CHAPTER-IV
INTERNATIONAL MEASURES TO COMBAT TERRORISM

4.1 Introduction

_Terrorism is a global menace. It calls for a united, global response. To defeat it, all nations must take counsel together, and act in unison. That is why we have the United Nations._

- Kofi Annan

“A crime is a crime”. This is a remark made by the Marget Thatcher in response to the Irish Republican Army terrorist acts. Washington and its partner, the North Atlantic Treaty Organization and the Organization of American States immediately identified the terrorist attack on America on 9/11 as “acts of war”. President Jorge Bush while addressing the nation requested the other states to co-operate in this war by declaring, “You are with us or with them”. All these kinds of terrorist activities proved that time has come for the United Nations to act decisively, collectively and effectively to combat terrorism.

The United Nations (herein after referred as UN) is a pivotal organ of the world government, and the most important of all international institutions, which has become universal institution because of its sheer strength of 193 memberships of sovereign states. General Assembly of UN is essentially a deliberative body, with powers of

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discussion, investigation, review, supervision and criticisms of the work of UN. Its powers are limited to making recommendations and not binding decisions.\(^5\)

In the last three decades, the emergence of highly organized, well trained, and well-financed international terrorist networks had exposed the significant gaps in the United Nation’s pre-existing anti-terrorism framework. The end of the Cold War as well as aftermath of the tragic attacks on the United States in 2001 have forced the overhaul of the Organization’s anti-terrorism strategy, far-reaching resolutions as well as imposition of an onerous set of mandatory obligation on member states. The marshalling of an international law strategy on terrorism is a story of committees and their reports of resolutions of drafting treaties and calls for state action.\(^6\)

### 4.2 The General Assembly Resolutions on Terrorism

Up to 1980s, the actions of General Assembly (herein after referred as GA) against terrorism was influenced by the two factors namely, self-determination (decolonization) and cold war. The disintegration of USSR and disappearance of cold war ultimately helped the UN to take more aggressive stand on the terrorism during the 1990s. The GA has addressed international terrorism in two ways: by developing a normative framework that defines terrorism as a common problem and by encouraging concerted government action to develop international and national legal rules for dealing with terrorist.\(^7\) Institutional characteristic of the GA is that it cannot act as a direct coordinator of action against terrorism because it lacks authority to command

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\(^5\) Article 10, 11, 13, and 14 of the Charter of the United Nations.


governments and other influential actors to take or avoid particular action. Moreover, the GA oversees no administrative structure capable of implementing its decisions and it lacks resources needed to provide material rewards for good behavior or material punishment of bad behavior. The GA efforts to develop a normative framework have proceeded in the form of resolutions addressing terrorism as a general problem. GA Resolutions are broadly classified in to three categories.

1. Measures to Prevent Terrorism
2. Measure to Eliminate International Terrorism
3. Human Rights and Terrorism

The GA’s efforts to encourage concerted international action against terrorists have taken three forms. It has constituted two ad hoc committees on terrorism, composed of delegates of member states, to work out measures that are more specific. It has encouraged UN specialized agencies with competence in fields likely to be affected by terrorist activity to address the issue. It has urged governments to perfect the international and domestic laws against terrorist activity and cooperate more closely with one another in suppressing terrorism.

The GA first defined international terrorism as a general problem in 1972, it returned to the subject sporadically in the mid-1980s and has addressed it continuously since adopting the Declaration on Measure to Eliminate International Terrorism by

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8 Articles 10, 11, 13, and 14 of the Charter of the United Nations.
9 Supra note 7.
13 M.J.Peterson, op. cit., p. 175.
resolution 49/60 in December 1994. The titles and preambles reveal that the GA’s approach to the problem of terrorism underwent a marked change in the early 1990s from 1972. Until the 1990s, terrorism was dealt with almost entirely by the GA, which approached the issue as a general international problem rather than relating to specific events or conflicts. Security Council (herein after referred as SC) began to take on the question of terrorism in the 1990s in response to specific events. Indeed, the Member States of the UN were forced to reconcile their desire to act in a concerted manner to prevent and repress acts of terrorism with their inability to define the very phenomenon they sought to prohibit.

On the one side were those who contended that normative responses to prohibited conduct could not be devised without agreement as to what conduct was indeed prohibited. In particular, what uses of force, by whom and in what circumstances, were to be considered as ‘terrorism’ triggering certain legal consequences? On the other side were those who responded that agreement upon definition was doomed to failure, and that it was better to proceed pragmatically with building up agreed norms that were relevant to different aspects or the overall problem.¹⁴ This was especially problematic in the light of the *nullum crimen sine lege* principle, one of the most fundamental tenants of criminal law.¹⁵ There simply was no consensus to identify what acts did or did not constitute terrorism. Even in today’s vastly improved climate at the UN the definition of terrorism would still present enormous problem. Nevertheless, UN Member States saw the need to acts against the ruthless and mindless violent terrorism.

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¹⁵ Article 15 of *International Covenant on Civil and Political Rights*, 1966.
The GA first addressed terrorism as a distinct problem in September 1972 on the initiative of the then Secretary-General Kurt Waldheim, in the wake of several major incidents most notably the attack on Lod Air Port in Israel and the capture and killing of Israel’s athletes at the 1972 Summer Olympics in Munich. Waldheim proposed that the GA create an ad hoc committee to explore practical ways of improving national and international efforts to identify, apprehend, and punish those involved in terrorist activities.\textsuperscript{16}

In 1984, when international and domestic criticisms of Regan administration policies in Central America was at its height, the Soviet did succeed in winning sufficient support for discussing “State Terrorism” in the first Committee (Disarmament and International Security).\textsuperscript{17} Some delegations (Cuba, Iraq, Iran, Lebanon, Libya, Pakistan, Syria and Sudan) were of the view that the definition should be extended to State-sponsored terrorism and acts of State terrorism. Some other delegates articulated that people’s struggle including armed struggle against foreign occupation, aggression, colonialism and hegemony, aimed at liberation and self-determination in accordance with the principle of international law shall not be considered a terrorist crime. Resolution 40/61 adopted in 1985 also included “mass and flagrant violation of human rights” among the ‘root causes’ of terrorism, suggesting that many governments would not regard persons engaged in armed struggle against brutally oppressive regimes as terrorists.\textsuperscript{18} Other delegation, expressing objection to this proposal, claimed that people’s

\textsuperscript{16} In 1972, the General Assembly adopted Resolution 3034(XXVII) establishing the Ad Hoc Committee on International Terrorism, which consists of 35 members and charged with examining both practical measures for suppression and identification of the causes of terrorism.
\textsuperscript{17} M.J., Peterson, \textit{op. cit.}, p.179.
\textsuperscript{18} \textit{Ibid.}, at 181.
right to struggle was legitimate and accepted under international law but could not be carried out by any means, only within the confines of the rules of armed conflict.\textsuperscript{19}

In 1994, the GA made major breakthrough in condemning the terrorism in its all format unanimously without going into the technical aspect of the definition of terrorism. Resolution No 49/60 titled as “Declaration on Measures to Eliminate International Terrorism” adopted on February 17 1995 was passed in its forty-ninth session. The content of the resolution is further reaffirmed in later resolutions whenever circumstances demanded the GA to condemn the terrorism.\textsuperscript{20} The contents of resolution become the guidelines and polices for every country in combating the terrorism domestically and internationally.

\textbf{4.2.1 Salient Features of the Resolution of 49/60}

The following are the salient features of the Declaration on Measures to Eliminate International Terrorism.

1. Resolution urges States to take all appropriate measures at the national and international level to eliminate the terrorism.

2. General Assembly condemns the international terrorism in all its forms and manifestation including acts of state that are supporting terrorism directly and indirectly.

3. It is declared that those responsible for terrorism should be brought to justice.


4. It is stressed that each State must cooperate with other States in most practical and effective manner that strengthens international community as a whole in combating the terrorism.

5. The State Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed.

6. All methods and practice of terrorism constitute grave violations of principles of the United Nations, which threatens the international peace and security, jeopardize the friendly relations among the states, and aim at the destruction of human rights and the democratic basis of society.

7. The resolution unambiguously declared that any criminal act that is going to create terror in the public cannot be justifiable on any political, philosophical, ideological, racial, ethnic, religious or on any other grounds.

8. States have obligations under the Charter of the United Nations and international law, to refrain from organizing, assisting, participating in terrorist acts in territories of other states and providing infrastructure facility to train the terrorists from their soil.

9. Resolution urges the States to honor, ratify and implement the existing international treaty on terrorism and enact domestic legislations against terrorism in accordance with international treaty.

10. State should speedily prosecute the perpetrators of terrorism under the provisions of their domestic law or make extradition to other State by having bilateral, regional or multilateral extradition treaty.
More recently as part of its response to the events of September 11 2001, the Sixth Committee of the UN’s GA attempted to formulate a comprehensive general definition of terrorism.\textsuperscript{21} The Convention is still in draft form; indeed the UN’s GA Ad Hoc Committee on Terrorism is still debating the definition. While the international legal community has struggled to formulate a universally accepted definition until today, bodies such as the UN have exerted a significant influence on the actions of members’ states in this regard.

In 2004, the High-Level Panel on Threats, Challenges and Changes chaired by the former Thai Prime Minister, Anand Panyaracham, was a General Assembly initiative that explored the challenges faced by the world following the end of the cold war, the tumultuous 1990s and 9/11. The panel maintained that since the ‘war on terror’ began, there has been an erosion of the values which terrorist seek to target; human rights and the rule of law. The panel called on states affected by terrorism not only focus on military means but also adopt a comprehensive program that promotes human rights and the rule of law.\textsuperscript{22} The Panel maintained that there is an urgent need for an internationally accepted definition of terrorism.\textsuperscript{23}

At the turn of the millennium, terrorism motivated by religion was already poised to cross the threshold of terrorist’s use of either Weapons of Mass Destruction (WMD) or

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\textsuperscript{21} Article 2(1) of the Draft Comprehensive Convention on International Terrorism provides:

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


\textsuperscript{23} \textit{Ibid.}
Nuclear weapons.\textsuperscript{24} It is important to remember that terrorist originations usually lack moral scruples and do not fear to use nuclear weapons. GA passed a resolution calling upon the states to take measures to prevent the terrorists from acquiring the WMD and Nuclear weapons on January 9 2003 under the title “Measures to prevent terrorists from acquiring weapons of mass destruction”.\textsuperscript{25}

Finally, GA adopted the \textit{International Convention for the Suppression of Acts of Nuclear Terrorism} on April 13 2005.\textsuperscript{26} International Atomic Energy Agency anticipating the danger of Nuclear Terrorism, bought amendment to strengthen the \textit{Convention on the Physical Protection of Nuclear Material} on July 8 2005 which gives wide power to the agency of Atomic Energy to inspect the nuclear plants in various countries. Further, it requested the members to sign and ratify the \textit{International Convention for the Suppression of Acts of Nuclear Terrorism}.\textsuperscript{27} Recently UN has chalked out its strategy to fight international terrorism and the same was adopted in its resolution on October 13 2010 titled as “The United Nations Global Counter Terrorism Strategy.”\textsuperscript{28} Resolution recommended two types of measures. First, Measures to address the conditions conducive to the spread of Terrorism. Second, Measures to prevent and combat Terrorism. Both measures consist of 18 recommendations.

\textsuperscript{24} The release of deadly nerve gas on the Tokyo underground in March 1995 not only confirmed those fears but also marked a significant historical watershed in terrorist tactics and weaponry. Evidence of Bin Laden’s continued interest in nuclear weaponry surfaced just six weeks after the 9/11 attacks with the arrests of two Pakistani nuclear scientists—Sultan Bashirudin Mahmood and Abdul Majjed. The CIA has noted that, “The current WMD terrorist threat is considered low but increasing.” See, Bruce Hoffman, \textit{Inside Terrorism}, (New York: Columbia University Press, 2006), p.118.


\textsuperscript{26} GA/RES /No 59/290/ of April 15 2005.

\textsuperscript{27} GA/RES’s third paragraph of 60/73 of January 11 2006.

\textsuperscript{28} GA/RES/No 64/297 of October 13 2010 which condemns the terrorism in its all forms which is serious threat to international peace, calls the states to become parties to all international treaties against terrorism, implement Security Resolutions related to terrorism and co-operate with international counter terrorism bodies. GA/RES/60/288/ of Sep 8 2008, GA/RES/62/272/ of Sep 12 2006.
4.3 Security Council Resolutions on Terrorism

The Security Council (herein after referred as SC) is the continuous executive organ of the UN.\textsuperscript{29} Here, decisions on procedural matters are to be made by an affirmative vote of nine members. Decisions on all other matters are to be made by an affirmative vote of nine members including the concurring votes of the five permanent members.\textsuperscript{30} The SC being executive organ of the UN has primary responsibility to maintain the international peace and security; during the discharge of these obligations, the SC acts on behalf of UN.\textsuperscript{31} The measures by the SC to maintain international peace includes initially calling upon the offending State to give effect to its decision including sanctions.\textsuperscript{32} If the Sanctions do not produce the desired end, the SC may use the all kinds of military force at its disposal against the guilty State that may be in the form of either blockade or War.\textsuperscript{33}

Until the 1990s, terrorism was dealt with almost entirely by the GA as a general international problem. The SC began to take on the question of terrorism in the early 1990s to specific events. The fact that the UN has taken action against terrorism, even

\textsuperscript{29} Article 23 of the Charter of the United Nations. Security Council consists of 15 Member body including five permanent and General Assembly elects remaining 10 members. Third paragraph of Article 23 of the Charter of the United Nation provides each member of the Security Council have one vote.

\textsuperscript{30} See, third paragraph of Article 27 of the Charter of the United Nations. However Starke commented that It is a here that the so-called ‘veto’ operates, as if a permanent member does not affirmatively vote in favour of particular decision, that decision is blocked or vetoed, and fails legally to come into existence, see, J.G.,Strake, \textit{Introduction to International Law}, 10\textsuperscript{th} edn, (New Delhi: Aditya Books Private Ltd, 1994), p.643.

\textsuperscript{31} See, Article 24 of the Charter of the United Nations. Further, Article 25 of the Charter of the United Nations mandates that all the members of the UN have obligation to implement the decisions of Security Council. Chapter VII of the UN is important because it provides opportunity for the Security Council to determine the existence of any threat to the International peace, or act of aggression and empowers SC to employ appropriate measures to implement its recommendations, See, Article 39 of the Charter of United Nations.

\textsuperscript{32} It may call upon the Members of the UN to apply Sanctions against the offending State. Such Sanctions may include partial or total economic restrictions, restrictions on the transportation of rail, sea, air, postal, telegraphic and other means of communication, and severance of diplomatic relations, See, Article 41 of the Charter of the United Nations.

\textsuperscript{33} Article 42 of the Charter of the United Nations.
while not being able to agree on how to define the phenomenon, is an important part of the story. Nevertheless, in October 2004 the UN Security Council unanimously passed the Resolution, which defines the terrorism:  

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

It is true that international community has to wait some time before UN GA has its own definition of terrorism.

As mentioned earlier the SC began to take on the question of terrorism in the 1990s in response to specific events. In particular, three cases, downing of Pan Am and UTA air fights, the attempted assassination of Hosni Mubarak then the President of Egypt, and the bombing of American Embassies in Kenya led to sanctions: against Libya and the Sudan for refusing to extradite the suspects terrorist involved in the above incidences. Further sanctions were on Taliban regime in Afghanistan for supporting terrorist group and refusing to extradite Bin Laden. It is during this period the SC first qualified acts of international terrorism as “threats to international peace and security” in response to the bombing of Pan Am flight 103 in 1992.  

In accordance with UN Charter, the legal effect of labeling terrorism, as a “threat to international peace and security” was to empower the SC to enact measures to combat it under Chapter VII, which is binding on all members. In response to September 11

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34 SC/RES/No 1566 of October 8 2004.
2001 terrorist act, the SC acted immediately and authorized measures ranging from the use of force in self-defense to requiring member states to undertake wide-ranging and comprehensive measures against the terrorism. Resolution No1368 passed the day after the attacks on US territory recognized “the inherent right of individual or collective self-defense” as a legitimate response. This was the first time that self-defense was formally recognized as legitimate response to terrorism.36

4.3.1 Security Council Sanctions in the 1990s

International terrorism has been concern of UN member state since the late 1960. However, the SC had been discredited for decades by large paralysis caused by the Cold War cleavage among its permanent members. Nevertheless, the unremitting antagonism among the permant members quickly disappeared with Soviet’s liberalization in the late 1980s, freeing the SC to act with increasing resolutions against international terrorist violence

4.3.1.1 Sanctions on Libya

In January 1992, at the Security Council’s first ever meeting of the heads of all states and governments “expressed their deep concern over acts of international terrorism and emphasized the need for the international community to deal effectively with all such acts”. 37

The Libyan regime supported terrorist carried terrorist attack on American Service men in Berlin in 1986 that led to the US’s bombardment on Libya. The Libyan regime immediately responded with counter terrorist attack of blowing up the Pan Am flight 103 over Lockerbie, Scotland, in December that opened the way to dramatic

innovations in Security Council activism. Likewise, French’s Union de Transports Aeriens (UTA) flight 772 was exploded over Niger in September 1989 the downing of the Pan Flight cost the lives of all 259 people on board as well as 11 people on the ground. The UTA bombing killed 171 people. In both cases, the initial investigations indicated Libyan official’s involvement. In 1992, USA, France and UK demanded SC action against Libya and SC declared that terrorist acts are “threat to international peace and security”. It invoked Chapter VII of the UN Charter and imposed economic sanctions. Sanctions included the prohibition of Air traffic, arms embargo and reduction in personnel of Libyan embassy aboard. SC strengthened sanctions further through its Resolution 748 in March 1993. The sanction regime on Libya was a success, ultimately the suspects were handed over to the international committee.

4.3.1.2 Sanctions on Sudan

An assassination attempt was made on the life of the Egyptian President Hosni Mubarak in Addis Ababa of Ethiopia on June 26 1995 by three suspected terrorists linked with Sudan and it refused to extradite them. Mandatory UN economic sanctions were imposed on Sudan in April 1996, which included Air Travel restrictions and reductions in the number of persons in the embassy office of Sudan. The more stringent sanctions were never used because SC Members feared the humanitarian consequences of an air embargo, particularly on a country already ravaged by humanitarian crisis and civil war. Finally, the Sudan regime, even though it denied the involvement in the assassination

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41 SC /RES /No 1054 of April 26 1996.
attempt, expelled number of terrorists from their soil including Bin Laden. In case of Sudan, sanctions were symbolic more than real. In this case, the international community used sanctions less to punish a particular state and more to transmit a general message that supporting terrorist activities was not acceptable and would provoke a substantial response. Sanctions against Sudan were lifted on September 28 2001 through the resolution 1372 after its express pledge to fight terrorism.

4.3.1.3 Sanctions on Afghanistan and Taliban

America had already declared that Bin Laden was suspected in the terrorist attack on the USA Embassy in Nairobi, Kenya and Tanzania. Pressured by the USA the SC imposed the sanction on the Afghanistan regime in October 1999 under Chapter VII of the UN Charter. Resolution clearly indicted the Taliban regime for “sheltering and training of terrorists and planning of terrorist acts” as well as for continuing to “provide safe haven to Osama Bin Laden … and to use Afghanistan as a base from which to support International Terrorist Operations”.

Sanctions included the Aviation and siege the Assets of the Taliban Government in other countries. Resolution 1267 provided for the creation of a committee to monitor the implementation of the sanctions. In addition, the Resolution requires Member States to report to the committee the steps taken to implement the Resolution within 30 days of its adoption. In December 2000, the SC further strengthened the sanctions and required all member states to close all Taliban offices in their countries, freeze the financial assets

of Bin Laden and his associates and arms embargo on the Taliban.\textsuperscript{46} Most important mandate of the Resolution that provided for the creation and updating of list of the “individuals and entities designated as being associated with Bin Laden including those in the Al-Qaida organization”, and named the 1267 Committee as the responsible monitoring body.\textsuperscript{47}

The Committee takes the “listing” of individuals and entities on the “terror list” at the request of the aggrieved state. The Committee holds discussion behind the closed doors and takes decision of banning and listing terrorist organization on the justifiable ground based upon the available evidence within two days. The individuals and terrorist organization were merely informed the decisions of the Committee. Further the Committee has clarified that naming the individual or organizations in the list does not lead to guilty of terrorist act or accusation of any kind of crime because these measures are ‘preventive’ rather than a repressive objective.\textsuperscript{48} The whole process was criticized as not fair and transparent because the entities were not given chance to defend themselves, no access to the document relied by the committee to the entities, no process of reviving the decision of committee, and entire proceedings were held \textit{in camera} amounted to violation of norms of due process.\textsuperscript{49} Unfortunately, the UN sanctions had not made desired effect on the Taliban Government attitude because it has been recognized by only three countries; it has no international trade and limited fund aboard.

\textsuperscript{46} SC /RES/No 1333 of December 19 2000.
\textsuperscript{47} Paragraph of 8(c) and 16(b) of SC /RES/No 1333 of Dec 19 2000.
\textsuperscript{48} Paragraph 8(a) of SC/RES/No 1333 of Dec 19 2000.
UN’s sanction régime of 1990, which had shown unprecedented unity of the SC, paved the way for tougher action in the forthcoming years. It had sent strong message to the states that terrorism is not acceptable in any format and threat of sanction as deterrent factor reduced the state sponsored terrorism directly or indirectly. Terrorist organizations were not coming up openly to claim the responsibility of carrying terrorist acts that they used to earlier because of threat of black listing the terrorist entities. Denial of easy access to weapons, funds, air travel, support network, and safe haven places made the terrorism highly costly affairs, which was beyond the means of ordinary terrorist organizations except organizations like Al-Qaida, which had global network.

4.3.2 Collective Security, Self-Defense and Pre-Emptive Strike on Terrorism

The SC took swift and unprecedented action in the wake of the events of September 11 2001. Two resolutions were particularly important. Resolution 1368 of September 12 of 2001 legitimized the individual use of force against terrorism. Resolution 1373 of September 2001 broadened the scope of international response. The SC felt that it was necessary to offer the United States a stronger form of support than sympathy. Accordingly, it recognized in resolution 1368 “the inherent right of individual or collective self-defense in accordance with the Charter.” This recognition would not have been new because it simply repeated the words of the Charter.\(^{50}\) SC had already expressed its intention in unequivocal words that international terrorism is threat to international peace and security.\(^{51}\) This was the first time the SC expressly stated that the

\(^{50}\) Article 51 of the Charter of the United Nations.
states have inherent right of individual or collective self-defense against terrorism in accordance with Charter.\textsuperscript{52}

The UN Charter recognizes the right to self-defense as an inalienable right of States, but it is generally accepted that this right is not open-ended. Occurrence of armed attack is precedent condition for exercise of self-defense and it ceases to operate when the SC takes action.\textsuperscript{53} However, the SC intentionally refrained from defining the terrorist attack as an “armed attack”.\textsuperscript{54} Nevertheless, the SC regarded the attacks of September 11 as threats to international peace and security, but it did not call for collective action. By invoking a state’s right to self-defense, it handed over this responsibility to individual states. The USA and UK gave notification to SC of action of self-defense against the Taliban régime of Afghanistan and declared war. Article 51 of the UN Charter authorizes self-defense only until the SC takes action, this provision is made moot in case of US and UK attack on Taliban régime of Afghanistan because the SC never intended to take such action. Russian President Vladimir Putin invoked the resolution and its right to individual and collective self-defense one year after of 11/9 when he justified Russia’s right to military intervention against Chechen rebels operating in Georgia.\textsuperscript{55} Now the questions are, when the self-defense does begin and end. How authentically it is possible to prove that preparation of international terrorism has become equivalent to armed attack. What should be quantum and timing of military response?\textsuperscript{56}

\textsuperscript{52} Preamble of Security Council /RES/ No 1368 of September 12 2001.
\textsuperscript{53} Supra note 50.
\textsuperscript{56} Bardo Fassbender, op. cit., p.93.
Where the state is openly sponsoring or directly involved in the terrorism, this option could be exercised. But in most of terrorist acts it is non-state actors who are involved. Would this self-defense option be exercisable under those circumstances? Would not allowing each individual state to take military action weaken the UN itself? UN prohibits the use of force against the integrity of territory and political independence of state except in accordance with purpose of UN.\textsuperscript{57} UN unambiguously and expressly states that it believes in collective measure in preventing and removing the threat to international peace.\textsuperscript{58} Authorizing each state to fight international terrorism on its own terms creates more problems than solution and undermines the creditability of UN that would frustrate the whole purpose of its establishment. Powerful nations can exercise the option of self-defense and weak nation are left at the mercy of UN to fight terrorism because the self-defense is of no help for them. This amounts to discrimination among the states, which violates basic principles of UN. The easier the recourse to self-defense, the greater is the danger of an abuse of military power by strong State against the weaker.\textsuperscript{59} In case of Taliban at least the SC should have authorized the US and allies to use force like it authorized in Iraq war in 1990.\textsuperscript{60}

\textbf{4.3.2.1 Pre-Emptive Defense}

The international community accepted the self-defense under 1368 resolution of SC with certain reservation by considering the magnitude and effect of the horrible act of terrorism on USA on September 9 2001. Self-defense under Article 51 could be exercised to repel an imminent threat of aggression or armed attack. The Pre-emptive defense

\textsuperscript{57} Article (4) of the Charter of the United Nations.
\textsuperscript{58} Article 1(1) of the Charter of the United Nations.
\textsuperscript{59} Bardo Fassbender, \textit{op. cit.}, p.94.
\textsuperscript{60} SC /RES/No 678 of November 29 1990.
defies this logic, authorizes the state to attack opponent’s state before it commences the preparation of attack, net result is that the defensive state’s pre-attack could deprive opponent state’s chance or opportunity to prepare the attack. In September 2002, the President Bush proclaimed a new “National Security Strategy”\(^{61}\) based on broadly defined right of “pre-emptive self-defense” which considerably goes beyond the controversial “anticipatory self-defense” that was claimed in the past by some states. Part III of the document includes the following statement:

[D]fending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders … we will not hesitate to act alone, if necessary to exercise our right of self-defense by acting pre-emptively against such threats, to prevent them from doing harm against our people and our country….

This was the strategy prepared from the context of Saddam Hussein regime in Iraq.\(^{62}\) It was suggested that the possession of weapon of mass destruction by Iraq might ipso facto constitute a threat to the United States, either because Iraq might use these things itself or because it might leak them to terrorist.\(^{63}\) The US pre-emptive defense policy relied on the alleged link between “rogue state” and terrorist groups.\(^{64}\) President Bush re-acknowledged USA’s National Security Strategy in his addresses to the UN in New York on January 28 2003:

All free nations have a stake in preventing sudden and catastrophic attacks. And we are asking them to join us ….Yet the course of this nation does not depend on the decisions of others. Whatever action is required, whenever action is necessary, I will defend the freedom and security of the American people. … Some have said


we must not act (against Iraq) until the threat is imminent. Since when have terrorists and tyrants announced their intentions, politely putting us on notice before they strike?

The Iraq was attacked by the USA and UK in the month of March 2003 with stiff oppositions by the international community and without authorization of the SC on the doctrine of self-pre-emptive defense. Bush Administration’s “pre-emptive self –defense” could produce disaster effect on the purpose and functioning of UN in future because the international law is a reciprocal system of the rules, and that a freedom of action claimed by one state cannot be denied to other states. If preventive self-defense would work for USA why not for Russia. This was the argument put forward by the Russian federation with respect to the Georgia on the criteria that it was also having the symptoms that was parallel to Iraq. It is to be noted that India had welcomed the pre-emptive self-defense.

Secretary-General Kofi Annan stressed the necessity of multilateral cooperation in the struggle against terrorism and went on to assert, “Choosing to fallow or reject the multilateral path must not be a matter of simple political convince.” Acknowledging that unilateral use of force would threaten the Charter-based system of norms, he observed that it would have “consequences far beyond the immediate context” and “there is no substitute for the unique legitimacy provided by the United Nations to remove threats to international peace.” 65 The then, French President Jacques Chirac termed the pre-emptive strike notion “extraordinarily dangerous,” because “as soon as one nation claims the right to take preventive action, other countries will naturally do the same.” 66 If this doctrine runs at large, the generalized opportunity for attack would simply raise the expectation of

66 Supra note 64., at 40.
violence and press virtually all states to attack sooner than later. That is hardly in the interest of international law.

4.3.2.2 Resolution 1373

SC adopted the resolution 1373 on September 28 2001 in the aftermath of the terrorist act on the USA unanimously. It marked a watershed in the global campaign against international terrorism, which was again reaffirmed by the SC in the January of 2003.\textsuperscript{67} The resolution was adopted pursuant to Chapter VII of the UN Charter (Threats to International Peace and Security); it is binding on all UN member states; failure to comply would lead for punitive measures against offending state.\textsuperscript{68} Resolution 1373 codified the pervious instruments particularly Convention for the Suppression of the Financing of Terrorism and is considered as “one of the most expansive resolution in the history of the council”.\textsuperscript{69} Salient features of the resolution are as follows:

1. International terrorism is threat to peace and security.

2. Each state collectively or individually has right to self-defense.

3. Each State must co-operate in preventing and suppressing the terrorism by becoming party as soon as possible to International Convention and Protocol related to terrorism particularly the Suppression of the financing of Terrorism of 9 December 1999.

4. Each State must lawfully prevent and suppress the finance and preparation of terrorist act in their territory by taking all kinds of legislative and administrative measures.

\textsuperscript{67} SC /RES/No 1456 of 20 Jan 2003.
\textsuperscript{68} See, Para 1 and 2 of the Resolution 1373 of Security Council begins with “decides that all state shall…”
\textsuperscript{69} Paul, Rabbat, \textit{op. cit.}, p.95.
5. Each State has an obligation to refrain from, organizing, instigating, assisting, or participating in terrorist acts in another state or allowing its tertiary to be used by the terrorists, suppress the recruitment of members of terrorist organizations and refrain from supplying weapon to terrorist groups.

6. Criminalize the collection and assistance of assets including funds in any format for terrorist acts and freeze such assets.

7. Deny safe heaven to those who finances, plans, supports, and commits terrorist acts either by prosecuting in their territory or hand over to the sates that have made request for their prosecutions. Have strict visa rules and vigilance at boarder of the territory to prevent free movement of terrorist.

8. Each State must declare that support, preparation, and attempt of terrorist act as serious criminal offence with serious punishment by enacting domestic legislation.

9. Each State should share whatever information they have in respect of terrorist originations with other states including warning information obtained through their intelligence agency.

10. Every State must respect the human rights in combating the terrorism, refugee status shall not be given to terrorists and political motivation of offence cannot be ground for denial for extradition of terrorist.

11. The Resolution establishes the Counter Terrorism Committee (herein after referred as CTC) consisting of all 15 members of Security Council to monitor the implementation this resolution.
12. All the States should submit report to CTC within 90 days in respect of measures it has undertaken under the resolution.

A key feature of resolution 1373 is the creation of CTC which is tasked with the duty of monitoring the member-states implementation of 1373 and where necessary, to provide them with relevant technical assistance. The CTC initiated a multistage program. First stage, examine whether a state has the necessary legislation needed to combat terrorism, with emphasis on terrorist financing. Second, explore the entire anti-terrorist programs of the state, examining mainly what the executive machinery is doing to prevent terrorist movements. Finally, focus on monitoring the compliance and implementation of resolution 1373, which includes ratifying international conventions, and sharing the information. The Security Council established the Counter-Terrorism Executive Directorate (herein after referred as CTED) to assist and help the CTC on March 26 2004 because fatigue-reporting system made the task of CTC difficult. The CTC had received some 117 reports from States by the end of January 2002 that is a remarkable response, within the first year of its operation. The Committee received and responded to over 280 reports.

Reflecting its successes, the CTC mandate was further extended through SC resolution 1624 (2005) that calls upon States to take measures against the “incitement to commit terrorist acts”. The resolution also imposes a reporting obligation for which the CTC has been designated the competent body. The CTC and the CTED have faced many challenges; however, progress has been impressive. Countries and international, regional and sub-regional organizations have all submitted reports on their progress.

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70 SC /RES/No 1535 of March 26 2004.
72 Paul Rabbat, op. cit., p.97.
Ratification of Suppression of Terrorist Bombing (1997) rose from 28 countries to 115, in case of Convention for the Suppression of the financing of Terrorism (1999) from 5 to 117 countries remarkable achievement by any standard.73

Early reports pointed out certain difficulty in implementation of 1373 resolution measures. First, the resolution laid down very general prohibitions that were often difficult to implement in the context of human rights.74 Secondly, many states dealt with terrorist activities in their own territories, yet many were silent with respect to terrorist acts carried by their nationals in other states.75 Third, States have different interpretation on key terms. Fourth, information on international cooperation was sketchy. Fifth, many states lacked the legislative and administrative capacity to implement the resolution.76 Sixth, states need huge financial assistance to guard their border area with modern technology on which resolution is silent.

4.4 Human Rights and Terrorism

The fight against terrorism cannot be used as an excuse for slackening efforts to put an end to conflicts and defeat poverty and disease. Nor can it be an excuse for undermining the bases of the rule of law - good governance, respect for human rights and fundamental freedoms. The long-term war on terrorism requires us to fight on all these fronts. Indeed the best defense against these despicable acts is the establishment of a global society based on common values of solidarity, social justice and respect for human rights.

- Kofi Annan, October 200177

The UN has incorporated human rights in its charter in general that have become basic principles of international law.78 Now it is well-settled principle that human rights

75 Chantal de Jongle Oudraat, op, cit., p.162.
76 Ibid.
are proprietary of International legal order. Opponents still try to prove that the human rights area part is of only domestic legal system and UN intervention is unwarranted. The protection of human rights no longer remains a subject of domestic jurisdiction, otherwise the various international covenants and conventions and countless activities, resolutions and actions of the UN and other international bodies would be ultra vires. As the Secretary-General of UN put it in 1998, “Sovereignty never meant as a license for governments to trample on human rights and human dignity. Sovereignty means responsibility not just power.” The 1990s appear to have been characterized by a shift in the balance between the state and individual rights towards the latter.

What guiding rules or principles should nations follow in their efforts to combat terrorist violence? Walter Schwimmer the then Secretary General of the Council of Europe has said that the terrorism must be defeated with the utmost vigour. However, not at any cost, certainly not at the cost of the fundamental values we have learned to cherish in tragic times and have placed at the very centre of our collective functioning. Draconian type of anti-terrorist laws lead for State terrorism that would ensures the victory for terrorists. Terrorists theoretically see it as major aim to force government to pass increasingly severe laws. If that happens, they will not only be likely to gain

78 Articles, 1(3), 13(1) (b), 55, 56, 62(2), 68, and 76(c) of United Nations. Further Human Rights are elaborated in the Universal Declaration of Human Rights, 1948 and International Covenant on Civil and Political Rights, 1966, which are adopted on December 10 1948 and December 16 1966 respectfully.
79 Security Council Resolution 417 of 1977, imposed sanctions under Chapter VII on South Africa in 1977 because of South Africa’s apartheid policies against black majority, which threatened the international peace. The end of Cold War considerably expanded the space available for the promotion of Human rights. UN intervention in Northern Iraq, the former Yugoslavia, Haiti, Liberia, Sierra Leone, Kosovo and East Timor proved unambiguously that the sovereign jurisdiction of State under article 2(7) of United Nations Charter could be overridden where events within state borders threatened international peace and security. See Supra note 64., at 36.
80 Article 2(7) of the Charter of the United Nations.
81 Supra note 64., at 36.
increased support from within the community, they will be assisted to project themselves as its legitimate protectors. The need to respect human rights is in no circumstances an obstacle to the efficient fight against terrorism.

GA resolutions under the title of “Measures to Prevent the International Terrorism” had requested the States to observe the human rights; otherwise, its gross abuse would provide fertile ground for breeding the terrorism. GA changed its priority focusing more on elimination of terrorism rather than prevention of terrorism because the terrorism has taken its worst and ugly shape and spreads its tentacles across the world. GA cautioned the enthusiastic States at regular time that in the process of combating terrorism they must not overstep their authority by remanding their obligation to respect the international standard of human rights under the resolutions titled as “Measures to Eliminate International Terrorism”. The defect of these resolutions is that it talked about the observance of human rights generally but did not refer to any particular human rights. Another major flaw of all previous resolutions is that they put the obligations on state to honor the human rights but never blamed the terrorist for violating the human rights under the dilemma that UN would only address the states.

The GA filled these gaps in the latter resolutions. GA in its resolution titled as “Human rights and terrorism” acknowledged that the terrorist acts grossly violate the human rights as stated in the Preamble of the United Nations Charter, Universal Declaration of Human Rights 1948 and International Covenant on Civil and Political

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Rights 1966 and reiterated that states have obligation to honor and promote the human rights.\textsuperscript{86} The resolution has added new dimension to the protection of human rights by declaring that the every individual should strive to secure and observe the human rights. GA changed its perception that observance of human rights is not the domain of state but also the responsibility of individuals. These principles are reaffirmed in the resolution of UN Commission on Human Rights along with other GA resolution with additional declaration that terrorist acts violate the right to live free from fear, and right to life, liberty, and security.\textsuperscript{87} Further, the declaration emphasized that the right to life is a basic human right without which human being can exercise no other right.\textsuperscript{88}

Many States, especially developing countries, consider that murder, kidnapping, and other acts committed by terrorists, as well as the sense of fear that such acts generate constitute gross human right violation. Mention is specifically made in this regard to violations of the right to life that is most basic right of human life including the right to liberty and security, and the right to live free from fear. Others mostly western States and several Latin American States, strongly hold on to more traditional view that human rights obligations apply only to states, it is only states that can commit violations of human rights. Terrorists acts merely constitutes criminal acts that should be prosecuted in criminal court, otherwise there is risk of conferring on terrorist some sort of status under the international law.\textsuperscript{89}

\textsuperscript{86} GA/RES/No 48/122 of Feb 14 1994.
Labeling terrorism as a human rights violation has added a further dimension to the condemnation of these domestic terrorist acts at the international level. Stretching the argument, anti-terrorist measures could thus be presented as a means to protect the rights of the victims. In addition, by assigning foremost importance to the right to life, the door has been left open for restrictions of other rights. Many Human Right Organizations are in favor that terrorism violates human rights. However, there exist a danger in this process; terrorism acquires the additional stigma of human rights violation, while anti-terrorist measures gain the aura of being as pro human right, at time when anti-terrorist measures are becoming increasingly tighter and wide-ranging.

GA adopted another series of resolutions for the protection of human rights under the headings of “Protection of human rights and fundamental freedoms while countering terrorism”. These resolutions declared that the terrorism’s object is destructions of human rights, fundamental freedoms, democracy, threatening territorial integrity, security of states and destabilizing legitimately constituted Governments. Unique feature of these resolutions is that certain human rights are recognized as non-derogable under any circumstances in accordance with the article 4(2) of the International Covenant on Civil and Political Rights 1966 (herein after referred as ICCPR). The ICCPR recognizes two distinct sorts of explicit limitations on the civil rights. The first set comprises of those ‘claw-back’ clauses that limit a specific set of rights (for example, freedom of thought, expression, religion, assembly and association) in non-emergency situation.

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90 Ibid.
91 Ibid., at 24.
93 2nd Paragraph of GA/RES/NO 59/191 of March 10 2005.
A second set of limitations are labelled ‘derogations’ and apply in emergency situations in accordance with Article 4 which states:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin.

2. No derogation from articles 6, 7, 8 (paras 1 and 2), 11, 15, 16, and 18 may be made under this provision.

Here rights are classified as derogable and non-derogable. During the officially proclaimed emergency, derogable rights may be curtailed or restricted to the extent emergency circumstances demand. Derogation under any circumstances is not permissible when it amounts to discrimination based solely on the ground of race, colour, sex, language, religion or social origin. State is further under an obligation to inform the other states of derogation through the Secretary-General of the UN.95

Rights like, right of life including protection from arbitrary arrest, rights against torture, cruel, and inhuman degradation, rights against slavery, rights against arrest for non-fulfillment of contractual obligation, rights against *ex post facto*, right to recognition as person (16), right to religion of his choice, are not permitted to be derogate from under any situation. The wordings “No derogation may be made” under Article 4(2) makes the State’s obligation to adhere to the norm optional. Another flaw is that the state’s power

95 Article 4(3) of the *International Covenant on Civil and Political Rights*, 1966.
to declare emergency without any limitation makes the protection of human rights an illusion than reality. It is claimed that the open-endedness of Article 4 constitutes one of the ‘principal weaknesses’ of the ICCPR.96

Twenty first century states are in the era of ‘War on Terror’ declared by US and endorsed by European Union without any time limitation; this makes it easy for the state to declare emergency. As long as the perceived threat of terrorist act is present, states that intended to implement drastic reductions of personal liberty will be tempted to plead on ongoing emergency. Precedent of such incidence is well known. In 1999, the UN Sub-Committee on Prevention of Discrimination and Protection of Minorities reported that Israel’s State of emergency that was declared in 1948 had operated continuously ‘notably in the occupied territories’. Syria’s state of emergency declared in 1963 was also continuing, along those declared by Egypt (1981) and Algeria (1992).97 A subsequent report prepared by the office of the United Nations High Commissioner for Human Rights in 2005 revealed that Algeria, Egypt, Israel and Syria had maintained their respective states of emergency. UN’s Human Right committee observed that

“[O]n number of occasions the committee has expressed its concern over State parties to have derogated from the right protected by the covenant, or whose domestic law appears to allow such derogation, in such situation not covered by the article.98

The pattern reveals emergency is norm and normalcy is exception and weakness in the oversight mechanisms of International human rights law.99 The actual length of any emergency appears to be determined to a significant extent by reference to the domestic

96 Ian Cram, op. cit., p.31.
98 See, General Comment No 29 on States of emergency adopted by the UN Human Rights Committee on July 24 2001.
99 Ian Cram, op. cit., p. p.32.
political calculations. The use of Article 4 by existing office holders to close off avenues of political dissent and thereby maintain their hold on power reveals that counter-terrorism measures can be exploited for questionable motives.

SC reiterates that effective counter-terrorism measures and respect for human rights are complementary and mutually reinforcing and are an essential part of successful counter-terrorism effort.\textsuperscript{100} While many states have unwillingly or willingly infringed on human rights in their haste to adopt measures against the terrorism, others have availed themselves of the fight against terrorism as a pretext for allowing them to curtail the rights of their populations. The expert committee monitoring compliance with the \textit{Convention Against Torture} (CAT) cautioned the states that were parties to the convention that most of its obligations cannot be derogated, and issued important recommendations related to counter terrorism to specific countries such as Egypt, Sweden and Russia.\textsuperscript{101}

Human Rights Watch (herein after referred as HRW) has submitted a paper on violation of human rights by various States in the 59\textsuperscript{th} Session of the United Nations Commission on Human Rights on March 25 2003. HRW has alleged that since September 11, 2001, Egypt has arrested hundred of suspected government’s opponents, many for alleged membership in the Muslim Brotherhood, a banned non-violent group, including professors, medical doctors, and other professionals and has been referred to military courts whose procedures do not meet international standards.\textsuperscript{102}

In India, Tamil Nadu government invoked the \textit{Prevention of Terrorism Act, 2002} against Dravida Munnetra Kazhagam leader V. Gopalaswamy alias Vaiko on 4 July

\textsuperscript{100} SC/RES/ No 1963 of 2010.
\textsuperscript{101} Jeffery Laurenti, \textit{op. cit.}, p.79.
2002. That Vaiko who had supported Prevention of Terrorism Act, 2002 strongly in Parliament should find himself at the receiving end.\textsuperscript{103} Uttar Pradesh Government on January 25 2003 slapped Prevention of Terrorism Act, 2002 on Raghuraj Pratap Singh alias Raja Bhaaiyya and on his 80-year-old father for political reasons.\textsuperscript{104}

Since military operation in Chechnya in 1999, Russia’s leaders have described the armed conflict there as a counter-terrorism operation and have attempted to fend off international scrutiny of Russian forces abusive conduct by invoking the imperative of fighting terrorism which has caused the civilian casualties to the extent of 3000.\textsuperscript{105}

Since September 11 2001, the United States had transferred about 650 men captured in the Afghan war or who had suspected links with All-Qaeda to the U.S. military base at Gauantanamo Bay, Cuba. U.S. officials apparently chose the site both for security purpose as well as because they believed that U.S Courts would refuse to exercise jurisdictions over it. Further, the U.S. federal court ruled that US Courts have no jurisdiction over the Guantamano Bay on July 30, 2002.\textsuperscript{106} The United States has refused to recognize the applicability of the \textit{Geneva Convention on War,} 1949 to any of the Afghan war or All-Qaeda detainees held in Guantamano on the ground that they are “Non Combatant Enemy”. The detainees continue to languish in the camp for last 10 years without a legal forum in which they can challenge their detention. The situation of detainees held at Guantamano camp drew the attention of the standing Special Rapporteurs of the UN Commission on Human Rights because of torture of detainees. When credible reports and evidence was generated about pathetic conditions of detainees.

\textsuperscript{104}Ujjwal Kumar Sing, \textit{op. cit.}, p.241.
\textsuperscript{106}Ibid.
of Guantanamo Bay the GA went on record “deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism”.

The UN Commission of Human Rights issued a sharply critical report in early 2006 that stated, “The continuing detention of all persons held at Guantanamo Bay amounts to arbitrary detention in violation of Article 9 of ICCPR”. Called on Washington to “either expeditiously bring all Guantanamo Bay detainees to trial, in compliance with Articles 9, paragraph 3, and 14 of ICCPR, or release them without further delay”, and insisted on prompt closure of the facility. UN “seemed more worried about counter terrorism measures than about terrorism itself” was the early reaction of USA to the UN’s attempt to highlight the pathetic situation of detainees in Guantamano Bay.

Terrorists violate human rights, including the right to life. Suspected terrorists often claim respect for their human rights - some of the very same rights they have violated themselves in their acts. This raises the question whether terrorist too should be allowed to enjoy rights. The answer is ‘yes’. People accused of terrorist acts have human rights. That is exactly difference between a situation of the Rule of Law and situation where law is arbitrary. Do they have the same rights as victims? Again, the answer is “yes”, although this might go against society’s feelings of justice. Broad repressive measures alienate large sectors of society from the government and tend to produce new recruits for terrorist organizations. Terrorists know very well that overreaction by

107 GA/RES/ No 60/158 of Dec 16 2005.
109 Jeffery Laurenti, op. cit., p.78.
111 Ibid.
112 Ibid.
government to their provocative attacks can play into their hands - though at times, overreaction has also led to the elimination of terrorist organizations.113 Terrorism appears stronger, more destructive and more harrowing than ever. Nevertheless, Secretary General noted that:114

“While the international community must be resolute in countering terrorism, it must be scrupulous in the ways in which this effort is perused. The fight against terrorism should not lead to the adoption of measures that are incompatible with human rights standards. Such developments would hand a victory to those who so blatantly disregards human rights in their use of terror. Greater respect for human rights, accomplished by democracy and social justice, will in the long terms prove effective measures against terror. The design and enforcement of means to fight terrorism should therefore be carried out in strict adherence with international human right obligations”.

If States would consider the need to respect human rights as an obstacle to the efficient fight against the terrorism, State already would have lost this fight. Quite contrary to this, democratic states must uphold human rights and thus set a shining example for the kind of society communities are fighting for.

4.5 The Multilateral Conventions on Terrorism

International Conventions against terrorism adopted within the UN framework targeting these specific acts of terrorism. These conventions have some common features.

The first of these is that the Anti-Terrorist Conventions establishes the scope of the conduct to be prohibited by defining the substantive “terrorist” offence, which is to constitute the Convention’s ratione materiae norm. Secondly, the Anti-Terrorist Conventions obliges the State Parties to penalilse the act in question in their domestic legal orders that is a sine qua non. It is relevant to note that the domestic law impediments are not a valid defense for the country’s failure to adhere to its international

113 Ibid.
114 Kofi Annan, Message to the African Union’s High Level meeting on Terrorism. Algiers, September 11 2002.
It is long standing rule of public international law that a nation-state may not invoke its internal laws as a justification for its failure to perform its international law obligations that is accepted as a cornerstone principle of international law. The other common feature shared by the Anti-Terrorist Convention is that each instrument identifies certain bases like place of terrorist offence, nationality of terrorists; and nationality of victim of terrorist offence, on which state parties are required to establish their jurisdiction over the crime-defined therein. Primarily criminal jurisdiction rests in the state where the offence was committed. This territorial principle is a firmly established concomitant of the concept of state sovereignty, which is regarded as most fundamental form of jurisdiction. However, the territorial principle is extended beyond the state territories. It means that offenders who have committed the offence in particular state without their presence in that state territory, they are presumed to be present in that state territory at the time of commission of offence.

The nationality principle entitles a state to exercise personal jurisdiction over crimes committed by its nationals wherever they have been committed. The principle of flag state jurisdiction permits states to exercise criminal jurisdiction over the crimes committed on board ships or aircraft registered with them. Protective principle empowers the state to exercise jurisdiction over crimes committed against its security and integrity, institutions and other fundamental national interests. Universal Jurisdiction

116 Article 27 and 46 of the *Vienna Convention on the Law of Treaties*.
is one, which comes under the jurisdiction of all states wherever offence is committed. The purpose of conceding universal jurisdiction is to ensure that no such offence goes unpunished. Universal jurisdiction based on the doctrine of aut punier, aut dedere, which speaks that the offenders are either to be punished by the state on whose territory they are found or to be surrendered (extradited) to the state that is competent of exercising jurisdiction over them.\textsuperscript{121} 

Anti-Terrorism Conventions have utilized these devises. The final principle, the passive personality principle, is derived from the nationality not of the perpetrator of the offence (as in the nationality principle above), but from that of the victim.\textsuperscript{122} Fifthly, failure to honor the Anti-Terrorism Convention’s established principle of aut dedere aut judicare or “no safe haven for terrorist” by the States can lead to sanctions by SC. Finally, these instruments also provide that the offences listed therein are impliedly incorporated into any existing extradition treaty and cannot be considered as falling within the “political offence exception”, or in the absence of an extradition treaty, that the anti-terrorism treaty itself serve as the legal basis for extraditions. Extradition is based on the doctrine of aut dedere aut judicare, which is the formal surrender of a fugitive criminal to a requesting State-usually under the terms of a bilateral or multilateral treaty.

4.5.1 Tokyo Convention on Offences and Certain Other Acts Committed On Board Aircraft, 1963

The treaty is adopted on September 14 1963. The object of treaty is to safeguard the life and property of people and aircraft. Convention empowers the aircraft commander to use the necessary force to prevent occurrence of offence inside the

\textsuperscript{121} Supra note 117., at 235.
\textsuperscript{122} David freestone, \textit{loc, cit.}
airplane. The Convention operates outside the territory of the state in which the plane is registered and on open high seas. It applies to the acts committed inside the airplane after commencement of take off and before the plane-land ends. The state in which plane is registered is competent authority to exercise the passive personality jurisdiction over the offence. However, other states would not interfere in this regard unless the offence has occurred within their territory, against their own nationals, against the security of state, and breach of any rules and regulations related to flight of aircraft. The wordings “may not interfere” in Article 4 of the Convention makes the obligation of assisting the state in which plane registered is discretionary than mandatory which is serious flaw of the convention. When any person on the board seized control of plane or attempts to seize the control of the plane, the states shall take all necessary steps to restore the control of the plane. The offence is extraditable but it has been not made mandatory which undermines the effectiveness of the convention.

4.5.2 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970

The Hague treaty of 1970 is adopted on December 16 1970. Any person unlawfully, controls, or attempts to seize or control the aircraft outside the territory of plane’s registered State, which is engaged in either domestic or international flight, person is said to be, committed the offence under the treaty. Article 2 of the treaty obligates States to make aircraft highjack is serious offence with severe punishment in their domestic law. Aircrafts used in the military, customs and police are exempted from

124 Article 1 and 5., Ibid.
125 Article 3 and 4., Ibid.
126 Article 11., Ibid.
127 Article 16., Ibid.
offence of highjack.\textsuperscript{129} Article 4(1) and (2) say that each Contracting State shall take necessary measures to exercise the jurisdiction or assist the state that is willing to exercise jurisdiction based on the doctrine of \textit{aut dedre aut judicare}.\textsuperscript{130} Hague Convention is binding only on the contracting parties to the treaty. Nevertheless, by considering the sheer strength of 140 membership of the Hague Convention, the aircraft highjack offence has impliedly become subject matter of universal jurisdiction. Moreover, the principles of Hague Convention have become base for future Conventions. Where the states have either bilateral or multilateral treaty of extradition, Article 8 of the Hague Treaty makes conclusive presumption that aircraft highjack offence is part of such extraditable treaty. Further Article 8(2) says that in case extradition is subject to the existence of extradition treaty and states do not have such extradition treaty, then the states may consider the convention self as the base for extradition. Article 11 obligates states to inform promptly about the relevant information of aircraft highjack to the International Civil Aviation Organization as soon as possible.

4.5.3 \textit{Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971}

The Convention is adopted on September 23 1971. Purpose of the Convention is to prohibit certain kinds of unlawful acts during the service of the aircraft, which endanger the safety of the aircraft. Article 1 prohibits the following acts. One, an act of violence against a person in the aircraft, which affects the safety of that aircraft. Second, makes aircraft unworthy of flight. Third, keeping any thing in the aircraft that renders the aircraft incapable of flight or endangers the safety of aircraft in flight. Fourth, destroys or

\textsuperscript{129} Article 3(2)., \textit{Ibid.}
\textsuperscript{130} Article 7., \textit{Ibid.}
damages the air navigation facilities. The aircraft is said to be in flight from the movement the doors are closed for take off and until the doors are opened after landing. Article 3 says contracting States have to enact domestic legislation to give effect to the Convention. Article 4(1) provides that the Convention shall not apply to the aircraft used in military, customs or police services. Article 5 says that state has jurisdiction over the offence when committed in their territory, or the state of registered aircraft, or in state where the aircraft lands with offenders on the board, or in the state where the owner of aircraft has place of principal business. In case the offenders are noticed in any contracting sates, then Article 6 obligates such states to arrest and inform the other state that is willing to exercise the jurisdiction. Article 7 authorizes either the state in which the offenders are arrested to prosecute or extradite them to other interested states. The offence under the Convention is extraditable. Further, where there is not extradition treaty between the states, under such circumstances this Convention itself shall be treated as the extradition treaty.

4.5.4 Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airport Serving International Civil Aviation, 1971

The protocol adopted on February 24 1988. The object of the protocol is in addition to the Montreal Convention of 1971. Montreal Protocol prohibits the commission of violence against the persons at airport serving the international civil aviation. Further, the Convention makes destruction or damaging the facilities of an international airport is offence.\(^\text{131}\)

\(^{131}\) Article 1(a) and (b) of the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airport Serving International Civil Aviation 1971.
4.5.5 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, 1973

The Convention is adopted on December 31 1974. The object of the treaty is to prevent the crimes against the diplomatic and other international persons. Article 1 of the treaty defines the International protected persons who are a Head of State including any other collegial body or Minster of Foreign and their family who accompany them, and any representative or official of a State. Further, it says those persons must be protected form the premises of official, private and means of transportation used by them. Article 2 obligates the states to protect international protected persons from the attempt to commit to murder, kidnapping, assault, battery, violent attack that endangers their life and liberty. States shall make these acts as serious offences under their domestic law.\textsuperscript{132}

Treaty establishes the jurisdiction of the offences on the bases of place of crime, nationality of offenders and victim of offences.\textsuperscript{133} States who have jurisdiction over the offences must either prosecute or extradite the offenders to the requested States.\textsuperscript{134} The treaty obligates the states to take practicable preventive measure to prevent the occurrence of offences and exchange such information including all evidence at their disposal with other States.\textsuperscript{135} The offences under the treaty are part of executed extraditable treaty, the treaty may be used as base for extradition of the offenders, and in future, the States shall include these crimes as extraditable offences.\textsuperscript{136} The treaty has made improvement by guaranteed due process treatment to the offenders during the proceedings, which has enhanced the quality of treaty.

\textsuperscript{133} Article 3, Ibid.
\textsuperscript{134} Article 3(2) and 7., Ibid.
\textsuperscript{135} Article 4 and 10., Ibid.
\textsuperscript{136} Article 8, Ibid.
4.5.6 International Convention against the Taking of Hostages, 1979

The Convention is adopted on December 18, 1979. The object of Convention is to curb the tendency of terrorists taking the persons as hostages in the plane. Article 1 declares that any person who seizes or detains and threatens to kill, in order to compel third party, namely, a state, any other person including international organization, to do or abstain from doing any act as precondition for the release of the hostage is said to commit the offence of hostage taking. Art 2 obligates states to make the hostage taking a serious offence in their domestic law. States shall take preventive measures to prevent the occurrence of such act and any information about such incidence is to be shared with other states.137 Convention authorizes the states to exercises the jurisdiction over the offences on the bases of place of offence, or nationality of offenders. Even the states in which ship or plane is registered or the state to which the victim of offence belongs can exercise the jurisdiction to try the offence.138 State must either prosecute or extradite the offenders to states which has requested for extradition.139

Information of arrest of offenders should be shared with other states. The offenders have given the privilege to meet their state representative.140 The Convention guarantees the accused fair treatment at all stages of the proceedings.141 The Convention has made further improvements in the protection human rights. Now states cannot request for extradition of offenders merely on the ground of offender’s race, religion, nationality, ethnic origin.142 The existence of any extradition treaty between the states that is contrary to the Convention is incompatible. Further provisions of such treaty stands modified to

138 Article 5., Ibid.
139 Articles 5(2), 6 and 8, Ibid.
140 Article 6(3), Ibid.
141 Article 8(1), Ibid.
142 Article 9(1), Ibid.
the tune of this Conventions. The states that do not have extradition treaty shall make use of the provisions of Convention as base for extradition.\textsuperscript{143} The Convention has two limitations. One, it shall not apply to the offence which is committed within State of nationality of the offenders and they are apprehended in their domestic state. Further, the hostages of such offence must also belong to the nationality of offenders.\textsuperscript{144} Secondly, Convention is not applicable to an act of hostage taking committed in the course of armed conflict as defined in the Geneva Conventions of 1949.

\textbf{4.5.7 Vienna Convention on the Physical Protection of Nuclear Material, 1980}

The treaty is adopted on March 3 1980. Its object is to protect the nuclear materials and prevent the terrorists from acquiring such materials. The Convention is applicable to ‘Nuclear material’ and ‘Uranium enriched’. States are authorized to import and export the nuclear materials only after the assurance of safe transportation from concerned States in accordance with descriptions of Annex 1 of the treaty. Further, the state must also observe the Convention even when it transports nuclear materials within its territory. The State that exports the nuclear materials shall inform the International Atomic Energy about the route of its exports and the name of the parties who have the responsibility of its safe transportation. Any theft, robbery, and any other unlawful taking of nuclear materials occur in any states, such states shall inform the incidence to international organizations.

Any person without lawful authority possesses, or uses and transfers nuclear materials that cause threat to person or property is offence. Theft, robbery, fraudulent obtainment of nuclear materials is also offence. Further, any threat to use nuclear material

\textsuperscript{143} Article 9(2) and 10., \textit{Ibid.}

\textsuperscript{144} Article 13., \textit{Ibid.}
to cause death or serious injury to any person or damage to property, and compel person
do or abstain from to do is also made offence. Convention has authorized the states to
exercise the jurisdiction over the offence based upon the place of offence, registration of
ship and aircraft of State, and nationality of offenders.

4.5.8 *Rome Convention for the Suppression of Unlawful Acts against the Safety of
Maritime Navigation, 1988*

The object of the Convention is to promote the international co-operation among
States to have effective and practical measures for the prevention of all unlawful acts
against the safety of maritime navigation. The Convention is adopted on March 10
1988. The Convention is applicable to all kind of civil ships except warship and ship
used by State for police purpose. Any person, who attempts to seize ship by force, injures
any person in that process and damages ship is said commit offence under the
Convention. Convention has authorized the states to exercise jurisdiction based upon
the place of offence of State in which it is committed including territorial sea. Further, the
state of nationality of offenders, state of nationality of victim of offence, and the State in
which the ship is registered can also exercise the authority of jurisdiction. The States are
under obligation to inform the Secretary General of UN of outcome of the prosecution of
the accused.

4.5.9 *Rome Protocol for the Suppression of Unlawful Acts against the Safety of Fixed
Platforms Located on the Continental Shelf, 1988*

This protocol is applicable to the above said offences committed on the fixed
board and platform located on the continental shelf under *Rome Convention for the
Suppression of Unlawful Acts Against the Safety of Maritime Navigation*. Fixed platform

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means an artificial island installation or structure permanently attached to the seabed for
the purpose of exploration or exploitation of resources or for other economic purposes.

4.5.10 Montreal Convention on the Marking of Plastic Explosive for the Purpose of
Detection, 1991

The Convention is adopted on March 1 1991. International community was
concerned about the use of plastic explosive in terrorist activity. Therefore, international
community felt that the marking of explosive would enable to identify and trace the
explosive easily that would reduce its misuse. Article 3 of the Convention obligates each
States to take necessary and effective measures to prohibit and prevent the manufacture
of unmarked explosive in its territory.

The States should ban the import and export of the unmarked explosive. The
Convention shall not applicable to the explosive used for the purpose of performance of
police and military. Any unmarked explosive produced or bought before the
commencement of Convention should be made ineffective within period of 3 years from
the date of Convention. The Convention has established the International Explosive
Technical Commission consisting of experts not less than 15 but not more than 35
members by International Civil Aviation Organization. The Commission provides
technical assistance to States in respect of manufacturing, marking and detection of
explosive. Further, the Commission shall report its finding through the International Civil
Aviation Organization to the states and international organizations.

4.5.11 International Conventional For the Suppression of Terrorist Bombings, 1999

International Community was concerned about the widespread use of bombs and
other explosive devised in terrorist activities that caused great loss to human life and

147 Article 4., Ibid.
property. International Community felt that existing multilateral Conventions do not adequately address these issues. Therefore, international community adopted the *International Conventional For the Suppression of Terrorist Bombings* Convention on January 12 1998. Any person who delivers explosive or lethal device with intention to be used against state is said committed the offence under the Convention.\(^{148}\) Further even placing and denoting an explosive or lethal device in public place, or government facility, a public transportation system is also offence.\(^{149}\) Any person who abets, provokes, instigates other persons to explode explosive and places explosive is also offence. The Convention shall not be applicable to acts of offence that is committed within the domestic state of offenders and the authority of their domestic state apprehends such offenders. Further, the victims of such offence must also belong to the domestic state of offenders.\(^{150}\) The Convention has authorized states to exercise its jurisdiction based on the place of offence where it is committed. Even the state whose ship or aircraft is exploded can exercise jurisdiction. Further, the states of offenders and victim of offence are also empowered to exercise jurisdiction. The state whose facility or infrastructure including diplomatic and consular facility is exploded can also exercise jurisdiction.\(^{151}\)

Arrested accused in other states are entitled to consult representative of their State and International Committee of the Red Cross may be allowed to meet the offenders.\(^{152}\) Each State must either prosecute the offenders under their domestic laws immediately or extradite offenders to the state that has made the request for extradition to prosecute the

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\(^{149}\) *Ibid.*


\(^{152}\) Article 7., *Ibid.*
Every other international multilateral Convention is subjected to proviso of extradition of offence under the *International Conventional for the Suppression of Terrorist Bombing Convention*. It means that states cannot refuse to extradite the offenders on the ground that there is lack of existing explicit provision of extradition in the International Convention. Further, the *International Conventional for the Suppression of Terrorist Bombing Convention* itself can be used as base for extradition. An offence under the Convention is not exempted from the extradition as political offences. On the other hand, state cannot make request for extradition merely on the ground of offender’s race, religion, nationality, ethnic origin and political dissent opinion. It means that offenders shall not be discriminated because of their race, religion, nationality, and ethnic origin. Each State party must inform through the Secretary General to all States about the outcome of the trial of the offenders. Convention has assured the offenders that they would be given fair treatment including respecting of their human rights during the proceedings of trial.

State has to enact the domestic legislation to proscribe the offence mentioned under the Convention. Further state has to take all-practicable measures to prevent the preparations of the act inside or outside their territory. Whatever the information the state has gathered in respect of activity of terrorist related to explosive including its financing has to be shared with other states. The State, which has the custody of offenders, may transfer the offenders for the purpose of investigation to another State that has requested

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unless the offenders freely consented. Further, the offenders shall not be tried for any other offences in the extradited State.

4.5.12 International Convention for the Suppression of the Financing of Terrorism, 1999

The Convention is adopted on January 10 2000. International Community considered the financing of terrorism is matters of concern because the strength, quality, intensity of terrorist acts depends upon the finance of the terrorist organization. Moreover, the existing multilateral legal instruments do not address this issue explicitly. Therefore, the present Convention is passed. Any person who intentionally collects and provides funds to carry out the acts, which constitutes offences under the various Conventions related to terrorism that are listed in the annex, is said to commit an offence. Further, it is not necessary that collected funds must have been used for the terrorist acts. Funds mean assets of every kind and by whatever means it is acquired. The Convention is not applicable to the acts that are committed in the domestic state of offenders and victims of offence belong to same state. Further, the authority in their domestic state must have apprehended the offenders.

Convention obligates state to enact the appropriate domestic legislation to make it as offence with deterrent sanctions including monetary. Further, that legislation has to make provision in respect of trace of the identity of the organization or person who have financed the terrorist, and seize and froze such funds. Further, the State should

157 Article 13., Ibid.
161 Article 3., Ibid.
162 Article 4., Ibid.
163 Article 5. and 8., Ibid.
make the Banking regulation in respect of opening of accounts more stringent. The Bank has to supervise the suspected account holder’s money transactions and inform the same to competent authority.\footnote{164}{Article 18., \textit{Ibid.}} Convention authorizes the states in which the offence is committed to exercise the jurisdiction over the offence. Even the state of offender’s nationality, victim’s nationality, and the state in which terrorist attacked ship or aircraft is registered.\footnote{165}{Article 7., \textit{Ibid.}} Convention either obligates the concerned states to immediately prosecutable the offender or extradite the offenders to the state that has made the request.\footnote{166}{Article 9 and 10., \textit{Ibid.}} Such extradition cannot be denied on ground of the fiscal crime or political offence.\footnote{167}{Article 13 and 14., \textit{Ibid.}}

Any provision in the existing multilateral treaty of extradition between the various states which is contrary to this Convention is void. Further states can extradite the offenders to other states merely based on this Convention even though there is no explicit extradition treaty is existed.\footnote{168}{Article 11., \textit{Ibid.}} States are obliged to share the available information with other States as preventive measure through the Intentional Criminal Police Organization (Interpol).\footnote{169}{Article 18(4)., \textit{Ibid.}} State may transfer the offenders with their free consent to other States for investigation purposes, under such situation the offenders will not be tried for any other offence in that state, and they should be retransferred immediately after the completion of investigation.\footnote{170}{Article 16., \textit{Ibid.}} The offenders are guaranteed fair treatment during the investigation and trial.\footnote{171}{Article 17., \textit{Ibid.}}
4.6 Conclusion

It must be recognized that international legal responses to terrorism through multilateral treaty represent a significant pattern of international cooperation. The conventions against terrorism provide a significant quantity of evidence. The growth of international law text on terrorism has produced some excellent studies of the topic. They underline the limitation of international law as an effective weapon in the fight against terrorism, though it is unanimously decried as a crime. The diversity and complexity of terrorist activities complicates the task. States facing problem of terrorism have two options, criminal repression of terrorists or political approach which depends upon diplomacy and cooperation. The former is more technical in nature, relaying on criminal legislation and domestic legal system. The latter approach more readily opens the debate, taking into account not only the isolated act but also its environment. Over the last three or four decades these two approaches to the problem of terrorism have led to a deadlock. How can international community promote an international criminal law when most countries still consider terrorism as an exclusively national issue?\(^{172}\)

The international community’s failure to define terrorism is political, not technical. States, which are frustrated, disempowered, victims of economic and social wrongs, refuses to embrace a purely formal or factual definition of terrorism. They declined to sign the terrorism conventions. Therefore, there is no universally accepted definition of terrorism in international law. Existing definition are either limited in scope to particular act of terrorism, or approved by only a limited number of States. Criminals are given the possibility of finding refuge in States, which do not subscribe to the accepted definition.

\(^{172}\) Rosalyin Higgins, *op. cit.*, p.32.
Failure to build a mechanism to suppress international terrorism may result in provoking unilateral responses by the victim States. In the absence of effective measures sanctioned by international law, the Victim State often breaches the law itself under the pretence of self-defense, by restoring to methods sometime similar to the ones it denounces. In one way or another terrorists’ message has to be addressed. The criminal act must be prosecuted, and the political issue thoroughly appraised. The defeat of Iraq by the UN with unprecedented collaboration of USA and Russia, admission of doctrine of *aut dedere aut judicare* by Libya and Somalia, and the unprecedented unanimity of world in passing the Security Resolution 1367 and 1373, demonstrated the growth of international solidarity in fight against the terrorism. Any contradiction between the legal action and the political issue must vanish if States are to progress in the fight against terrorism. Although it is difficult but not impossible to reach simple and practical definition of terrorism. The rule of *aut dedere aut judicare* or *aut punire, aut dedere* must be applied without any exceptions. Finally, the State must show the political will to act and overcome the calculation of political expediency.

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173 *Ibid.*, at 34