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THE LEGAL FRAMEWORK ON REBELLION AND INSURGENCY IN ISLAMIC LAW AND CUSTOMARY INTERNATIONAL LAW: A REVIEW

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ABSTRACT

Over the years, Muslim countries have been faced with wave of violence mostly related to insurgency or rebellion, leading to loss of lives and property on an unprecedented scale. Interestingly, rebellion and insurgency have a long, controversial, and deeply rooted history in Islam. As such, it is one of the most thoroughly studied and regulated concepts in Islamic law. Other non-Muslim societies too, have faced these kinds of challenges at different stages of their development, underlining the literature on rebellion and insurgency in customary international law. Therefore, from Muslim to non-Muslim states, this challenge is not a new one: there clearly is no shortage of legal regulation from either side. Notwithstanding, the menace of insurgency related violence seems to have defied all attempts at regulation. This paper compares the regulation of insurgency and rebellion under Islamic law and customary international law with a view to identifying the similarities or otherwise. It thereby relates the trends in rebellion and insurgency in both Muslim and non-Muslim countries to the legal regime in both systems. The paper finds that the legal regime regulating rebellion and insurgency in Islamic law and customary international law are similar, with trivial variances in substance. This being the case, it raises the question if the legal regulation of these issues has had any effect on the unending violence that has so far destroyed several states and led to loss of millions of lives. The paper concludes that notwithstanding the seeming laxity of the legal regimes regulating insurgency and rebellion in both Islamic law and customary international law, the genesis of the problem might have been with application rather than the substance of the law.

Keywords: *Rebellion, Insurgency, Islamic law, Customary international law.*

INTRODUCTION

Happenings around the globe tend to shape the perceptions and conceptions of issues generally, and how certain things will always be remembered. The contemporary world faces many armed conflicts, most of which are deemed 'internal' – or 'non-international'. Islamic history has also been shaped in a great deal of ways, by numerous incidents of rebellion and civil strives which ultimately shaped the juristic discourse of the subject of rebellion. A careful study will therefore, disclose a very sensitive and tense area of the law wherein the line between theology and law is so thin that one may end up more confused than ever before.

Terrorism, rebellion and insurgency carried out in the name of Islam have led to the question often asked, i.e. what the relationship between Islam and violence is. The answer to this question, which obviously is rhetorical, has been provided in Islamic texts and juristic writings dating back to the time of the prophet (SAW), his companions, and renowned Muslim jurists for centuries. Happenings around the Muslim world over the last two decades in general and the last few years have been at the least, intense. The unending insurgency in Somalia, Iraq, Afghanistan, Libya, Mali, the Boko Haram insurgency in Nigeria; and more recently, the on-going rebellion in Syria have brought into limelight certain issues which though not new to the human community, are now being viewed from an entirely different point of view; What is the position of Islamic law in relation to rebellion and insurgency?

Islamic law has been proven to deal with the issue of rebellion, civil wars, and internal conflicts in quite some detail. Most manuals of Islamic jurisprudence (*fiqh*) have a chapter on "*Siyar*" that contains a section on rebellion (*khuruj/baghy*); some manuals of *fiqh* even have separate chapters on rebellion. The Qur'an, the primary source of Islamic law, provides fundamental principles not only to regulate warfare in general but also to deal with rebellion and civil wars. The Sunnah of the Prophet (SAW) elaborates these rules and so do the conducts and statements of the pious Caliphs who succeeded the Prophet; these Caliphs, especially 'Ali, laid down the norms that were accepted by the Muslim jurists who in time developed detailed rules on the subject matter of rebellion. Islamic history records several instances of rebellion in its early period and that is why the subject has always been an issue of concern for jurists.

To tackle the issue comprehensively, a comparison is made between the position under Islamic law and that which obtains under customary international law. This is with a view to see if Islamic law has dealt with the issue more favorably to encourage the emergence of insurgents and rebels across the Muslim world. The paper however, emphasizes more on the legal position rather than the juristic discourse, often theological, which centers on the blameworthiness or otherwise of rebels. It also circumvented the discourse that has to do with the role played by some companions of the prophet (SAW) in the development of the entire concept of rebellion in Islam. This is meant to avoid the controversial points which might easily be sensitive. The focus of the paper therefore, is on the legal position as advocated by jurists from the major schools of Islamic jurisprudence as compared with customary international law.

Exploring the Term Rebellion Or Insurgency

According to Oxford Learners Dictionaries, expression is what people say, write or do in order to show their feelings, opinions and ideas (Oxford Learner's Dictionaries, 2014). Meanwhile, freedom is defined as a right or power or liberty (The Law Dictionary, 2013). From this combination of definitions, basically, it can be understood that a person has a liberty or a right to show to the others what they feel or think.

Meanwhile in the legal context, freedom of expression is a derivative of a basic human right which sometimes is expressed in more limited language such as freedom of speech, freedom of thought or freedom of the press and this right can be expressed in various means such as through writing, social media, movie and others. Therefore, freedom of expression is a freedom to communicate ideas, whether orally or in print or by other means of communication but it is subject to certain restrictions (Duhaime Legal Dictionary, 2014).

Rebellion and insurgency are two related concepts which have been widely discussed in both Islamic Law and customary international law. In as much as they also have several related and often derivative concepts, these two are more intertwined as they are synonymous with each other.

The Islamic Law Context

Technically, or legally, the term rebellion or insurgency has been variously defined by Islamic jurists over the years. scholars from all the major schools of Islamic jurisprudence have given definitions of the term rebellion; though these definitions may not be the same, they are very closely related, and may well be said to be focusing on bringing out the same basic ingredients with slight variations. A few of such definitions may be considered with a view to identify the basic elements of rebellion in Islamic Law. This will help in elaborating the perspectives of this discourse.

The term rebellion is the equivalent of the Arabic word "*baghyun"* which may either mean "demand, oppression, or excess" (Qadri, 2010, p. 173). It is reflected in defiance to the instructions of a legitimate authority and initiating violent or armed fight to counter it (Qadri, 2010). The Hanafi scholar, Ibn Humaam, identifies challenge to authority as the basic element of rebellion, though he classified it into four (Humam, 1999, p. 5:334). Other Hanafi scholars however, offered slightly different definitions such as the one proffered by Ibn Abideen Al-Shaami, which emphasises the possession of arms and the bid to take over power based on some erroneous reading of the texts (Muhammad, 1386 AH, p. 261). From these definitions, it may be deciphered that rebellion is manifested where there is defiance to the legitimate authority, rejecting its legitimacy based on a new and erroneous interpretation of the primary sources of Shariah. It will inevitably encompass armed violence aimed at taking over power from the legitimate government of the day. In as much as the definitions proffered above are from Hanafi scholars, they are, not far away from those canvassed by scholars from the other Sunni schools of jurisprudence (i.e. *Maa* (Fadl, 2001)*liki*, *Shaafi'i*, and *Hambali*). Indeed, they all point at nearly the same basic elements, which include: Defiance to authority, armed struggle, and erroneous interpretations of the primary texts (Al-Kalbee, Nd, p. 364).

Generally, rebellion may be manifest in a multitude of acts which might meet the requirements of revolt to authority; It may be in the form of inert defiance to the instructions of the legitimate authority. It may well be in the form of an armed revolt, or by way of a "counterculture" trying to find a different manner of societal expression; on occasions, rebellion is manifested by the killing of, or attempt to kill renowned spiritual or political leaders (Fadl, 2001, p. 4).

The Context in Customary International Law

In customary international law, rebels and insurgents are mostly discussed under the general categorisation "non-state actors" which represents persons or groups independent of a state (Lubell, 2010, p. 14). Rebellion or insurgency may therefore, be defined as those groups engaged in armed struggles against the regime in authority with the aim of deposing the current administration or otherwise to instigate a secession leading to the establishment of a new nation; it may also be that they only aim to gain more self-government within the nation as it existed (Zegveld, 2002, p. 1). The core characteristics of insurgents or rebels therefore, is their armed struggle against the nation to which they belong. They are known to be a product of the injustices or failures of the state in question. Because they are not accepted without difficulty within the international community, they normally establish themselves forcefully to gain international standing comparable to the influence and authority which they command (Cassese, International Law, 2005, p. 71).

Rebellion or insurgency therefore, is that movement essentially originating from political and armed resistance within an independent nation which results in the rebels establishing their authority over some part of the state with a quasi -government structure.

In comparing the two systems, the first point to be noticed is that of dissidence which founds the basis of what constitutes rebellion under both Islamic law and customary international law. Under both systems, it is recognised that rebellion originates from dissidence to established authority under which the rebelling parties were existing. In both systems, there is initially an established government recognised as such, and which was in control of the designated territory. This would automatically exclude situations where there was no government in place, meaning rebellion cannot be founded in a territory that was not under effective governmental control. The second element common to both systems is the nature of the struggle which involves the use of arms or force by the rebelling group against the existing government. A slight difference may however be seen from the perspective of Islamic law where the categorisation of rebels by some scholars include those who do not really initiate armed struggle (Humam, 1999). This means that, under such a definition, civil disobedience may qualify as rebellion. Again, both systems identify the objective of the rebellion to be a change or overthrow of the government of the day. Though, customary international law considers demands for greater autonomy as another objective, under Islamic law, it tends to be more about establishing what the rebels believe to be the true position of the law. These are similar because they both point to a need for justice and perhaps more representative system reflective of the rights of the rebelling party. Hence, because of the nature of Islamic law on statehood which recognises the entire Muslim *Ummah* as one nation, the establishment of a new nation cannot fit into the objectives of rebellion. Yet, because of the state-centric nature of customary international law, the rebels would as a matter of necessity struggle to establish a new state to enable them gain recognition within the international system. From a definitional point of view therefore, what constitutes rebellion in Islamic law and customary international law are similar, though not necessarily identical.

REBELLION AND RELATED CONCEPTS

The term rebellion or insurgency is often related with other concepts with which it shares near or even similar characteristics, depending on the system in question and the time under consideration. Under Islamic law for instance, a glimpse at the classical treatises on rebellion will inevitably disclose an association with concepts such as brigandage, highway robbery, and often apostacy. Notwithstanding their close or related characteristics however, these concepts are different both in terms of their true nature and the legal injunctions regulating them. It is true that brigandage for instance, is regulated by the same legal ruling as rebellion by way of the provisions of the Holy Qur'an which are mostly used as the legal framework for both concepts (Qur'an 5:33 and 49:9). However, Islamic scholars have always differentiated between the characteristics and the legal regulation of these two concepts. Hence, Ibn Al-Q¯asim of the Maliki school considered the two concepts as substantially incongruous: to him, the brigand (*muhaaribuun*), desecrate the law for dishonest and evil reasons, while driven by self-seeking benefits. On the contrary, what drives the rebels (Khawaarij), is their reading of the texts which they have faith in (Fadl, 2001, p. 137). The apostates on the other hand, are believed to have left the fold of Islam, and no longer believe in it and its values. Generally, some distinguishing characteristics of rebellion as opposed to other concepts in Islamic law are:

i) That the action must aim at the deposition of the head of state.
ii) That they try to rationalize their position by putting forth arguments in their favour justifying their opposition to the established authority.
iii) That the power they wield owes its origin to their supporters.

iv) That a rebellion takes place in a revolution or in a state of civil war brought about for the achievement of the purpose of the rebellion (Ouda, 2005, p. 113).

Though bandits and insurgents are equally a sturdy assemblage of persons taking up weapons in defiance of the law, while rejecting the injunction of the government, banditry (*hiraabah*) is considered a crime, and dealt with as such under the criminal law of the land. Insurgency or rebellion on the other hand, is regulated by the law of war, and the rebels are considered combatants. Notwithstanding, the state may, under the doctrine of *siyaasah,* direct penal measures against the insurgents for instigating anarchy in the society (Tabassum, 2011, p. 126).

In customary international law on the other hand, rebellion is often discussed within the broad concept of non-state actors which encompass similar or related concepts such as belligerents, terrorists, and national liberation movements (NLM). These concepts are closely related, if not interwoven because one might also qualify as the other or even all. For example, a rebellious group can easily lead to belligerency once they have become strong enough to resist the government and have effective control of territory (Cassese, International Law, 2005, p. 126). At the same time, such a group might be declared a terrorist organisation by some states, or a broad range of states within the international community. This same group might also be viewed the national liberation movement for some nationalities. Examples of such situations abound especially in contemporary international law where these concepts have defied definition. Indeed, this is the primary reason for the lack of clear and generally accepted definition of terrorism in international law. This explains the reason why groups such as *Hamas* in Palestine are declared terrorists' organisation by Israel and its allies, while some states recognise them as NLM.

Despite the close relationship between these groups however, there still exists a line of demarcation mostly fashioned around their objectives and the way they emerged. As a result, NLMs for instance, are often associated with the liberation of their people from external or colonial control. They were historically driven by the yearning for liberation and autonomy, hence the incentive for armed struggles against foreign suppression and apartheid. The right to self-determination widely accepted under the United Nations system and international human rights treaties means that they have the right to apply all needed measures, as well as military strength to accomplish their anticipated purposes (Crowford, 2008, pp. 118-9). NLMs are still distinguishable from rebels or insurgents from the simple point that they fight foreign powers to free their land and achieve self-governance, as opposed to rebels who fight their own state or government structure. Terrorist groups on the other hand, notwithstanding the lack of a clear definition, are more likely to be associated with the violence they perpetrate rather than the political aims they pursue. Terrorism was initially associated with cruelty perpetrated by the country as an institution typifying former repressive governments' resort to viciousness to horrify its subjects; viciousness by non-state actors was subsequently categorised as such (Young, 2006, p. 27).

Therefore, while both Islamic law and Customary international law often discuss rebellion as a closely related concept with other concepts, the dividing line is often not that blurred as it can be carefully distinguished. Again, the concept of terrorism being one that gain prominence in legal discuss within its current context over the last few decades, it is more of a trend in customary international law than it is in classical Islamic law. This is not however saying that there is no such discourse in Islamic literature as contemporary Muslim scholars have exhaustively discussed this concept (Javaid Rehman, 2005), (Fadl, 2001), and (Qadri, 2010).

Indeed, it is clearly covered under the same legal framework as brigandage in Islamic jurisprudence.

THE LEGAL POSITION OF REBELS IN ISLAMIC LAW

The legal framework on rebellion in Islamic law, just like the definitions of the term, depends largely on the school of Islamic jurisprudence in question. Essentially though, the differences are more telling when it comes to the legal position of rebels than it is on the meaning of the term. The perceptions of jurists in relation to what amounts to rebellion, its nature, and the position of the law is mostly derived from qur'anic verses, the practices of the prophet (SAW), and that of the companions of the prophet. This goes to show that the differences are reflective of understandings, and the circumstances that shaped human perception.

Hanafi Scholars classified those who rebel against the state into four categories (Humam, 1999):

a). Insurrectional movements not founded upon erroneous elucidations of the texts, who attack, slay, and plunder wealth of wayfarers; whether they possess military might or not. This group are not rebels, but bandits.

b). Those movements, like (a) above, which though founded upon erroneous elucidations of the texts, lack military might. If they engage in criminal activities like those in (a) above, they should be punished accordingly because they are nothing more than bandits. This means that both groups in (a) and (b) are dealt with under the Islamic criminal justice system as common criminals.

c). A group, possessing military might and support, revolting against the established authority based on erroneous elucidation of the texts. They are certain, based on their erroneous reading of the texts that the authority is founded upon untruth, that they are unbelievers, or in a state of defiance to Allah, to make it mandatory for them to rebel against it. As a result, they proclaim war against the Muslims, and consider companions of the prophet (SAW) as apostates. The mainstream view among the scholars is that they are insurgents (Humam, 1999, p. 334).

d). A group with similar attributes to that in (C) above, but who did not proclaim war against the Muslims; they are also considered rebels (Humam, 1999, p. 334).

Some Hanafi scholars only considered the group possessing military might and support, in addition to founding their rebellion upon an erroneous reading of the texts, as rebels. Others yet categorised them into only three classes, comprising of the Bandits, the *kharijites*, and the rebels (Qadri, 2010, pp. 177-8).

Maliki scholars on the other hand, mostly consider a group as rebellious where it is founded on erroneous exposition of the texts while possessing military might (Al-Kalbee, Nd, p. 364).

Shafi'i scholars hold that rebels who possess military might and founded their insurrection on erroneous elucidations of the text should be confronted and conquered. This is as opposed to *Kharijites* who proclaimed sinners as unbelievers, thereby forsaking the *Ummah*, who should not be conquered unless if they initiate the battle (Al-Ansari, 1418 AH, p. 123). The predominant view within the *Shafi'I* school therefore, is that rebellion is generally prohibited, and that the rebels should be subjugated and overcome (Al-Shirbeenee, 1415 AH, p. 547).

The position among *Hanbali* scholars is like that of the *Shafi'i*; they consider rebellion as unlawful even where the leader is undeserved (Al-Karmee, ND, p. 348). They however differ on the need for a leader who is in control within the rebellious group.

Therefore, insurgence or rebellion is differentiated from banditry under the rudimentary legal principles. It is maintained that an insurgent group founded upon an erroneous reading of the texts, and which possesses indeterminate control or influence qualifies as a rebellion. As rebels, their relationship with the state involves some level of tolerance; granting that Sunni scholars are not unanimous regarding how the state should precisely handle its relationship with the rebels. The widely held view among Sunni scholars though, is that insurgents should not be accountable for human and material losses resulting from their rebellion. It is also generally held that insurgents should not be crucified, nor should their possessions be appropriated (Fadl, 2001, pp. 237-8). The consequence of this position is that where such groups are recognised as rebels, they fall outside the legal framework of banditry, theft, and murder. It means that they are no longer dealt with under the Islamic criminal law, but rather under the Islamic law of armed conflict. This means that the etiquettes with respect to war applies in regulating their relationship with the state.

THE LEGAL POSITION OF REBELS IN CUSTOMARY INTERNATIONAL LAW

Rebels or insurgents have been recognised players in international law for as long as the system existed; yet the legal regulation of rebellion is still fuzzy (Cassese, International Law, 2005, p. 25), though rebels and insurgents, graduating to become belligerents have been part of the international system as it developed throughout the ages (Cassese, International Law, 2005, p. 124). Defining what qualifies as a rebellious movement has always been a herculean mission, largely for the varied shapes an insurgency regularly takes (Hamid, 2011, p. 92), yet a single phase progresses into one more phase gradually leading to legal acknowledgement.

In the early stages of its development, fairness of the cause coupled with the influence acquired over territory and people, determined the legal implication of a combat against the state. Accordingly, a basis not widely accepted as just, together with lack of influence over territory and people, excludes the movement from the legal regime regulating rebellion, thus subjecting it to the criminal laws of the state. (Clapham, 2010, p. 16). If on the other hand, the reason is justified, and the movement is able to establish itself as the authority over territory and people, that takes the conflict outside the realm of domestic criminal law; a civil strife emerges, regulated by the laws of armed conflict (Clapham, 2010).

The legal position of rebellion or insurgency in customary international law therefore, is more of a gradual movement from pure illegal activities to be dealt with under domestic law enforcement to pseudo recognition in international. All subjects taking up arms against their state were considered as rebels who may gain legal recognition once in control of territory and population, leading to recognition of belligerency (Nijman, 2010, p. 95). Thus, control over territory in addition to having a just cause transmutes a movement hitherto seen as seditious or rebellious into civil war where the law of war applies (Clapham, 2010). At this point, the belligerents have attained a subject-like status in international law and may be recognised by other states willing to enter legal relationship with them. The position is such that simple criminal activities may blossom into strong opposition having control over territory and capable of resisting the state structure. Once this happens, recognition of belligerency imbues them with a quasi-state status in a civil war situation (Crowford, 2008, pp. 118-9). At this point, it is no longer an issue of domestic law enforcement against criminal elements or scuffles. Accordingly, the insurrectionaries who fought against their country gradually acquire

recognition as subjects of international law with rights and obligations, when the situation reaches that of a civil war (Hamid, 2011, p. 91). Belligerents are recognised as subjects with rights to conclude treaties in customary international law (Cassese, International Law, 2005, p. 128); this favourable position of the law towards insurgency paved the way for the rise of NLMs especially after World War II (Cassese, International Law, 2005, pp. 71-2).

COMPARISON OF THE TWO SYSTEMS

A careful perusal of the legal position of rebels in the two systems being compared will reveal much similarities, though there exist slight differences. For a start, under both systems, rebellion has its roots in discontent with the legitimate authorities in charge of a state. This constitutes one of the elements of the definitions of rebellion under Islamic law and customary international law, both of which viewed it as a movement based on disgruntlement with the government. while the exact basis for the discontent may differ from one system to another, what matters is that some subjects had reason not to agree with the government of the day based on its policies. It is more likely that the consideration under Islamic law of the basis of such discontent may be rooted in religious, rather than social matters as may be seen in the history of rebellion in Islam. This in turn might have influenced the general requirement for an interpretation (taaweel), even though erroneous, to form the basis of the discontent (Ibn Hajar Al-askalanee, 1993, p. XIV:530).

The requirement for an erroneous interpretation is analogous to the need for a legal justification of their cause. When viewed from the position of customary international law, it may also be seen that rebellion was historically determined by the justness of the cause. Under that historical context therefore, insurgency would be viewed as a common illegal activity unless it is accompanied with a just cause and substantial influence and support. Where it is considered just however, a civil war is deemed to have emerged with complete application of the laws of armed conflict (Clapham, 2010, p. X:49). The need for the rebels to have not only control but also support is meant to ensure that common criminals with force of arms do not claim the status of rebellion to avoid punishment for their offences by simply subjugating a population. This represents another point of convergence with Islamic law where the rebelling party are required to have not only a reasonable an interpretation (*taaweel*), but also solid support from a large population (*shawka*) (Qud¯ama, ND). It may therefore be said that the need for a just cause and strong support reflected in a large followership is a requirement in both Islamic and customary international law. Again, in both systems, where these requirements are not met, the group in question may be treated as common criminals, subject to the criminal law of the land.

Moreover, both systems categorically require that the rebels not only have a just cause and support, but that they must be in control of territory where they are the recognised authority (Cassese, International Law, 2005, p. 124). The essence of this requirement is to establish the rebellious movement as a quasi-state structure which inevitably liberates it from the domestic legal system of the other state against which they are fighting. This similarity is one of the most striking in both systems as it constitutes a cardinal requirement among all jurists in Islamic law and customary international law: it reflects a point of convergence. As a result, under Islamic law, where the insurrectionaries do not control territory, they cannot be treated as rebels, but bandits (Fadl, 2001). Under customary international law on the other hand, control of territory is what moves the rebellious movement into the realm of international law and the protection of the law of armed conflict.

Again, under both systems, once the position is established as rebellion, the situation moves outside domestic law enforcement and is regulated by the law of armed conflict. As stated earlier on, this has the implication of treating the rebellious party as a semi-state entity on near equal standing with the government they are fighting. The rebels do not believe in the

fairness of the government; as is the case in customary international law which requires a just cause, or that they do not believe in the sanctity of that institution, as would be the case in Islamic law which requires a plausible interpretation. Consequently, they are dealt with under an entirely neutral system of laws which applies to both parties.

The lack of unanimity among Muslim jurists on the definition and exact legal position of rebels however mean that whether a group is categorised as rebellious of a gang of bandits will depend to a large extent on who is making the categorisation. So that it is possible that a group which might have been dealt with under the law of rebellion would end up being treated as bandits in another place due to jurisprudential differences. The situation is not so much different in customary international law where the views in relation to rebellion is still ambiguous (Cassese, International Law, 2005, p. 125). As a result, states decide on whether a group qualifies as a rebellious movement which they may be willing to deal with. In addition, the fact that state A has recognised rebel group X does not mean that state G must also do so. So that just as the case obtained in Islamic law, what constitutes a rebellious movement, and if they should be treated under the law of armed conflict or domestic law enforcement is a matter that may vary from place to place.

THE REALITY OF CONTEMPORARY TRENDS IN REBELLION

Several countries have faced serious cases of rebellion and insurgency over the past few decades. These situations, when closely studied, reveal reasons as diverse as these nations are, so that the remote and immediate causes of these insurgencies vary from one state to the other. The way they were tackled also vary from state to state, reflecting a lack of adherence to the rule of law from both sides of the conflict. Some of the most notorious cases of rebellion across the globe include that of Somalia, Libya, Syria, the Democratic Republic of the Congo, the Boko Haram in Nigeria, the IRA in Ireland, the FARC rebels in Ecuador, among others.

Somalia for instance, is one of the countries with many of its citizens displaced as refugees in several states across the globe (USA Refugee Council , 2016). The political crisis in Somalia had its roots in the 1977 regime change that altered the political structure of the country. Although it had witnessed three major armed conflicts between 1977 and 1991 (Seth G Jones, 2016, pp. 9-11), the level of devastation got worse in the years that ensued. Chief among the influences of the Somalian crisis was the involvement of armed non-state actors. This is evidenced by the creation of several violent groups based mostly on ethnic and other parochial considerations, leading to a worsening of the situation (Priya Gajraj, 2005).

The rise of the Boko Haram sect in Nigeria heralded a regime of senseless violence never experienced before in the region leading to the resultant battle between the sect and government forces. As a result, properties and infrastructure were reduced to rubble, mostly caused by the Boko Haram fighters and in some instances government troops in response to attacks by the group (United Nations High Commission for Refugees, 2017). The Boko Haram insurgency started originally as freedom fighters flourishing morals meant to liberate the population from injustice and subjugation. The conflict gradually filtered into neighbouring countries, with augmented pervasion, attacks, conscription, and suicide-bombings, by the armed group.

The Afghan conflict has also led to chaos and the annihilation of lives, possessions and public infrastructure, over a long period of time, and a complex history (Hanifi, 2009, p. 23). Such features as colonial British effect, deepening ethnic, religious, and denominational differences had their bearing on the situation (Hanifi, 2009). The devastation leading to unyielding insecurity and weakened common infrastructure had its direct origins in the actions

of armed non-state actors in the state. This can be traced back to the 1920's with the initial appearance of such ethnic and denominational groups pushing back against efforts at westernization (Maley, 2010, pp. 859-860).

The Allied Democratic Forces (ADF) was a rebellious group created in 1995 as an antagonistic movement against the Ugandan government (Vlassenroot, 2012, p. 159). The group rapidly commenced violent attacks against Ugandan targets from across the border in then Zaire (now DRC) (Vlassenroot, 2012). The group led one of the most devastating armed insurrections in the East-African region having repercussions across several countries, and international legal tussle that has since become notorious for example as illustrated in the case concering armed activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda); Request for the Indication of Provisional Measures, International Court of Justice (ICJ), 1 July 2000, available at: http://www.refworld.org/cases,ICJ,3ae6b6e14.html [accessed 28 July 2018].

The Revolutionary Armed Forces of Colombia (FARC), was an armed dissident group involved in prolonged violent battle against the Colombian authorities since 1964 (BBC NEWS, 2016). It got involved in asymmetrical as well as straight violent hostility against Colombian territory and citizens, espousing vicious and regularly extremists' strategies, resorting to intimidations, kidnappings, murders, extortion, commandeering, etc (Deeks, 2012, p. 535). It was a broadly acknowledged dissident organisation involved in ferocious battle situation in Colombia, usually regarded as an internal armed conflict (ICRC, 2010).

In Syria, there was the Syrian National Coalition, emerging as a peaceful opposition to the government, later turning into an armed insurrection. There then was ISIS which emerged at a later stage in the conflict, independent of the Syrian opposition. The Syrian crisis started as a peaceful protest against the administration of Bashar Al-Assad in 2011 progressively garnering backing all over the nation. It increasingly took a violent turn as soon as the regime re-joined with imperiousness, detaining and shooting some demonstrators and followers, together with some pupils (BBC NEWS , 2012). The state of affairs quickly transformed into a violent struggle, the parties equally enlisting backing rooted in belief, ethnicity, and sectarianism (Kathy, 2015). The official establishment of the demonstrators into a revolutionary movement, coupled with the political, pecuniary, and ethical backing they got overseas brought in additional unconcealed external involvement in the battle. As for ISIS, it is a vicious terror movement established in 2004 by an infamous Al Qaeda operative, *Abu Mus'ab al-Zarqawi*; it is recognized for its ruthless radical approaches designed to driving the USA out of Iraq (Olsen, 2014, p. 3). Originally identified as Al Qaeda in Iraq, the organisation later re-formed itself, benefiting from the conflict in Syria to found its existence in both nations, naming itself the "Islamic State of Iraq and al-Sham (ISIS or ISIL) (Olsen, 2014).

All these rebellious movements, and many more, have had their reasons for embarking on insurrectional activities against their own governments. It is true that most of them are from Muslim countries, or Muslim dominated areas; though not Islamic states. This demarcation is important because as may be seen from the nature of their emergence, they were mainly established based on social, ethnic, economic, or political grounds. What is more interesting however is the fact that they all share common framework of existence and modus operandi, including those that were not related to Islam or Muslims. Moreover, even those groups which claimed Islam as the basis of their emergence could not be said to have met the requirements of rebellion in Islamic law.

The nature and operational structure of these groups cannot fit into any of the definitions of rebellion proffered by the jurists. To start with, they were not founded on some erroneous interpretation of the texts. This is notwithstanding the attempt by some of them to proffer such interpretations because it needed to satisfy the requirement of an interpretation of the texts which were based on some factual issues concerning the administration. It is not just about applying the appellation "Islam" to cause conflict that serves: it must be reflected in the characteristic of such activities. From the juristic discourse so far analysed all the jurists agree that where a group of people selfishly terrorize the Muslim ummah, destroying lives and property, without *ta'aweel*, they are nothing but common bandits who should be treated and punished as such. Destruction of lives and property, and perhaps the economy, is what the provisions of the holy Qur'an on *hiraaba* is addressing (Fadl, 2001). As such, must of these insurgents are at the best, bandits, and at the worst terrorists whose main aim is the destruction of Muslim lives, property, and the economic system. They are therefore, liable to receive the prescribed punishment for their actions as stated in the holy Qur'an (5:33-34).

It may be argued that some of the perpetrators of the violence that has engulfed the Muslim world over the last few decades or so, qualify as rebels as contemplated under Islamic law as they have both *man'a* and *ta'awil*. Importantly, it may also be said that they have succeeded in deposing some of the leaders they rebelled against. The groups in the so called 'Arab spring' for instance, from the initial stage started their uprising against the government and had always targeted the government and its establishments; While the *Boko haram* and *ISIS* on the other hand never differentiated between government and civilian targets. In fact, their primary target seems to be the civilian population and the economic system: the security forces are obviously attacked only as a defensive plan. The Islamic law on rebellion provides the yardstick of 'ta'aweel plus mana'ah' for the identification of the reality of an armed conflict. Moreover, it differentiates between rebels and an ordinary gang of robbers by recognizing the combatant status for rebels as well as the necessary corollaries of their de facto authority in the territory under their control. Thus, it offers incentives to rebels for complying with the law of war, thereby reducing the sufferings of civilians and ordinary citizens during rebellion and civil wars.

CONCLUSION

The legal regulation of rebellion and insurgency in Islamic law centers generally around the concept of the rebellion being founded on some erroneous interpretation of the texts, which led them to revolt against the state. To attain the status of a rebellious movement however, such a movement must also have wide followership and control over territory. Where the group lacks such followership, control, and a reasonable though erroneous interpretation as the basis of their revolt, they are considered as mere bandits or criminals subject to the criminal laws of the land. Where on the other hand they satisfy the conditions stated, they are considered rebels, and the law of armed conflict regulate their relationship with the state, albeit with special conditions that they are treated as Muslims whose property cannot be confiscated, nor can they be held as slaves. This position is comparable to what obtains under customary international law where an insurrectional movement matures into a rebellion with a quasi-state like position in international law. As it is the case in Islamic law, such a movement attains the status of recognition in international law where it commands large followership and authority over territory. Again, the historical development of the law on rebellion under customary international law is closely linked to the concept of the justness of the course of the rebels

which determines the legality of their cause. This also is near what obtains in Islamic law which requires a plausible interpretation of the texts, even though it is erroneous. The recognition of rebellion is another area where the two systems share some commonality: in Islamic law, a movement may qualify as a rebellious one depending on the place and the predominant juristic views. This means that there is no unanimity on the determining characteristics of rebels and how they are to be dealt with by the state. Thus, a group qualifying as rebellious in one territory of under one juristic disposition may not be so qualified elsewhere. Similarly, in customary international law, a rebellious movement may be recognized as such by one state but not by another reflecting too, the divergence of understandings and often, interests. This goes to establish the fact that the law as it is, may have little, if anything to do with the decision of individuals to rebel against their state. Rather, it may have more to do with the fact that in both systems, the law is hardly implemented to its latter.

Hence, the recent cases of insurgent movements in so many Muslim countries has nothing to do with the Islamic regulation of rebellion as this is not far away from what obtains in customary international law. Again, this experience is not peculiar to the Muslim world as other nations have also had their fair share of insurrectional movements. It is also noteworthy that though these countries might be predominantly Muslim nations, in practice, they have been more tilted towards the application of customary international law than Islamic law with regards to rebellion.

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