LOOKING BEYOND THE ACTORS AND UNTO THE CAUSE: THE LEGAL STATUS OF MILITANTS IN THE NIGER DELTA REGION OF NIGERIA*

Abstract
This paper analyses the situation in the Niger-Delta region of Nigeria with respect to the activities of the militants. It also attempts an analysis of the legal status of these militants despite the cause of the militancy, the determination of which will determine their culpability.

Keywords: Niger Delta, Militants, Legal Status, Right to Self Determination

1. Introduction
The paper is divided into seven parts. Part I discusses the background to the study. Part II discusses the general background of the topic, part III attempts a discussion on the right to self-determination and the causes of the agitation in the Niger-Delta region of Nigeria drawing light from the 1999 Constitution, Land Use Act and indeed earlier legislations that sparked off these agitations. Part IV discusses the legal status of these militants despite the causes of the militancy part V discusses the framework for responsibility of the militants, part VI discusses the framework for enforcement of the laws against these militants and finally part VII concludes the paper.

2. General Background
The Niger Delta region of Nigeria located in the South-South comprises six states namely: Akwa Ibom, Bayelsa, Cross River, Delta, Edo and Rivers. It is endowed with rich natural resources which include one of the largest deltas in the world; third largest mangrove in the world; largest wetlands in the world; and most extensive fresh water swamp forests in West and Central Africa. It hosts Oloibiri town where crude oil was first discovered in commercial quantities in 1956, it holds 60-80% of all Nigerian plant and animal species. It has oil reserves that became the mainstay of the Nigeria’s economy since the discovery of oil in commercial quantities. The natives of this region have had long feud with the Government over ownership and control of natural resources from that area, a claim that originated from the change in the structure of ownership which hitherto resided in the natives but was by an Ordinance vested in the Crown and in the Federal Government (a progeny of the Crown) after independence in which the said legislations totally divested the people of all rights and ownership over oil resources and land. This is the genesis of claim for economic self-determination which the government has denied and

*Chukwudumebi OKOYE-ASOH, LLM (Benin), PhD Candidate, Faculty of Law, Rivers State University. Phone: 08162261318, 08020755121. E-Mail: koyemebi@yahoo.com.
*Ujah Mauree AKUNNA, LLM, PhD Candidate, Faculty of Law, Rivers State University, and
*Jessica NWINEE, LLM, PhD Candidate, Faculty of Law, Rivers State University.
1Niger Rivers Delta’ <http://www.worldwildlife.org/wildworld/profile/g200/g155.html> accessed 11 July 2017
6I. Gary and T. Karl, Bottom of the Barrel: Oil Boom and the poor (Baltimore: Catholic Relief Service, 2003)p. 3
the attitude of government led to armed conflicts organized by different youth organizations in the region.

The agitation of militants in the Niger Delta region of Nigeria has become a growing concern to scholars in the circles of human rights and international humanitarian law. One major reason for this concern is the nature and cause of the agitation. On one hand the inherent right to economic self-determination, the right to own property – land is at stake which stands parallel to the provisions of the 1999 Constitution and the Land Use Act of 1978. These laws and others before vest ownership of all land in the government. Furthermore, the agitations in this region have led to various atrocities being committed ranging from violence to life and property, to environmental degradation in the pretext of a just agitation or war. How do we tag these militants, can they be legally classified as combatants under the law or are they mere rebels and criminals? Is there an ongoing armed conflict in the context of international humanitarian law or is the situation in that region a mere situation of violence. Indeed, while it may be easily classified in the Niger delta region as situation of violence under Article 1(2) of the Additional Protocol 1 (hereinafter AP 1), the challenge in classifying these groups of persons stems from the fundamental philosophy of human rights law which is the inalienability of the human rights. Human rights indeed are sacrosanct and inviolable and according to Kayode Esu in Ransome Kuti v. A.G. of Nigeria such human rights are above the ordinary law of the land. In this situation, the Land Use Act seems to be in conflict with the philosophy of human rights law and the question of the application of IHL to such agitation in also an issue.

3. The Right to Self Determination and the Causes of Militancy in the Niger Delta Region

‘National aspirations must be respected; people may now be dominated and governed only by their own consent. Self-determination is not a mere phrase; it is an imperative principle of action...”8 The right of a people to self-determination is a cardinal principle in modern International Law (commonly regarded as *jus cogens* rule), binding as such, on the members of the United Nations (hereinafter UN) as authoritative interpretation of the Charter’s norms.9 It states that people based on respect for the principle of equal rights and fair equality of opportunity, have the right to freely choose their sovereignty and international political status with no interference.10 On 14 December 1960, the United Nations General Assembly (hereinafter UNGA) Resolution 1514 (xv) under the Declaration on the Granting of Independence to Colonial Countries and Peoples which supported the granting of independence to colonial countries and people provided an inevitable legal linkage between self-determination and its goal of decolonisation. It postulated a new international law based on the right of freedom of economic self-determination. On October 24, 1970, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states11 was adopted unanimously by the General Assembly during a commemorative session to celebrate the twenty-fifth anniversary of the UN. This instrument

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7 (1985) 2 NWLR PT 6, 211 - 230
8 American President Woodrow in his famous self-determination speech on 11 February 1918 after he announced his fourteen points on 8th January 1918
10 Clause 3 of the Atlantic Charter states ‘...respect for the right of all people to choose the form of Government under which they will live, and the wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them”
11 The UNGA Resolution 2625
12 The UNGA Resolution 2625
further developed the concept of self-determination as it became recognized as *jus cogens* thus a source of international law. The origin of the principle of self-determination is traceable to two American presidents. First is Woodrow Wilson’s fourteen points after First World War which led to the dissolution of empires with the ensuing reconstruction as a result of formation of new nation states or previous states that were revived, and secondly, Franklin D. Roosevelt and Winston Churchill Prime Minister of the United Kingdom after the signing of the Atlantic Charter on 14 August 1941 by pledging the eight principal points of the Charter. The UNGA resolution in paragraphs 1 and 2 declare that;

1. The subjection of the people to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.

2. All peoples have the right to self-determination by virtue of that right; they freely pursue their economic, social and cultural development.

The right to self-determination is provided expressly in the International Covenant on Civil and Political Rights\(^\text{12}\) (ICCPR), the International Covenant on Economic, Social and Cultural Rights\(^\text{13}\) (ICESCR) and the African Charter on Human and Peoples’ Rights\(^\text{14}\) (ACHPR). Article 1 (1) of both the ICCPR and ICESCR and Article 25(1) of the ACHPR are the same with the provision of resolution 2 of UNGA. Furthermore, self-determination is now recognised as an integral part of human rights law which has a universal application and is a necessary condition for the enjoyment of other human rights and fundamental freedom\(^\text{15}\). This is so even as the UN recognised the fact that the denial of right to self-determination is one of the reasons for armed conflicts. The UNGA resolution 1514 arrived at after series of agitations and clamour for political self-determination by colonised people that led to the decolonisation of territories hitherto under colonial rule has been prominent in the past 50 years\(^\text{16}\). The clamour for economic self-determination also gained prominence after Second World War even if its propagation has been suppressed in the post-cold war era\(^\text{17}\). The New International Economic Order (NIEO) which was a set of proposals put forward during the 1970’s by some developing countries was meant to be a revision of the international economic system in favour of Third World countries replacing the Bretton Woods system that benefited the leading states that created it – especially the United States. The NIEO with the UN played an important role in the development of economic self-determination. According to Farmer, economic self-determination is a people’s capacity to dispose freely of natural resources in accordance with democratically taken decisions.\(^\text{18}\) Self-determination is seen as a political principle due to its secessionist character as different from economic self-determination that is viewed as a mere appendage to it as it can operate independently of the secessionist movement.\(^\text{19}\) Control of resources is the main reason for claims and agitations for economic self-determination and the outcome of such claims or struggle is dependent on how the government handles the agitators and their claim. Where the government denies the claims as is the case in Nigeria with respect to the demands by the Niger Delta region, violent conflicts will ensue. Recourse will be had to the situation of the law before

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\(^\text{12}\) Came into force on 23 March 1976  
\(^\text{13}\) Came into force on 3 January 1976  
\(^\text{14}\) Came into force on 25 January 2005  
\(^\text{15}\) Supra note 3  
\(^\text{17}\) Ibid  
\(^\text{18}\) Supra note 16  
\(^\text{19}\) Ibid
independence and after to ascertain the root cause of agitations for economic self-determination that have led to militancy in the Niger Delta region. This is traceable to the Mineral Oils Ordinance of 1916\textsuperscript{20} that altered the structure of oil mineral ownership in Nigeria by vesting the ownership of oil resources in the Crown. Before the 1916 Ordinance, the earlier Ordinance\textsuperscript{21} and its amendment in 1914 did not make any specific provision on the ownership of oil resources. S.5 of the 1907 Ordinance, provides

It shall be lawful for the governor to enter into an agreement with any native authority for the purchase of full and exclusive rights in and over all mineral oils, within and under any lands which are the property of any Native community (Emphasis supplied)

This provision reveals that prior to the amalgamation of Nigeria, the colonial government recognised the ownership of land and minerals in and under it in the natives and could only own same by agreement and purchase but the 1916 Ordinance changed the status quo by divesting the native community of their ownership of oil resources and vested it on the Crown. Amendments of 1950 and 1959 consolidated further the ownership of oil resources in the Crown by extending the absolute right and control of the colonial government over oil resources to onshore and offshore reserves as a result, the ownership of oil resources has remained vested in the Federal Government a progeny of the Crown since independence in 1960. Subsequent constitutions and laws such as Petroleum Act;\textsuperscript{22} Territorial Waters Act;\textsuperscript{23} Exclusive Economic Zone Act\textsuperscript{24} and Minerals and Mining Act\textsuperscript{25} expressly retained government absolute ownership and control over oil resources located mainly in the Niger Delta. S.44 (3) of the 1999 Constitution provides

Notwithstanding the forgoing provisions of the section (providing against compulsory acquisition of property without the payment of adequate compensation) the entire property in and control of all minerals, mineral oils and natural gas in, under or upon the territorial waters and Exclusive Economic Zone of Nigeria shall vest in the government of the federation....

S.1 (1) of Petroleum Act States: ‘The entire ownership and control of all petroleum in, under or upon any lands to which the section applies shall be vested in the state’. It goes further in sub section 2 to extend the ownership of petroleum to land, all land, both those covered by water in Nigeria and under the territorial waters of Nigeria forms part of the continental shelf or part of Exclusive Economic Zone of Nigeria. The implication of the vesting of ownership of oil resources in the Federal government is that ownership of oil resources hitherto in the hands of the natives of the Niger Delta has been transferred to the federal government and secondly, the exploration and production of the resources invariably became the exclusive preserve of the federal government without recourse to the native host communities. Consequently, the colonial government vested all resources in the Crown while the federal government completed the absolute control of the resource by vesting the ownership of the land in the state.\textsuperscript{26}

\textsuperscript{20}Ibid
\textsuperscript{21}S. 3(1)
\textsuperscript{22}1969
\textsuperscript{23}1967
\textsuperscript{24}1991 replaced by the Maritime Zones Act
\textsuperscript{25}No. 34 1999 repealed by the Minerals and Mining Act 2007
\textsuperscript{26}S.1, 2 of the Land use Act, CAP 15 Laws of the Federation of Nigeria 2004 and S.44 (3) of the 1999 Constitution
While the legality of the constitutions and other subsidiary legislations that divested ownership of land and oil resources from the natives is not in doubt, it is instructive to note that all these legislations with the exception of the independence constitution were products of military governments which gave the laws the toga of arbitrariness to the chagrin of the natives who see such legislations as not being reflective of their true wishes.

4. The Legal Status of Militants in the Niger-Delta Region of Nigeria

The violent activities of militants in the Niger Delta region of Nigeria which leads in their trails massive destruction of oil pipelines and installations, lives, property, kidnap and rape call for a determination of their legal status. Are they combatants, the title to which gives them the right to participate directly in hostilities, be treated as prisoners of war when captured and to abide by the rules of International Humanitarian Law when fighting? Article 4 (1)-(6) of the Geneva Convention 3 of 1949 provides an elaboration of groups that can be legally classified as Prisoners of War (combatants). They include persons belonging to one of the following categories who have fallen into the power of the enemy:

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces
2. Members of other militias and members of other volunteer corps, including those of organized resistance movements belonging to a party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements fulfill the following conditions:
   a. That of being commanded by a person responsible for his subordinates;
   b. That of having a fixed distinctive sign recognizable at a distance;
   c. That of carrying arms openly;
   d. That of conducting their operations in accordance with the laws and customs of war.
3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondence, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.
5. Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.
6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed unit, provided they carry arms openly and respect the laws and customs of war.

Article 4(2) did not exhaustively mention ‘militias, ‘volunteer corps and organized resistance movements’, but the principle equally covers other armed groups however described (whether as paramilitaries, private military companies, guerrillas, insurgents terrorists etc. The description of such groups is largely immaterial. Legally what is decisive is whether these are forces ‘belonging’ to a state under Article 4(2) meaning that the state exercises ‘overall control’ over their operations. Can this be
said of the Niger Delta militants? Certainly no, as they do not have any link whatsoever with the state let alone being subordinate to it as to be under its control.

Furthermore, for the militants to be accorded the status of combatants, they must comply with the above four minimum conditions of combatancy, even where they belong to a state, most will fail to satisfy all of the cumulative conditions. Whether because their operations by their nature do not respect IHL norms of distinction or proportionality, or because they do not comply with the ‘procedural fair play’ requirement of showing themselves to the adversary (like terrorists mingling with civilians or committing criminally perfidious attacks like the terrorists). This is however not true of the Niger Delta militants as although they cannot be said to meet the four cumulative conditions under 4(2) they are fighting a just cause. While these militants may be said to be commanded by a person responsible for his command in the person of their commanders, the Movement for the Emancipation of Niger Delta (MEND) for instance is commanded by Asari Dokubo, they have a fixed distinctive sign recognizable at a distance and carry arms openly as envisaged under 4(2) (a) - (c) respectively, but do not conduct their operations in accordance with the laws and customs of wars as stipulated. The spate of bombing of oil installations and pipelines with the consequential spillages, destruction of farmlands and aquatic life, environmental degradation and kidnap of oil workers for ransom or to draw home their demands support the above assertion. Invariably, since these conditions are cumulative, they will operate in making the threshold higher and difficult to meet in bringing the militants activities under non international armed conflicts with the consequential protection accorded under IHL.

Indeed, a minimum threshold of intensity is also required to distinguish non – international armed conflicts under both Common Article 3 of the Four Geneva Conventions 1949 and Article 1(2) of Additional Protocol II of 197728 from lesser violence. Article 1(2) of Protocol II expressly excludes ‘situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature’. The same exclusion is understood to apply when interpreting Common Article 3 of the Geneva Conventions.29 Thus terrorists acts and other armed conflicts which are isolated, sporadic, low level or in the nature of ordinary crime and which do not provoke intense and sustained military responses by the victim state will not cross the threshold of a non – international armed conflict. The central question is whether there exists sufficiently intense armed violence between an organized armed group and a state or another armed group30.

Can the conflict in the Niger Delta region between the militants and government forces mobilized to counter the militants be said to be intense? This query is pertinent because for the violence to be considered as intense, it must be of extreme force degree or strength. Accepted definition of armed conflict was that given in the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Tadic case “…..armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state”31 when applying that part of the definition relating to non – international armed

281977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non – International Armed Conflicts, adopted 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978 (Protocol II))
30Prosecutor v Tadic (International Appeal on Jurisdiction) (ICTY, Case No IT – 94 – 1, 2 October 1995), [70]. Prosecutor v Limaj et al (ICTY, Case No IT - 03 – 66 – T, 30 November 2005), [85]
31Para 70 supra, emphasis added
conflicts in its first two cases, the Tadić Trial Chamber at ICTY and the Akayesu\(^{32}\) Trial Chamber at International Criminal Tribunal for Rwanda (ICTR) both interpreted the definition to consist of two criteria namely protractedness of the conflict and the organization of the parties to the conflict thereby making an armed conflict distinguishable from banditry, unorganized, sporadic and short-lived insurrection, attacks or terrorists activities. The word “protracted” as contained in the definition of non—international armed conflict above was held in Celebici case\(^{33}\) to refer more to the intensity than to the duration. The American Commission on Human Rights considered a 30 hour battle a Common Article 3 conflict\(^{34}\).

There is a lacuna created by Common Article 3 of the Geneva Conventions which laid down minimum humanitarian standards that should apply in the case of “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties” by not providing guidance as to what the threshold of non—international armed conflicts should be. This led the ICRC to provide a list of “convenient criteria” in its commentary on the Geneva Conventions to guide the application of Common Article 3. These convenient Criteria were rejected by the ICTY as being too stringent with regard to organizational requirement when it considered whether or not the Kosovo army fulfilled the said requirement\(^{35}\).

In Lima case\(^{36}\) the ICTY observed that the convenient criteria mentioned in the ICRC Commentary were not intended to be explicit requirement as a result of which it went ahead to assess the existence of a non—international armed conflict by reference to ‘objective indicative factors of intensity of the fighting and the organization of the armed group depending on the facts and circumstances of each case. Boskoski case\(^{37}\) discussed what constitutes the lower threshold of non—international armed conflicts and reviewed how the relevant elements of Common Article 3 recognized in Tadić\(^{38}\) case namely “organization of the armed group” and “intensity” are to be understood, in so doing, it identified the “factors” to be taken into account when assessing these elements and identified a number of ‘indicators thereof; these factors have been adopted by the International Criminal Court. The factors and indicators are:

1) The existence of a command structure; indicators: e.g. the existence of headquarters; a general staff or high command; internal regulations; the issuing of political statements or communiques; the use of spokespersons; identifiable ranks and positions.

2) Military (operational) capacity of the armed group; indicators: e.g. the ability to define a unified military strategy; to use military tactics; to carry out (large scale or coordinated) military operations; the control of certain territory, and territorial division into zones of responsibility;

3) Logistical capacity of the armed group; indicators: e.g. the existence of supply chains (to gain access to weapons and other military equipment); ability for troop movement; ability to recruit and train personnel;

4) The existence of an internal disciplinary system and the ability to implement IHL; indicators: e.g. the existence of disciplinary rules or mechanisms within the group; training;

\(^{32}\)Prosecutor v Akayesu www.unictr.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf

\(^{34}\)La Tablada Case www.cidh.oas.org/annualrep/97eng/Argentina11137.htm#para 184

\(^{35}\)Supra note 16

\(^{36}\)Ibid

\(^{37}\)Ibid

\(^{38}\)Ibid
5) The armed group’s ability to speak with one voice; indicators: capacity to act on behalf of its members in political negotiations; to conclude cease fire agreements.

Applying the above five indicators one would notice that the Niger Delta militants do meet most of the factors as opposed to the case with the Free Syrian Army. Despite the obvious fractious and divided nature of the relationship between the FSA and the rebels affiliated to it with respect to the rebels not receiving orders from FSA leadership and acts of gross violations of IHL rules for instance the summary executions some caught in camera as was widely reported in both electronic and print media, though these delayed the conflict from being termed non international armed conflict nonetheless, it was later recognized as such. The “ability to implement IHL” does not mean that IHL necessarily needs to be respected by the concerned party at all times for the factor to be ‘fulfilled’. Similar to the requirement set by article 1(1) of Additional Protocol II that refers to the ability to implement said protocol, “the ability to implement IHL” is something entirely different from actually fighting in accordance with IHL. The ICRC commentary describes this condition of Additional Protocol II as “corresponding with actual circumstances in which the parties may reasonably be expected to apply the rules developed in the Protocol, since they have the minimum infrastructure required therefore.” The ICTY explained about this factor that:

Where members of armed groups engage in acts that are prohibited under international humanitarian law, […] they are liable to prosecution and punishment. However, so long as the armed group possesses the organizational ability to comply with the obligations of international humanitarian law, even a pattern of such type of violations would not necessarily suggest that the party did not possess the level of organization required to be a party to an armed conflict.39

The above five factors are not determinative of organizational criterion and the indicators merely serve to indicate, consequently, not all the five factors need to be fulfilled. Lack of internal disciplinary system or the ability to speak with one voice would not mean that organizational criterion for the existence of armed conflict is not met. Ideally this was the case with FSA despite the evidence of lack of internal disciplinary system, the ICRC went ahead to declare the conflict non –international armed conflict. There is strictly no hard and fast rule about the criteria as the appearance of the existence of some of these criteria may suffice. This is the case of the Niger-Delta militants.

Non – international conflicts involving terrorist and armed groups are less likely to arise under Protocol II given that it additionally requires territorial control by the group. From the foregoing, it may not be easily determined essentially, what must be of considerable weight is the cause of the struggle which cannot be ignored. The persuasive position which materially is overwhelming is whether the cause pursued is just in the context of the right to self-determination, the right to environment and the existence of community right.

Generally, in IHL, insurgents or militants of this nature are classified as Non – State actors. This term according to Marce,40 refers originally to organized armed groups participating in Non – international armed conflict but today, they include unorganized armed groups taking part in armed conflict. In

39 Boskski supra note14
In Nigeria, there are other non-state actors which arose on several grounds ranging from marginalization, religion and the one under discussion, resource control. Does IHL regulate their activities? In the case of *Prosecutor v. Sam Hinsu-Mosma* the Appeal Chamber of Sierra Leone Special Court held that “it is well settled that all parties to an armed conflict, whether states or non-state actors are bound by IHL”. If by the interpretation of the court, all engaged in armed conflict are bound by IHL, no contrary argument can reasonably deny them legal status that compels their recognition as combatants. Moreso, non-compliance with the norms of IHL does not *per se* confer nor deny status.

5. Possible Framework for Responsibility of Niger-Delta Militants under IHL

IHL cannot hold responsible those she does not recognize as subjects of international law, for once they take up arms and sustain engagement, they become subjects of international law, since that act is a denial of allegiance to the State.

**The Provisions of Common Article 3**

This article which operates in situations of non-international armed conflict makes provisions for the protection of persons who no longer take part in hostilities including members of the armed forces who have laid down their arms and those placed *‘hors de combat’* by sickness, wounds, detention or any other cause by prohibiting the following acts with respect to those persons mentioned herein. They include:

a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

b) Taking of hostages; and

c) Outrages upon personal dignity in particular, humiliating and degrading treatment.

It is worthy of note that the provisions of Common Article 3 relate to parties to a conflict making the provision binding on all non-state actors though the extent to which it binds non-state actors is debatable and the precise means these non-state actors are bound by IHL is controversial. However, it should be noted that Non-State actors are bound by Customary International Law and Common Article 3. Common Article 3 prohibits violence to life and person, taking of hostages, etc. On this premise, it can be argued that the militants in the Niger-Delta region of Nigeria who kidnap oil workers, attack oil pipelines and other installations thereby leading to the loss of lives may be in violation of the provisions of Common Article 3 which has attained the status of Customary International law. However, this violation if not consistent, systematic and widespread may not meaningfully sustain wholesome condemnation by the international community.

**Additional Protocol I**

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41 Boko haram insurgents and Biafran agitators  
42 Case Mo ScSc – 2004 14 AR 72(E)  
43 It states that ‘in the case of armed conflict not of an international character…….. each party to the conflict…….’  
46 *Prosecutor v Morns Kallon and BrimaBiody Kamara*, ScSe – 2004 – 15 AR 72. (E) and ScSc 2004 10 AR 72 (ce) Decision on challenge to jurisdiction, Lome Accord Amnesty Appeal Chamber 13, March 2004, Pres 4547. In this case, the court declared that Common Article 3 is binding on states and insurgents alike. If Common Article 3 must bind insurgents (militants), it is a clear admission that they are subjects of international law.
The agitations in the Niger-Delta Region of Nigeria have led to certain actions that have had adverse effects on the environment. Oil pipelines and some other oil installations have been the major targets of these militants, thereby leading to the pollution of the environment, farm lands are affected, water is polluted and even the air is no longer as pure as it used to be. This section of the paper examines the legal implications. Two wrongs, they say cannot make a right, but recall that the oil multinationals the agents of the Nigerian State pay little or no attention to the environment they operate which of course is one of the primary reasons for the agitations. Article 35(3) and 55(1) of Additional Protocol I prohibit acts and methods of warfare that ultimately cause damage to the environment. Article 35(3) provides that “it is prohibited to employ methods or means of warfare which are intended, or may be expected to cause widespread, long–term and severe damage to the natural environment.”

Furthermore, Article 55(1) states that care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. Article 55(1) acknowledges the state of warfare, meaning that those engaged therein cannot but be recognized as combatants, bearing that legal status. It is important to note that what constitutes “widespread, long term and severe damage” was not provided for but the use of “and” to link the three adjectives qualifying the damage to the natural environment means that they are cumulative conditions, all of which must separately be met in order for there to be a breach of the relevant provision.46 This means that the impact of such activities of the militants must be such that it has caused environmental damage that is widespread, long-term and severe for them to be held liable for war crimes. This constitutive description cannot readily apply to the militants

Article 8(2) (b) (iv) of the International Criminal Court Statute considers certain attack on the environment as grave breaches, and therefore attracting individual criminal responsibility. Thus, wartime environmental damage has been criminalized. As stated above, the precise meaning of the separate elements ‘widespread’ long-term and ‘severe’ was not mentioned in the Statute and so, imputing culpability becomes difficult47. Moreso, wide spread, long-term and severe damage formula sets an extremely high threshold for actionable environmental damage under IHL.48

**Human Rights Law**

While it may be settled by law that International humanitarian law is applicable to armed non-state actors like the militants in Niger-Delta, it is controversial whether human rights law applies.49 Indeed, several authors insist that only states have human rights obligations as opposed to IHL which also binds non state actors.50 This is so because, as argued, they are unlikely to have the capacity to uphold certain rights such as the duty to ensure a regularly constituted court, the right to due process and to have their

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47 Recourse is had to certain official and unofficial commentaries regarding the meaning of these literatures as they were used in the convention ed. Understanding widespread and can an area on the scale of several hundred square kilometres, for long-term, a period of months, or approximation of reason and severe damage as ‘involving serious or significant disruption or harm to human life, natural and economic resources or other
48 Ibid
50 Ibid
own legal system, courts etc. However, this is the former legal position; the new legal position is that international human rights law binds non-state actors who are individually criminally responsible for any crime committed among the grave breaches of the Rome Statute and therefore liable to prosecution.

6. General Framework for Enforcement
As noted above, these militants are fighting a “just cause” but in the course of their efforts, they should be encouraged to respect human rights. Generally, Enforcement measures of IHL can be diplomatic or judicial. Diplomatic measures include condemnation by states or United Nations organs, international pressure on the violating entity to stop the violation and economic sanctions against the violating entity. The violating entity can also be labeled by the international community as a ‘terrorist organization’. This would enable the world community to offer assistance to a state party. This latter measure, due to the nature of the activities and organizational structure of the militants would be better used than others aforementioned.

7. Conclusion
It is settled principle of IHL that parties to an armed conflict must ensure that they adhere to all the rules governing armed conflict irrespective of the cause of the conflict. IHL is not concerned about the reason for the conflict, rather, it is concerned with the protection of those who do not or are no longer participating in armed conflict. To deny the militants a legal nomenclature merely begs the question and denies real substance to the resolution of militancy in the Niger-delta. Since it cannot be denied that they are pursuing a just cause, it is only delusional to classify them as mere criminals that can be subject to criminal sanctions. Law must evolve to respect as subjects of international Law, and in this circumstance as insurgents and rightly engage them as such. Denying the reality that there is an armed conflict will only hasten the decay that the hostility procures.

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51 L. Moir, The law of internal Armed Conflicts (Cambridge, University Press, 2007) 50-56.
53 Akpoghome, Supra note 43
54 Ibid