Chapter 3

3. INTERNATIONAL PARAMETERS ON HUMAN RIGHTS
   VIEW OF ANTI-TERRORISM

3.1 INTRODUCTION

The human cost of terrorism has been felt in virtually every corner of the globe. The United Nations family has itself suffered tragic human loss as a result of violent terrorist acts. The attack on its offices in Baghdad on 19 August 2003 claimed the lives of the Special Representative of the Secretary-General, Sergio Vieira de Mello, and 21 other men and women, and injured over 150 others, some very seriously.

Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights.

Security of the individual is a basic human right and the protection of individuals is, accordingly, a fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice.

In recent years, however, the measures adopted by States to counter terrorism have themselves often posed serious challenges to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centers, and have often
been disregarded. Other States have returned persons suspected of engaging in terrorist activities to countries where they face a real risk of torture or other serious human rights abuse, thereby violating the international legal obligation of non-refoulement.

The independence of the judiciary has been undermined, in some places, while the use of exceptional courts to try civilians has had an impact on the effectiveness of regular court systems. Repressive measures have been used to stifle the voices of human rights defenders, journalists, minorities, indigenous groups and civil society. Resources normally allocated to social programmes and development assistance have been diverted to the security sector, affecting the economic, social and cultural rights of many.

These practices, particularly when taken together, have a corrosive effect on the rule of law, good governance and human rights. They are also counterproductive to national and international efforts to combat terrorism. Respect for human rights and the rule of law must be the bedrock of the global fight against terrorism. This requires the development of national counter-terrorism strategies that seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law.

It implies measures to address the conditions conducive to the spread of terrorism, including the lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, and socio-economic marginalization; to foster the active participation and leadership of civil society; to condemn human rights violations, prohibit them in national law, promptly investigate and prosecute them, and prevent them; and to give due attention to the rights of victims of human rights violations, for instance through restitution and compensation.
• Raise awareness of the impact of terrorism and counter-terrorism on the enjoyment of all human rights;

• Provide a practical tool for practitioners dealing with terrorism, counter-terrorism measures and human rights;

• Provide guidance on ensuring compliance with human rights when countering terrorism;

• Illustrate specific human rights challenges in countering terrorism.

3.2 THE LEAGUE OF NATIONS AND HUMAN RIGHTS

After the First World War, came the provisions of League of Nations Charter. The Covenant of the League of Nations reflected the very limited international concern with human rights. The phase, ‘human rights and fundamental freedoms’ did not appear in the Covenant. The drafters of the Covenant were pre-occupied with the maintenance of international peace and security, the pacific settlement of disputes, the establishment of a mandates system for former German and Ottoman territories, and the protection of minorities in Central Europe.

Neither the Council nor the Assembly of the League subsequently dealt with questions of human rights. The whole sale and systematic suppression of human liberty in Communist Russia, Fascist Italy, and Nazi Germany went officially unnoticed by the League, although the implications of these acts of tyranny were recognized by many of its member States.¹

¹ James Frederick Green, the United Nations and Human Rights, the Brookings Institution, Washington, D.C., 1956, p. 9.
3.3 THE UNITED NATIONS CHARTER AND HUMAN RIGHTS

The United Nations Organisations was primarily concerned with evolving a mechanism to maintain international peace and security, yet it could have failed to recognize the importance of international co-operation in dealing with social and economic problem if world was to be saved of another scourge of world war. Of no less importance was the recognition of human rights, civil, political, economic, social and cultural.

It was an essential innovation in the sphere of international peace and security that importance was also given to human rights. It was then fully realized that respect for human rights was intimately connected with the preservation of international peace and security.

The way human rights were trampled upon by the totalitarian states during the Second World War, it was imperative for the world organisation to take stock of ground realities and create some mechanism for the protection of human rights. It was for the first time in the history of mankind and international law that not merely the concept of human rights was enshrined in the international law but some mode for their enforcement was also propounded.

The greatest achievement of the movement of human rights is that human rights are no longer confined to the realm of domestic jurisdiction but a violator of human rights can be hauled up in the international arena. One of recommendatory roles of the General Assembly falls in the realm of human rights. It has to initiate studies and make recommendations for making human rights a reality.

From time to time, it has made several recommendations on issues pertaining to human rights. Its 1947-recommendations pertain to granting equal rights to women if the States have not already done so [Resolution 285 (III)], its 1951 recommendation asked the States to intensify their efforts to secure the observance of human rights and fundamental freedoms [Resolution 540 (VI)].
also recommended to the Nations from refraining from and ceases certain actions or practices prejudicial to human rights.2

Having primarily responsible for the maintenance of peace and security all the world over, the Security Council is also responsible for the promotion of human rights. Article 1 (3) of the Charter, inter alia, lays down that it will promote and encourage respect for human rights and fundamental freedoms for all without any distinction of race, sex, language or religion.3

The Commission of Human Rights, while considering the report of the committee, decided to designate Convention as Covenant on Human Rights. In its third session the Commission laid down the task of framing an international bill of rights as consisting of declaration, covenant, and ways and means of implementing them. This was confirmed by the General Assembly.

On December 10, 1948, the General Assembly adopted the Universal Declaration of Human Right. But the task was not so simple. A controversy erupted on the Covenant. The controversy related as to whether the Covenant should have only the traditional human rights, viz., only civil and political rights, or whether it should also include economic, social and cultural rights.

2 Its other recommendations on the related subjects are: Not to interfere with the reception of radio signals, as it constituted denial of the right of people to freedom of information. The General Assembly has adopted several conventions and opened them to signature, verification, or accession by the States. Some of these are: Convention on the prevention and punishment for the crime of genocide (1948); Convention for suppression of the traffic in persons such as prostitution (1949); Convention on political right (1952). For four decades, it has passed resolutions and made recommendations on apartheid in South Africa. The 1952 Commission to study racial situation in South Africa; its declaration that practice of apartheid is contrary to Charter provisions [Resolution 721 (III) of 1953; in 1962 it appealed to the members to break off diplomatic- ties with South Africa. It called upon the members and specialized agencies to take appropriate measures and to intensify their efforts to dissuade South Africa from pursuing its policies of apartheid. It asked them to implement the Security Council Resolution of December 4, 1963. A UN Trust was established to provide legal aid to refugees from South Africa. In 1967 the General Assembly appealed to the Human Rights Commission to establish an ad hoc working group of experts to investigate the charges of ill-treatment and torture of detenu and prisoners in South Africa. In 1973 was adopted a Convention on the Suppression and punishment of the crime of apartheid.

3 See Article 83 of the Charter
The Second World War marked a turning point in the development of international concern for human rights. The rise of Fascism and Nazism was ruthless challenge to the steady advance in the democratic process which assured the individual an ever-broadening field for the exercise of his rights as a free person.

In Fascist Italy and Nazi Germany the individual was stripped of civil rights and was subjected to police tyranny, condemned to brutal oppression on grounds of race and religion. During the war, a campaign of systematic extermination of the members of the Jewish race was carried on in Germany. It was a savage campaign for which human being could provide no parallel.4

It was the catalyst which produced revolutionary development in international law relating to human rights. The allied leaders and their governments, reflecting the aroused conscience of the free world, insisted that the foundations of peace must be built upon respect for human rights. In January 1941, President Roosevelt, in his message to Congress, enunciated what are termed as the four freedoms.5

These freedoms were the goals for which the world must strive for. The Atlantic Charter of 1941 set forth similar objectives for the post-war world.6 In October 1942, Prime Minister Churchill promised that “when this struggle ends with the entronement of human rights, social persecution will be ended”. The Washington Conference of 1942, the Moscow Conference of 1943, and the deliberations at Dumbarton Oaks7 in 1944 gave similar assurances.

4 These Rights and Freedoms, United Nations Department of Public Information, 1950, p.2
5 Freedom of Speech of worship, freedom from wants freedom from fear – “everywhere in the world”.
6 Supra. Note 26
7 The Dumbarton Oaks proposals contained only a brief reference to the promotion of human rights as one of the activities to be performed by the proposed General Assembly, and, under its authority, the Economic and Social Council. The single sentence on this subject in the proposals, which carefully stressed the political and security purposes of the new organization, was as follows: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among
The objectives of peace and of better conditions of life became major issues for discussion at San Francisco in the spring of 1945, when the establishment of a global organization – the United Nations was being considered. The Charter of the United Nations which was adopted there incorporated specific provisions relating to human rights.

This marked a new beginning for the promotion and protection of human rights which was formerly vested in nation states, was now made a matter of international concern. Now it is beyond doubt that individual is not merely the object of international law but also is a subject of international law and is directly protected by it and in some cases can seek his own remedy. So, the human rights provisions of the Charter reflect the reaction of the international community to the horrors of that war and the regimes which unleashed it.

The human rights programme of the United Nations signifies a bold attempt for the recognition of the rights of individual as a subject of vital international concern. In the whole history of mankind it has been the first fruitful institutionalized endeavor in this direction. It is the contemporary culmination of man’s long struggle for all basic human values.8

Massacres, tortures arbitrary arrests, including cruel detentions of those who are already victims of various forms of discrimination, and summary executions are reported by information media so frequently that the natural human reaction of horror trends to be dulled.9

nations, the organization should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms”. See, James Frederick Green, Op. cit., pp. 15-16.


It is significant to note that the preamble of the Charter of the United Nations begins with the words, “We the Peoples of United Nations” rather than with traditional words “The High Contracting Parties”. This new and benign trend is not by accident. This departure from the traditional trend is deliberate and pregnant with meaning. This is evident from the words which follow in the Preamble.

After having resolved “to save the succeeding generations from the scourge of war”, it expresses the determination “to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small”.

One of the purposes that the Charter spells out is the achievement of international co-operation “in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” The Charter enjoins that the General Assembly shall initiate studies and make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms.

Thus the Preamble indicates that the Charter of United Nations is the result of the experience of a devastating war and that it holds out hope of a lasting peace based on recognition of sovereign equality of all states and on better conditions for the millions who have victim of oppression and exploitation.

The charter of the United Nations has recognized the anxieties of modern man and has laid great stress on the importance of international co-ordination for the promotion of the economic and social welfare of the people of the world.

The United Nations Charter vested the task of promoting respect for human rights in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council. Thus human rights became part of an
international programme sponsored by the major organs and agencies of the United Nations and articulated working programmes of appropriated commissions, committees, and sub-committees. Since the Charter came into force, many instruments have adopted in the field of human rights.

3.3.1 United Nations Charter 1945

The problem of international terrorism in general has been under consideration of General Assembly since 1972. On September 23, 1972, the Assembly recommended the following item to be included in the agenda and brought before the Sixth Committee:

A measure to prevent International Terrorism, which endangers takes innocent human lives or jeopardizes fundamental freedoms. Study of underlying causes of those forms of terrorism and acts of violence which lie in mystery, frustration, grievances, and despair and which cause some people to sacrifice human lives, in an attempt to effect radical changes.\(^\text{10}\)

On its recommendations the General Assembly on December 18, 1972 adopted a resolution\(^\text{11}\) wherein it was decided to establish an Ad hoc Committee on International Terrorism of 35 countries. The Committee held its first session in 1973 without achieving any positive results. However, the Committee submitted its report to the Assembly.

The latter was unable to consider the item for want of time until the thirty-first session held in 1976. In 1976, the Assembly adopted a resolution wherein it invited the Ad hoc Committee to work in accordance with the mandate originally entrusted to it. By the same resolution, the Assembly also invited States to submit their observations as soon as possible to the Secretary-General so as to enable the

\(^{10}\) U.N. Doc A/AC 6/418, at 5.
\(^{11}\) General Assembly Resolution 3034 XXVII, 18th December 1972.
Committee to perform its mandate more efficiently, and it requested him to transmit to the Committee an analytical study of those observations.

The *Ad hoc* Committee met in 1997 and submitted a report to the Assembly without any further progress. In 1979 Session, the *Ad hoc* Committee worked out general recommendations relating to practical measures of co-operation for the speedy elimination of the problem of international terrorism.

These recommendations reflected a common view of fundamental importance. On the recommendations of the *Ad hoc* Committee, the General Assembly on December 17, 1979 adopted a resolution\(^\text{12}\) wherein the act of terrorism was condemned and it urged all States, unilaterally and in cooperation with other States as well as relevant United Nations’ organs to contribute to progressive elimination of the causes underlying that kind of terrorism.

By the resolution, the Assembly called upon all States to fulfill their obligations under International law to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts. Since 1979, no further progress has been made in the following years excepting the endorsement of the resolution adopted in 1979\(^\text{13}\).

The *Ad hoc* Committee in the year 2002 restarted negotiations on a comprehensive international treaty on terrorism. The Committee began deliberation on difficult topics to tackle including those dealing with a definition of terrorism and its relation to liberation movements, possible exemptions to the scope of the treaty, in particular regarding the activities of armed forces, and how to advance the level and types of international cooperation to combat terrorism.

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\(^{12}\) General Assembly Resolution 34/145, December 17, 1979.

\(^{13}\) General Assembly Resolution 38/130, [http://www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html), visited on 05.08.07.
However, no Convention has been concluded as yet. The United Nation Charter was a landmark in this unique legal development.\(^\text{14}\)

### 3.4 IMPORTANT INTERNATIONAL CONVENTIONS ON HUMAN RIGHTS

The Charter of the U.N. which reaffirms “faith in fundamental rights, in the dignity and worth of human person”\(^\text{15}\) and enlists promotion and encouragement of “respect for human rights and for fundamental respect for all without distinction as to race, sex, language or religion”\(^\text{16}\) as one of the purposes of the U.N. goes on to obligate the General Assembly to initiate studies and make recommendations for the purpose of promoting international co-operation in economic, social, cultural, educational, and health fields and “assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”\(^\text{17}\) and finally obligates the U.N. to promote “universal respect for all without distinction as to race, sex, language, or religion.”\(^\text{18}\)

These provisions make no distinction between citizens or non-citizen or national and aliens. So is the case with the Universal Declaration of Human Rights, 1948, which is said to be the extension of the Charter itself so far as human rights are concerned and is rightly reckoned as the mine from which all human rights have been quarried.

The Universal Declaration uses the words such as “all human beings”, “everyone”, “no one”, “and all”. Article 2 of the Universal Declaration provides that “everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind such as, race, colour, sex, language, religion,

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\(^{15}\) See Preamble of the U.N. Charter.

\(^{16}\) Article 1(3) of the U.N.Charter.

\(^{17}\) Article 1(3) 1(b)

\(^{18}\) Article 55 (C)
political or other opinion, national or social origin, property, birth or other
statues.”

As pointed out by R.B. Lillich, “The new epoch in the international
protection of human rights ushered in by the United Nations, paradoxically has
been attended by some unnecessary confusion about the continued protection of
aliens.”\textsuperscript{19} Further, “The new international human rights norms obviously should
supplement, rather than supplant, traditional international law.”

It may be noted here that the title, “The Problem of Applicability of
Existing International Provisions for the Protection of Human Rights to
Individuals, who are not citizens of the country in which they live” had been an
item on the agenda of the U.N. Sub-Commission on Prevention of Discrimination
and Protection of Minorities for several years.

In 1972, the Sub-Commission adopted a resolution recommending that the
Commission on Human Rights should consider the problem of the applicability of
the present provisions for the international legal protections of human rights of
individual who are not citizens of the country in which they live and to consider
what measures in the field of human rights would be desirable.\textsuperscript{20}

3.4.1 International Covenants on Human Rights and (First) Optional
Protocol

Similar to the Universal Declaration of Human Rights, Article 2 paragraph
1 of the International Covenant on Civil and Political Rights, 1966 (or referred as
the Civil Covenant) provides that “each State Party to the present Covenant
undertakes to respect and to ensure to all individuals within its territory and
subject to its jurisdiction, the right recognized in the present Covenant without

\textsuperscript{19} “The Problem of the applicability of Existing International Provision of Human Rights to individuals,
who are citizens of the country in which they live,” AJIL, Vol 70 (1976), pp. 507-509.
\textsuperscript{20} XXV Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities UN
distinction of any kind, such as, race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other statues.”

3.4.2 International Conference on Human Rights or Tehran Conference (22 April to 13 May, 1968)

The first global conference on human rights was held at Tehran (Iran) from 22 April to 13 May, 1968. The first world conference was held in connection with the observance of the International Year for Human Rights and marks the Twentieth Anniversary of the Universal Declaration of Human rights.

This conference was convened to review the progress which had been made in the field of human rights since the adoption of the Universal Declaration of Human Rights, to evaluate the effectiveness of the methods used by the United Nations in the field of human rights, and to formulate and prepare a programme of further measures to be taken subsequent to the Tehran Conference was attended by the representatives of 84 State Governments.

The Conference adopted the Proclamation of Tehran and 26 resolutions. These resolutions and the general principles set out in the Nations in the field of human rights. The Proclamation stressed the indivisibility of human rights and fundamental freedoms and made it clear that the enjoyment of economic, social and cultural rights is necessary for the full realization of civil and political rights. Later on this indivisibility was affirmed in the Vienna Conference on Human Rights, 1993.

3.4.3 World Conference on Human Rights, Vienna (14 to 25 June, 1993) or Vienna Conference

The World Conference on Human Rights was held at Vienna from 14th to 25th June, 1993.21 This world Conference was held some 25 years later after the

21 For details see U.N. Chronicle, Vol. XXX, No. 3 (September, 1993), pp. 54-61.
International Conference on Human Rights (or Tehran Conference) held at Tehran (Iran) in 1968 to assess the progress achieved under Universal Declaration of Human Rights (1948) and held laid the foundation for subsequent work in the field of Human Rights at the international level.

On 18th December, 1990, the General Assembly decided to convene a world conference on Human Rights. Governments, U.N. Specialized Agencies, international and regional organizations and NGOs were invited to participate and assist in the preparatory process. A Preparatory Committee was established and opened to all making proposal to the General Assembly on the Conference’s agenda, participation and documentation.

The first three sessions of the Preparatory Committee were held in Geneva from 9th to 13th September, 1991, 30th March to 10th April, 1992, and from 14th to 18th September, 1992. During these sessions the Committee adopted draft rules of procedure for the conference but was unable to finalize a draft provisional agenda. The conference agenda was adopted by the General Assembly on 18th December, 1992. The Preparatory Committee held its fourth and final session at Geneva from 19th April to 8th May, 1993. In this session the Preparatory Committee adopted the draft document to be considered by the Conference.

3.4.4 Convention on the Prevention and Punishment of the Crime of Genocide

The acts of genocide committed during the Second World War shocked the whole mankind so much so that the General Assembly in its first meeting affirmed the principles enunciated in Nuremberg Judgment. Besides this, in its resolution 96(1), dated December 11, 1946, the General Assembly declared that “genocide is
a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world”.

3.4.5 Conventions Relating to International Humanitarian Laws of War

After the establishment of the U.N., human rights have been the most important subject of international law. The need for application of human rights was felt in peace as well as in war or armed conflicts. Rather the need for human rights was felt more urgent during armed conflicts than during peace. According to one view, since the U.N. Charter has not only outlawed war, it has also prohibited “the threat or use of force against the territorial, integrity or political independence of any State.

There is no need to regulate the laws of war. It is also pointed out that it is because of this reason that after the adoption of the Charter of the U.N., most of the development of international law has taken in the field of Laws of peace. To a great extent it is true but to say that there is no need to regulate law of war does not seen extent it is true but to say that there is no need to regulate law of war does not seem to be correct.

Even though war has been outlawed and even use of force has been prohibited yet When a member State of the U.N. in violation of Article 2(4) of the Charter, the State against which armed attack has taken place may resort to individual or collective self-defence and may thus resort to war as permissible under Article 51 of the Charter.

Besides this, collective action can be taken by the Security Council with respect to threats to the peace, breaches of peace and acts of aggression as provided under Chapter VII of the Charter. Moreover, a distinction has sought to be made between war and non-war armed conflict so as to avoid effects of the

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laws of war. The examples of Korean Conflict from 1950 to 1953; Indo-China war; Congo Conflict of 1960 to 1963 and Indo-Pak conflict of 1965 may be cited as examples in this connection.\textsuperscript{23}

**3.5 EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS (1950)**

The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred as “ECHR”) was signed at Rome on November 1950. It entered into force in September, 1953. There are 22 parties to it. They are: Austria, Belgium, Cyprus, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherland, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and the United Kingdom. A state to become a party of ECHR must be a member of Council of Europe.

Eleven Protocols of ECHR have also been signed, either, adding the rights recognized in convention or amending the convention. For example, Protocol I, which was signed on March 20, 1952 and entered into force on May 18, 1954, adds certain new rights such as right to peaceful enjoyment of one’s possessions, and right to education.

It also includes an undertaking of the State Parties to hold free elections at reasonable intervals by a secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

**3.5.1 European Commission of Human Rights**

The Commission consisted of a number of members equal to that of the High Contracting Parties but no two members of the Commission could be the

nationals of the same State. The members of the Commission were elected by the Committee of Ministers of the Council of Europe, by an absolute majority of votes, from a list of names driven up by the Bureau of the Assembly. The members of the Commission were elected for a period of six years. They were entitled for re-elections. The members were sitting in their individual capacity. The election was so managed as to relieve half of the members every three years.

3.6 EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (1987)

Article 5 of the Universal Declarations of Human Rights (1948) provides that no one shall be subjected to torture or to cruel, inhuman or degrading punishment. This provision was incorporated, without any change in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

The preamble of the Convention of (1987) i.e. the present Convention recalls this provision and notes that the machinery provided for in that Convention i.e., the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) operates in relations to the persons who allege member States of the Council of Europe who are signatory hereto are convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits, they have agreed to the provisions of the European Convention for the Preventions of Torture and Inhuman or Degrading Treatment or Punishment (1987).
3.6.1 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Article 1 of Convention provides for the establishment of a European Committee for Prevention of Torture and Inhuman or Degrading Treatment. The Committee, shall by means of visit, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

3.7 AMERICAN CONVENTION ON HUMAN RIGHTS (1969)

The Bogota Charter of the Organisation of American States (OAS), the American Counterpart of the Council of Europe, was adopted by the Ninth Inter-American Conference in 1948. Besides establishing new institutions of the OAS, the 1948 Bogota Conference also adopted the American Declarations on the Rights and Duties of Man. It is significant to note that this Declaration was adopted seven months before the adoption of the Universal Declaration of Human Rights.

The main difference between the American Declaration and the Universal Declaration is that while the latter contains only rights, the former also contains articles on duties of man. In the American Declaration, while, twenty-eighty articles proclaim the rights of man, eight articles deal with the duties of man.

As against this, of 30 articles of the Universal Declaration, only one article, namely, Article 29 deals with duties of man. The preamble of the resolution which embodied the American the initial system of protection “suited to the present social and juridical conditions” it also recognized the need to strengthen that system in the international field as conditions become more favourable.

Five years after the Tenth Conference of the American States the meeting of the Consultation of the Foreign Ministers decided that keeping in view the
progress achieved at the United Nations, and in Europe in respect of the international protection of human rights, action in this field should also be initiated by American State with this objective in view the meeting of the consultation of the Foreign Ministers established an Inter-American Commission on Human Rights and requested the Judicial Council to prepare draft convention on Human Rights and a Statute of the Court of Human Rights. The Juridical Council accordingly prepared the draft convention on human rights.

This draft was considered at the Second Special Inter-American Conference in Rio de Janeiro in 1965. Two other drafts- the one submitted by Chile and other by Uruguay-were also considered. The Conference referred these drafts to the Council of the OAS so that an acceptable draft could be evolved after hearing the view of the Inter-Commission of Human Rights.

Meanwhile another important development took place for the Inter-American Commission on Human Rights was empowered to receive and consider individual complaints of violation of certain basic human rights such as, right to life and liberty, freedom of expression, right to a fair trial, equality before law and freedom of religion.

3.8 INTERNATIONAL CONVENTIONS AND CONFERENCES ON TERRORISM

3.8.1 United Nations Conventions on Terrorism


The Convention punishes international commission of a murder, kidnapping or other attack upon the person or liberty of internationally protected persons; form a violent attack upon the official premises the private
accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty.\textsuperscript{24}

\textbf{3.8.1.2 International Convention for the Suppression of Terrorist Bombing, adopted by the General Assembly of the United Nations. On 15\textsuperscript{th} December 1997}\textsuperscript{25}

The Convention on Suppression of Terrorist Bombing punishes the person who commits an offence within the meaning of this Convention. Accused unlawfully and intentionally delivers, places, discharges or denotes an explosive and other lethal device, in, into or against a place of public use, a State or Government facilities, a public transportation system or an infrastructure facility with the intention to cause death and with the intend to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss\textsuperscript{26}


Any person commits an offence within the meaning of this Convention, if that person unlawfully and intentionally possesses radioactive material or makes or possesses a device with the intention to cause death or serious bodily injury or with the intention to cause substantial damage to property or the environment.

\textsuperscript{24} Article 2 Para 1 The international commission of:
\begin{itemize}
  \item a) murder, kidnapping or other attack upon the person or liberty of internally protected persons;
  \item b) a violent attack upon the official premises the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty.
\end{itemize}
\textsuperscript{26} Article 2 of Convention for the Suppression of Terrorist Bombing, Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers places, discharges or denotes an explosive and other lethal device, in, into or against a place of public use, a State or Government facilities, a public transportation system or an infrastructure facility: with the intention to cause death or serious bodily injury; or with the intend to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.
\textsuperscript{27} www.nti.org/e_research/official_docs/inventory/pdfs/nucterr.pdf.
The intention is to cause death, serious bodily injury or to cause substantial damage to property or environment or to compel a natural or legal person, an international organisation; or State to do or refrain from doing an act. Any person also commits offence, if he threatens under a circumstance, which indicates the credibility of the threat, to commit the said offence amounts to an offence under this commission. 28


Any person according to this Convention commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they are going to be used and with the knowledge that they are to be used in full or in part in an act which constitutes an offence of terrorism as defined in the international instruments or any other ant that intended to the cause death or serious bodily

28 Article 2 of Convention for the Suppression of Acts of Nuclear Terrorism, Any person commits an offence within the meaning of this Convention, If that person unlawfully and intentionally: Possesses radioactive material or makes or possesses a device: with the intent to cause death or serious bodily injury or with the intent to cause substantial damage to property or the environment Use in any radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material: with the intent to cause death serious bodily injury or with intent to cause substantial damage to property or environment or With intent to compel a natural or legal person, an international organisation; or State to do or refrain from doing an act. Any person also commits offence if that person: threatens, under circumstances which indicates the credibility of threat, to commit an offence as set forth in sub paragraph 1(b) of the present article; or Demands unlawfully and intentionally radioactive material, or device or a nuclear facility by threat under circumstances which indicates the credibility of the threat, or by use of force

29 Article 2 of Convention for the Suppression of Acts of Nuclear Terrorism, 1) Any person commits an offence within the meaning of this Convention, if that person unlawfully and intentionally: Possesses radioactive material or makes or possesses a device: with the intent to cause death or serious bodily injury or with the intent to cause substantial damage to property or the environment: Use in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material: with the intend to cause death serious bodily injury or with intent to cause substantial damage to property or environment or With intent to compel a natural or legal person, an international organisation; or State to do or refrain from doing an act. 2) Any person also commits offence if that person: threatens, under circumstances which indicates the credibility of the threat, to commit an offence as set forth in sub paragraph 1(b) of the present article; or Demands unlawfully and intentionally radioactive material, or device or a nuclear facility by threat under circumstances which indicates the credibility of the threat, or by use of force.
injury to a criminal or to any other person not taking an active part in the hostilities, in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intermediate a population, or to compel a Government or an international organisations to do or to abstain from doing any act.  

3.8.2 Non-United Nations Conventions on Terrorism

3.8.2.1 Convention for the Suppression of Unlawful Seizure of Aircraft, Signed at The Hague on 16 December 1970

According to this Convention any person who on board an aircraft in flight unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of, that aircraft, or attempts to perform any such act amounts to an offence of unlawful seizer of aircraft and makes it punishable.

3.8.2.2 Convention for the Suppression of Unlawfully Acts against the Safety of Civil Aviation, signed at Montréal on 23 September 1971

According to this Convention any person commits an offence of unlawful acts against safety of civil aviation if he unlawfully and intentionally commits an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight which is likely to endanger its safety in flight and places or causes to be placed on an aircraft in

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30 Article 2 of the Convention for the Suppression of the Financing of Terrorism, Any person commits an offence within the meaning of this Convention if that person unlawfully And willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used in full or in part in order to carry out : An act which constitutes an offence within the scope of and as defined in one of the treaties tested in the annex or Any other act intended to cause death or serious bodily injury to a criminal or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intermediate a population or to compel a Government or an international organisation to do or to abstain from doing any act. For an act to constitute an offence set forth in paragraph, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1 sub paragraph (a) or (b).

31 Entry into force 14 October 175 Parties as on may 2002

32 Article 1 of Convention for the Suppression of Unlawful Seizure of Aircraft, Any person who on board on aircraft in flight: (a) Unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act.
service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to its which renders it incapable of flight, or to cause damage air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or communicates information, which he knows to be false, thereby also as an offence endangering the safety of an aircraft in flight.\textsuperscript{33}

3.8.2.3 Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988\textsuperscript{34}

In Article 1 of the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal, any person commits an offence if he unlawfully and intentionally, uses any device, substance or weapon to commit violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport will be punished according to this Convention.\textsuperscript{35}

\begin{itemize}
  \item Article 1 of Convention on Suppression of Unlawful Acts against the Safety of Civil Aviation. Aviation 1. Any person commits an offence if he unlawfully and intentionally. (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to its which is likely to endanger its safety in flight; or (d) destroys or damages air navigation facilities or interferes with their operation if any such act is likely to endanger the safety of aircraft in flight; or (e) Communicates information, which he knows to be false, thereby endangering the safety of an aircraft in flight.
  \item Entry in to force 6 August 1989, 114 parties 1 per 2002.
  \item Article 1 of the Convention, the following shall be added as new paragraph: 'Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon; Performs an act of
\end{itemize}
3.8.2.4 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 1988

This Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in Article 3, lays down that any person who commits an offence if that person unlawfully and intentionally seizes or exercise control over a ship by force or threat thereof or any other form of intimidation. Performs an act of violence against a person on board a ship if that act is likely to endanger the safety of navigation of that ship; or destroys a ship if that act is likely to endanger the safety of navigation of that ship; or destroys a ship or causes damage to a ship or to or to its cargo to be placed on a ship, by any means whatsoever, a device or substance which is likely to endanger the safe navigation of that ship has committed the offence under this Convention.

Anyone who destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or injures or kills any person, in connection with the commission or the attempted commission of any of the offence shall be punished according to this Convention.36

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36 Article 3 of Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation, Any person commits an offence if that person unlawfully and intentionally: seizes or exercise control over a ship by force or threat thereof or any other form of intimidation; or performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in sub-paragraphs (a) to (f).
3.8.3 REGIONAL CONVENTIONS ON TERRORISM

3.8.3.1 Arab Convention on the Suppression of Terrorism

Signed at a meeting, Secretariat of the League of Arab States in Cairo on 22 April 1998.\(^{37}\) Article 1 Each of the following terms shall be understood in the light of the definition given.

3.8.3.1.a Terrorism:

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.

3.8.3.1.b Terrorist offence:

Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law. The offences stipulated in the following Conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences:

3.8.3.2 Convention of the Organisation of the Islamic conference on Combating International Terrorism, adopted at Ouagadougou on 1st July 1999.\(^{38}\)

\(^{37}\) [www.al-bab.com/arab/docs/league/terrorism98.htm](http://www.al-bab.com/arab/docs/league/terrorism98.htm)

Article 1 of the Convention of the Organisation of the Islamic Conference on Combating International Terrorism for the purposes of this Convention has defined Terrorism as:

‘Terrorism’ means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honor, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States.

Article 1 of the Convention of the Organisation of the Islamic Conference on Combating International Terrorism for the purposes of this Convention has defined Terrorist Crime as:

‘Terrorist Crime’ means any crime executed, started of participated in to realize a terrorist objective in any of the Contracting States or against its national, assets or interest or foreign facilities and national residing in its territory punishable by its internal law”. 39

3.8.3.3 European Convention on the Suppression of Terrorism, concluded as Strasbourg on 27 January 1977

According to the Article 1 of the European Convention on the Suppression of Terrorism, for the purpose of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.

A. An attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

B. an offence within the scope of the Convention of the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;

C. an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;

D. a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

E. an offence involving kidnapping, the taking of a hostage or serious unlawful detention;

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40 In September 2001 the European Commission provided the following indications: There is a list of offences treated as acts of terrorism where they are committed intentionally by individuals or groups against one or more countries or their institutions or populations in order to threaten them and seriously undermine or even destroy their political, economic or social structures.

41 For the purpose of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as offence inspired by political motives: an attempt to commit any of the foregoing offences or participation as an compliance of a person who commits or attempts to commit such an offence; within the scope of the Convention of the Suppression of Unlawful Seizure of Aircraft, signal at The Hague on 16 December 1970; an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; an offence involving kidnapping, the taking of a hostage or serious unlawful detention; an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; an attempt to commit any of the foregoing offences or participation as an compliance of a person who commits or attempts to commit such an offence.
F. an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;

G. an attempt to commit any of the foregoing offences or participation as an an compliance of a person who commits or attempts to commits such an offence.

3.8.3.4 OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C. on 2 February 1971

Article 2 of OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion makes the offence of kidnapping, murder, and other assaults against the life or personal integrity of those persons to whom the State has a duty to give special protection according to international law, as well as extortion in connection with those crimes, to be considered common crimes of international significance, regardless of motive

3.8.3.5 OAU Convention on the Prevention and Combating of Terrorism, adopted at Algiers on 14 July 1999

According to the Article 1 of the OAU Convention on the Prevention and Combating of Terrorism, the terrorist act would mean any violation of the criminal

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42 www.untreaty.org/english/terrorism.asp
43 Article 2 of the OAS Convention to Prevent and Punish Acts of Terrorism, Taking the Form of Crimes against Persons and Related Extortion, for the purposes of this Convention, kidnapping, murder, and other assaults the life or personal integrity according to international law, as well as extortion in connection with those crimes, shall be considered common crimes of international significance, regardless of motive.
44 www.untreaty.org/english/terrorism.asp
45 Article 1 OAU Convention on the Prevention and Combating of Terrorism, For the purposes of this Convention: ‘Terrorist Acts’ means: any act which is a violation of the criminal law of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to: intimidate, put in fear, force, coerce or induce any Government, body, institution, the general public or any segment thereof,
law of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage.

When he tries to put in fear, force, coerce or induce any Government. Body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular service, the delivery of any essential service to the public or to create a public emergency; or create general insurrection in a State.

3.8.3.6 SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987.

In Article 1 of the SAARC Regional Convention on Suppression of Terrorism, are the basic requirements of the law of extradition, the following offences, shall be regarded as offence of terrorism-Murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offences relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property. Even an accomplice would be published for his act.

3.9 TERRORISM AND OTHER ASPECTS OF INTERNATIONAL LAW

3.9.1 Terrorism and International Humanitarian law

International humanitarian law contains a set of rules on the protection of persons in “armed conflict”, as that term is understood in the relevant treaties, as well as on the conduct of hostilities. These rules are reflected in a number of treaties, including the four Geneva Conventions and their two Additional
Protocols, as well as a number of other international instruments aimed at reducing human suffering in armed conflict. Many of their provisions are now also recognized as customary international law.\textsuperscript{46}

There is no explicit definition of “terrorism” as such in international humanitarian law. However, international humanitarian law prohibits many acts committed in armed conflict which would be considered terrorist acts if they were committed in times of peace\textsuperscript{47}.

For example, deliberate acts of violence against civilians and civilian objects constitute war crimes under international law, for which individuals may be prosecuted. This rule derives from the fundamental principle of international humanitarian law related to the protection of civilians in armed conflict, namely the principle of distinction. According to this principle, all parties to a conflict must at all times distinguish between civilians and combatants.

In essence, this means that attacks may be directed only at military objectives, i.e., those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances applicable at the time, offers a definite military advantage. Civilians lose their protection as civilians for such time as they participate directly in the hostilities. Furthermore, indiscriminate attacks are strictly prohibited according to international humanitarian law.

This includes attacks that are not directed at a specific military objective, employ a method or means of combat which cannot be directed at a specific military objective, or employ a method or means of combat the effects of which

\textsuperscript{46} See Jean-Marie Henckaerts and Louise Doswald-Beck, eds., Customary International Humanitarian Law (Cambridge, Cambridge University Press, 2005), as well as case law of the International Criminal Tribunals for Rwanda and the former Yugoslavia.

cannot be limited as required by international humanitarian law, and consequently are of a nature to strike military objectives and civilians or civilian objects without distinction. Indiscriminate attacks include disproportionate attacks, which are also prohibited.

International humanitarian law also specifically prohibits “measures of terrorism” or “acts of terrorism.” These prohibitions aim to highlight individual criminal accountability and protect against collective punishment and “all measures of intimidation or of terrorism.” 48 Furthermore, “acts or threats of violence the primary purpose of which is to spread terror among the civilian population” are also strictly prohibited under international humanitarian law.49

According to the International Committee of the Red Cross, while even a lawful attack on a military objective may spread fear among civilians, these provisions, related to the conduct of hostilities, seek to prohibit “attacks that specifically aim to terrorize civilians, for example campaigns of shelling or sniping of civilians in urban areas.”50

It is important to note that, in addition to international humanitarian law, international human rights law continues to apply during armed conflict, subject only to certain permissible limitations in accordance with strict requirements contained in international human rights treaties. In essence, the difference between the two bodies of law is that, whilst human rights law protects the individual at all times, international humanitarian law applies only in situations of armed conflict.

In this regard, the Human Rights Committee has stated, in its general comment that: [The International Covenant on Civil and Political Rights] applies also in situations of armed conflict to which the rules of international humanitarian

48 Fourth Geneva Convention, art. 33.
49 Additional Protocol I to the Geneva Conventions, art. 51 (2), and Additional Protocol II to the Geneva Conventions, art. 13 (2)
50 See “International humanitarian law and terrorism…”
law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

The International Court of Justice has also affirmed the applicability of the Covenant during armed conflicts, stating that “the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable lex specialis, namely, the law applicable in armed conflict.”

In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court further posited the applicability of human rights law in times of armed conflict, stating “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in article 4 of the [International Covenant on Civil and Political Rights].”

Most recently, the Court applied both human rights law and international humanitarian law to the armed conflict between the Democratic Republic of the Congo and Uganda. Acts of terrorism which are committed outside of armed conflict generally constitute crimes under domestic and, depending on the circumstances, international criminal law and thus should be regulated through the enforcement of domestic and international criminal law.

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3.9.2 Terrorism and International Law

Over the course of four decades, the international community, under the auspices of the United Nations, has developed 13 conventions relating to the prevention and suppression of terrorism. These so-called sectoral instruments, which address issues ranging from the unlawful seizure of aircraft and the taking of hostages to the suppression of terrorist bombings, contribute to the global legal regime against terrorism and provide a framework for international cooperation.

They require States to take specific measures to prevent the commission of terrorist acts and prohibit terrorist-related offences, including by obligeing States parties to criminalize specific conduct, establish certain jurisdictional criteria (including the well-known principle of aut dedere aut judicare or “extradite or prosecute”), and provide a legal basis for cooperation on extradition and legal assistance.

Most of these treaties relating to specific aspects of terrorism define specified acts as offences and require States to criminalize them. They cover offences linked to the financing of terrorism, offences based on the victim’s status (such as hostage-taking and crimes against internationally protected persons), offences linked to civil aviation, offences linked to ships and fixed platforms, and offences linked to dangerous materials.\(^\text{53}\)

According to the International Convention for the Suppression of the Financing of Terrorism, for example, terrorism includes any “act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any

\[^{53}\text{See, for example, Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols (United Nations publications, Sales No E.04.V.7)\]
act.” It requires the penalization of specific offence related to the financing of terrorism thus defined.

The Security Council has recognized the ratification and effective implementation of the universal anti-terrorism instruments as a top priority. On 28 September 2001, acting under Chapter VII of the Charter of the United Nations, it adopted resolution 1373 (2001), stating explicitly that every act of terrorism constitutes a “threat to international peace and security” and that the “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations.”

The resolution also requires all States to criminalize terrorist acts; to penalize acts of support for or in preparation of terrorist offences; to criminalize the financing of terrorism; to depoliticize terrorist offences; to freeze funds of persons who commit or attempt to commit terrorist acts; and to strengthen international cooperation in criminal matters. Depending on the context in which terrorist acts occur, they may also constitute crimes under international law. During the drawing-up of the Rome Statute of the International Criminal Court, several delegations argued for the inclusion of terrorism in the jurisdiction of the Court as a separate crime.

The majority of States disagreed, however, precisely because of the issue of the definition. The Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, adopted in Rome on 17 July 1998, recommended that a Review Conference of the Rome Statute, which may take place seven years following the entry into force of the Statute, namely in 2009, should consider several crimes, including terrorism, with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court.
Although the Rome Statute does not include “terrorism” as a separate crime, it does contain various offences which may include terrorist conduct, depending on the particular facts and circumstances of each case. A terrorist act might constitute a crime against humanity, an offence defined under article 7 of the Rome Statute to include certain acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.\(^5\)

Moreover, acts such as deliberate or indiscriminate attacks against civilians or hostage taking might fall under war crimes, as defined under article 8 of the Rome Statute. The international criminal law provisions against terrorism have also been addressed in practice by international tribunals.

In 2003, the International Criminal Tribunal for the former Yugoslavia convicted, for the first time, an individual for his responsibility for the war crime of terror against the civilian population in Sarajevo, under article 3 of its statute. The Court concluded that the crime of terror against the civilian population was constituted of elements common to other war crimes, in addition to further elements that it drew from the International Convention for the Suppression of the Financing of Terrorism.\(^5\)

“Human Rights” has become one of the central concepts of international law since the close of World War II. There is hardly any branch of law today in which the concept does not get involved in some degree or other. Every problem

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\(^5\) International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Galić*, Case IT-98-29, Judgment of 5 December 2003. The Tribunal added the following specific elements (Para. 133): “1. Acts of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population. “2. The offender willfully made the civilian population or individual civilians not taking Part in hostilities the object of those acts of violence. “3. The above offence was committed with the primary purpose of spreading terror among the civilian population.”
of international law, it is recognized now, has a human rights dimension. This has had a profound consequence for the approaches of the different participants in the political and legal processes to the problems of both international law and of human rights. The approach of any participant to human rights determines, and is determined by, its approach to international law as a whole.

3.9.3 Human Rights and the UN Charter

The Charter of the United Nations which was signed on 26th June, 1945 expressly gives recognition to human rights. Without defining the term, it expresses concern for human person and his rights. There is a marked change in the preamble of the Charter. It is the involvement and concern of “the peoples of the United Nations” rather than the “High contracting parties” inter alia “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women….” Further, one of the purposes of the UN is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction based on race, sex, language, or religion.

General Assembly is one of the six principal organs of the United Nations. It is a representative body of member States and may be similar to world legislature. This Assembly is required to initiate studies and make recommendations for the purposes of assisting in realization of human rights and fundamental freedoms for all men and women without distinction as to race, language, sex, or religion.

Human rights are universal—in other words, they belong inherently to all human beings and are interdependent and indivisible. Today human rights

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56 Preamble, Charter of the United Nations
57 Art (3) ibid
58 As on 28th September 2006, General Assembly consisted of 192 members.
60 See, for example, the Charter of the United Nations, Art. 55 (c), the Universal Declaration of Human Rights, art. 2, and the Vienna Declaration and Plan of Action.
permeate national and international both senses. In national systems, the concept of human rights was present but in international law, which is of recent origin and roughly goes back to four hundred years back.\textsuperscript{61}

Extreme violence and terrorism have created a variety of challenges and Dilemmas for human rights advocates. In many countries these were further complicated by the events of September 2001, which triggered a profound and often disturbing debate about how societies and governments should respond to terrorist acts while respecting human rights and the rule of law.\textsuperscript{62}

Critics argue that human rights organisations have not positioned themselves to advantage in this discussion. It is claimed they spend too much time defending the rights of people accused of terrorist offences and too little advocating the rights of victims; and that they have misread the profound threat that modern terrorism poses. These criticisms have been particularly directed at international human rights organisations and at those active in predominantly non-Muslim countries that have been the target of attacks by jihadist armed groups.

Terrorism is generally understood to refer to the deliberate killing of innocent people (and hostage-taking and destruction of property) in order to spread fear through populations and force the hand of political leaders.\textsuperscript{63} Militant groups seeking to overthrow authority have frequently used exemplary violence to intimidate political opponents via public opinion. States too have employed terror to intimidate and repress their opponents.

The latter issue is not addressed in this report, not to minimize its importance, but because the human rights movement has not encountered the same

\textsuperscript{61} J.G. Starke, Introduction to International Law, 8 (First Indian reprint
\textsuperscript{62} This debate has been deepened by other terrorist incidents, for example in Amman (2005), Bali (2005 and 2002), Istanbul (2003), London (2005), Madrid (2004), and Riyadh (2003).
\textsuperscript{63} Walzer, 2002. Walzer distinguishes this basic and most widespread form of terrorism from ‘state terrorism’ used by governments against their people to spread fear, and from ‘war terrorism’, the effort to kill civilians in such large numbers that their government is forced to surrender.
problems of law and policy in addressing itself to state terror. The subject that this report addresses is therefore not political violence as such, but its most extreme manifestations, whatever cause is enlisted as justification. It is precisely because extreme violence or terrorism is so often a tactic employed by the weak against the powerful that there has often been reluctance on the part of human rights groups to engage fully with the issues that it poses.

Human Rights have become a established reality since the establishment of the United Nations in 1945, which has, as its central concern, reaffirmed its faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small…..”64

The expression “human rights” denotes all those rights which are inherent in our nature and without which we cannot live as human beings.65 In other words, human rights being eternal part of the nature of human beings are essential for individuals to develop their personality, their human qualities, their intelligence, talent and conscience and to enable them to satisfy their spiritual and other higher needs. These are inalienable rights which belong equally to all members of the human family and as such, should be protected by rule of law if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.66

Human rights, as such, are incorporated in various International Human Rights Instruments, such as, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural rights; regional human rights treaties, such as, the European Convention on Human Rights, the African Charter on Human and People’s Rights; subsidiary instruments, such as, the Helsinki Final Act; and national constitutions, legislation

64 Charter of the United Nations, 2nd Preambular Paragraph.
66 See 1st and 3rd preambular paragraph of the Universal Declaration of Human Rights.
and even these instruments, treaties and national legislation is very wide and covers variety of rights including traditional civil and political rights on one hand and newly developed economic, social and cultural rights, on the other.

The purposes of securing human rights as such are to provide protection to these rights against the abuse of power committed by the organs of State; to establish institutions for the promotion of living condition of human beings and for the development of their personality; and at the same time, to provide effective remedial measures for obtaining redress in the event these rights are violated.\(^67\) Karel Vasak has aptly remarked that the “human rights, which are essentially individual in character, for they are meant to be individuals, constitute a social phenomenon by virtue of those for whom they are intended.”\(^68\)

Human rights flourish in a climate of peace. The relationship of ‘human rights and terrorism’ is a vexed one. Man, it is said, “has an inalienable right to go to hell in his own fashion, provided he does not directly injure the person or property of another on the way”\(^69\).

There is growing consciousness in the international community of the negative effects of terrorism in all its forms on the full enjoyment of human rights, fundamental freedoms, on the establishment of Rule of law and democratic freedoms as enshrined in the United Nations Charter and the International Covenants on Human Rights. All States are required to suppress all and any form of terrorist activities within their borders as terrorism represented globalization of feat and concept for the role of international law.\(^70\)

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3.10 COMPARATIVE STUDY OF ANTI-TERRORISM LAWS IN INDIA, UNITED STATES AND UNITED KINGDOM

Both India and the United States enacted anti-terrorism laws in the immediate aftermath of September 11. Although these laws arguably cut deeper into the system of personal liberties than any other piece of legislation in recent years, they were also rushed through the legislative process faster than any other law in recent years.

The Indian government capitalized on the shift in U.S. policy after September 11 by responding immediately and decisively in offering its full support for the American “War on Terrorism”. Prompted ostensibly by India’s own problems with terrorist violence, as well as to some degree, by Prime Minister Vajpayee’s desire to portray himself as a leader in the campaign against terrorism (at least in South Asia), the government hastily pushed through Parliament the controversial Prevention of Terrorism Act, 2002 (POTA)\(^1\)

Notwithstanding its numerous potentially objectionable provisions, the procedure by which it was enacted was a matter of concern in itself. Rather than being piloted through Parliament as a Bill, POTA was promulgated as an Ordinance four weeks before Parliament opened for its winter session.\(^2\) The use of this fast-track procedure enabled the government to bypass the requirement of submitting the next to the Parliamentary Standing Committee on Home Affairs and the National Human Rights Commission for examination and comment.

\(^1\) India was driven by the desire to further its rapprochement with Washington and sought a closer engagement with the United States after the twin tower attacks. For an interesting comment see Dennis Kux, India’s Fine Balance, Foreign Affairs, May/June 2002.

This move by the government was interpreted by political opponents as an attempt to bring in the new measures to combat terrorism through the ‘back door’, provoking strong criticism. After the Bill was rejected in the Upper House in which the governing party (Bhartiya Janata Party or BJP) lacks a majority, a rare joint session of both Houses was called.

The BJP coalition’s majority in the combined 782-member Parliament allowed the Bill to go through. The only two joint sessions that have taken place in the past in India were preceded by a general consensus; however, the government refused to forge a consensus on POTA by referring it to a Select Committee of Parliament for deliberations as mandated for every Bill.

On a similar note, in the U.S., key procedures applicable to proposed laws – including inter-agency review and the normal Committee and hearing processes – were suspended for the enactment of the USA PATRIOT Act. Just six weeks after September 11, the U.S. Congress yielded to the Bush administration’s demands for a new arsenal of anti-terrorism weapons and overwhelmingly approved this new law. The hastily –drafted, complex and far-reaching legislation spans 342 pages.

Yet it was passed with virtually no Congressional or public debate. In India however, fears about POTA and TADA, an anti-terror law under which more than 76,000 individuals were arrested for carrying out obscurely-defined the anti-national and disruptive activities. TADA was allowed to lapse in 1995 following a sustained campaign by the National Human Rights Commission, together with domestic and international human rights organisations.


\[74\] The implementation of the Act resulted in prolonged detention without charge or bail or trial, political torture, forced confessions, etc. The law was extensively used against college students, trade unionists, women’s organisations, anyone inconvenient. Parliament was to review the Act every two years.
TADA charges against almost 24,000 people were dropped on the recommendations of Review Committees constituted under a Supreme Court directive. The Indian government sought to justify the passage of POTA as being necessary to fill the vacuum created by the lapse of TADA, thereby giving law enforcement authorities more teeth.

It was argued that the current criminal justice was not equipped to deal with ‘heightened threats’ post 9/11. Existing laws in India did not define a terrorist act, terrorist organisation, proceeds of terrorism or the financing of terrorist organisations. Moreover, it was argued that unlike TADA, the Act incorporated a number of safeguards against the misuse of power by law enforcement agencies.75

One might legitimately question whether attacks similar to the one carried out on the Indian Parliament on December 13, 2001, might have been prevented by these enhanced powers. It would seem not, as the Prevention of Terrorism Ordinance (POTO) was already in force when the assault occurred. On the contrary, concerns that POTA might be used to target political opponents and minority groups have reinforced: when Hindu-Muslim clashes erupted in Gujarat. 62 Muslims were charged under POTO.

However, not one of the Hindu extremists responsible for the retaliatory anti-minority violence was similarly charged. Although the POTO charges against the accused were subsequently dropped, the suspicion that the new law is infected with religious discrimination is likely to have been strengthened by such actions.

In the U.S., on the other hand, it appears that there was sufficient information for the U.S. intelligence and military to have taken steps to detect and prevent a September-11 like scheme. The national security establishments under

75 The rate of conviction under TADA was an appalling 0.9%
both Bill Clinton and George Bush, Jr. failed to heed information dating back to 1995 warning of the heightened possibility of airline attacks.

These leads were small pieces of data among the massive amounts of material swept up by the sprawling intelligence apparatus. While the objective of PATRIOT Act is the strengthening of the anti-terror campaign by the enhancement of the intelligence-gathering powers of government agencies, information that has now come to light, would seem to suggest that the root of the problem might have lain more in the effectiveness of the responses to intelligence already available to the CIA and the FBI prior to the attacks.

The imperative now would rather seem to be a get-down-to-business accounting of the inertia or negligence that proceeded September 11 – an inquiry that could begin the long-overdue reformation of CIA and FBI operating practices. Instead of investigating the failures of policy, imagination and coordination over two administrations, the administration’s response has been a call for greater secrecy in government, and a suggestion that anyone who dares question the need for amplified powers bestowed under PATRIOT is ‘unpatriotic’.

While it remains to be seen how the executive will wield its new authority, if the months that have elapsed since September 11 are they guide, it would appear that we should brace ourselves for a disregard of the rule of law by the very agencies charged with its enforcement. By November 2001, the Department of Justice had already detained more than 1,100 immigrants, not one of whom has been charged with committing a terrorist act and only a handful of whom are being held as material witnesses to the 9/11 hijackings.

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76 See David Corn, The Warming Game, The Nation, June 10, 2002
77 Anonymous, September 11 questions, The Nation, June 10, 2002
78 The U.S. government spends more than US$30 billion annually on spies and high-tech eavesdropping.
3.10.1 Pota and the right to privacy

In India, the backdrop is different in that there are as yet no laws protecting online privacy. Indian courts have not yet had an opportunity to address privacy issues such as control of private electronic data, cyber intrusions and electronic surveillance. While the Indian Constitution does not patently grant a ‘right to privacy’, the Supreme Court had dealt with the issue by importing the right to privacy into the fundamental right to life and liberty under Article 21, and the right to freedom of speech and expression in Article 19(1)(a)\(^79\).

Ad hoc judicial solutions have thus far been found sufficient to deal with individual cases as they have arisen. However, the increased electronic interference portended by POTA will necessarily spur the carving out of a national legislation dealing with privacy rights\(^80\).

3.10.1.1 Right to freedom of speech and association and the anti-terror legislation

The second area in which a collision between the anti-terror laws and civil liberties may be anticipated is that of the right to freedom of speech and association. Both the Indian and American Constitutions articulate the right to disagree with the policies of the government, support unpopular political causes, and associate with others in the peaceful expression of those views.

Unjustified investigations and criminalization of political expression are counterproductive and ultimately have a debilitating effect on the political system.

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\(^{79}\) Article 19(1)(a) states: “All citizens shall have the right to freedom of speech and expression”

Is freedom of speech such a barrier to the effective tackling and prosecution of terrorists? Does national security require restrictions calculated to stifle to political dissent? These are perhaps important questions to bear in mind when evaluating the following new anti-terror provisions⁸¹.

3.10.1.2 Patriot Act and the first amendment

The First Amendment to the U.S. Constitution makes inviolable both freedom of speech and freedom of association: “The State shall make no law abridging the freedom of speech, or of the press, or the right to assemble peacefully.” Promoting the truth, it has been famously argued, is best achieved by testing opinions in a free market place of ideas. Holmes envisioned marketplace of ideas is potentially threatened by PATRIOT’s over-broad definitions of ‘domestic terrorism’, ‘terrorist organization’, and ‘engage in terrorist activity’⁸².

Section 802 of the PATRIOT Act creates a federal crime of “domestic terrorism” under which anyone who tries to “influence the policy of the government by intimidation or coercion,” if his actions “bread any criminal laws” and “are dangerous to human life,” is a terrorist. A 1960’s anti-Vietnam War protester would arguably have fit this new definition⁸³.

Because this crime is couched in such expansive terms, it may well be read by federal law enforcement agencies as licensing the investigation and surveillance of political activists and organizations based on their opposition to government policies, and lead to the criminalization of legitimate political dissent.

Vigorous political activities, by their very nature, could be construed as acts that “appear to be intended to influence the policy of the government by

⁸¹ See Sharon H. Rackow, supra
intimidation or coercion. “Further, acts of civil disobedience— even those that do not result in injury and are entirely non–violent could be construed as “dangerous to human life” and “in violation of criminal laws.”

On other words, if a protester at a peaceful demonstration against the launch of missile strikes against Iraq tore down a fence, and someone fell and injured his head, the sponsoring organization would now be liable to become the target of a federal investigation for terrorism. Past records of wholesale abuses of law enforcement authority to harass individuals and organizations with unorthodox or unpopular political views are well-documented.

What makes Section 802 especially disturbing is that individual acts of violence at public demonstrations are already penalized under various criminal laws. It is difficult to understand the reasoning behind equating such actions with the acts of terror that took place on September 11. Moreover, there are already three definitions of terrorism in usage— international terrorism, terrorism transcending national borders and federal terrorism— which together sufficiently characterize the various manifestations of terrorism. Therefore it remains unclear why a fourth, broad definition as embodied in Section 802 is necessary.

Again, the Act empowers the Attorney General to authorize electronic surveillance without a court order and without judicial review. The manner in which the government implements the Act will therefore require monitoring so as to ascertain whether activists and organizations are being targeted selectively for surveillance and prosecution based on their opposition to government policies.

To complicate and obscure matters further, the term “terrorist organization” is no longer limited to organizations that have been officially

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84 Under this broad definition, it is possible that an immigrant who grabs a makeshift weapon in a sudden scuffle may be subject to removal as a “terrorist”.
85 In such cases, it is the non-citizen who is saddled with the difficult task of proving that his/her assistance was not intended to further terrorism.
designated as terrorist and that have therefore had their designations published in the Federal Register. Instead, Section 411 now includes as “terrorist organizations” groups that have never been designated as terrorist, if they fall under the loose criterion of “two or more individuals, whether organized or not” which engage in specified terrorist activities.\(^86\)

After the PATRIOT was enacted, Secretary of State Colin Powell created a list of organizations and individuals considered to be terrorists with virtually no Congressional or judicial oversight. Under the Act, the Secretary of State has the sole authority to add individuals or organizations to the list of suspected terrorists.\(^87\)

Certain provisions of the PATRIOT Act also have significant consequences for the status of immigrants and their continued residence in the U.S. Since 1983, the U.S. government had defined the term “terrorism” as “premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience”.

However, Section 411 of PATRIOT, which deals with immigrants, stretches the term to encompass any crime that involves the use of a “weapon, or dangerous device” (other than for mere personal monetary gain). This section has potentially huge ramifications in that it vastly widens the class of non-U.S. citizens that can now be deported from the U.S. on terrorism grounds.

The term “engage in terrorist activity” has also been expanded to include soliciting funds for, soliciting membership for, and providing material support to, a “terrorist organization”, even when that organization has legitimate political and humanitarian ends and the non-citizen seeks only to support these lawful ends. In

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\(^{86}\) See supra Sec. 3(1) of POTA defining ‘terrorist act’

\(^{87}\) See supra Sec 802 of the PATRIOT Act defining ‘domestic terrorism’
such situations, Section 411 would permit guilt to be imposed solely on the basis of political associations protected by the First Amendment.

By virtue of these provisions, non-citizens could be detained or deported for providing assistance to groups that are not designated as terrorist organizations at all, as long as the activity of the group satisfies an extraordinarily broad definition of terrorism that covers virtually any violent activity. So now, environmental groups demonstrating against the drilling in the Arctic National Wildlife Refuge or human rights groups protesting the threatened withdrawal of American soldiers from U.N. peacekeeping operations would, on the basis of minor acts of violence or vandalism, meet this overbroad definition.

Non-citizens who provide assistance to such groups – such as paying membership dues – will run the risk of detention and deportation. What is disturbing is that most of these powers do little to increase the ability of law enforcement or intelligence to bring terrorists to justice, but much to undermine the Constitution and violate the rights of both immigrants and American citizens alike. Tackling these issues has become difficult at a time when public opinion is so thoroughly imbued with an unquestioning patriotic spirit.

3.10.1.3 POTA and the right to free speech

Shifting the focus back to India, freedom of speech and expression is protected by Article 19(1) (a) of the Constitution. Clause (1) (c) of Article 19 articulates the right to form associations or unions. Now we will discuss how the new definitions for ‘terrorist act’ and ‘terrorist organization’ impinge upon these constitutionally guaranteed rights.

Section 3 (1) of POTA defines a “terrorist act” as “any act done by any means whatsoever, with intent to threaten the unity, integrity, security or
sovereignty of India or to strike terror in any section of the people, in such manner as likely to cause death or injury, or loss or damage of property, or *disruption of any supplies or services essential to the life of the community.*”

This wide definition has raised concerns that non-violent human rights defenders, minority communities and the media may be exposed to a discriminatory enforcement of the Act. While one of POTA’s much-touted improvements over TADA is that it does not cover “disruptive activities” which were as ill-defined under the earlier Act as to allow the prolonged detention of striking students or milkmen, the phraseology of the definition of “terrorist act” in POTA arguably leaves the door open to equal abuse.

The Schedule to the Act designates a list of prescribed “*terrorist organizations*”88. The list may be added to by the government of an organization is “believed to be involved in terrorism”. Section 18(4) is intentionally vague in its terms: an organization is deemed to be “involved” in terrorism if – (a) it commits or participates in acts of terrorism, or (b) prepares for terrorism, or (c) promotes or encourages terrorism, or (d) is otherwise involved in terrorism.

It is difficult to fathom the justification for a power to ban terrorist organizations which is *prima facie* as broad and open-ended as to be easily liable to abuse. Unlike the PATRIOT Act however, POTA has put in place a system of checks and balances. Section 19 of POTA provides for the review of orders banning terrorist organizations by a Committee headed by a Judge of the High Court.

Another striking provision states that a person commits an offence under Section 21(2) if he manages or arranges a meeting which he knows is – (a) to support a terrorist organization, or (b) to further the activities of a terrorist

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88 In such cases, it is the non-citizen who is saddled with the difficult task of proving that his/her assistance was not intended to further terrorism.
organization, or (c) to be *addressed by a person who belongs or professes to belong to a terrorist organization*.

Translated into practice, this could mean that the holding of any meeting of three or more persons, one of whom chances to belong to a terrorist organization is *ipso facto* criminalized, notwithstanding that the content of such a person’s address did not relate to the inviting of support for, or the furthering of the activities of, the terrorist organizations of which he is a member.

POTA’s criminalization of acts “threatening the unity, integrity, security and sovereignty of India”\(^{89}\) Appears to be as broad as the PATRIOT Act’s punishment of acts “appearing to be intended to influence the policy of the government by intimidation or coercion”\(^{90}\).

In the case of both sections, the danger to human life need only be a remote possibility. In the Indian Act, there is more over the added danger that legitimate peaceful protest against the government which causes a disruption of essential services or supplies is branded a ‘terrorist act’.

Although the government’s power to ban ‘terrorist organizations’ under POTA is broad, the Act does ensure the review of such orders. In contrast, the absence of any oversight mechanisms in PATRIOT with respect to the Secretary of State’s power to proscribe ‘terrorist organizations’ is especially troubling. Whether the exigencies of combating terrorism warrant and vindicate these provisions will have to be borne out when their constitutionality is challenged\(^{91}\).

### 3.10.1.4 Lessons from the United Kingdom

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\(^{90}\) *See supra* Sec. 3(1) of POTA defining ‘terrorist act’.

\(^{91}\) *See supra* Sec 802 of the PATRIOT Act defining ‘domestic terrorism’.
It is interesting to note how the U.K., which has waged a prolonged and deadly struggle against both domestic and international terrorism for decades, has chosen to deal with the problem. Not all of Britain’s lessons are positive: many of its traditional civil liberties have been compromised\textsuperscript{92}.

Yet it is arguable that the odds of being blown up by a bomb in a bar during one of the IRA’s periodic mainland bombing campaigns were not significantly less before the most recent cease-fire, with all the measures introduced to combat the terrorist threat, than they were 30 years earlier. Moreover, the revelations of spectacular miscarriages of justice involving alleged IRA terrorists have surfaced over the last 15 years, exposing the British criminal justice system to justifiable criticism\textsuperscript{93}.

Governments in India and the U.S. are willing to adopt sweeping instruments to present at least the appearance of responding strongly and effectively to a widely-perceived threat. But as with many government initiatives, once a policy or program is in a place, it becomes progressively harder to control or limit.

The hard lesson to be learned from the British experience is that the initial curtailment of civil liberties in the U.K. turned out to be the starting point of a dynamic and continuing adjustment in the way the law is viewed and implemented as a tool in the struggle against terrorism.

\textsuperscript{92} The present UK Terrorism Act, 2000 is permanent and not subject to routine review. Some of its provisions echo those of POTA and the PATRIOT Act. For instance, once an organisation is proscribed by the Home Secretary, it is illegal to belong to it, support it financially, or even to be present at a meeting people or more if one of these people is a member. While terrorism used to be defined as violence with political motivation, the Act widens the ambit to include anyone serving a “political, religious or ideological” cause, who uses violence or the threat of violence against people or property.

\textsuperscript{93} Pervasive electronic surveillance and security checks have become a part of everyday life. Ina major departure from long-established legal principle, a presumption of guilt could attach to an accused decision to remain
National security types often assure us that wartime diminutions of civil liberties are only temporary. But the war on terrorism is likely to be a permanent war. Defense Secretary Donald Rumsfield has said that the war will not be over until there are no terrorist organisations of potentially global reach left in the world94.

The Administration’s defenders might concede that civil liberties have been curtailed, but contend that if we have prevented another terrorist attack, it is worth the cost. The problem of course is that one cannot know what might have happened had the government respected basic principles like due process, political freedom and the rule of law. Unless we understand that respect for basic human rights is as integral to our security as fighting terrorism, we are in danger of losing sight of what we are fighting for.

3.10.2 Anti-Terrorism Law and Human Rights in the United Kingdom

The response of the United Kingdom to the events of September 11 has taken a number of forms. It has offered significant military support to the United States actions in Afghanistan. With its European partners it has been engaged in diplomatic activities designed to reduce support for terrorist groups and deny them access to funding and weapons.

Domestically it has introduced significant new anti-terrorist legislation and given the prevention of terrorism a higher priority in the work of its police and intelligence agencies. This legislation draws on new instruments at the European level and has significant similarities with developments in the United States, notably the USA PATRIOT, act although important differences remain.

3.10.2.1 Anti-Terrorist Law in the United Kingdom Prior to September 11

Over the past thirty years the United Kingdom has had significant experience of terrorism and of formulating a legal response to it. Most of this was devised in response to political violence relating to the status of Northern Ireland as part of the United Kingdom from the late 1960s onwards, which has claimed over 3000 lives.

Successive British governments took the view that campaigns of bombing and shooting both by Republican organisations such IRA and INLA, who want Northern Ireland to leave the United Kingdom and join with the rest of Ireland, and Loyalist organisations such as the UVF and UDA, who wish it to remain a part of the United Kingdom, placed the normal criminal justice system under severe stress and required specific legal and security measures.