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## **BOKO HARAM IN NIGERIA: JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT**



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**Resumen:** En el presente texto se pretende realizar una aproximación general al conflicto armado de carácter no internacional presente entre Boko Haram y el Estado de Nigeria mediante el análisis de los actores implicados, las causas profundas e inmediatas y las fases del conflicto, así como una delimitación de la competencia de la Corte Penal Internacional por los crímenes de guerra perpetrados por el grupo terrorista Boko Haram en Nigeria (Estado Parte del Estatuto de Roma). Adicionalmente, se efectúa un breve comentario general sobre la efectividad de la Corte como tribunal internacional con potestad para investigar y juzgar a personas acusadas de los delitos más graves contra la comunidad internacional.

**Abstract:** This text aims to provide a general approach to the non-international armed conflict between Boko Haram and the State of Nigeria by analysing the actors involved, the root and immediate causes and phases of the conflict, as well as a delimitation of the jurisdiction of the International Criminal Court for war crimes perpetrated by the terrorist group Boko Haram in Nigeria (State Party to the Rome Statute). In addition, a brief general commentary is made on the effectiveness of the Court as an international tribunal with the power to investigate and try persons accused of the most serious crimes against the international community.

**Palabras clave:** Boko Haram, conflicto armado no internacional, Corte Penal Internacional, Nigeria, grupo terrorista.

**Keywords:** Boko Haram, non-international armed conflict, International Criminal Court, Nigeria, terrorist group.

## 1. INTRODUCTION

Boko Haram currently conducts most of its activities in Nigeria. In particular, the Lake Chad basin, located in the central-western Sahel region of Africa, has become the epicentre of terrorist clashes in the region (Agenzia Fides, 2024). Nigeria is made up of 36 states and a federal territory, where the capital, Abuja, is located. The African country is known worldwide as the "giant of Africa" because of its huge population and economy. Nigeria has been one of Africa's leading oil producers since the beginning of the 21st century, yet the influence of Boko Haram and institutional corruption have led to enormous economic inequality in the country (Torregrosa et al., 2016). Nigeria is among the worst-ranked countries in both the Human Development Index 2022 and the Corruption Perceptions Index 2023.

For its part, Nigeria's terrorist activity dates back to the 19th century, specifically to the revolt of Uthman Dan Fodio and the emergence of Boko Haram in 2002, which is attributed to its founder Mohamed Yusuf and the linking of certain Nigerian politicians to the illegal financing of the terrorist organisation (Santé, 2017). Specifically, in 1999, Islamic law was introduced in northern Nigeria, which led to the creation of the Supreme Council of Sharia. Mohamed Yusuf was one of the most prominent members of the Council as a representative of Borno State, but his insistence on imposing Islamic law throughout the country led him to form the Taliban sect Jama'atu Ahlis-Sunna Lidda'Awati Wal-Jihad<sup>1</sup> (Nolivos, 2021). The killing of Mohamed Yusuf in 2009 led to a significant increase in indiscriminate, mass violence by Boko Haram against the civilian population, triggering the conflict that exists today.

It is therefore necessary to ask ourselves: What is Boko Haram? What are the characteristics of the non-international armed conflict between Boko Haram and the Nigerian state? What is the jurisdiction of the International Criminal Court (hereafter also ICC)? What war crimes have Boko Haram perpetrated? Is the ICC competent to try war crimes committed in Nigeria? How effective is the ICC? For these reasons, this paper aims to answer these questions, first by analysing the actors, the triggers and the different phases of the non-international armed conflict between Boko Haram and the Nigerian state, and then by delimiting the possible jurisdiction of the International Criminal Court – established by the Rome Statute – to try those responsible for the war crimes committed, as well as to frame the alleged war crimes committed by the terrorist group in order to prevent future actions and even to promote the resolution of an entrenched conflict.

## 2. BOKO HARAM

Boko Haram<sup>2</sup>, which declared its allegiance to Daesh in 2015, is divided into two Islamic fundamentalist factions operating mainly in northern Nigeria, the Islamic State in West Africa and Jama'atu Ahlis-Sunna Lidda'Awati Wal-Jihad, both of which receive funding from other terrorist groups such as Al-Qaeda and Daesh. Forty-five percent of the deaths caused by Boko Haram are Christian women and children, and one of their key goals in perpetrating terrorist acts is the destruction of Western culture. However, unlike other

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<sup>1</sup> "People Committed to the Propagation of the Prophet's Teachings and Jihad".

<sup>2</sup> The translation of the name used by the terrorist group is: "Western education is a sin".

terrorist groups, Boko Haram has not carried out any attacks on Western soil (Torregrosa et al., 2016).

The situation in Nigeria is very unstable, as the presence of the terrorist group is gradually changing the economic structure of the entire northern part of Africa. As Niyi Ajao, CEO of the Nigeria Inter-Bank Settlement System Plc, points out, the fact that the media has become so modernised and photographs of attacks can be seen around the world has seriously affected investor attitudes (Torregrosa et al., 2016). All this, coupled with the cost of the destruction of infrastructure caused by Boko Haram's activity, means that Nigeria is unable to develop and is in a situation of profound instability. In 2017, the conflict was estimated to have resulted in around 20,000 casualties and close to 2 million displaced people (Santé, 2017).

The terrorist group Boko Haram opposes the Western model of education by committing attacks of enormous cruelty and is opposed even to Muslims themselves, as it not only attacks the weak, but also seeks revenge against the government itself and certain heads of state. At present, despite the length of time it has been active, there is very little knowledge about Boko Haram due to cooperation between some senior Nigerian officials and the terrorist group. Boko Haram, which thrives on the country's instability, has expanded its borders beyond Nigeria by establishing links with other terrorist organisations, so the group's presence in the Western Sahel region and Africa's proximity to Europe mean that it remains an international threat that should not be underestimated.

### 3. NON-INTERNATIONAL ARMED CONFLICT

#### 3.1. ACTORS

The main actors in the current conflict in Nigeria are the state itself (state actor) and the terrorist group Boko Haram (violent non-state actor). However, three other nations – Saudi Arabia, Iran and the United States – are also secondary actors in the conflict. Nigeria is the largest sub-Saharan economy and has the tenth-largest oil fields in the world. It is rich in oil and natural gas, and this stimulates the interest of the countries above (Pérez, 2020).

How is Boko Haram financed? The main sources of funding include kidnappings, bank robberies and extortion (Vázquez, 2023). However, some Middle Eastern countries also have a strong economic influence on Nigeria, although little can be said on the subject due to the secrecy and scarcity of existing literature. However, as stated by Pedro Canales in *Revista Española de la Defensa*, published by Spain's Ministry of Defence, it can be "surmised that the bulk of funding comes from the various international patrons who have an interest in its activities" (Canales, 2014, p. 56).

For example, it is not surprising that Saudi Arabia has an interest in a country rich in oil and natural gas, where more than 50% of the population is Muslim. In addition, Nigeria is Africa's fastest growing economy with the largest oil resources (Pérez, 2020). Moreover, experts conclude that the proxy war between Saudi Arabia and Iran has also moved to Nigeria after passing through other countries such as Lebanon, Syria, Yemen and Pakistan (*La Información*, 2016). The United States has become Nigeria's main trading partner, as well as one of its most important diplomatic partners, with Nigerians

commonly referring to their country as 'the United States of Africa' (Ministry of Foreign Affairs, European Union and Cooperation, 2023). Specifically, according to the Economic Complexity Observatory, Nigeria exported \$2.84 billion in crude oil, \$378 million in refined oil and \$235 million in petroleum gas to the United States in 2021.

The media are tertiary actors in the non-international armed conflict, as they influence the course of the conflict by conveying messages and information. For example, some claim that Saudi Arabia does not fund Boko Haram because of media pressure and pressure from allied countries. Furthermore, we should also highlight the role of international non-profit humanitarian aid organisations, which implement humanitarian projects and contribute enormously to the reduction of deaths from malnutrition. Specifically, the international organisation Action Against Hunger prioritises aid to the most vulnerable in the northern part of Nigeria, especially helping children and young people to develop in strength and health and not fall victim to the malnutrition that pervades the country. In Nigeria, children under 5 years of age experience very high rates of malnutrition, with 10.8% acutely malnourished and 43.6% suffering from stunted growth, according to the NGO Action Against Hunger.

### 3.2. TRIGGERS OF THE CONFLICT

The instability in the country caused by the establishment of Islamic law in 1999, the weakness of the central government and a substantial increase in religiously motivated violence led to the emergence of the terrorist group Boko Haram in 2002. In its early days, Boko Haram advocated the Islamisation of Nigeria and the elimination of corruption throughout the country, which is why it received strong support from the majority of the population in the northern part of the country (Ruiz-Giménez, 2015).

The group's original purpose was the establishment of Islamic law in all Nigerian states, i.e. to transform the judicial system of the southern regions. At present, however, the group's goals are unclear, but what can be said is that Boko Haram is opposed to the Western model of education, as can be understood from its name.

As Delia, Barkindo and Jacobson argue, Boko Haram initially had mostly religious goals, but over time it evolved into a violent Islamic fundamentalist group, carrying out terrorist attacks of enormous cruelty. However, it was not religious motives that led the majority of the population in northern Nigeria to support the terrorist group, but rather that they perceived Boko Haram as an organisation capable of defending their rights and fighting political corruption in the country. However, as mentioned above, the linking of certain Nigerian politicians to the group's illegal funding also marked a turning point in the course of events (Delia et al., 2015).

Finally, we should mention the assassination of Boko Haram leader Mohamed Yusuf and some of his collaborators by the Nigerian government in 2009, which increased the spiral of violence carried out by the group with attacks and harsh reprisals (Ruiz-Giménez, 2015).

### 3.3. PHASES OF THE CONFLICT

#### 3.3.1. Pre-war

The predominantly Muslim states of northern Nigeria established Sharia or Islamic law as a judicial system in 1999, which led to the destabilisation of the country and the start of conflicts between Christians and Muslims. After the Nigerian civil war (1967 – 1970) and the annexation of the territory of Biafra in 1970, relations between Muslims, who wanted to impose Islamic law, and Christians, as well as between Yorubas and Hausa, became quite rigid (Ortiz, 2022). However, with the gradual implementation of Islamic law in the northern part of the country, there was a clear social divide between northern and southern Nigeria.

Why was Islamic law allowed to be established in northern Nigeria? In 1999, political power was in the hands of the central government and the house of assembly, although the courts were in the hands of the regional governments. The sudden emergence of cases of corruption and electoral fraud, coupled with section 275 of the Nigerian constitution, which states that any state that needs one can have an Islamic court, caused reputational damage to the federal government. This scenario meant that the northern states, with their Muslim majority and Hausa ethnicity, did not accept the existence of a president (Olusegun Obasanjo) who was neither Muslim nor Hausa, so the imposition of Sharia law was seen as a means to regain power.

As a result, the country, divided between northern (Muslim and Hausa) and southern (Christian and Yoruba) states, suffered a substantial increase in religious violence (Agboifo, 2000). Specifically, in 2002, the terrorist group Boko Haram appeared for the first time, although it was originally called People Committed to the Propagation of the Teachings of the Prophet and Jihad (Jama'atu Ahlis-Sunna Lidda'Awati Wal-Jihad).

#### 3.3.2. War

Among the acts carried out by Boko Haram, two attacks caused worldwide alarm and put Nigeria in the international spotlight. Specifically, the abduction of 276 girls in Chibok (Borno) in 2014 and the terrorist attack on the UN Headquarters in Abuja that killed 23 people (Santé, 2017). Moreover, it should be noted that the terrorist group is even an enemy for Muslims themselves, as it also attacks members of the government and heads of state regardless of religion, although some authors, such as Torregrosa López and Garriga Guitart, state that the group has support within the legislative, executive and judicial bodies of the government. The death of their leader, engineered by the Nigerian government, marked a turning point for the organisation, leading to revenge attacks against the government (Olojo, 2013).

Initially, Boko Haram targeted Christians using machetes and small arms, but in recent years it has changed its *modus operandi* by setting up car bombs and targeting other victims (Yorubas, members of the government and even Muslims). An example of this is an attack in December 2016 by two girl suicide bombers that left 30 people dead, although there have been countless similar attacks (Ande, 2016).

Regarding Nigeria's national security strategy, the country set up different agencies and increased military spending to deal with the terrorist group. In addition, in

2011 the government replaced the heads of the security services, as well as the Minister of Defence, the National Security Advisor and the Inspector General of Police. In the southeast of the country, the position of national counter-terrorism coordinator was created, and in the northeast, the country's National Security Committee was established. The government also identified the borders that served as transit points for members of the terrorist organisation and designed a strategy based on public security and national stability, which was modified again in 2014 (Eduardo, 2017).

In January 2012, the president of Nigeria declared a state of emergency in different parts of the country as a result of attacks by Boko Haram in Borno, Yobe, Niger and Plateau. In addition, several of their terrorist bases were destroyed thanks to the deployment of three thousand men in Borno and Adamawa. It is estimated that, following government pressure in northern Nigeria, a significant number of fighters escaped to Chad, Niger and Cameroon. Another operation to be highlighted by the government is the one carried out jointly by the African Union in 2015, which involved the entry into combat of more than eight thousand troops and made it possible to form a joint multinational force capable of fighting against Boko Haram with the aim of eliminating them (Eduardo, 2017).

### 3.3.3. Long-term considerations

Despite the efforts made by the federal government of Nigeria, Boko Haram remains a threat to the security of both that country and the African continent as a whole. Despite military pressure, Boko Haram continues to commit massive and highly lethal attacks. At present, despite the length of time the terrorist group has been operating in Nigeria, there is very little knowledge about it due to "the paucity of information shared by the police about Boko Haram, due to the fact that many officials and high-ranking people are in the pay of the group, and because the security services in general have been lax in dealing with the threat posed by the group" (Torregrosa et al., 2016, p. 71).

Boko Haram's local goals are evident, but there is a risk that the organisation's international presence will increase exponentially due to its increased reliance on global jihadism. Specifically, the group has expanded its base of operations beyond Nigeria's borders, establishing links with other organisations such as Al-Qaeda in the Islamic Maghreb, Movement for Unity and Jihad in West Africa, Al-Shabaab and the Islamic State (Eduardo, 2017). While it is true that the terrorist group operates and feeds off Nigeria's instability, it has in turn become a destabilising factor in the Western Sahel region, making it a long-term threat to be reckoned with on the international stage (Fuster, 2021).

Moreover, with reference to the Nigerian people and guarantees for the human rights of the population, it is worth noting that the lack of respect for these rights could be the source of people's non-acceptance of the Nigerian government, thus fuelling the conflict. Examples include extrajudicial killings by the state and regular suspensions of communications in certain conflict zones (Santé, 2017). Furthermore, the impossibility of voting due to the continuous increase in internal displacement, the suppression of electoral rights or the absence of elections in certain regions of the country, prevent any possibility of substantial changes in the country.

In short, the group, which is mainly present in northern Nigeria, must be considered a real threat, as its alliance with Daesh could strengthen the organisation and



lead to terrorist attacks on Western soil. "Terrorism – in any form – is increasingly affecting a greater number of countries, whether due to global threats – such as Daesh – or small-scale threats – such as Boko Haram" (Torregrosa et al., 2016, p. 77). Regarding possible solutions to the conflict, it should be noted that Boko Haram needs to be tackled not only on the battlefield, but also through the implementation and establishment of policies that allow for cultural integration and the development of a society in decline.

#### 4. JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

The International Criminal Court is a permanent institution empowered to exercise jurisdiction over individuals – and not states – in respect of the most serious crimes of international concern in accordance with the Rome Statute and shall be complementary to national criminal jurisdictions (Art. 1 Rome Statute). In other words, national jurisdictions have primary jurisdiction, while, in the absence of national jurisdictions, the ICC has jurisdiction.

Article 5(1) of the Rome Statute provides:

*"The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court shall have jurisdiction, in accordance with this Statute, over the following crimes:*

- a) The crime of genocide;*
- b) Crimes against humanity;*
- c) War crimes;*
- d) The crime of aggression".*

However, a number of conditions must be met before the ICC can exercise jurisdiction over acts committed by Boko Haram in Nigeria. As stipulated in Article 12.1 of the Rome Statute, states that are party to the Statute (Nigeria is a party) accept the jurisdiction of the ICC with respect to the crimes listed in Article 5.

In addition, as stated in Article 11(1) of the Rome Statute: *"The Court shall have jurisdiction only with respect to crimes committed after the entry into force of this Statute"*.

Nigeria signed the Rome Statute on 1 June 2000 and deposited the instrument of ratification on 27 September 2001. Therefore, taking into account that the Rome Statute entered into force on 1 July 2002 and that Boko Haram, despite its beginnings in 2002, did not begin to substantially increase its spiral of violence until 2009, the temporal condition of temporal jurisdiction is met. As mentioned above, Boko Haram first appeared as People Committed to the Propagation of the Teachings of the Prophet and Jihad (Jama'atu Ahlis-Sunna Lidda'Awati Wal-Jihad), but it was not until the assassination of leader Mohamed Yusuf in 2009 that the terrorist group, now Boko Haram, increased the scale of its attacks.

Moreover, Article 13 of the Rome Statute provides that the jurisdiction of the International Criminal Court may be activated by State Parties, the Security Council or the ICC Prosecutor, establishing that:

*"The Court may exercise jurisdiction with respect to any of the crimes referred to in article 5 in accordance with the provisions of this Statute if:*

*(a) A State Party refers to the prosecutor, in accordance with Article 14, a situation in which one or more such crimes appear to have been committed;*

*(b) The Security Council, acting under Chapter VII of the Charter of the United Nations, refers to the Prosecutor a situation in which one or more such crimes appear to have been committed; or*

*(c) the public prosecutor has initiated an investigation in respect of such a crime in accordance with Article 15".*

However, in cases (a) or (c) of Article 13, i.e. where a State Party alerts a Prosecutor to a situation in which one or more such crimes appear to have been committed (jurisdiction triggered by a State Party) or where the Prosecutor has initiated an investigation proprio motu (triggered by the Prosecutor), the ICC may exercise jurisdiction if either one or more of the States, on whose territory the conduct in question took place or of which the accused of the crime is a national, are party to the Rome Statute or have accepted the jurisdiction of the ICC by express declaration deposited with the Registrar. It should also be noted that crimes within the jurisdiction of the ICC are not subject to any statute of limitations (Article 29) and that the Rome Statute applies equally to all without any distinction based on official capacity (Article 27).

#### 3.4. NON-INTERNATIONAL ARMED CONFLICTS IN INTERNATIONAL HUMANITARIAN LAW

According to Article 3, common to the four Geneva Conventions, an armed conflict of a non-international or internal character occurs when it is not of an international character and occurs in the territory of one of the High Contracting Parties (Nigeria is a party to the Geneva Conventions and Protocols I and II). As this is a non-international armed conflict between Nigeria (a state actor) and the terrorist group Boko Haram (a violent non-state actor), the Geneva Conventions and Additional Protocol II apply. The following requirements are necessary to verify the existence of a non-international armed conflict (Güell, 2005):

- Sufficient intensity of confrontation (violence).
- A confrontation occurring within the territory of a State.
- A contending side with a sufficient level of organisation in addition to the state side.

The minimum threshold of violence will have to be contemplated on a case-by-case basis at the discretion of national or international courts or even the UN Security Council. Mere internal tensions or disturbances, such as riots, isolated acts and sporadic acts, do not constitute armed conflicts (Fernández, 2003). Therefore, instead of being governed by the rules of international humanitarian law, domestic law and international human rights law shall apply.

Furthermore, we should mention protracted internal armed conflict, which is not regulated by the Geneva Conventions and Protocols, but is a category of essentially jurisprudential origin (the territorial scope of Article 1(1) of Additional Protocol II is not required), although it is regulated in Article 8(2)(f) of the Rome Statute, which stipulates:

*"Paragraph 2(e) of this Article applies to armed conflicts not of an international character and, therefore, does not apply to situations of internal tensions and internal disturbances, such as riots, isolated and sporadic acts of violence or other similar acts. It applies to armed conflicts that take place on the territory of a state when there is a protracted armed conflict between governmental authorities and organised armed groups or between such groups."*

As per Article 8(2)(f) of the Rome Statute, the conflict between Boko Haram and the Nigerian state meets the criteria of an armed conflict of a non-international character (Güell, 2005), that is, an armed conflict involving a protracted confrontation on the territory of a state between the authorities of the government of that state and organised armed groups.

### 3.5. WAR CRIMES PERPETRATED BY BOKO HARAM

Under Article 8 of the Rome Statute (most current codification), the following constitute war crimes:

- Grave breaches of the Geneva Conventions of 1949.
- Other serious violations of the laws and customs applicable in international armed conflicts within the established framework of international law.
- In case of armed conflict not of an international character, grave breaches of Article 3 common to the four Geneva Conventions of 1949 against persons taking no direct part in the hostilities.
- Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law.

Thus, focusing on armed conflicts of a non-international character, war crimes include, inter alia (Article 8(2)(c) and (e) of the Rome Statute):

- Attacks on life and bodily integrity, especially murder in all its forms, mutilation, cruel treatment and torture.
- Outrages upon personal dignity, in particular humiliating and degrading treatment.
- Taking of hostages.
- Intentionally directing attacks against the civilian population as such, or against civilians not taking direct part in hostilities.
- Pillaging a town or place, even when taken by assault.
- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence also constituting a grave breach of common Article 3.
- Conscripting or enlisting children under the age of fifteen into the armed forces or groups, or using them to participate actively in hostilities.
- Order the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

In 2019 alone, Boko Haram caused a total of 1,968 deaths, making it clear that the terrorist group's activities have constituted a multitude of war crimes in Nigeria (Statista, 2022). "The magnitude of its victims, as well as the humanitarian crisis that its activity has entailed – with thousands of refugees and millions of internally displaced persons

producing greater regional imbalance and destabilisation – reach the dimensions of a real civil war" (Fuster, 2021, p. 197).

The goal of international humanitarian law is to regulate the use of force and limit armaments (*ius ad bellum*), as well as to protect victims and limit the means and methods of combat (*ius in bello*). In the first instance, the criminal jurisdiction of the state where the crimes took place applies and, failing that, international criminal law will apply through the International Criminal Court.

Referring to the non-international armed conflict between Boko Haram and Nigeria, on 18 November 2010, the ICC Office of the Prosecutor initiated a preliminary examination into war crimes and crimes against humanity allegedly perpetrated by the Boko Haram terrorist group and Nigerian security forces, which closed on 11 December 2020 with a finding that the Nigerian state had failed to fulfil its obligation to prosecute those responsible for international crimes (Amnesty International, 2020). As the Preamble of the Rome Statute states: *"It is the duty of every state to exercise its criminal jurisdiction against those responsible for international crimes"*.

However, as mentioned above, when the state is not capable of exercising its national jurisdiction (a fact that is confirmed by the lack of significant progress), it is the ICC that may exercise jurisdiction over any of the crimes regulated in Article 5 of the Rome Statute (such as war crimes). For these reasons, there are many voices calling for an investigation into the crimes perpetrated by Boko Haram in Nigeria.

In addition, it is important to note that with respect to war crimes, the ICC will have jurisdiction in particular when they are committed as part of a plan or policy or as part of the large-scale commission of such crimes (Article 8(1) of the Rome Statute).

### 3.6. THE EFFECTIVENESS OF THE INTERNATIONAL CRIMINAL COURT

Since its creation, the ICC has, overall, issued more than 40 arrest warrants and handed down 10 convictions and 4 acquittals (Mansilla-Moya, 2024). The effectiveness of the ICC is closely linked to cooperation between State Parties to the Rome Statute and collaboration between different international organisations. However, according to the principle of universal jurisdiction, the national jurisdiction of each State Party can and must – in certain cases – exercise jurisdiction over crimes of genocide, crimes against humanity, war crimes and crimes of aggression.

It is true that the ICC is currently conducting a multitude of investigations, which in many cases will remain merely preliminary investigations and in other cases will remain static for several years. The prosecution routinely encounters various controversies as regards obtaining evidence in its investigations (Zannarini, 2023). It is therefore proposed that states effectively exercise universal jurisdiction and, if necessary, activate the ICC's jurisdiction through *ex officio* initiation by the Prosecutor or referral by the Security Council.

With regard to the cooperation of State Parties, we should highlight the Recommendations on State cooperation with the ICC, which state that in order for the ICC to function properly it needs the cooperation of its State Parties, who constitute the fundamental pillar in terms of enforcement. The international court has no powers in this

area, but it is up to States to provide support in judicial and penitentiary functions (ICC, 2015). Specifically, Article 86 of the Rome Statute, which heads Part IX on international cooperation and mutual legal assistance, sets out the general obligation to cooperate by providing that: "*State Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in relation to the investigation and prosecution of crimes within the jurisdiction of the Court*".

### 3.7. SPECIAL REFERENCE TO THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT IN THE FIELD OF TERRORISM

As mentioned above, as per Article 5 of the Rome Statute, the jurisdiction of the International Criminal Court is limited to the crime of genocide, crimes against humanity, war crimes and the crime of aggression. The Rome Statute makes no express mention of the crime of terrorism, and the ICC lacks jurisdiction with regard thereto. However, the materialisation of conduct constituting terrorism in the commission of crimes under international law is more than evident, especially in international or non-international armed conflicts, as can be seen in the war crimes perpetrated by Boko Haram.

Conduct constituting terrorism, as it meets the intrinsic characteristics of crimes under international law in most definitions (although there is no international consensus on a univocal concept of terrorism), could be implemented in the Rome Statute through the convening of a Review Conference of State Parties, as well as through the subsequent approval and ratification of the different member countries of the International Criminal Court (Matteus-Rugeles; Martínez-Vargas, 2010). The fact is that "The lack of a universally accepted definition is not *per se* a sufficient reason for its non-inclusion in the Rome Statute", as this is mainly due to the lack of political agreement between the different states and the intention of countries to keep this competence within national sovereignty (Ginette et al., 2021, p. 38).

In short, the crime of terrorism does not present an autonomous categorisation in International Criminal Law, as it is subsumed within the crimes expressly regulated by the Rome Statute, and there is no decision or express reference by the International Criminal Court on terrorism. Therefore, terrorist conduct will fall within the jurisdiction of the ICC to the extent that it falls within the categories of crimes under international law regulated in the constitutive instrument of the ICC.

## 4. CONCLUSIONS

Today, Boko Haram remains a threat to the security of Nigeria and the African continent. Despite military pressure, the terrorist group continues to commit indiscriminate mass attacks against the civilian population and the Nigerian state itself. Boko Haram's local targets are evident, but the group's international projection is likely to increase due to its increased reliance on global jihadism, making it a threat to be reckoned with on the international stage. Specifically, it has links to Al-Qaeda in the Islamic Maghreb, Movement for Unity and Jihad in West Africa, Al-Shabaab and the Islamic State.

With regard to the ICC's jurisdiction to try those responsible for war crimes committed in the non-international armed conflict between Boko Haram and the State of Nigeria, it is clear that, given the lack of initiative on the part of Nigeria (a State Party to the Rome Statute) to exercise its criminal jurisdiction against those responsible, it is up

to the ICC Prosecutor to initiate an investigation *ex officio*. An increasing number of authors and experts, such as Delgado Correcher, are calling for the opening of "an investigation into possible war crimes and other serious human rights abuses and violations committed by both Boko Haram and Nigerian forces since the beginning of the conflict in 2009" (Delgado, 2023, p. 361).

However, it is also important to point out that despite the creation of the ICC as a permanent, independent jurisdiction, with universal pretensions, jurisdiction limited to the most important crimes, complementary to national jurisdictions and jurisdiction over individuals and not over states, there is currently great impunity with regard to the commission of war crimes, a fact that is reflected in the lack of convictions against the terrorist group Boko Haram and against a multitude of crimes of importance to the international community.

Finally, we should highlight the need to promote cooperation between the different State Parties to the Rome Statute in order to make the ICC effective and to be able to judge those responsible for genocide, crimes against humanity, war crimes and crimes of aggression, as well as to take into account the different specific instruments for monitoring compliance, such as the International Committee of the Red Cross and the International Commission of Inquiry. Moreover, the ICC is a relatively young institution, so awareness-raising and outreach measures to strengthen the international criminal justice system are essential to promote peace and security and protect the rights of victims.

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