Muslim b. Ḥajjāj al-Nīsābūrī, MukhtasarṢaḥīḥ Muslim, ed. MuḥammadNāṣir al-Dīn al-Albānī (Beirut: Dār al-Maktab al-Islāmī, 1404 AH/1984, 2nd ed.), 475, ḥadīth no. 1,790.

[81] Quran Chapter 7 vs199.

[82] Muslim b. Ḥajjāj al-Nīsābūrī, MukhtasarṢaḥīḥ Muslim, ed. MuḥammadNāṣir al-Dīn al-Albānī (Beirut: Dār al-Maktab al-Islāmī, 1404 AH/1984, 2nd ed.), 475, ḥadīth no. 1,790.

It is on the above illustration and explanation that one needs to understand that there is no offence or offences against Allah no matter the degree of the grievousness of the offence like terrorism that is not forgivable by Allah as long as the person doesn't die on it. But the conditions of repentance must necessarily follow. It is on this basis that Allah declares that:

> *"Indeed, the penalty for those who wage war against Allah and His messenger and strive upon earth (to cause) corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world, and for them in the Hereafter is a great punishment."*[83]
>
> *Except to those who return (repenting) before you apprehend them. And know that Allah is forgiving and merciful.*[84]

From the above Quran provisions, one would understand that the accused will not be punished if he repents from the crime before being arrested. There are divergence opinions on the punishment of the accused after the arrest and he make repentance of that crime. Although, there is no opportunity to the terrorist who killed him/her self during the operation to repent and his/her forgiveness can only be decide by Allah. As for the Muslims who commit the crime and repent before they are apprehended, the punishment of killing, crucifixion and cutting the limbs will be waved.

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[83] Quran Chapter 5 vs 33
[84] Quran chapter 5 vs 34

CONCLUSION

The paper examines phenomenon of the act of terrorism both under International and Islamic laws. The paper explains the concept of Amnesty to the person accused of terrorism also both under International and Islamic laws. The research discovered first and foremost that there is no legal or permanent definition of what constitutes act of terrorism under international law as different bodies and organizations state what they consider as an act of terrorism in different ways and with different approaches. The definition given by the United Nation differ from the one explained by the European Union and same thing applicable to each States. What constitute an act of terrorism in USA is different from that of Britain and that of France is totally different from that of Russia. The concept of Amnesty is deeply rooted in international law because it enjoys various international legal regimes; the purpose of which to restore lasting peace to the society. Concept of Amnesty equally has basis in the Quran and Sunnah. The accused will be entitled to Amnesty if he surrenders or repents before he was arrested or apprehended. The accused will have belief in the policy since it has basis under Islamic Law. The belief of this group is to practice their religion in line with Quran and Sunah. Therefore, owing to the concern raised at various quarters over the intention of the Federal Government of Nigeria to grant Amnesty to the deadly Bokoharam, it is safe at this juncture to posit that the intention is highly commendable and should not call for unnecessary apprehension. What the Federal Government must ensure in the circumstance is to carefully apply or grant Amnesty subject to the conditions stated for the repentance. Thus the terrorists must have surrendered and repented from committing further similar offence(s) before they could be entitled to Amnesty.