CHAPTER IV

The International Legal Regime
International Instruments
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International Instruments

In this Chapter an attempt has been made to place various international instruments which deal with terrorism generally or with an aspect of it.

The main aim of this work to describe the various efforts made on the legal front towards an international legal order whatever may be the reaction to terrorism, the underlying principles are quiteessential conditions for the successful combat or prevention of terrorism. Not only should military or armed action be embedded in a legal framework giving the status of legality but also efforts has been made to develop the general frame work of conventions, treaties and security council resoultion to ensure agreement on definition Jurisdiction, extradition and other forms of cooperation. The International law deserves to be highlighted not as a new starting point, yet, it's stands are completely capable of dealing with the various challenges arising out of terrorism issue. That does not mean that the necessary work has been completed. More needs to be done in the field of the various aspects of the legal response. The purpose of this work is to explain and to provide an inventory of accomplishment of the achievements and the needs to be done focussing on this concerns and tries to reach the International Legal order, against the human menace of International terrorism.

The twin tower affermath in 2001 had a number of effects on the legal front. first of all it forced to intensify the debate, protection and prosecution of International terrorism. Secondly, put serious concern resulted in a deliberation between freedom, security and Justice. Thirdly it influenced to take a note on migration and globalisation particularly cross border and extradition of international terrorists. Fourthly it resulted in a reaffirmation of relevance of international law and its observation and cooperation among the states irrespective of big or small powers. The most important outcome was the resolution 1373 of security council of UN on 2001.
The debate since the league of Nations era terrorism was in agenda for the international community when we note as early as in the year 1937 a conference organised on this very issue. This league of Nation conference resulted in 1937 Geneva Convention for the prevention and punishment of Terrorism. A Convention for the creation of International Criminal Court was also adopted in the year 1937, 16th November at Geneva by twentyfive countries except Italy and United States, Both these initiatives were short lived due to the outbreak of worldwar in 1939.

During the cold war to fight terrorism was a failure because of the ideological and political differences. The liberation war that has started in various Asian and African Countries mostly in third world nations used violence for aims to decide regarding their political status, until the aftermath of the decolonization process. The disintegration events of USSR in 1989 brought an end of major antagonism between west and soviet block. Thereafter the major power to refocuss on the purpose and principles of the United Nations.

Throughout the 20th Century terrorism was in the agenda with a renewed urge since the 1972 olympic terrorist attack popularly knowon as black september. The debate truly got under way after 1989 keeping in view the resulting instruments on hostage taking terrorist bombing, attacks, aimed at diplomatic staff as well as the financing of terrorist acts. The Tokyo yugoslovia and Rwanda tribunals, are importantant landmarks culminated in 1998 Rome Statute which laid the foundation structure for setting up the international criminal court in 2002 focussing on war criminals. The terrorists who are non war criminals in order to bring them to book UN's the security council in very clear terms demanded that national legislation insisted that no state should provide safe heaven to their land for the terrorists. This inherent challenges of terrorism need to be solved at home or in good cooperation with other state.

An International legal frame work was already in the process of being developed in 1990s and accelerated after 2001, September 11.

A new balance became essential between freedom, security and Justice particularly after twin tower shock, and shocking attack on the parliament of India.
Law could be defined as an instrument to regulate potential conflicts to prevent if from emerging to present it from escalating to any aggravated form and to find solutions thence to. "Justice" stands for equity, fairness and reasonableness and on due what someone entitled to. The concepts of justice is a product of continuously changing ideas, perceptions and developments as well.

After September 11, 2001, public opinion, the executive and legislator were willing to exchange some elements of freedom from increased levels of "Security". Terrorism's impact on balancing freedom, security and justice will have long term consequences.

In the last decade border control and increasing screening of migrants became a very relevant contemporary issue for many countries. Another issue that causes more concerns is the links between a country's resident and terrorist organisations. This area became the subject of further scrutiny.

Security Resolution

The security resolution by the security council of UN (SC Resolution 1373, 2001) is the most important instrument in the recent past that has been agreed upon considering its status & standing. This resolution reaffirmed the earlier resolutions of alike in the year 1999 and indeed a logical follow-up, with some few essential new additional elements.

Provision of threat to peace under chapter VII of UN charter that any act of international terrorism constitute a threat to international peace and security which attract the security council to apply its power under chapter VII of the UN charter to resort all means to combat terrorism to promote peace, security and harmony among the states and in the world in general.

There is a link between terrorism and with other forms of international crimes. The close connection noted between international terrorism and transorganised crime, illicit drugs, money laundering, illegal arms trafficking and illegal movement of nuclear, chemical, biological and other potentially deadly materials. In this situation there the need to improve the coordinated and concerted efforts on national and International, also in regional and sub-regional levels to strengthen a global response to this serious challenge of International terrorism to interna-
The chapter I of UN charter clearly declared the acts, methods and practices and principles of United Nations and knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and opposes to the principles of United Nations.

The states were called upon to become parties to the relevant international conventions for the prevention of International terrorism and the security council resolutions 1209 (1999) and 1368 (2001).

The Security Council on states to work together to prevent and suppress terrorist acts through increased cooperation among themselves. The states are also under an obligation to implement fully the relevant international conventions relating to terrorism. Also the security council focussed on the financing aspects which encourages and helps to grow terrorism. The SC recognising the need of the states to complement international cooperation by taking additional measures to prevent and supress through all lawfulmeans the financing, preparation of any act of terrorism in their territories.

The Security Council also stressed upon the states as a part cooperation to find ways of intensifying and accelerating the exchange of operational informations and regarding the movements of the terrorists and their network activities. Also called upon the states to cooperate on administrative and judicial matters to prevent the commission of terrorists acts. States can also through their multilateral cooerational agreements and arrangements to prevent and suppress terrorists attacks and take action against the perpetrators of such acts.

**Obligations**

The security council took the decisions that all states shall (a) prevent and suppress the financing of terrorists acts (b) to criminalize the wilful collection directly or indirectly funds are to be used or carryout terrorist acts. (c) freeze its financial assets or economic resources of persons who comments or involves in any terrorists acts in any from and manners (d) states to refrain from providing any form of supports active or passive to entities of persons involved in terrorist acts (e) afford maximum assistance in criminal investigations or criminal
proceedings relating to the financing or support of terrorist acts.

The crusade against international terrorism has not just began in the last two or three decades before, the real battle has taken its form and shape and started preparation one century earlier in this modern age. The study has focussed the efforts made by the international community in the pre and post UN eras.

INTERNATIONAL LEGAL REGIME

A. Cooperation of States in the fights Against International Terrorism.
   2. Unification Method.
   4. International Criminal Jurisdiction i) International Criminal Court ii) Internationalisation-Penal Law
   5. Terror Free Legal Regime.
   7. Extradition.
   8. UN Peacekeeping Doctrine.

B. Cooperation to fight Against International terrorism through International organisations.
   2. Shanghai Cooperation Organisation.
   3. NATO and OSCE
   5. Organisation of Islamic Conference (OIC)
   7. Regional Counter-Terrorism policy in south East Asian region.

Representatives of 93 nations referred to international terrorism in the general debate at the twenty-seventh session of the UN General Assembly. The debate was certainly affected by the tragic events at Munich Olympic Games in September 1972. Not a single state went on record in support of terrorist activities, but the stand taken on the prohibition of terrorism as a method of violence did reflect the essential difference between national policies. Representatives of Israel, the Portugal of the day and South Africa denoted their speeches entirely to the need to fight terrorism in general, taking up the cudgels against the legitimacy of the National liberation struggle.

It was typical of the capitalist countries in general to lay emphasis on the fight against all violence in whatever sense or form. The US representatives stress in particular, that it was a matter of urgent necessity to punish offenders for international crimes committed not only in the air but everywhere.

The American initiative won nothing like extensive support at the General Assembly was because, above all, acts of terrorism against diplomats and officials of foreign missions continued and still continue to be committed in the US itself with official connivance. The representatives of Israel struck a postare devoting all of his speech to the problem of Arab terrorism, by linking Middle East settlement up with fighting it, declaring that national, regional and international action, against Arab terrorism was an indispensable prerequisite for the fruitful exploration of the avenues for peace in the Middle East.

The representative of Egypt, exposing Israel's policy of terrorism in occupied territories, stressed that Israel was a state of terrorists and for terrorist, a state aiding and abetting the policy of terrorising the nations around it.

The representatives of Algeria, Iraq, Syria and Lebanon joined in calling for stamping out the underlying causes of the disease of terrorism.

The representatives of socialist Countries emphasized on the one hand, the
need to stem the mounting wave of international terrorism which jeopardised the life of innocent people and imperilled the development of normal international relations and cooperation. On the other, they pointed out that steps to suppress terrorism must not be allowed to be used to suppress the national liberation struggle. That was the position of the representatives of Yugoslavia, Czechoslovakia, Bulgaria, Poland and Soviet Union.

Now one can single out three major lines of approach to the problem as became clear in the general debate:

i) Combating violence and terrorism in general, as the position taken by colonial regimes and imperialist states.

ii) Condemning terrorist acts, and pressing for the very causes of terrorism to be eliminated, as the position taken by the representative of Arab states and of other countries of Africa and Asia.

iii) Distinguishing between violence used in pressing for the exercise of the right of peoples to national liberation and criminal terrorist acts which disrupt the diplomatic activity of states and their representatives or lines of communication between them, seeing no fruitful purposes entailing loss of life, as the position taken by the representatives of the socialist countries.

At its 2037th plenary Meeting, held on September 23, 1972, the General Assembly recommended the following item to be included in the Agenda and brought before the 6th Committee: "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which causes some people to sacrifice human lives, including their own, in an attempt to effect radical danger." 2

Divergent stands on terrorism found themselves reflected also in the deliberations of the 6th Committee. For example, the United States tabled a draft resolution marked off by a provision about the responsibility of Governments for taking appropriate measures to guarantee to all foreign diplomats in the
performance of their regular functions and to all foreign citizens travelling, visiting residing abroad, full legal protection from physical damage or threat thereof.

The international law experts observed two legal errors in American draft resolution in it. First within the meaning of the 1961 Vienna convention on diplomatic Relations, immunities and priviledges are granted to a diplomatic agent regardless of whether he is in the performance of his official duties or not and second the treatment of the status of a diplomatic agent as that of an ordinary foreign citizen or a private journey abroad removes all reason for granting immunities and priviledges to a diplomatic agent, even from the standpoint of legal protection from physical damage.

Australia, Belgium, Canada, Costa Rica, Italy, Japan and New Zealand have subsequently been joined by Austria, Great Britain, Guatemala, Honduras, Iran, Luxemburg and Nicaragua submitted another draft resolution. One point to note about that draft was that, unlike the American one, it reaffirmed the principle of equal rights and self determination enshrined in the UN charter as well as the proposal that nothing in that resolutuion could be interpreted as extending or narrowing in any way the scope of operation of charters provisions relating to cases in which the use of force in legitimate with certain means pointed out as illegitimate and contrary to the charter under all circumstances.

In spite of certain positive elements, the draft failed to win the support of a number of african and Asian countries because it said nothing to denounce the colonial racist and foreign regimes which pursue a policy of terrorism and violence.

A group of non aligned nations submitted a draft resolution which upon, a 6th committee recommendation, the Twenty-Seventh session of the UN General Assembly adopted on Dec. 18, 1972 as its resolution 3034, by 76 votes against 34, with 16 abstentions. This resolution acknowledges the importance of international cooperation in working out measures towards an effective prevention of acts of terrorism and an investigation of their underlying causes with a view to finding quick, fair and peaceful solutions.
The resolution reaffirms the inalienable right of all peoples oppressed by colonial and racist regimes and other forms of foreign domination, to self determination and independence and underlines the legitimacy of their struggle and in particular, the struggle waged by the national liberation movements on Conformity with the purposes and principles of the character and appropriate resolutions of UN agencies. At the same time the resolution condemns the repressive and terrorist acts of colonial, racist and foreign regimes depriving the peoples of their legitimate right to self determination and independence and of other human rights and fundamental freedoms. The specific measures contained in that resolution that the proposal for the nations to take appropriate measures at National level with a view to an early and final solution of this problem and also to consider the matter as an urgent one and make their observations and specific suggestions available to the Secretary General by April 10, 1973, for an effective solution of this problem.

The resolution provided for an Adhoc committee on International terrorism to be formed of 35 members who were to be appointed by the president of General Assembly, guided by principle of fair geographical representation.

Of the socialist countries, observations were sent in by Byelorussia, czechoslovakia, the Ukrine, the USSR and Yugoslavia, of capatalist countries of Europe, by Austria, Belgium, Cyprus, Denmark, Great Britain, Finland, France, Italy, Luxemburg, Netherlands, Norway, Protugal, Spain, Switzerland and Vatican; of the Countries of Asia and Africa, by Iran, Israel, Japan, Lebanon, Nigeria, Syria, Turkey, the Yemen Arab Republic. Observation were also sent by Australia and Newzeland. Canada, Guatemala and United States sent in their observations from the American continent.3

The US observations emphasised that a faster procedure of taking action against international terrorism would be preferable. The US also agreed to cooperate with the new committee and help it achieve some tangible results. Fearful in isolation the US pointed out that it was opposed to the use of force to deny the right of self determination and would not be party to any action
adversely affecting that right. There had previously been no statement to that effect either in the draft convention or in the resolution submitted by the United States. Admitting the draft convention to be insufficiently elaborated the US pointed out in its observations that this draft was a way of approach to the problem.

The US accepted the important principle that while defending the right to self determination one had to rule out the possibility of violent action that would endanger international order infringe basic human right and impair the very cause of self determination.

The observations presented by france, along with the proposal for a study of the causes of International terrorism to be found in the observations of most states, said that, "it would be pointless to seek the causes of acts or remedies for those acts without defining precisely the notions involved". This proposal is extremely important because any international convention has to be based on a clearly specified range of issues it is supposed to deal with. The Israeli Government submitted what actually amounted to a fullscale report on the questions of international terrorism. In the opinion of the Israeli Government:

i) The resolution is utterly oblivious of the imperative urgency of taking effective steps against international terrorism.

ii) The resolution took no account of the events that led to the General Assembly being seized of the matter.

That is to say that in this case, too Israel tried to reduce the issue of international terrorism to that of “Arab terrorism”.

Israel proposed definition of the “corpus delicti” of an act of terrorism ie. “Terrorism consists of an unlawful (criminal) act directed against a state, its organs, its nationals, interests or property, including its means of transportation whenever, such act is meant of calculated to endanger a state of terror or panic in the minds of the public as a whole or of an individual or of groups”.

Israel's position should be viewed in close association with the policy of terrorism conducted by Israels' governing quarters in respect of the Arab people of palestine as well as with the practice of individual terrorism against the
national liberation movement and its leaders.

In its observations, the Government of Israel did not mention the right of nations to self-determination trying to bypass this issue by separating the commission of an act of terrorism in peace time from one at the time of hostilities, with a reservation that the hostilities are understood as actions carried on in conformity with international conventions.

That is to say that Government of Israel reserved the right to decide whether any particular military operations fall within the Geneva conventions on the protection of war victims with all consequences following therefore. Proceeding from the foregoing the Government of Israel underlined on several occasions that the members of the Arab terrorist groups do not belong to any of the categories of persons enumerated or described in the Third Geneva Convention Relating to the Treatment of prisoners of war of 12 August 1949. Consequently, Israeli courts and tribunals have consistently dismissed the contention that members of the groups arrested are entitled to the status of Prisoners of War. On the opinions of the Israeli government are not belligerent parties and have no title to any right of belligerent parties. In actual fact, the members of palestine resistance movement conforms to the definition of guerrillas in accordance with Art-4 of the Geneva Convention relative to the treatment of prisoners of war.4

Under international law, the organised Arab resistance movement operating in Israeli occupied Arab territory has the status of a belligerent party, while any members of the movement have that of prisoners of war in case of captivity.

Of the Arba Countries, it was Lebanon, the Yemen Arab Republic and Syria that had sent in their observations. The most detailed of these were presented by the government of Syria, which pointed out in particular:

i) The Syrian Arab Republic has always stood against terrorism whether practised by individuals or groups or else by the state.

ii) The Syrian Arab Republic has supported General Assembly Resolution 3034 (Twenty seventh Session) as it established the clear distinction between criminal International terrorism, unrelated to the struggle of the peoples and the
concept of resistance on the one hand and struggle against all forms of colonialist and imperialist practices on the other hand.

iii) The UN has more than once mentioned the legitimacy of the struggle of the people of Guinea (Bissan), Zimbabwe, Namibia, as well as the legitimacy of the struggle of the people of Palestine.

iv) In the opinion of the Government of Syria, an objective consideration by the United Nations of the problem of international terrorism must begin by considering "state terrorism" as this is the most dangerous brand of violence.

v) The main cause of violence is the colonialist and imperialist policies and practices, as well as the crime of racist regimes against peoples.

vi) The duty of the United Nations is to find radical solutions and create a favourable atmosphere conducive to the realisation of the aspirations of peoples and particularly of their right to self-determination.

vii) Apart from "State terrorism" there is a brand of terrorism practised in order to achieve criminal purposes for personal benefit to its perpetrators. It has no relation whatever with the struggle of peoples.

viii) In the problem of terrorism, the fundamental difference among states does not arise over criminal terrorism caused by personal caprice or passions and making innocent victims, but on account of attempts by the imperialist and aggressive forces to legitimate colonial and imperialist terrorism and outlaw the legitimate struggle of peoples for emancipation from the claws of tyranny and despotism. It should be noted that the issue of "State terrorism" or that of aggressive action by states was examined in the special committee on the question of "Defining Aggression" from 1952 to April 1974. The special committee drafted it to the twenty-ninth session of the UN General Assembly.

Observations from the socialist countries came from the USSR, Byelosussia, the Ukraine, Czechoslovakia and Yugoslavia.

The Yugoslavia Government set forth the following principles which in its opinion should constitute the basis for the future convention.
1) The future convention should be based on the Principle of aut dedere aut punire (extradite or Punish).

2) Yugoslavia pledges full support the struggle of peoples against colonalist and racist forces.

3) Called upon the more nations to join to struggle against international terrorism.

The Government of Czechoslovakia submitted a documents which said that:

i) International terrorism has to be condemned as a phenomenon which is in strong contradiction with the effort to promote peaceful cooperation among states as well as peaceful coexistence.

2) The occurrence of the phenomena of international terrorism is rooted in deep social causes which have to be analysed and identified.

3) The measures to be taken in respect of these acts may not be misused to the detriment of the national liberation struggle of the oppressed peoples of the territories of these peoples, not relate to any act of resistance against the aggressor on the territory occupied by them.

The USSR laid emphasis on its support for resolution 3034 (Twenty Seventh Session) and pointed out that the soviet Union did not object the drafting and adoption of an international convention imposing certain obligations on states to check international terrorism.

The Adhoc committee on International terrorism held a session in the UN central agencies from July 16 to August 11, 1973, without achieving any positive results. None of its three subcommittees the subcommittee of the whole on the Definition of International terrorism, the sub committee of the whole on the Underlying causes of International Terrorism, and the -subcommittee of the whole on measures for the prevention of International terrorism succeeded in working out a generally acceptable point of view on the merits of the subject at issue.

The draft proposal submitted by different nations at the twenty seventh
Session of the UN General Assembly and the observations sent in by various states.

Special emphasis in the deliberations of the Adhoc committee was on the need for an inquiry into state terrorism and the forms it takes.

The thirty first session of the UN General Assembly considered a report of the Adhoc committee on International terrorism. At its 99th plenary meeting on December 15, 1976, the General Assembly, on a recommendation of the 6th Committee adopted Resolution 31/102 entitled "Measures to prevent international terrorism" which endangers or taken innocent lives or jeopardise fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes."

The Adhoc committee on International terrorism met again at the UN from March 14 to 25, 1977.

The following nations took part in the general debate: Algeria, Austria, Canada, Czechoslovakia, France, Great Britain, Greece, Haiti, Hungary, Italy, Japan, Sweden, Syria, Tunisia, Turkey, Ukraine, Uruguay, USA, USSR, Venezuela and Yugoslavia.

The Adhoc Committee concurred in reaffirming the inalienable right to self determination and independence of all the people who were under the domination of colonial and racist regimes and suffered from other forms of foreign rule and the legitimacy of their struggle, notably the national liberation movement in conformity with the purposes and principles of UN charter. The discussion brought out the following viewpoint apart from disagreement on which acts should be included in the concept. "International terrorism". For example, some states held there must be no qualification what so ever in the condemnation and suppression of international terrorism.

i) There must be no exception in the condemnation, and suppression of international terrorist activities.
ii) Terrorist methods applied by individual governments and individual states constitute one of the categories of acts of terrorism and fall with the common category of terrorism to be condemned.

iii) The issue of terrorism had for a long time, been linked up with the problems of fundamental human rights and freedoms.

iv) The issues of human rights are outside the committees, mandate.

v) it is necessary to concentrate on specific categories of acts of terrorism and to that end work out international and joint national measures.

vi) A number of states proposed looking for effective measures at a national level, particularly in the area of protection of diplomatic missions, for instance by banning the activities of organisations or groups commit acts of terrorism against diplomatic missions.

Certain emphasis was laid, besides on the importance of acceding to the conventions which had already been drawn up, on the fact that General Assembly must continue its efforts to oppose international terrorism, for international cooperation was indispensable, first and foremost, in that regard.

The representative of the USSR stressed in this regard that:

a) The documents to be adopted must repose on a consensus among nations.

b) There must be no wider interpretation of international terrorism to cover the national liberation movement, the resistance to the aggressor in occupied territories or the activities of the working people, for instance, against the exploiters.

c) Top priority should be given to combating acts of violence directed against foreign nationals including the acts committed for political reasons.

d) It is necessary to forestall a deterioration of relations between states consequent upon the commission of these acts of terrorism.

e) The documents to be adopted must be directed against the acts committed for criminal motives, with this category covering the activities of Zionist extremists, national emigrant centres and fascist type organisations.
f) Special responsibility in this context lies with the states hosting international organisations.

g) The conclusion of bilateral and multilateral extradition treaty/agreements can contribute towards the suppression of aircraft hijacking and other terrorist activities.

The Adhoc Committee could change little in the distinction between the positions of various states as regards international terrorism, although all nations are conscious of the need for a breakthrough in this field. This has re-emphasized the importance of taking into account the world's records on the fight against certain types of terrorist acts of an international character.

The 1979 session of the Adhoc Committee on International Terrorism worked out general recommendations relating to practical measures of cooperation for the speedy elimination of the problem of international terrorism. For effective action against terrorism, the UN General Assembly ought to call upon all nations to contribute, both independently and in cooperation with other nations and with appropriate UN agencies, to the progressive elimination of the underlying causes of international terrorism.

Second, the UN General Assembly ought to call upon all nations to honour their obligations under international law to reform from organising, instigating, assisting or participating in terrorist acts and civil disorders in another state or acquiescing in organised activities within their territory directed towards the commission of such acts.

One important recommendation made in this context for all nations to take appropriate measures at a national level with a view to an early and definite elimination of the problem of international terrorism, such as bringing national legislation into line with international conventions, meeting international obligations, assumed, frustrating the preparation and organisation of acts against other states in their own territory.

It is very important to regard the special attention that General Assembly and security council should give to all situations that may breed international
terrorism, such as colonialism and racism, as well as the situations, arising from foreign occupation or capable of jeopardising international peace and security.

Finally, the committee recommended contemplating an additional international convention or conventions founded, in particular, on the principle of extradition or punishment of offenders, with a view to suppressing the acts of international terrorism, still not covered by other international conventions.

The discussion of the issue of international terrorism in the UN agencies has shown that there is no common understanding of the object or the subject of a terrorist act falling within the scope of international law. In the observations submitted in accordance with the General Assembly Resolution 3034 (Twenty Seventh Session) practically all the States (38) proposed concluding a universal convention or a series of conventions to combat acts of international terrorism.

In contemplating the possible methods of legal cooperation of states at an international level in the prosecution of punishment of acts of international terrorism the research work may proceed along the following lines, keeping in view the corpus delicti and its social danger:

i) Unification of the standards of national Legislation in respect of certain offences.

ii) Convention machinery of legal cooperation in the presence of an international element within the corpus delicti as well as its social danger for international relation.

iii) Creation of a system of international criminal justice implying the functioning of an international criminal court.

**Unification of Penal Law**

An attempt for unifying criminal legislation in the control of terrorism has been undertaken by the International Association of penal law. A number of international Conferences for the unification of penal law have been held under the auspices of the International Association of penal law in compliance with the recommendation adopted by the first International congress of penal law which met in Brussels from July 26 to 29, 1926. These conferences were attended
by delegation of states as well as by governmental and Non governmental international organisations.

The issue of terrorism was considered by the third through sixth International conferences for the unification of penal law. The term “terrorism” was first used at the Third (Brussels, 1929) international conference. The documents and resolutions of the fifth (Madrid, 1934) and the sixth (Copenhagen, 1935) international conferences were also of interest.

The fifth conference stated that the unification of standards relating to the suppression of terrorism was insufficient for the prosecution of a crime on an international scale and that, for this reason, it was necessary to combine the application of the rules of territorial and universal Jurisdiction.

The sixth International conference, basing itself on the papers submitted by special speakers, adopted a document on terrorism, which defined “ outrages endangering the community or creating a state of terror. as well as the range of persons violence against whom must entail the application of penal code or special legislation, since these actions create a dangerous situation and a state of terror and can produce tension in international relations and create a particular danger to peace.

The acts which if committed, should entail the application of severe penalties in virtue of the wording of Articles 2 and 3 of the document adopted by the sixth International conference, comprise,

- any wilful acts causing a disaster by impeding railway, maritime, river or air communications or by interrupting public services or services of public utility.
- The use of explosives, incendary, asphyxiating or harmful substances.
- Propagating or provoking contagious or epidemic diseases.
- Destruction, of or damage to public buildings or public food stocks, ways and means of transportation and communication, signals, lanterns.
- destruction of, or damage to, hydraulic installations,
- incitement to the commission of offences or complicity in their commission of attempts to commit the above mentioned offences.
- Participation in an organisation or setting up an association with the view to the commission of any of the above mentioned offences.

- Manufacture, possession or transportation of arms and ammunition as well as substances and objects that can be used for the commission of the above mentioned offences.

Besides, the sixth International conference for the Unification of penal law has recommended that, in the absence of an agreement about the extradition of the offender, the latter should be referred to an international criminal court, unless the state concerned prefers to have him tried by its own courts.

The above quoted provisions of the document of the sixth conference made its purpose quite obvious the creation of a Universal international machinery to control subversive activity other than of an international character, except the instances of commission of terrorist acts against persons possessing diplomatic immunity.

It is possible to apply yet another principle for the unification of national legislation, that of including in it appropriate standards assuring criminal proceeding against and punishment of those who have committed terrorist acts with an international element.

It should be noted that a number of states have appropriate articles in their criminal law codes which identify the subject and object of the commission of an international terrorist act as well as the sanctions applicable in respect of the person found guilty, but a court of law, of having committed offences falling within the above quoted articles.

For example, such is Art 4 of the USSR law of December 25, 1958, on criminal responsibility for offences against the state, incorporated subsequently in the criminal codes of all the Union Republic, Art 109 of the criminal code and the criminal procedure code of the German Democratic Republic, Arts 106 and 107 of the criminal code and the criminal procedure code of the people’s Republic of Bulgaria, Arts 219, 220, 221, 222, 224 of the code of socialist Republic of Romania; Art 64 of Criminal code of Mongolian people’s Republic,
Arts 283, 284, 285 of the Criminal code and the criminal procedure code of the Polish People’s Republic, Art 221 of the penal code of Argentina, the 1956 Decree 3135 of Colombia, Art 38 of the Act No 50-29 of February 27, 1959 of Madagascar, establish varying degrees of responsibility for the commission of international terrorist acts.

Some states have been compelled to take special legislative and administrative measures in view of the growing number of terrorist acts of an international character committed in their territory. For example, the US Government has set up a cabinet Committee to combat terrorism, chaired by the secretary of state to co-ordinate such activities as “intelligence relating to international terrorism, improved precautionary measures by policy agencies, increased screening at airports to prevent hijacking, consideration of new legislation and increased contingency planning.

On October 24, 1972, the then US president Richard Nixon signed on Act for the protection of foreign officials and official guests of the United States, approved by congress. The Act, naturally operates only within the territory under US jurisdiction and does not solve the problem arising from the commission of a terrorist act of an international character even in respect of US nationals anywhere outside US Jurisdiction.

The Act does not cover, by the meaning of its articles, the representations of National liberation movements before they have been recognised by the US Government.

Obviously, as actual experience indicates, it must be the concern of special conventions to identify the range of persons and objects a terrorist act against whom or which involves international relations, since the inclusion of such norms in national legislation does not yet resolve all the problems connected with the cooperation of states in the suppression of international terrorist acts, such as the problem of inescapable punishment that of taking account of an international element in the corpus delicti, various aspects of legal cooperation at an international level etc. In a whole series of instance, as one can see, for example,
from the US record, the state virtually forswears the prosecution and punishment of persons having committed these acts.

The Belgian lawyer Bart De Schutter, an author on International penal law, holds that theoretically, there are international and national provisions for terrorism to be suppressed, international conventions in force can well serve the purpose.

Nevertheless, opinion differ as to the ways of suppression they range from an idealistic conception of an international criminal court to claims about the exclusive competence of national courts. Bart De Schutter have proposed establishing a hybrid system by creating special chambers of National courts, permitting foreign observers to attend the hearing of national courts and setting up mixed courts of national and foreign Judges.

**International Machinery for the prosecution and punishment of acts of international terrorism**

It has been a practice of the International Community to work out conventions for the suppression of International terrorist acts in general or individual types.

Unlike the unification method, a convention not only identifies the corpus delicti falling within its scope, but also the principles underlying the application of national legislation of the states parties to the convention for legal action against those who have committed the offences, as well as the obligation of the states concerned to cooperate in this field. That means assuring inescapable punishment of the persons whose acts constitute corpus delicti, if these persons, come under the jurisdiction of any of the states parties, consequently, this offers an opportunity to prosecute anyone for the offence committed on the territory of one state at an international level because of its danger to international relations. It does not matter on the territory of which particular contracting state the jurisdiction over the offender may have been established.

When we speak of the conventionary mechanism of cooperation in the suppression of terrorism, we mean different forms of action by states governed by an international agreement. This comprises, above all, the extradition, of
alleged offenders, mutual assistance in criminal matters, exchange of material
of criminal investigation, mutual enforcement of the ruling of criminal courts, mutual
supervision over persons convicted or released under suspended sentences, and
finally, the cooperation of the criminal police.

All these forms of cooperation may be an object of individual special
convention or may find reflection in a convention dealing with the suppression
of any specific offence. Virtually all nations acknowledge the necessity of
cooperation in the suppression of terrorist acts endangering international relations.
Irrespective of the purpose of a convention it must contain legal principles to make
it effective.

In the course of the general debate at the UN General Assembly, which
considered the problem of international terrorism, among other items, the United
states submitted Draft convention for the prevention and punishment of certain
Acts of International Terrorism. Structurally the draft convention consists of 16
articles and a preamble. The preamble recalls General Assembly Resolution 2625
(Twenty fifty Session) of October 24, 1970, lays accent on the statement in that
resolution that every state has the duty to refrain from organising, instigating,
assisting or participating in terrorist acts on the territory of another state or
acquiescing in organised activities within its territory directed towards the
commission of such acts.

However, the preamble has no reference to the right of nations to self-
determination or the right of the peoples to take up arms to liberate themselves
from colonial oppression.

Art 1 of the draft, although its provisions do outwardly seem to be well
elaborated, suffers from serious shortcomings, as it lacks a full definition of the
elements of criminal acts, since the convention covers only the offences committed
against natural persons and a list or criteria by which to identify the persons and
attack against whom falls within the convention.

Art. 2 contains an undertaking of the states parties to envisage severe
penalties for offences set forth in Art. 1.
Art. 3 fixes the principle of aute dedere aute Judicare. Art. 13 and 14 of the draft provide for the precedence of Geneva Conventions of August 12, 1949 as well as of any other convention which has been or may be concluded concerning the protection of civil aviation, diplomatic agents and other internationally protected persons if in conflict with any provision of this convention. This is strange wording, to say the least, for it makes it totally unnecessary to conclude a convention based on this draft if any subsequent convention should take precedence once in conflict with any provision of this convention.

The draft is based on the either extradite or prosecute principle. However, the most effective way of prosecution would be through the extradition of the offender to the state on the territory of which the offence has been committed, if the given person is not a national of the state on the territory of which he has found himself.

Because the right of nations to self determination has been ignored and the provisions of the convention under elaborated the draft was not taken into account during the deliberations of the Adhoc committee on International terrorism.

The Washington post said in December 1978 that when the General Assembly had adopted its resolution on terrorism which, in particular, rejected the approach of the United states seeking to charge the national liberation movements with terrorist activities, George Bush, the then US Ambassador to the UN, admitted his defect.

One point to stress in this context is that the US stand on the subject is completely at variance with international law because in accordance with the UN charter contractual practice (Protocol Additional to the 1949 Geneva Conventions for the protection of war victims in International Armed conflict, of June 1977) an international conflict should, notably mean one in which peoples fight colonial domination of foreign occupation or racist regimes in the exercise of their right to self-determination. This applies recognising not only the legitimacy of national liberation movements but also the duty to lend them all manner of assistance, including arms suppliers with a view to ensuring the exercise of their right to
Following a discussion of international terrorism at its thirty fourth session, the General Assembly adopted an important resolution, which contains a general condemnation of all acts of international terrorism endangering human lives or jeopardising fundamental human rights and freedoms.

The UN General Assembly denounced the continued repressive and terrorist acts committed by colonial racist and foreign regimes denying the legitimate right of the peoples to self determination and independence and other human rights and freedoms. The resolution called upon all nations to cooperate in eradicating the causes of international terrorism. It urged all nations to fulfil their obligations under international law: to refrain from organising, instigating, assisting or participating in acts of civil strife or terrorism in another state and in particular, to coordinate their legislation with international conventions to this end.

The General Assembly called upon all nations to cooperate more closely through an exchange of information for the purpose of preventing and suppressing international terrorism, concluding special treaties or adding reservations to other bilateral treaties as regards the extradition and prosecution of international terrorists.

The General Assembly called upon all nations to present their considerations and specific proposals notably, as regards the necessary of an additional convention or conventions for the suppression of international terrorism.

The resolution stressed, in particular, that is the General Assembly and the security council were to make their own contribution towards the elimination of the causes and problems of international terrorism, they must give special attention to all situations arising from foreign occupation which might give rise to international terrorism or produce a threat to international peace and security, by applying the appropriate provisions of the UN charter.

The record of the league of nations and the UN in this matter warrants the conclusion that a universal convention, should it be drawn up, could include the following major provisions.
1) Propositions for the preamble of a possible convention

a) Proposal for states to join the existing international conventions concerning various aspects of the problem of international terrorist acts.

b) reaffirmation of the inalienable right of all nations under colonialist or racist oppression and other forms of foreign domination, the self determination and independence.

c) reference to the Declaration on the Principles of international law concerning Friendly Relations and cooperation among states in accordance with the character of the United Nations.

d) emphasis on the importance of international cooperation in devising measures towards effective prevention of international terrorist acts.

e) proposal for states to take all appropriate measures at a National level with the aim of resolving this problems at the earliest opportunity.

2) Definition of corpus delicti falling within the convention to try and avoid any difference in the content and interpretation of it in the practice of individual states.

3) Qualification of the offence falling within the convention as criminal regardless of motive, which is an important condition to assure inescapable punishment of such crimes.

4) The principle of aute dedere aute Judicare which is likewise extremely important for assuring inescapable punishment of the offences falling within the convention.

5) obligation of states parties to the convention to qualify the offences within its scope as the gravest crimes under national legislation, which would enable the differences between the penalties provided for by national legislation to be reduced to the minimum.

6) Commitment of the states parties to the convention to maintain legal cooperation as regards the application of the convention.

The effectiveness of the convention will depend, first and foremost, on its
universality as well as on the measures to be undertaken at a national level because the judicial formulation of the provisions of the convention is an indispensable but insufficient condition for the prevention and punishment of offences within its scope.

To facilitate the drafting and adoption of a universal convention, the UN General Assembly could produce an appropriate declaration or resolution based on the above stated propositions for the preamble.

One point to note in summing up the consideration of the conventionary mechanism for combating international terrorist acts is that this method will not only assure the unification of the definition of the corpus delicti but also special protection of persons or property who or which should be so protected in virtue of their status under international law.

**International Criminal Jurisdiction**

Along with the generally recognised methods of prosecution for the commission of international terrorist acts within the framework of national jurisdiction and governed by domestic legislation as well as the conventions concluded to this effect at an international level. There have been many suggestion as to prosecution and punishment for the commission of such terrorist acts in an international criminal court.

It appears important to review the various drafts for the establishment of an international criminal court drawn up with a view to prosecution and punishment for the commission of acts of terrorism within the meaning of international law.

As stated earlier, along with the convention for the prevention and punishment of terrorism, the league of nations drafted, in 1937, a convention for the Establishment of an International Criminal Court. The convention never came into force, but was signed by Belgium, Bulgaria, Spain, France (with the colonial reservation) Greece, the Netherlands, Romania, Czechoslovakia, Turkey Yugoslavia, there have been no ratification. Note worthing in that convention are matters
of procedure, universality and corelation with the basic provisions of the convention for the prevention and punishment of terrorism.

Structurally, the convention consists of a preamble and 56 Articles. All Articles can be classiofied as constitutional and procedural.

Art. 1 establishes an International criminal courts for the trial of persons accused of offences dealt with the convention for the prevention and punishment of terrorism. Art 2 says that in the cases referred to in Art. 2, 3, 9 and 10 of the convention for the prevention and punishment of terrorism, each High contracting party shall be entitled instead of prosecuting before his own courts, to commit the accused for trial to the International Criminal Court.

Consequently, the Art 2 of the convention establishes the optional procedure for a case to be heard in the International criminal court. The second important point of Art 2 is that a High contracting party shall be entitled, in cases where he is able to grant extradition in accordance with Art-8 of the convention for the prevention and punishment of terrorism, to commit the accused for trial to the courts if the state demanding extradition is also a party to the present convention. In practical terms, this means that the state having established its Jurisdiction over the offender may choose one of the three possible situation.

1) hearing the case in accordance with its own legislation.
2) Granting extradition.
3) Committing the offender to the court for trial.

In such a case it is of interest to note the principle whereby the convention elects the law of the court.

Art 21 emphasizes that substantive criminal law to be applied by the court shall be that which is the least severe. In determining what that law is the court shall take into consideration the law of the territory on which the offence was committed and the law of the country which committed the accused to it for trial.

One can see from Art 21 that there can be conflict between the provisions of the law of the territory in which the offence was committed and the provisions
of the law of the country which committed the accused to the court for trial and therefore, although the principle of the least severe penalty being applied is established, there is no definite solution to the question of which law will be applied by the court, since it has none of its own, which is one of the serious shortcomings of the convention designed either to unify the appropriate provisions or formulate one to specify the legal provision.

Under Art 24, the president of the court shall notify the state against which the offence was directed, the state on whose territory the offence was committed and the state of which the accused is a national about the decision of a High contracting party to commit an accused person for trial to the Court after the president has been informed by the party about such a decision.

Art. 25 formulates the rules to govern the document committing an accused person to the court for trial. This document shall first of all, contain a statement of principal charges brought against that person and second, the allegations on which they are based, and shall name the agent by whom the committing state will be represented.

Art 25 lays it down that the state which committed the accused person to the court for trial shall conduct the prosecution unless the state against which the offence was directed or failing that state, the state on whose territory the offence was committed, expresses a wish to prosecute. Consequently, this article establishes an advantage, from the standpoint of pressing the accusation, from the state against which the offence was committed. This principle has enough reason to be applied but it is not followed in other provisions of the convention, as shown earlier.

In case the right of accusation has not been used and the states having this right have shown no wish to exercise it, the court shall not proceed further with the case and shall order the accused to be discharged (Art 28).

Under Art 31, the state on the territory of which the court is sitting shall place at the court's disposal a suitable place of internment and necessary staff
of warders for the custody of the accused.

Art. 39, 40, 41 deal with the execution of the sentences of the court,

Art 40 the most important one lays it down that sentences involving loss of liberty shall be executed by a High contracting party chosen with his consent by the court. Such consent may not be refused by the state which committed the convicted person to the court for trial, and if it has expressed the wish to do so, the sentence shall always be executed by the state.

If the sentence of death has been pronounced the state designated by the courts to execute the sentence shall be entitled to substitute the most severe penalty for it, as provided by its national law which involves loss of "liberty (Art-41).

The wording of this article allows the presumption that a case may be heard in line with one law, while the sentence will be executed under the provisions of another law, which means stultifying, in large measure, the provisions of the convention for the prevention and punishment of terrorism designed to assure inescapable punishment for the offences set forth in the appropriate Articles of this Convention.

It has been suggested by some countries that the matter should in this case be settled by electing the law of the country against which the offence was directed and executing the sentence in line with the standards of the same system of law which, on the other hand, would ensure the consistency of prosecution. It would also prompt the nations which have no provisions for the control of offences of this kind in their legislation so far as to take more radical action.

The last article, noteworthy from the stand point of general theory, is Art 42 granting the right of pardon in the country which has to execute the sentence on the understanding, however, that country shall first consult the president of the court.

The provision also reduces the possibility of attaining the aims set by the convention for the prevention and punishment of Terrorism, Since:
1. The President of the court may not influence the will of the state introducing an amnesty because of his status.

2) The very granting of an amnesty for cases of this category does much to stultify the principle of inesciable punishment considering, in particular, that the convention does not specify that the state is to carry out the sentence. This idea no means disproves the validity of the provisions of the convention on legal guarantees offered to the accused defence, the right of rehearing, study of the material of the proceeding, etc.

So, the international community has undertaken an attempt, at creating a legal machinery of prosecution and punishment for the commission of international terrorist acts. This has been an interesting experience because the problem of creating such a machinery is still suffers differences on various points of view prevalent among scholars and various positions of various nations.

The issue of creating international criminal Jurisdiction was debated at the UN in connection with the 1948 convention on the prevention and punishment of the crime of Genocide, which stated that there must be “Such international penal tribunal as may have Jurisdiction with respect to those contracting parties which shall have accepted its Jurisdiction.”

The fifth session of the General Assembly adopted Resolution 489 which set out the decision to create a committee on International Criminal Jurisdiction (the Geneva Committee). The seventh session of the General Assembly had a report and draft statute of an International Criminal Court brought before it by the committee. However the seventh session did not take any decision on the substance of the matter, but created a new committee which had the same task before it (Seventeen member committee). It submitted its report with a revised draft statute of an International criminal court to the Ninth session of the General Assembly.

Both Committees have done a large amount of work toward drafting the statute of the court and their reports and drafts are of certain interest, although the draft statute has been neither recommended to, nor accepted by any state.
A series of problems arise in connection with the creation of international criminal jurisdiction. The competence of the Court is one of the most important of these. In the drafts, the matter is dealt with in the opening articles headlined "Purpose of the court", while in third chapters, the issues of competence are regulated in detail. Art 1 of the Geneva Drafts statute reads: "There is established an International Criminal Court to try persons accused of crimes under international law as may be provided in conventions of special agreements among states parties to the present statute."

Art 1 of the draft statute presented by the seventeen-member committee says that "There is established an International Criminal Court to try national persons accused of crimes generally recognised under international law". The Geneva Committee's report has specified that, "the determination of these broad categories would not establish any jurisdiction".

The seventeen-member committee has emphasized that Art 1 does not confer any jurisdiction on the court but specifies its principal objective and imposes thereby general restrictions beyond which the Court may not operate, not the states may confer any jurisdiction on it.

The articles of chapter III, 'Competence of the Court" are very important because they are, first and foremost, basic to the very possibility of the court violating national sovereignty or ruling out such a possibility.

No person shall be tried by the court unless jurisdiction has been conferred upon it by the state or states in which the crime is alleged to have been committed (Art-27). A state may withdraw its conferment of jurisdiction. Such withdrawal shall take effect one year after the delivery of notice to that effect to the Secretary General of the United Nations (Art. 28).

The another important issue is that about who may have access to the court. The Geneva draft statute stipulated that proceedings might be instituted by the UN General Assembly, by any organisation of the states so authorised by the General Assembly and by the states parties to the statutes. The Seventeen
member draft contained two alternatives. Alternative A: proceedings may be
instituted by any state which has conferred jurisdiction upon the court over such
offences

Alternative B: Stipulated apart from the above mentioned provision, that
in the interest of the maintenance of peace, a United Nations’ organ to be
designated by the United Nations may stop the presentation or prosecution
of a particular case before the court (Art. 29).

The second alternative appears to have a greater advantage yet the difficult
part is to agree to a special organ being set up. It is the security council that
can alone be such an organ as could stop the presentation or prosecution of
a particular case before the court.

The conclusion that can be drawn from a review of chapters I and III of
the draft statute of International criminal court is that the most important problems
connected with the creation of the court the competence of the court the attribution
of jurisdiction, recognition of cognizance, the law of the court, access to the
court have been essentially released in the right way in our view, as they are
based on the generally recognised principles and standards of international law.

Paragraph 1 of Art. 26 — “Attribution of Jurisdiction” says that jurisdiction
of the court is not to be presumed. The court by convention will not have any
jurisdiction at all unless the state confers jurisdiction on it through an appropriate
expression of will. This is further evidence of the need to draw up substantive
international criminal law and that precisely because and in the light of the
creation of International criminal Jurisdiction.

The Geneva draft indicated that general jurisdiction is conferred only by
convention, while the attribution of Jurisdiction by special agreement or by
unilateral declaration was allowed only post factum. This difference was removed
from the draft of the seventeen member committee. Paragraph 2 of Art 26 lies
it down that “a state may confer jurisdiction upon the court by convention,
by special agreement or by unilateral declaration.”
This implied that this particular point referred only to future conventions, special agreements and declarations, i.e. such documents as would be adopted for the express purpose of creating international criminal Jurisdiction. That means indicating the ground that court was to act upon and precluding the possibility of arbitrary legal action because of the unclarity and conflicting nature of the sources of law.

The Jurisdiction of the court was optional. In attributing Jurisdiction to the court, the state did not commit itself to referring any particular cases to the court. It is entitled to do so but may prefer to take action either in its own national court under its own laws, or special international courts. Unless a different procedure is envisaged in an appropriate act, the only obligation arising from the attribution of Jurisdiction to the court is the passive obligation to allow proceeding to be instituted in that court against appropriate persons.

The drafts contained a fairly circumstantial account of the matter of legal procedure the rights of the accused, the rights of the court, etc (Art 35-52)

Regarding the establishment of an International Criminal court are about the way the court is to be set-up. The seventeen member committee discussed four methods by which an International Criminal Court might be established.9

A. Establishment of the court by amendment of the UN Charter.
B. Establishment of the court by multilateral conventtion.
C. Establishment of the court by a General Assembly resolution.
D. Establishment of the Court by a General Assembly resolution to be followed by conventions.

Establishment of the court by an amendment of the UN Charter can be brought about auspices of the International court of Justice or by setting up an International criminal court as a new major organ.

Most of the members of the committee reacted sceptically to the possibility of the court being established by any of these methods in the foreseeable future,
considering, however, that the establishment of the court by a multilateral
convention would be the best and most practicable procedure for sometime.

The committee suggested the following procedure: with the preliminary draft
statute of International criminal court drawn up, it would be expedient to
recognised, by a General Assembly resolution, the desirability of instituting such
a court, and call a conference of plenipotentiary representatives, of states to
finalise the drafting of the statute of the court and the formulation of other acts
imposing obligation upon states connected with the competence of the court and
its proper functioning.

Those who were in favour of an International Criminal Court being established
by a General Assembly resolution maintained that such a court could be brought
into being at once and without any amendment of the UN charter. They invoked
Art. 22 of the charter authorising the General Assembly to establish any such
subsidiary organs as it found necessary to assist it in performing its functions.
Obviously that although the General Assembly can indeed establish such subsidiary
organs, there is no reason for its competence to be interpreted to mean that
the General Assembly has the right to establish an International criminal court.
The General Assembly may adopt resolutions with recommendations for it to be
created. These recommendations can be adopted as a draft convention
containing the obligations of states regarding the creation, organisation and
functioning of the court. However, only the ratification of such a document by
states would permit such a court to be established.

The United states called for the court to be established by a General
Assembly resolution to be followed by conventions. To use this method would
mean that the General Assembly would have to adopt a resolution proposing
the statute of the International criminal Court. This resolution would however, have
to provide that the court would not be considered established until a specified
number of states had conferred jurisdiction upon it by convention, special
agreement or unilateral declaration.
Preliminary discussion of the issue of creating international criminal jurisdiction by the General Assembly is indispensable in all cases because that would bring out the position of states with regard to such a court and attribution of jurisdiction upon it and would besides, make clear the number of states agreeable to attend the conference called to this end.

The nations which voted for the relevant General Assembly resolution may be expected to attend subsequently the conference to be held to draft the convention. The accession of a sufficiently large number of nations to the statute is an, indispensable condition for international criminal jurisdiction to be established.

One of other most important issue arising from the problem of International criminal Jurisdiction is that of a substantive law to be applied by the court. A report by the seventeenth member committee pointed out “Some member felt at the present time it was still to clear that the substantive law be to be applied by the court was not sufficiently mature to make the creation of an International criminal jurisdiction practicable”. Others were of the opinion that since adhoc tribunals had tried and sentenced thousands of criminals on the basis of that law an, international criminal court could will be established to apply it, and that the lack of precision of that law was a further argument for entrusting its application, not to ad hoc courts established for each occasion, but rather to a permanent court set up in advance which, would guarantee a more universal application.

The lack of precision of substantive law might provide an excuse for intervention in the internal affairs of states. Therefore, the work out the provisions of that law is a matter of principle.10

It is important to note that General Assembly in a Resolution of november 21, 1947, entrusted the formulation of the principles of International law recognised in the charter of the Nuremberg Tribunal and in the Judgement of the Tribunal to the international law commission and directed it to “formulate the principles
of documental law recognised in the character of the Nuremberg Tribunal and in the Judgement of the Tribunal and prepare of draft code of offences against the peace and security of mankind”.

The report of the Interational law commission to the fifth session of the UN General Assembly in 1950 contained a formulation of the Nuremberg Principles. In its resolution of december 12, 1950, the General Assembly asked the governments of the UN member states to submit their observations regarding this formulation and requested the international law commissionin preparing the draft code of offences against peace and security of mankind, to take account of the observations made on this formulation by delegations during fifth session of the General Assembly and of any observations which may be made by governments.

Taking into account all the observations made by delegations as well as those contained in written comments by the governments of 14 nations submitted to and considered at its meeting, the commission drafted a code of offence against the peace and security of mankind was submitted to the UN General Assembly for consideration. The issue of draft code was included in preliminary agenda of the sixth session of the General Assembly but, by assembly decision, its consideration was postponded and the commission was asked to go ahead with drafting the code, taking into account the proposals received from various nations.

The draft code that was submitted laid emphasis on criminal acts connected, in one way or another, with terrorism, notably, with preparing aggression.

It is worth mentioning in this context paragraph 4 of Art. 2 which was enlarged by the Commission in its final draft code of 1954 compared with that of 1951. The draft contains a special reference to the 1937, International Convention on the suppression of Terrorism which undoubtedly, offered an enlarged interpretation
of paragraph 6 of 2 of the draft code of offences against the peace and security of mankind which has no list of acts treated as terrorist.

The importance of including a provision on terrorism in the draft code was stressed by the representative of the USSR who speaking in the political committee of the sixth session of the General Assembly with reference to the American mutual security Act of October 10, 1951, noted the significance of the thorough drafting of the code and in particular of paragraph 6 of Art. 2.

This US act see the obvious purpose it had been produced for. It provided, notably, for the special appropriations to the amount of 100 million dollars for financing any selected persons who are residing in or escapes from the Soviet Union, Poland, Czechoslovakia, Hungary, Romania, Bulgaria, Albania ... either to form such persons into elements of the military forces supporting the North Atlantic Treaty Organisation (NATO) or for those purpose.

The act did not only clearly contradict, but flagrantly violated fundamental standards of international law, including the 1937 convention which unequivocally declared similar action to be an international crime. It was for that reason the US delegations launched so active a campaign to forestall the discussion and adoption of the draft code which contained imperative ban on terrorist activities.

The draft of the seventeen member committee was examined at the Ninth session of the General Assembly which, however failed to take any decision on the merits of the issue. Under resolution 897 and 898, consideration of the question of international criminal jurisdiction was deferred until a definition of aggression has been formulated.

The twelfth session of General Assembly once more put off the question of International criminal Jurisdiction for the same reasons (Resolution 1181).

In 1974, as the draft definition of aggression was brought before UN General Assembly, the UN secretary general proposed resuming consideration of the draft code of offences against peace and security of mankind as well as the issue of international criminal Jurisdiction.
In 1977, the report of the International law commission suggested that the draft code of 1954 be reconsidered.

In 1980, seven nations called for that item to be included in the General Assembly agenda under the title of "Draft code of offences against the peace and security of mankind". Erik say, UN legal adviser, justly pointed out that out of the legal documents to be regarded as connected with the draft code one should mention the International convention on the Elimination of All forms of Racial Discrimination of 7 March, 1966, the convention on the Non-applicability of statutory limitations to war crimes and crimes against Humanity of November 26, 1968, the convention on the prevention and punishment of crimes against International protected persons, including diplomatic agents, of December 14, 1973, definition of Aggression, Declaration on the granting of Independence to colonial countries and peoples, Declaration on principles of International law concerning friendly relationship and co-operation among states in accordance with the charter of the United Nations and let us add the international convention against the taking of hostages.

Obviously these documents have to be taken into account in drafting the code and in bringing its provisions up to the present day level of cooperation of states in the control of international crimes. It is just as obvious that the records of discussion of that question in the sixth committee of the Thirty-Third session of the General Assembly in 1978 and of the discussion of same question in the sixth committee in 1980 provided important supporting evidence. Another piece of supporting evidence when drawing up an international legal document essential to all states would be the replies received from governments and international organisations to the inquiry from government and international organisations to the inquiry from UN secretary General. As the debate in the sixth Committee has brought out, most of the replies underlined the need for the code to include such offences as unlawful action against the safety of civil aviation, offences against internationally protected person, terrorism, non-applicability of statutory limitations to such crimes, suppression of the activities of individuals as well as groups
and organisations presenting a danger to peace and contradicting international law. 11

As the representative of zaire said, the Nuremberg Trial had produced a new legal conception, the conception of criminal responsibility of individuals having committed, on behalf or as an agent of a state, acts which are offences against humanity. Besides a principle of indirect criminal responsibility has arisen from the decision on indirect prosecution for the misdeeds of the states on behalf of which such individuals acted. The fact that a state may, if indirectly, be brought to book within the framework of international criminal jurisdiction is an unprecedented one and it has considerably extended the area of application of international public law.

This approach is of fundamental importance for the suppression of terrorist acts committed by the state Officials.

The way terrorist acts, aircraft hijacking have once more attracted legal attention to the issue of setting up an international criminal court.

In particular, these questions were discussed at two conference on international criminal law held at Racine, Wisconsin, USA in 1971-72, and in bellagio, Italy in 1972 under the auspiceous of International Foundation for the Establishment of an International criminal court. They have produced the following documents, the convention on International crimes and statute for an International criminal court.

The draft statute for an International Criminal Court consists of 50 articles. To give a general appraisal of this document, one should point out its positive and negative aspects.

The draft statute for an international criminal court is certainly of great interest for the study of the problem of international criminal jurisdiction as it.

a) has taken into account the previous efforts to establish an international criminal court.
b) has elaborated the technical issues of the selection, functioning, dismissal and replacement of Judges.

c) recognises the necessity of selecting judges so as to represent major forms of civilisation and fundamental legal systems of the world. (Art 6).

d) Art. 16 provides for the following additional bodies of the court. Procurator's office, defence prosecution, investigation commission, pardon and parole collegium.

e) has preserved the rights of the states to establish special courts by two or more states to prosecute for commission of offences over which each of the states has the right to exercise its Jurisdiction in accordance with the general standards of international law (Art 49).

f) has worked out propositions concerning the rights and duties of all the parties to the trial as well as of the bodies involved in it (Arts 28, 29, 30, 31, 37, 46, 47).

The list of international offences which fall within the Jurisdiction of the International court does not create a clear picture of the scope of the courts activities.

The third International conference on International penal law was held under the auspices of the Foundation at Dacca (Bangladesh) late in December 1974. Besides, representatives of the foundation have sponsored seminars in Abidjan (Ivory cost), baku (USSR), Ludwingsburg (West Germany), Brussels (Belgium) and Beverly hills (USA). The drafts of the documents elaborated there are an attempt at reflecting the basic world legal system.

The fourth conference of the Foundation for the establishment of an international criminal court met at san jaun (Puerto Rio) in January 1976. The draft worked out at the conference contained some new provisions compared with the previous ones. In particular, Art 1 establishes responsibility for the commission of offences enumerated in art 2 not only of natural persons but also
of corporations, associations and other commercial, industrial and financial organisations. It should be considered positive that the conference included into the list of offences falling within the convention not only the international legal offences codified by the conventions in force but also the offences formulated in a number of UN General Assembly resolutions.

In particular, paragraph 3 of Art. 2 contains the following formulation.

Acts falling within the scope of criminal sanction have been identified in the following UN General Assembly resolution:

a) Resolution on the formulation of the Nuremberg Principles of 1950.

b) Resolution on respect for Human Rights in armed conflict.


d) Resolution on the definition of ‘Aggression’, 1974. An important point is the application of the functional principle in granting protection to persons kidnapped and smuggled across the national border (Government of public activity).

A basically new thing is the inclusion in the draft convention of the corpora delicti of the offences against the economy of a state, establishment of responsibility for external intervention in the affairs of a state with a view to establishing control or undermining its economy for affecting on heavily damaging the economy of a state through a boycott, a blockade or embargo as well as for bribery of other forms of corruption eroding the probity of national leadership.

Besides, there is a provision for responsibility for abuse of human and national resources of a state. These conventions are obviously antimonopolistic. The insertion of such points indicates further progress on the way towards a more democratic approach to the problem of the establishment of an International criminal Court.

Under the draft convention, the nations are obliged to take necessary steps,
in accordance with their national legal systems, to fulfil their obligations arising from their membership in the conventions.

Compared with the previous drafts this one provides for responsibility for action directed, by and large against the sovereignty of a state, its political and economic system and its culture.

The draft establishes responsibility for a breach of economic sanctions adopted by the security council and which is particularly important establishes responsibility for actions obstructing the exercise of the right to self determination of nations under colonial or apartheid rule.12

In May 26-31, 1977, an international conference of experts on international criminal law and Jurisdiction and major violations of international law was held in Boston (USA). It was attended by representatives of 30 countries. The object of the conference was to work out provisional mechanism of investigation and possible prosecution for the commission of such dangerous offences as blowing up civil airlines, assassinations and other inhuman acts falling within the scope in international law.

The conference discussed the draft code and statute of the court proposed by the International law commission and the commission of International Criminal law of the International Foundation for the establishment of an international criminal court. The most important task was that of working out the mechanism that could easily be used given the wish of the parties concerned and which could besides, assure an impartial settlement of disputes arising in the course of adjudication of cases.

As compared with the draft documents drawn up by the proceeding conferences of the foundation, the draft of this conference contained several new elements, notably the offences falling within the draft convention, included the use of mercenaries against national liberation movements in battle for freedom and independence from the yoke of colonialism and foreign domination, as well as service as mercenaries against national liberation movement.
It should be noted that this draft convention has been better elaborated and structurally more perfect than the previous foundation documents of this kind. The draft also reflects the recent shift towards a more democratic development of international law.

One document of interest for this study is the draft international criminal code prepared by well known lawyer, cherif Bassiouni, secretary, general of the International Association of penal law. Dean, International Institute of Higher studies in Criminal Sciences. The draft was discussed at the international. Institute of Higher Studies in Criminal Sciences at Siracuse from December 1977 till May 1979. In July 1979 the draft was committed to the UN. The structure of the code provides for its alternative application, its first version may be used by the International criminal court, and the second one, as a code of international offences set forth in appropriate conventions imposing obligations on the contracting states and put into force through national systems of criminal law.

The first version presupposes the existence of an International Criminal Court and an appropriate setup for the administration of Justice indispensable to any system of criminal law. For this purpose the draft code incorporation a general part. The second version drops the general part, having a "special part" as its central piece which specifies the range and corpa delicti of international offences.

Both the first and second version necessitate a "special part" and procedural mechanism for the enforcement of international criminal law which in the first case is included in the "General part" and in the second, is the "Enforcement part". The draft code contains a fourth section called "General Treaty provisions", proceeding from the assumption that both versions under consideration will take on the form of a multilateral convention under any circumstances. In drawing up the general part, the author of the code based his work on a unitary integrated structure, striving to link the conceptions of common and civil law and also take into account the conceptions and the approach of socialist law to the problem of international criminal law to the extent they have found reflection in contractual practice and customs of international law. Such an approach to drafting the
"general part" of the code was promoted by a desire to set up a Universal International criminal court.

The draft code divides international offences into four main groups.

Category (1) Covers acts regarded as international offences under the existing international conventions. aggression; war crimes, unlawful use of weapons; genocide, crimes against humanity; apartheid; slavery and related crimes; torture (as a war crime), unlawful medical experimentation (as a war crime), piracy, crimes relating to international air communication threat and use of force against internationally protected persons taking of civilian hostages, unlawful use of the mails, drug offences, falsification and counterfeiting, theft of national archaeological treasures (intime of war), interference with underwater cables, International traffic in obscene publications. category (II) includes international offences which in the conclusion of international conventions within the UN framework. These comprises use of torture. Category (III) comprises the delicts the prohibition of which is the object of certain international conventions, however, these offences are not regarded as international the use of torture (as a human rights violation); unlawful medical experimentation (as a human rights violation), theft of national and archeological treasures (intime of peace). And finally, category (IV) includes the offences which are an object of attention in present day international law concerning which international conventions are expected to be concluded.

The chapter "Enforcement part" considers article by article, various questions of International cooperation the application of the principle of aute dedere aute Judicare, measures by states forces to the application of the code, problems of Jurisdiction in connection with the enforcement of the code, regulation of extradition, Judicial assistance and recognition of foreign penal Judgements. This chapter defines the procedure for committing a defendant to a foreign state for the execution of a sentence, as well as the rights of the person involved in the trial in connection with the enforcement of the code and establishes legal costs and the procedure of its payment. The chapter entitled "general treaty
provisions"formulates, article by article, the procedure for settling disputes, making reservations signing of or acceding to the convention, ratification, entry into force, review of the provision of the convention, and notification of states parties, indicates the official languages of the convention and defines the procedure for transmittal of the copies of intruments of ratification of the convention to the state parties.

The drafts putting terrorist acts under the Jurisdiction of International criminal court have objectively qualified the offences under consideration as crimes of an international character, since the states parties to the conventions were either to prosecute the defendant in the manner prescribed by national law or commit him for trial to the International criminal court, which meant mixing up the principle of aute dedere aute Judicare- the principle of conventionary cooperation- with the necessity of prosecution for the commission of offences by the International criminal court.

The mixed character of the Jurisdiction of the International Criminal Courts the drafts of which have been reviewed above will become all the more obvious if compared with the activities of the International Military Tribunal established to try and punish the major war criminals of the Axis power.13

1) The Jurisdiction embracing the offences against peace, war crimes, and offences against humanity (Art-6)

2) The Tribunal formed of representatives of the victor powers which had defeated the fascist Axis powers in world war II.

3) The tribunal became an organ of international Justice.

Having put to trial individuals who had committed grave international crimes comprising the following international elements, the crimes had been perpetrated as part and parcel of the polices of the Axis powers, that were extremely dangerous for all humanity, the crimes were committed on the territory of one or several states; perpetration of crimes by foreign natural persons or persons having foreign accomplices, crimes were committed against the property of a
foreign national of Judicial person or state.

Terrorist acts which due to their corpa delicti fall within the category of International crimes as well as. For example, assassianation of a representative of a racial group to produce a state of terror among the members of that group is bound to be qualified as an international crime under Art 11 of 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid and consequently may be tried by an International criminal court. It is necessary to note, that at present selective Jurisdiction is applied to persons guilty of international crimes, as there is no International criminal court in existence and the nations are anxious to secure inescapable punishment for international crimes. For instance, Art V of the 1973. International convention says that person charged with having committed actions mentioned in Art II of the given convention may be brought before a competent court of any state party to the convention which may have Jurisdiction over the contracting states which will have accepted its Jurisdiction.  

The Jurisdiction of the International criminal court over offences of an International character including terrorist acts, may be resorted to whenever the mechanism of the relevent conventions has failed to work within a specified time limit. In such a case, the international criminal court might act also as a conciliatory commission or a court of conciliation between nations with regard to the principle of inescapable punishment.

To sum up the extent of cooperation taking place between the nations in the prevention and punishment of terrorist acts falling within the scope of International law has been ascending from the methods of unification through the conventionary mechanism to the establishment of an international criminal court.

From the standpoint of inescapable punishment, this cooperation takes place in the event of

a) Unification through the acceptance by national legislation of terrorist acts
subject to unification,

b) the conventionary mechanism—through the unification of the corpus delicti of a terrorist act in national legislations and qualification of such acts as criminal offences for the purposes of extradition, with prosecution to be based on the principle of atri dedere atri judicare, which means try or extradite to the other state.”

c) The establishment of an International criminal court through the application of the conventionary mechanism, where this principle means try the accused yourself, or extradite him for prosecution to the International criminal court.

The latter circumstance only provides an alternative procedure of prosecution within the framework of international criminal Jurisdiction which in this case, will be of an optional character.

The conventionary mechanism of cooperation is the optional method of legal cooperation of states for purposes of prevention and punishment of international terrorist acts. This is due to the effect produced by the application of the basic principles of the conventionary mechanism to the prosecution and punishment for the offences which have this particular corpus delicti and are socially dangerous in this particular way.

In the thirty second session of UN General Assembly once more directed its attentions to the imperative necessary of action to suppress terrorism. UN has done and can yet do much towards working out a system of international acts promoting and ensuring the cooperation of states in the suppression of international terrorism.15

There were more flare-ups of terrorism in various capitalist countries in 1980 and 1981 and everywhere “right and left” terrorism could be seen overlapping and as a matter of fact, uniting against democracy and social progress with the wave of terrorist acts sweeping across the world, reactionary elements in western countries are seeking to put the blame for it on the communists, going as far as to accuse the communist movement of organising
The end of cold war marked a spectacular change in the world order. This led to better cooperation among the states in tackling common problems. Trade, tourism, communication and relations in general, on the whole have increased. There has been a growing awareness among the states that as a matter of practical necessity there has to be a greater cooperation in the utilisation of resources, in maintaining peace and security and cooperation in other fields.

INTERNATIONALISATION OF CRIMINAL JUSTICE SYSTEM

For a long time the idea of internationalising penal law has been the work of legal academic in a pursuit of peace and security of mankind. To reflect the idea in the project of an "International Penal Code" initiated at the end of 19th century, is still unfinished after a century. This was started with the Nuremberg and Tokyo trials against world war II criminals and is continued with the persistent work of small crime prevention and criminal Justice programme of the United Nations. An eminent International law professor observed in this regard that truly in the present state of world society international criminal law does not exist particularly in its applicability to the world powers seems to be contradiction in terms. The simple reason is that it presuppose an international authority which is superior to these states. In reality, any attempt to enforce an international code against either soviet union Russia or United states would be a war under another name.

We are witnessing a theoretically convincing arguments among the states over the past few years in the penal field for the establishment of transnational or international jurisdictional mechanism to deal with international crimes including international mafias and international terrorism. A few prominent demand indicates the trend of the international society.

Demand for global crime control means put forward by governments.

Parallel demands for an end to "impunity" usually advanced by human rights NGOs with respect to gross human right violations. Attempts to harmonise national penal laws through international conventions on genocide, control of illegal drugs,
money laundering etc.

To stand with UN recommendations on standard “Minimum Rules” for prisoners, police, prosecutors, Judges etc and also relaying more on UN resolutions and declarations on international terrorism etc. Efforts made by some states to strengthen the cross boarder or Universal Jurisdiction of their national institutions.

The establishment by security council the two adhoc international criminal tribunals in case of yugoslavia and Ruanda.

The Rome statute for the establishment of International Criminal Courts.

From the above developments we can evaluate and for fruitful theoretical concept concentration is to be made on the increasing penal plularism of penal systems, polarisation and transnational enforcement problems to understand the realities in establishing the universal institution of penal laws.

The Internationalisation of penal provisions are faced with increasing penal Jurisdictional overlaping, Penal cultural polarisation and transnational enforcement problems. A brief consideration of these issues are essential in this context of institutions of penal law.

**Jurisdictional Pluralism overlaping**

Jurisdictional pluralism can be understood by reference to a few recent more or less spectacular international criminal cases.

I refer especially to the more or less successful attempts to bring to Criminal Justice, national leaders or ex-leaders like Norriege (Panama). Honecker (German Democratic Republic), Pinochet (Chile), Milosevic (Yugoslavia) and even scharon (Israel). In all these cases, the claim was that they had committed gross human right violations, for which they would never be tried in their own countries. In case of general pinochet, several countries (spain, Belgium, France and switzerland) tried to get him extradited from the United Kingdom. The UK government did not grant extradition ever after a long battle. meanwhile the authorities in chile have opened investigation against pinochet.16

In the famous Lockerbie case, for which a scottish court convened in the
Netherland to try the two Libyans accused of causing an air crash that killed 259 passengers and crew members as well as 11 residents of the Scottish village of Lockerbie.

In connection with the post-September 11 cases, the so-called Taliban held in Guantanamo including a young Turkish citizen, resident in Bremen, Germany, is still unclear regarding their trial. They may be end up in US military tribunals or in US regular courts. Other Countries could also claim jurisdiction and ask for extradition.

To focus the discussion of penal Jurisdictional pluralism to state as well as non-state terrorism, exclude the other international crimes like global crimes, other international economic crimes by the international mafias.

The discussion not primarily deal with the coexistence of the different formal and informal norms. The present dealing with a competition between the penal jurisdiction of different states and that of the emerging international penal institutions.

Due to the development of specialised international NGOs like Amnesty international, Human Rights Watch the phenomena of jurisdictional pluralism is rapidly gaining importance. Amnesty international published 14 principles on the effective exercise of Universal jurisdiction. In this document, states are urged to ensure that their courts can claim universal jurisdiction over genocide, crimes against humanity, war crimes, torture, extrajudicial execution and disappearances. Here we are really concentrating not on the jurisdiction of one over another rather the issue depends on whether or not we are dealing with substantively different legal penal cultures.

Penal Cultures

In this era of economic and informational Globalisation legal cultures of different states are converging. According to this notion, legal cultures over increasingly merging into one, more or less homogeneous modern legal culture. This view unlike in business law has a questionable application to criminal law. Interestingly the degree of adaptations and legal transplantation between common law and civil law "families" in vogue, have worked both ways without producing
any uniform result in penal laws. Differences in penal culture exist and persist quite independent of the classical legal families distinguished by their legal parameters. The idea of penal convergence is needed however neither empirically not politically.

In penal field there is more evidence for polarisation than for convergence. We can understand by considering the differences in punitivity to be found in different legal orders. Let us take just few instances of this phenomena.

Taking capital punishment as a punishment which is most obvious among others. There are countries that have abolished capital punishment dejure, others who have abandoned de facto and there are those who practice it more or less extensively. China is the leader in this respect. US & Iran follow to some extent. On the other hand members of the European Council have amended in 1983 the European convention on Human Rights with the goal to make Europe a death penalty free continent.

Similarly differentiation can be found in case of incarceration. While some states using this sanction in a relatively restrained fashion and there are many who follow it comparatively more.

If extradition is denied or could not be possible one alternative enforcement option is the illegal kidnapping of alleged offenders in the name of selfhelp. This has been done by Israel in case of German Nazi criminal Eichmann. Panama’s president Norriea was kidnapped by the United States. Turkey succeeded in abducting the leader of the radical kurdish liberation Movement ocalan. In all these cases criminal court proceedings followed as per the kidnapped state. The illegality of the arrest was not seen as a legal obstacle by the national courts and the accused were convicted.

Another way to deal the situation as an enemy attack rather than as a crime. This can be used as a Justification for war against any state seen as aiding and abetting the aggressor. War does not require the same kind of proof as an extradition procedure. The evidence is kept secret and presumption of guilt is taken instead of innocence. The concept or definition of war does not operate on the basis of individual guilt anyway. It assumes the whole populations of the
state to be enemies, irrespective of their individual guilt. Administrative efficiency given top priority rather than due process of law.

The concept of war had already entered the arena of law enforcement in a disturbing way, by using the word war not only with the state sovereignty but also attaching the word with the international crimes like "war on drugs" "War on crime" and "war on terrorism". It is disturbing since it implied that for certain areas of crime due process standards to follow were somehow less appropriate, when referred to september 11 attack on US in the context of International terrorism.

This amount to a clear regional polarisation, taken together, their penal cultures. A much more punitive penal culture prevails in USA than to European Countries. We can also find the difference in Penal Cultures in the Arab and Hindu Worlds.

The differences between western Europe and USA already began to cause problem in international legal Aid. Take for instance extradition decisions. In 1989 soering case European court of Human Rights stopped the United Kingdom from extraditing a murder suspect to the United states because of the likelihood of death penalty. The court ruled the death row syndrome constituted in itself inhuman treatment and therefore violates the European convention on Human Rights & Freedoms. Here the death penalty come in the way of Extradition.

From the European point of view reason to be content with the fact that truly a unified modern penal culture yet difficult, instead exist internationally a modicum of choice.

**Enforcement difficulties**

In the absence of transnational of International law enforcement mechanism for penal Justice system regarding the apprehension of suspects across national boarders, requires the cooperation of states in which the suspects reside. In peacetime this works quite well, on the basis of bilateral or multilateral extradition treaties. National Courts decide on basis of evidence about the offences allegedly committed. But these treaties include a number of obligatory or optional exceptions. Those are (i) No extradition for politically motivated offences. This
has been reduced by international treaties making the extradition obligatory in the case of skyjacking and other forms of international terrorism. (2) No extradition of one's own citizens (3) No extradition in the likelihood of cruel or inhuman punishment. (4) No extradition in the case of immunity of heads of governments.

Problems of penal institutions

For some years all over the world National Penal Institutions have been in a constant crisis. This has manifested in many ways as follows.

i) Less effective with respect to both reducing crime or rehabilitating the offenders.

ii) Socially selective criminal courts continue to process the poorest least educated parts of the national populations.

iii) Uncivilised, inhuman living conditions in that the penal institutions typically offer living conditions well below those considered acceptable outside.

The recent trend of Penal internationalisation could bring indirectly new legitimacy to those time worn delegitimised penal institutions.

1. International Humanrights NGOs traditional foes of prisons, are rallying around to new international penal institutions because they serve the cause of reducing poor standards of living of the inmates as the gross violation of human rights.

2. Many liberal reformative critics of punishment and prisons are now relaying more on the notion of internationalisation or more common criminal Justice system may outrightly reduce the chances of war.

Another new type of crisis emerging with the new international institutions. The critics of the International criminal Tribunal yugoslavia decried with the fact that the prosecutors in the Haque while prosecuting the war crimes of the serbians neither have authority nor intention to investigate possible war crimes of the NATO forces. As the tribunal is a creature of the security council and risks being disbanded whenever it should get out of line. This became more clear when an Independent International criminal court was established. There is a tug of war between USA and the organisers of the criminal court. The ICC is seen as a danger by the USA as it is not dependent for its existance on the decisions
To mention a Weberian analysis, the globalisation of the economy will have to be followed by the globalisation of some sort of global protective power with definite legal institutions. International criminal justice suffers from considerable enforcement problems. In today’s unipolar world, one superpower vis-a-vis all other sovereign political organisations is relegated to the status of semi autonomous body.

**International Criminal Court**

The International Criminal Court, commonly referred as ICC is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and the crime of aggression. The court came into being on 1st July 2002 the date of its founding treaty. The Rome statute of International Criminal Court entered into force on the same day. The court can only prosecute the crimes on or after that date. The court officials seat is in the Hague, Netherlands but the proceeding may take place anywhere suitable for the purpose.

The contemplation for international criminal Jurisdiction has started one century before by the international community. The movement accelerated towards the development of a system complementary to that of domestic courts. Considering the horrific nature of the crimes committed against civilians and allied combatants particularly the masskillings of Jews and other minorities there was a public support all over the world for the trials of the criminals, despite reservation by some countries during the second world war. Unlike the other wars almost half of the victims of the world war II were civilians. On humanitarian ground in August 1949 the international community actively supported extending the scope of International Humantarian law through treaty law to cover civilians more effectively.\(^{18}\)

The victorious powers of the second world war established two tribunals for the trial and punishment of individuals of defeated states. The Nuremberg and the Tokyo war crimes Tribunal represented a watershed in the process
towards an effective criminal law regime. The remarkable contribution of these trials was shaking the foundation of state sovereignty as a shield against crimes in international law. Piercing the veil of state entity nuremberg tribunal observed “Crimes against international law are committed by men, not by abstract entities and only by punishing individuals who commit such crimes can the provisions of international law be enforced”

The international military tribunal at Nuremberg was the first instance in modern international law where individuals were made accountable for international crime. This principle of accountability evolved by the tribunal endorsed by the General Assembly of United Nations in 1946 (G.A. Resolution 95(i)). Later on observed atrocities and grave violations of international humanitarian law for the territory of Yugoslavia the security council of United Nations established an adhoc criminal tribunal by deriving its authority from chapter VII of the charter. The tribunal for Yugoslavia was established in 1993 (Resolution 808 of 22nd February 1993). A similar tribunal was established for Rwanda in 1994 (Resolution 955 of 8th November 1994)

The armed conflict in the Balkans led the UN to setup an international criminal tribunal in the Hague, to try those accused of war crimes, genocide and crime against humanity. Most famous among the accused was the former president of Yugoslavia Slobodan Milosevic. Since than special courts have been set up to prosecute domestic and international crimes. Examples of such mixed tribunals are East Timor, Herzegovina, Bosnia, Kosovo, Cambodia and Lebanon.

These international mixed criminal tribunals contribute to the development of the distinction between international humanitarian law and human rights law.

The international community through Rome’s statute established ICC as a permanent institution having the power to exercise its jurisdiction over persons for the most serious crimes of international concern. This court is complementary to national criminal Jurisdiction. As on December 2011, 120 states are parties to the statute of the court. The court can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party or a situation is referred to the court
by United Nations Security council. The court can exercise its jurisdiction only when national courts are unwilling or unable to prosecute or investigate such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states.

To date the court has opened investigation into seven situations out of which three were referred to the court by the state parties. (Uganda and Democratic republic of Congo) and two were referred by the United Nation’s Security Council (Darfur and Libya) and two were begun proprio motu by the prosecutor (Kenya and Cote d’ Ivoire).\(^{19}\)

It publicly indicated 27 people proceeding against 24 of whom are ongoing. The ICC has issued arrest warrants for 18 individuals and summons to nine others. Six individuals are in custody and are being tried while eight individuals remain at large as fugitives.

Article 5 of the Rome Statute grants the court jurisdiction over four groups of crime, which it refers as most henious crime i.e. the crime of genocide, crime against humanity, war crimes and the crimes of aggression. Many state wanted to add terrorism and drug trafficking to the list of crimes covered by the Rome statute. However the states were unable to agree on a definition for terrorism and it was decided not to include drug trafficking as this might over whelm the court’s limited resources. During the negotiations that led to Rome statute, large number of states argued that the court should be allowed to exercise Universal Jurisdiction. The proposal was defeated due in large part to opposition from the United States. The Court was allowed to exercise Jurisdiction only under the limited circumstances. Such as (1) where the person accused of committing a crime is a national of a state party or where the person’s state has accepted the jurisdiction of the court (2) where the alleged crime was committed on the territory of a state party or where the state on whose territory the crime was committed has accepted the jurisdiction of the court (3) where the situation is referred to the court by the UN security council.

The court’s Jurisdiction does not apply retroactively. It can only prosecute crimes committed on or after 1st July 2002, the date on which Rome statute
entered into force. Where as state becomes party to the Rome statute after that date, the court can exercise jurisdiction automatically with respect to crimes committed after the statute came into force for that state.

The ICC is intended as a court of last resort investigating and prosecuting only where national courts have failed. The statute of the court provides that a case is inadmissible if (a) the case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable genuinely to carry out the investigation of prosecution. (b) The case has been investigated by a state which has jurisdiction over it and the state has decided not to prosecute the person concerned unless the decision resulted from the unwillingness or inability of the state genuinely to prosecute.

The ICC is governed by an Assembly of states parties. The states parties can not interfere with the Judicial functions of the court. The Judicial division consists of the 18 Judges of the courts, organized into three Chambers- the pre-trial chamber, Trial chamber and Appeals chamber. The judges must be persons of high moral character, impartiality and integrity required in their respective states for appointment to the highest Judicial offices. No two judges may be nationals of the same state.

The ICC does not have its own witness protection program, but rely on national programs to keep witnesses safe.

Co-operation by states not party to Rome statute one of the principles of international law is that a treaty does not create either obligations or rights for third states without their consent. This is also mentioned in the 1969 vienna convention on the law of treaties. The cooperation of the nonparty states with ICC is envisioned by the Rome statute of the International Criminal Court to be of voluntary nature. Even states that have not acceded to the Rome Statute might still be subject to an obligation to co-operate with ICC in certain cases. When a case is referred to the ICC by the UN security council all UN member states are obliged to co-operate since its decisions are binding for all of them. There is also an obligation to respect and ensure respect for international humanitarian law which stems from the Geneva conventions and additional protocol which
reflects the absolute nature of IHL. It has been argued that at least non party states requires to make an effort not to block actions of ICC in response to serious violation of those conventions. For investigation and evidence gathering it is implied from Rome statute that the consent of a non party state is a prerequisite for ICC prosecutor within its territory. It is also necessary for the prosecutor to observe any reasonable conditions raised by that state. In case the non party state refuse to cooperate ICC can inform Assembly of States of ICC or security council of United Nations. Amnesties and national reconciliation processes are another avenue to end conflict by granting amnesty to human right abusers by making an agreement with ICC. Article 16 of the statute empowers the security council to prevent the court not to prosecute or investigate a case.²⁰

Criticising the ICC Czech politician Marek Benda argues that the court as a deterrent will only mean the worst dictators will try to retain power at all costs.

Unlike the International Court of Justice the ICC is legally and functionally independent from the United Nations. The court cooperates with the UN in many different areas including exchange of information and logistic support. The relationship between the court and the UN is governed by a “Relationship Agreement” between the International Criminal Court and the United Nations.

In the recent days there is a proliferation of International human rights and humanitarian activities. In the quests to find a way to punish international crimes the role of activists became important like the legal experts. Non Governmental Organisations have played crucial role to the evolution of the ICC, particularly the Amnesty International. The NGO’s of the International character created the normative climate and urged states to consider for strengthening the court and advocated for statute’s ratification and for the passage of domestic legislation globally. The ICC depends on NGOs for information, interaction with local population. The NGOs are also “Source of criticism, exhortation and pressure upon the ICC, and push for expansion of its activities.

Extradition

Each state exercise complete jurisdiction over all the persons within its
Difficulty arises when a person after committing crime runs away to another country. For the preservation of international peace and order there is a need of international co-operation among the states. In order to punish the criminal the principle of extradition has been recognised. In the absence of any general convention on extradition, it mostly depends upon bilateral treaties. For the administration of justice and maintenance of law and order and inability of a state to exercise its jurisdiction within the territory of another state cooperation is required among the states to punish the accused person. Extradition is the delivery of an accused or a convicted individual to the state on whose territory he is alleged to have committed or to have been convicted of a crime or by a state on whose territory the alleged criminal happens to be for the time being.

There is no general duty of states in respect of extradition of criminals to a foreign state. This is due to principle of sovereignty in international law. Every state has authority over the people within its borders. In the absence of any obligation to surrender an alleged criminal to a foreign state and the right to demand such criminals have caused a web of extradition agreements to evolve.

Most of the countries in the world have signed bilateral extradition treaties with most other countries. No single country also has extradition treaty with all other countries. Extradition is the official process that involves the two states to pursue the matter between the territorial state and the requesting state. The system of extradition depends on the adhoc process of bilateral or multilateral treaties. The extradition treaty should be interpreted liberally to give effect to the purpose of the states to achieve the surrender of fugitive criminals for trial in the requesting state. Due to this pitfalls terrorist flee only to such states where extradition treaty is absent between the states. A limitation has been imposed on this rule by a few conventions.

Limitations: In pursuing the official process for extradition countries decide the conditions under which they may entertain or refuse extradition requests. Different countries have different approaches to extradition depending on the domestic law. Differences are required to be addressed with regard to extradition
for an uniform practice. The main exceptions to the process of Extradition are (i) Political offenders and (ii) nationality. The civil law countries do not allow extradition on the ground of “extensive extra-territorial jurisdiction on the nationality principles”. The state fails to extradite a person charged with an offence of terrorism because of technicalities of law and intend to prosecute the offender by its competent authority. The other exception is the liberal construction of the word “Political offenders”. Certain limitation has been imposed by few international convention to curb the specific form of terrorism. The Hague Convention of 1970 made the provision that the offence committed under the convention is to be treated as an extraditable offence even in the absence of extradition treaty among the states parties to the convention and such offences shall not be treated as a political motive or purpose.

Similarly Montreal Convention of 1971 has also submitted that the states should extradite the persons charged for the offence of terrorism irrespective to their other acts. Such provisions creates fear of conviction in the minds of terrorists which is helpful to eliminate terrorism.

The other common bars for extradition are (i) failure to fulfill dual criminality (ii) Possibility of certain forms of punishment (iii) Jurisdiction (iv) Citizenship of a person in question.

Generally the act of crime for which extradition is sought must constitute a crime with penalty in both the requesting and the requested parties. Many countries like Australia, Canada, Mexico and most of the European Nations will not extradite it death penalty is likely to be imposed on the suspected, Unless they are assured that the death sentence will not be passed. In case of soering v United kingdom the European Court of Human Rights held that it would violate article 3 of the European Convention on Human rights to extradite a person to the United States from the United Kingdom in a capital case. The members of the European convention also can not extradite people where they would be considerable apprehension of being tortured inhumanly.

Some time jurisdiction over a crime can be ground to refuse extradition. In case the person in question is a Nation's own citizen causes that country to
have jurisdiction for the trial of the case. Some states refuse to extradite their own citizen who may facing trials for the person’s themselves. The countries like France, Germany, Russian Federation, Austria, China, Taiwan, Japan forbid extradition of their own citizens either by law or by treaty. Such restriction create controversial situation. If a French National Commits a crime abroad and then returns to their home country to avoid prosecution. These countries frequently have laws in place that give them jurisdiction over crimes committed abroad by or against citizens.

The Federal structure of some countries like United States pose particular problems with respect to extraditions when the police power and the power of foreign relations are held at different levels. Most of the criminal cases in USA prosecution occur at the state level and most foreign relations occurs on the Federal level. Foreign Sovereign Countries can not have official treaty with subnational units as the individual states. Due to constraints of federalism any condition on extradition accepted by the Federal government such as not to impose death penalty are not binding on the individual states.

Similarly taking a flight in the United States subjects to federal law as all airports are considered subject to federal jurisdiction.

**International Controversies On Extradition**

When one country refuses to extradite the suspects or a criminal to another Country their relationship reaches to strained situation. Many questions involving the process of extradition are complex, particularly the democratic country with rule of law. In such cases final decision to extradite lies with the national executive (Prime Minister or President). Due to pressure from opposition and journalist these may significantly slow down procedures which led to unwarranted international difficulties.

Issues of international law relating to extradition have proven controversial where a state has abducted and removed an individual from the territory of another, state without previously requesting permission or following normal extradition procedure. This type abduction is a violation of the domestic law of the country in which they occur. Also a violation of international law. Such type
"Extraordinary rendition" is an extrajudicial procedure and policy of the United States in which criminal suspects or terrorists or supporters of terrorist organisations are sent to other countries for imprisonment interrogation. The procedure for this differs from extradition as the purpose of the rendition is to extract information from the suspected terrorist. The purpose extradition is used to return fugitive so that they can stand trial or fulfill their sentence.

The extradition of a fugitive from India to a foreign country or vice-versa is governed by the provisions of Indian Extradition Act 1962. The basis of extradition could be a treaty between India and a foreign country. The information regarding fugitive criminals wanted by foreign countries is received directly through their diplomatic missions or through the Secretariat of the ICPO-Interpol in the form of red notices. The Interpol wing of Central Bureau of Investigation passes it to the concerned police organisations.

In this connection action can be taken under the Indian Extradition Act Article 3 (b) 1962, regarding the arrest and extradition of fugitive criminals under certain conditions, through competent magistrates. The provisions of Sec. 41 (I) g of the Cr. P.C. 1973 authorizes police to arrest a fugitive criminal without a warrant and immediately inform Interpol wing of CBI for onward transmission to the

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<th>Year</th>
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<tr>
<td>1950</td>
<td>Morton Sobell</td>
<td>Mexico</td>
<td>United States</td>
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<tr>
<td>1960</td>
<td>Adolf Eichmann</td>
<td>Argentina</td>
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<td>1967</td>
<td>Isang Yun</td>
<td>West Germany</td>
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<td>1986</td>
<td>Mordechai Varnunu</td>
<td>Italy</td>
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<td>Humber to Alvaren Machain</td>
<td>Mexico</td>
<td>United States</td>
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<td>1997</td>
<td>Mir Aimal Kansi</td>
<td>Pakistan</td>
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<td>1999</td>
<td>Abdullah Ocalan</td>
<td>Kenya</td>
<td>United States</td>
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<tr>
<td>2002</td>
<td>Martin Mubanga</td>
<td>Zambia</td>
<td>Turkey, USA</td>
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<tr>
<td>2004</td>
<td>Khaled El-Masri</td>
<td>Macedonia</td>
<td>Guantanamo Bay</td>
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<tr>
<td>2005</td>
<td>Hasna Mustufa</td>
<td>Italy</td>
<td>USA, Egypt</td>
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<tr>
<td>2009</td>
<td>Camilla Broe</td>
<td>Denmark</td>
<td>USA</td>
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<tr>
<td>2011</td>
<td>Dirar Abu Sessi</td>
<td>Ukraine</td>
<td>Israel</td>
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Government of India for taking decision on Extradition. An Indian fugitive Criminal can be tried under section 188 of Cr. P.C. with the previous sanction of the Central Government.

Terror Free Regime under International Humanitarian Law
Prohibition of Terrorist Acts in International Humanitarian Law.

The new world Human order is as yet a nascent system grappling with war, violence, proliferating terrorism and traumatic inflictions on innocent civilians. History bears witness to massacres without mercy and mass suffering consequent on lawless attacks on the wounded soliders and victimisation of women and children during armed conflicts when nation attacks nation on ethnic, tribal or religious group indulge in ‘cleansing operations’ on an internecine scale. peace and security and faith in fundamental human rights have been the growing hunger of human species from the dawn of history.

The laws of war were extant in ancient India when the epic wars were fought involving large armies and directed by great warriors heroes like Rama and krishana. The most glorious instance of Emperor Ashok, who won the kalingwar (225 BC) but, at the sight of slaughter in battle, renounced violence for ever as a Buddist ruler shrines as a beacon light of humanatian regime. “To exist is to Co-exist” is the quintessence of global Jurisprudence.

Today humanity is threatened by wars, armed conflict, confrontations and power struggles lead to problems of varied dimensions. Sociolegal economical political and humanatian. The impact of armed conflicts on the human race is of such a magnitude that it demands timely action by government organisations and individuals. This calls for an effective legal and institutional response to the humanatian challenges facing out time. It is necessary now, more than ever, to draw the attention of the international community to the untold sufferings of the victims of armed conflicts, and violence victims of Terrorism.

International humanatian law is a branch of the law of nations, or international law- also called as law of armed conflict and previously known as the law of
war is a special branch of law governing situations of armed conflict in a word, war.

Here to deal with the provisions of contemporary international humanitarian law which prohibit “terrorist acts” commonly referred as terrorism. The most worth noting is in highlighting one specific aspect of the well-known obligations and prohibitions set forth in the Geneva conventions and their additional protocols—namely the absolute and unconditional ban on terrorism by which the objective will be attained.

First of all it is necessary to clarify once more the meaning of various terms particularly about the ratification of the Additional Protocols of 1977 have of late produced some strange pronouncements, such as: “Rights for terrorists- a 1997 treaty would grant them”, “law in the service of terrorism”, protocol I as a charter for terrorism.”

The term “armed Conflict” as defined in International law covers any conflict, between states or within a state, which is characterized by open violence and action by armed forces.23

International or internal situations which do not bear the essential characteristics of armed conflict although marked by collective violence, consequently do not come within the range of this analysis- in particular, situations of internal strife, riots and violent repression, which are not covered by the humanitarian law instruments.

The terrorist acts committed in situations of armed conflict fall within the scope of application of international humanitarian law. Terrorism in “peacetime”, that is in situations which can not be classified as armed conflicts, is not covered by international humanitarian law which, in such situations, is quite simply not applicable.

Terrorism is a social phenomenon with far too many variables to permit a simple and practical definition. There seems to be no consensus among legal authors and other experts on its meaning and consequences.

The various international conventions adopted over last 60 years are all
limited to some specific aspects of terrorism and therefore they are of partial help in a search for a comprehensive programme on combating terrorism.

**Prohibition of Terrorist Acts in Wartime.**

Terrorist acts committed in wartime have a different legal connotation, violence carried to its extreme is inherent in war, it also inherent in terrorism. This raises the question of the distinction to be made between two different types of violence, "Lawful violence" in armed conflicts governed by the laws of war as opposed to "illicit violence" which includes violence unlawfully.

The first criterion relates to the states of the person committing violence members of the armed forces of a party to an armed conflict have a right to participate directly in hostilities. No other persons have that right. Should they nevertheless resort to violence, they breach law. Their deeds may constitute acts of terrorism.

The rule is clear and is not likely to raise any significant problems in international armed conflicts. Difficulties arise in situations of non-international armed conflicts and wars of national liberation.

The second criterion is derived from the rules governing the protection of specific categories of persons and rules on methods and means of warfare in armed conflicts, to be lawful, the use of violence in warfare must respect the restrictions imposed by the law of war. Consequently even members of the armed forces legitimately entitled to the use of violence may become terrorist if they violate the laws of war.

In practice it is not always easy to make a distinction between terrorist violence and legitimate acts of war. The study reached to the point we must examine the existing law applicable in armed conflict with respect to the prohibition of terrorist acts: The main sources are the four Geneva Conventions of 12 August 1949 relating to the protection of victims of armed conflicts, and their two Additional protocols of 8 June 1977. Although only approximately one third of International community has ratified the 1977 protocols to date (February 1986), for the purpose of this analysis they will never the less be deemed to have the force of law for the community of nations.24
The fundamental principles of international law recognised in the charter of Nuremberg Tribunal (the Nuremberg Principles) must also be taken into consideration, since they too deal with terrorist acts in times of peace and of war and declare them to be international crimes. Ban on Terrorism under the law applicable in International armed conflicts.

The main body of international humanitarian law applies to international armed conflicts, which are hostilities between states. Since 1977 for states party to protocol I – the term “international armed conflict” also covers armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination” (Article-1 Para 4, Protocol 1)

The humanitarian conventions are two categories (1) Rules which restrict methods and means of warfare (2) Rules for the protection of persons in the power of the adversary against arbitrary acts and violence.

The rules or set of rules concerns methods and means of warfare referred as the “law of the hague”– innovative Article 51, para 2 of protocol I is particularly noteworthy. The general reminder of the obligation to protect the civilian population against dangers arising from the military operations, paragraph 2 stipulates” The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited”. This provision confirms that terrorism is not an authorized method of warfare.25

The first sentence in the second paragraph of the Article 51 lays down that attacks against the civilian population as such and against individual civilians are prohibited a clear and categorical prohibition covering most terrorist acts. The second sentence goes on the prohibit acts of violence the primary purpose of which is to spread terror among the civilian population. Such acts must not necessarily be directed against civilians. This means the intent to spread terror among the civilian population, even threats of violence intended to spread terror are prohibited.

The subjective factor of intent to spread terror among the civilian population
is always an indispensable element. The fact that any military operation or indeed any threat of military measures is bound to have a terrorising effect on unprotected civilian, eg. military operations against a legitimate objective in the immediate vicinity of a residential area, can not be eliminated. The remaining part is the international use of terror as a means of warfare.

It mean that in international armed conflict any recourse to terrorist methods of warfare is absolutely inadmissible. The prohibition set forth in Article 51 is not be circumvented by means of reprisals. By implication terrorist attacks against civilians causing death or serious injury are grave breaches under article 85 of protocol I and one to be regarded as war crimes.

Beyond all doubts, most victims of terrorist attacks are civilians. Cultural property, is also threatened by terrorism for the purposes of blackmail. Article 4 of the Hague convention of 14 May 1954 for the protection of cultural property in the event of armed conflict prohibits any act of hostiltity against protected property. It is not clear about the mere threat of destroying such property with purpose of terrorising the population is prohibited.

At this stage only to mention Article 56 of protocol I which prohibits attacks against works or installations containing dangerous forces (shch as dams, dykes and nuclear plants) of article 53 which protects cultural objects and place of workship.

There is, first and foremost the long standing legal principle according to which "the right of the parties to the conflict to choose methods and means of warfare is not unlimited" and "it is prohibited to employ weapons projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering" (Article 35, Protocol I).26

The practical applications of this general principle include for example the prohibition to use poisonous gases, the prohibition of perfidy (Art-37), the prohibition to refuse to give quarter (Art- 40) - a provision which is particularly relevant to our analysis, since the threat of random murder is a common enough feature of terrorist activity. Even in an armed conflict, members of the armed forces may not be threatened in such manner carrying out the threat would be prohibited
anyway by virtue of the provisions governing the protection of wounded and prisoners).

By virtue of First, Second and Third Geneva Conventions of 1949 members of the armed forces of an adverse party must be respected and protected as soon as they surrender or their resistance is overcome. Any attempt to their lives or violence to their persons, are strictly prohibited (First & Second conventions, Art 12, para 2), and they must be protected against acts of violence or intimidation (Third convention, Art 13, para 2). In this context, the restrictions relative to the questioning of prisoners spelt out in the Third Geneva Convention are of paramount importance: “Prisoners of war who refuse to answer many not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment of any kind (Art- 17 para 4). This provisions are tantamount to a comprehensive ban on acts of terrorism against overpowered enemies.

The fourth Geneva Convention, relative to the protection of civilian persons in time of war, is only Geneva convention of 1949 in which the term ‘terrorism" is explicitly used. Its article 33, one of the provisions common to the territories of the parties to the conflict and to occupied territories, stipulates that all measures of intimidation or of terrorism are prohibited'. This provision complements the general rule that belligerents shall threaten humanly the civilians of the adverse party who are in their power. No terrorist act can ever be justified in this context.

Under certain circumstances the violation of several of the aforementioned provisions governing the protection of the civilian population is a grave breach of the conventions or of protocol I and has to be repressed as such. Such acts of terrorism may therefore be war crimes. The alleged war criminals have to be brought to trial by the authority in whose power they are be, it a party to the conflict or be it any other state party to the Geneva conventions or to protocol 1 - unless the said authority prefers to extradite the alleged offender to another concerned state party. The far reaching obligation to prosecute or to extradite is a particular aspect of the humanitarian law instruments.

To observe, one can say that civilians in the power of the adverse party
to the conflict are protected against wanton acts of violence by an elaborate set of legal provisions. All these provisions are applicable totally and unconditionally under any circumstances whatsoever in particular they may not be circumvented by recourse to reprisals.

Interdiction of Terrorism in Non-International Armed Conflict

The provisions of international humanitarian law applicable in internal armed conflicts are far less detailed than those applicable in international conflicts. The situation with respect to terrorist acts in civil war still need great exploration.

To answer such we must start necessary proceed from Article 3 common to the four Geneva Conventions. In short and succinct wording it leaves absolutely no doubt as to the fact that, in internal armed conflicts too, terrorist acts of any kind against persons not taking part in the hostilities are absolutely prohibited.

To read the initial general rule that persons not or no longer taking an active part in the hostilities shall be treated humanely, the second paragraph of Article 3 prohibits, interalia, "violence to life and person in particular murder of all kinds, mutilation, cruel treatment and torture" and "the taking of hostages." Article 3 of the four Geneva conventions therefore leaves no latitude for terrorist acts against persons in the power of the adverse party to the conflict.

Article 4 of protocol II reaffirms the aforementioned prohibitions and in various respects extends and improves the system of protection. For the present purpose the express ban on terrorist acts in para 2 (d), is particularly noteworthy. This is the second time that the word "Terrorist" appears in a humanitarian treaty. The entirely new in protocol II (Compared with Article 3 of the conventions) is the introduction of provisions designed to protect civilians by influencing the very conduct of hostilities. In this respect, Article 14 entitled "Protection of the civilian population" is of paramount importance: paragraph 2 stipulates that "Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." This provision is identical to the prohibition of terrorist acts in international conflicts enunciated in Article 51, para 2, of protocol I.
The Section of the population protected under Article 3 of the Geneva Conventions and Article 4 of Protocol II is very comprehensive, since the law applicable in non-international armed conflicts makes no distinction between various categories of persons (Combatants, civilian population etc.).

Article 13 expressly prohibits terrorist acts against the civilian population. The prohibition of course applies to both sides, that is to governmental and dissident armed forces. Conversely only little protection is afforded to persons taking part in the hostilities on the government’s (usually members of the armed forces) or on the dissidents side.

Methods of warfare may be permissible which in peacetime would amount to terrorist acts. Some restrictions may result from general uncodified principles of law. Protocol II merely stipulates that it is prohibited to refuse to give quarter (Art 4, para 1).

As already observed, terrorist acts are subject to criminal prosecution by the competent state authorities in accordance with national law, though these should avoid prosecuting and convicting dissidents for terrorism merely on account of their participation in the conflict.

Similarly, in non-international armed conflicts too, any terrorist act whatsoever against civilians who take no active part in the hostilities is prohibited.

The outline of the international prohibitions on terrorism which are applicable in internal armed conflicts raises the question as to whom these prohibitions are addressed.

The Geneva Conventions, the 1977 additional protocols and for that matter, international public law in general are primarily addressed to states, States are bound (i) to refrain from resorting to terrorism and (2) to do everything in their power to prevent terrorist acts from being committed by individuals or in territory under their Justification.

This puts a direct obligation the persons who act on behalf of the state, including members of the armed forces, of the police and of similar organisation.

International humanitatin law does not put a direct obligation on individuals who do not in some way represent the state. But states are under an obligation
to enact pertinent domestic legislation to ensure respect for the rules of international public law.

In non-international conflicts, the approach is different since one party to the conflict does not qualify as a state. Common Article 3 and Protocol II nevertheless put a legal obligation on dissidents to all members of armed groups must heed the ban on terrorism. Commandants of dissident forces are under the obligation to enforce the prohibition and to repress violations by members of their organisations. Dissidents are liable as a group. Like government authorities, dissidents must take all necessary measures to prosecute and punish terrorist acts which are committed not only by members of their armed force but also by individuals acting on their own and living in territory under their control. By this it is clear that in civil war the dissident party too is conclusively bound by the ban on terrorism. This is very important since wars are particularly prone to breed terrorist acts.27

**The Special position of wars of National liberation**

The legal status granted to wars of national liberation by the First Additional protocol of 1977 calls for some observation in connection with this analysis. The new law is often misunderstood. Some claim that this innovation legitimizes terrorism. This erroneous conclusion to a certain extent due to some of the terminology used in anti-colonialist rhetoric. In particular to say that oppressed people are allowed to use any means to attain independence is liable to be misconstrued. That means, it does not mean that methods and means of combat banned under other circumstances are authorized in wars of national liberation.

If a mass of people is involved in a war of liberation against "Colonial domination and alien occupation and against racist regimes", that conflict, under the new law, qualified as an international armed conflict. This means that the entire code of international humanitarian law applicable to international conflicts enters into force, along with all its attendant rights and obligations.

The above analysis has established that the law of international armed conflicts is characterized by an elaborate set of prohibitions of terrorist acts. It
follows quite clearly that these prohibitions also apply into, to wars of national liberation. No other conclusion is tenable from a legal point of view. Anyone claiming that, with the adoption of Article I, para 4, of protocol I, the legal instruments for the fight against terrorism have become weaker, is misunderstood the new situation. The new law should be seen rather as an attempt to achieve stricter, humanity oriented control over wars of national liberation, such wars being, as experience shows, characterized by particularly severe outbreaks of violence.

**Status of Combatant under Provisions of protocol I**

Article 44 of Protocol I lays down new Conditions for combatant status in international armed conflicts. It is important to know whether Article 44 in any way weakens the ban on Terrorism and consequently encourages recourse to terrorist acts.

As read earlier, Article 44 modifies the conditions for a person to qualify as a legitimate combatant. The requirements have become less stringent in that by virtue of Article 44, some persons can now claim, under certain circumstances, the privileges accorded to combatants which they would not have been entitled to under the old law. Consequently, Article 44 had slightly enlarged the group of persons entitled to participate in hostilities.

Article 44 in no way modified the concomitant obligations of combatant status. Anyone entitled to engage in combat must abide by the rules of the law of war, including ban on terrorism. Under Article 43 and 44, no distinction is made between two categories of combatants, namely "regular combatants" bound by all the obligations of the law of war and guerrillas whom some consider partly absolved from those obligations. All combatants belong to the same class, all must abide by the same rules, and all are faced with the same consequences if they violate the law of war. They are liable to prosecution for violation of the law of war and under certain specified circumstances for war crimes. Therefore guerrilla fighters committing a terrorist act against civilians also have to face criminal proceedings. Article 44 does not condone disregard for traditional obligations under humanitarian law and it does not grant immunity against the
consequences of committing any terrorist act.

The recognition of certain aspects of guerrilla warfare by international humanitarian law could not lead to an increase in terrorist acts by combatants. It is established under the new law, the perpetrators of such acts and their instigators can now be called to account for their conduct in a different way, since they are now subject to the whole body of international humanitarian law. Both the article 1 para 4 and Article 44 are not meant to weaken the protection of civilians against terrorist acts but to correct situations considered inequitable and subject them to the jurisdiction of the law of international armed conflict since this body of law is endowed with strict and particularly well-developed regulations. Neither of the two provisions individually or jointly in any way undermines the ban on terrorist act. Guerrilla fighters engaged in a war of national liberation who unlawfully terrorise civilians are terrorists and must answer to their conduct.

Within the scope of International humanitarian law, terrorism and terrorist acts are prohibited under all circumstances, unconditionally and without exception. The authorities of the parties to the conflict and all states party to the humanitarian instruments are obliged to prosecute any alleged offender against the prohibition of terrorism.

The law of armed conflicts is particularly well developed and can provide guidance to the legal approach to terrorism in peacetime. Any act forbidden to combatants by the law of armed conflicts because it amounts to terrorism should equally be prohibited and prosecuted under the law applicable in peacetime regardless of the perpetrator.

The final observation made by the legal advisor to international committee of the red cross bears substantial practicability of International humanitarian law in context of International terrorism.

The question that has been raised is whether international law in general and international humanitarian law specifically, are adequate tools for dealing with the menace of terrorism. The international law if correctly applied, is one of the strongest tools that the community of nations has at its disposal in the efforts to reestablish international order and stability. To be very clear about is which
body of law is the right tool. It is the rules of the United Nations charter and not international humanitarian law, that regulate the use of force in international relations. The relevant provisions of the UN charter provide guidance on questions such as legitimate resort to force, the right to self defense and lawful responses to threats or breaches of international peace and security. It is the UN charter that allows the international community to pass political and other judgement on the use of force in international relations. International humanitarian law is quite essentially the body of rules that regulates the protection of person and conduct of hostilities, once an armed conflict has occurred. Its aim is to alleviate the suffering of individuals affected by war regardless of the underlying causes of Justification for the armed conflict. There is no just or unjust war in the eye international humanitarian law. In its dictionary only one category of persons, exists and are protect by its embodiment of rules. They protect people from murder, torture of rape, no matter which side they happen to belong to. Several bodies of law including national and international rules of criminal law are relevent in the struggle against terrorism. International humanitarian law is that body of rules applicable whenever the fight against terrorism amounts to or includes armed conflict. The norms of the humanitarian law were designed specifically for the exceptional situation of armed conflict. The experts of International humanitarian law crafted with well acknowledgement and were fully aware of the need to balance state security and the preservation of human life, health and dignity. That balance has always been at the very core of the laws of war.

UN Peacekeeping Doctrine

Brief historical overview of UN peacekeeping

With the inception of the United Nations in 1945 the idea of peacekeeping even though it was not spelt out in the UN charter, soon attracted much attention. In his "agenda for peace" Secretary General Boutrous Ghali for making peace recommended that (i) Creation of new category of UN forces- "Peace enforcement units" consists of trained volunteer troops (ii) Full participation of General Assembly in supporting efforts at mediation (iii) Greater reliance on the
international court for the peaceful adjudication of differences (iv) Armed force should be made available by member states to security council on a permanent basis to provide the UN with credibility as a guarantor of international security. According to him the nature of peacekeeping which evolved in the intervention of United Nations, as the international climate has changed. To help implement settlements negotiated by peace makers and to meet increasing demands the Secretary General recommended the following (i) The immediate establishment of a reserve fund (ii) Improved training of peacekeeping personnel (iii) Establishment of pre-positioned stock of basic peacekeeping equipments for immediate use by the U.N. when required.

The Security Council concluded on 28th May 1993, urging all states to make participation in the support for international peacekeeping a part of their foreign and national security policy. In its review the council said that UN peacekeeping operations should be conducted in accordance with operational principles consistent with U.N. Charter provisions and security council's decision. Also the council's readiness to take measures against parties which do not observe its decisions and the council's readiness to take measures against parties which do not observe its decisions. The council's claim right to authorize all means necessary for UN forces to carry out their mandate and the inherent right of U.N. forces to take measures for self defence. The council supported preventive deployment of UN peacekeeping forces on a case-by-case in the different zones of instability and potential crisis.

Traditional peacekeeping is based on the core principles of consent of the parties to an inter-state conflict and the neutrality of peacekeeping force and the limitation of use of force to self defence. The First UN peacekeeping mission installed in June 1948 to assist the mediator and truce commission in supervising the observance of the truce in Palestine in the name of UN Truce Supervision Organisation (UNTSO). It was followed by U.N. Military Observer Group in India and Pakistan (UNMOGIP) to supervise the ceasefire between India and Pakistan in the state of Jammu and Kashmir with 38 military observers.

The dynamics and root causes of conflict have changed in the post cold
war world and as a result the traditional pillars of peacekeeping lost weight in case of the genocide in Rwanda (1994) and Bosnia (1995). In response, the Brahimi Panel suggested recommendations for peacekeeping reform. The panel identified strategic proposal for upholding peacekeeping doctrine to arrive at clear, credible and achievable mandates.

In many occasion UN peace keeping operations has been conducted around the world at different time of need for the preservation of peace and harmony.

The Secretary General Boutrous Ghali emphasized on preventive diplomacy to avoid a crisis and conflicts. In order to foster confidence between parties he recommended post conflict peace building measures. He has suggested the setting up of a United Nations Rapid reactions force to act quickly in case of need and a united command for the United Nations peace keeping forces. Both these proposals were made on 6th January 1995, but both the proposals were rejected by America. America suspected that it was an attempt by secretary General to have more powers. America opposed to the assumption of more power by Secretary General. The Report of the Panel on United Nations Operations and analysis made on ground realities made from peace operation suggested the ditch area where careful approach is very much essential. Those are as follows

- Capability of mission and rules of engagement United Nation’s Peacekeeping must be above to carry out their mandates professionally and successfully and be capable of defending themselves, from other mission components and the missions’s mandate with robust rules of engagement against those who renege on their commitments to a peace accord or otherwise to undermine it by violence.
- Ensuring mission support.

The Security Council should leave in draft form resolutions authorizing missions with sizeable troop levels until such time as the secretary General has firm commitments of troops and other Critical Mission Support elements, including peace-building elements from member states.

- Preparedness for enforcement measures.

Security Council resolutuions should meet the requirements of peacekeep-
ing operations when they deploy into potentially dangerous situations especially the need for a clear chain of command and unity of effort.

- Feasibility of mandate

The panel recommends that before the security council agrees to implement a ceasefire or peace agreement with a United Nations-led peacekeeping operation, the council assure itself that the agreement meets threshold conditions such as consistency with international human rights standards and practicability of specified tasks and timelines.

- Intelligence

The secretariat must tell the security Council what it wants to know when formulating or changing mission mandates. Another important matter that the countries that have committed military units to an operation should have access to secretariat briefing to the council on matters affecting the safety and security of their personnel especially those meeting with implications for a mission's use of force.

In many occasions the followings are the UN peacekeeping operations around the world.30

1. UN Truce Supervision Organisation (UNTSO)- UNTSO was established in June 1948 to assist the mediator and the truce commission in supervising the observation of the truce in Palestine. UNTSO supervises the General Armistice Agreement of 1949 and the observance of ceasefire in the Suez Canal area and the Golan Heights which followed the Arab Israeli war in June 1967.

2. UN Military observer group in India and Pakistan (UNMOGIP)- established in January 1949 to supervise the ceasefire between India and Pakistan in the state of Jammu and Kashmir with 38 military observers.

3. UN peacekeeping force in Cyprus (UNFICYP) Established in March 1964, UNFICYP has a strength of 1480 military personnel and 38 civilian police to prevent fighting and restoration of law and order. Since 1974 this has included supervising the ceasefire and maintaining a buffer zone between Cyprus National Guard and of the Turkish Cypriot force.

4. UN Disengagement observer force (UNDOF) Established in June 1974
to supervise the ceasefire between Israel and Syria, with 1120 military troops and observers.

5. UN Interim Force in Lebanon (UNIFIL) Established in March, 1978, UNIFIL has strength 5280 troops, 57 military observers and 520 civilian staffs to confirm the withdrawal of Israeli forces from south Lebanon to restore peace.

6. UN Iraq-Kuwait Observer Mission (UNIKOM) Established in April 1991 with a strength of 320 military personnel and 188 civilian staff to monitor 40 kilometre long Khor Abdullah waterway and demilitarized the zone between the two countries.

7. UN Angola Verification Mission (UNAVM) Established in June 1991 with a strength of 75 military observers, 28 police observers and 115 civilian staff to verify the arrangements agreed to by the Angolan parties for monitoring the cease fire and observing elections in 1992.

8. UN Observer Mission in El Salvador (UNUSAL) – It was established in July 1991 to verify implementation of agreements between El Salvador and the Frente Farabundo Marti Para La liberacion National (EMLN).

9. UN Mission for the Referendum in Western Sahara (MINURSO) – It was established in September 1991 to monitor a cease fire, verify reduction of Moroccan troops in the territory, monitor confinement of troops to designated location, ensure release of Western Sahara political prisoners etc to ensure a free referendum and proclaim the results with 225 military observers, 100 military support personnel and 103 civilian staff.

10. UN Protection Force (UNPROFOR) – It was established in February 1992, with 24,000 military and civilian personnel, in Croatia, Bosnia and Herzegovina and Yugoslav Republic of Macedonia.

11. UN Transitional Authority in Cambodia (UNTAC) – Established in April 1993 with a strength of 28,000 military personnel to organize and conduct free and fair elections (23-28) May, 1993 and help oversee civil administrations human rights situations, maintenance of law and order, resettlement of refugees etc. The transitional period end with a constituted Assembly to approve new constitution.

12. UN Operation in Mozambique (UNOMOZ) – Established in December 1992
with a strength between 7000 to 8000 military and civilian personnel to facilitate implementation of the 4 October 1992 Rome agreement to withdraw foreign troops, to disbanding of private armed groups, to authorize the security arrangement for UN activities etc.

13. UN operation in Somalia II (UNOSOMII)– Established in April 1993 with 28,000 military personnel and 2800 civilian staff to monitor a cease fire, provide security for UN personnel and supplies and escort humanitarian supplies to distribution centres throughout Somalia.

14. UN Observer Mission Uganda Rivanda (UNOMUR) Established in June 1993 with a strength of 81 military and 24 civilian staff for monitoring Uganda/Rivanda boarder to verify that no military assistance reaches Ravanda.

The UN Security Council for the four decades remained paralysed due to conflict among great powers and frequent use of vetoes. The whole fabric of international peace and security under UN charter is based on the assumption of cooperation among member states and members of security Council in particular. Due to emergence of the US as the sole super power the Council has even embarked on an activist role. The developing countries apprehend the monopolise of America on UN and hagemony over the world as they did in the past. For ensuring success of new initiatives and strategies to make UN more authoritarian it is necessary that the security council should be enlarged and made more representative. The majority of member states will have faith and confidence in the council only after it is democratised and made more representative. The UN peace keeping forces can be more effective to take up and settle international issues only in an atmosphere of trust, cooperation and unity.31

International terrorism is the problem of international community and society as it is no more less confined to nation or state societies. International terrorism is to be dealt by international bodies like UN. There is need to strengthen the power and position of United Nation to which all nations require to respect and cooperate by discharging their their respective obligatory duties.
Cooperation to Combat Terrorism Through International Organisations.

With the end of cold war between the two super powers USSR and USA one essential development took place in the later years is the growing tendency among the states to make combined efforts to tackle problems or issues which effects them like cross borderer terrorism, drug trafficking, illegal crossborder trade. It is virtually impossible on the part of a single state to meet these challenges with their limited resources. In due course of time this necessary has led to the growth of international as well as regional cooperation in international politics.

Any regional cooperation is preferred and strengthened by certain basic elements which mobilises them to come together. First of all their historical interactions and related problems. Another aspect is the linkages between the societies. Finally some geographical, or sociological or economical problems which are common to all the countries of that region. In order to solve these central problems there the emergence of an organisation Institutional legal forum which can play a pivotal role in the region.

Most of the asian republics which attained their independence faced numerous challenges during their initial years of independence. The unstable political structure, transitional economy, multiple composite societal structure create some sort of imbalance in the continent with the existing cross borderer terrorism the drug trafficking and growth of Islamic militancy posed new challenges to the small or big countries of central Asia as well as south East Assia. As most of these countries are weak in military as well as economically they preferred to cooperate among themselves to protect themselves. The present study try to assess the extent of the regional cooperation mechanisms that the states have developed to meet the challenges of terrorism.32

Commonwealth of Independent States

The formation of commonwealth of Independent states was a lankmark step
in the direction of establishment of a regional security mechanism. Soon after
the disintegration of soviet Union, all the countries which initially formed the
CIS realised that Russia to play a pivotal role in managing the security of their
respective countries. Keeping this objective in mind, CIS came into existence
in December 1991. Soon after its formation all the five central Asian countries
decided to join the CIS when they signed the treaty on 12 December 1991.

Soon after its formation, the first thing the members of the CIS did was
to sign the CIS treaty on collective security. The basic objective- as Outlined by
CIS in the treaty are as follows: Article-I states that the participating states confirm
their commitment to refrain from the use of force in inter state-relations. They
pledged to resolve all disagreements among themselves and with other state by
peaceful means of the treaty mentions that states will consult with each other
on all important question of international security affecting their interests and will
coordinate their position on those questions. Under the provision of some of the
article, the members will activate the mechanism of joint consultations for the
purpose of coordinating their positions and taking measures to eliminate the threat
that has emerged. Under this provision, the member states of Central Asia invoked
collective security treaty to combat drug trades, Islamic militancy and other security
related problems.

Subsequently, in order to strengthen the Collective Security treaty, the
member countries in their meeting at Tashkent on 6 July 1992, and on 16 July
1992, decided to create a common unified military system, "CIS Blue Helmet
Force" for rapid deployment in those areas, which were affected by regional
conflict. In Tashkent conference Russia announced the allocation of additional
military force to protect the border with Iran and Afganistan. This additional military
force was to get support from military force of the respective central Asian
countries."

During meeting of the heads of the CIS in Moscow, an agreement was
signed on forming coalition defence forces on the territory of republic of Tajikistan.
The entire Tajik-Afgan border was divided into Zones of responsibility between
At the Minsk summit of 22 January 1993, a charter for closer political, economic integration and defence alliance among the CIS countries was prepared. Russia, despite its own domestic crisis maintained that it would continue to guarantee security and stability of the CIS states.

In October 1993, Kazakhastan, Kyrgyzstan, Uzbekistan and Tajikistan signed an agreement on the concept of Military security of the CIS member states in Bishkek. The document considered, “the instability of the social, economic, military and political situation in a number of regions, the existence of potent military potential in certain states which exceed their defence needs, the proliferation of nuclear and other weapons of mass destruction, as a major sources of potential military threat for member states of the CIS.

The security environment around central Asia underwent a marked change after Taliban assumed power in Afganistan. Immediately after taking over Afganistan they encouraged businessman to trafficking of narcotics and small arms to the neighbouring countries and central Asia became of conduit for trafficking of small arms and narcotics. Not only then Taliban government encouraged trafficking of narcotics and weapons, lent also many radical Islamic groups of central Asia, took shelter in Afganistan and tried to destabilise the whole central Asian region in the hope of establishing a theocratic Islamic state. This raised anxiety among central Asian leaders, who felt threatened. It was leadership of Russia took some active measures to combat these radical elements.

In October 1995, the tenth conference of International ministers of the CIS member states was held which ended with the signing of a services of protocols, agreements and documents. The representative of the 12 states of the member states put their signature to a draft treaty on the procedure for the stationing of and interaction between member of law enforcement bodies of the CIS on the territory of Commonwealth members states and to a document on amendments and agenda to the CIS's Minsk convention of 1993 on legal aid and legal relations on civil domestic and criminal cases. Describing the significance of these documents Maj Gen. Saidaimir Zhukhurob the Tajik minister of internal affairs said...
that Yeravan documents would in future help to impose significantly the operational and procedural activities with the framework of the ministry of internal affairs. The minister further said that the criminals were not biding time but moving ahead of the law enforcement bodies. He summed up the objective of the meeting that it would enable better co-ordinated work on major direction of operational activities. The council of the head of CIS boarder troops meeting in the Tajju capital, Dushanbe on 22 December 1995 signed the documents coordinating border policy through and the member states and along the Tajik summit on Afghanistan was held in which Russia and four leaders of central Asian republic, except Tuskmini joint statement issued on 6 January 1998, following two days of talks in Ashgabat agreed that CIS is an acceptable model for cooperation as seems at the transitional stage”. Each members of the CIS seems determine its participation independently on the basis of the domestic priorities and international commitments.

Not with standing Uzbekistan’s withdrawal from CIS collective security treaty on 2 April 1999, CIC guidelines on development came into force. The head of the state who participated in the conference took a stand that “armed conflicts in the CIS regions should be settled by peaceful means and by invoking UN Principles to settle armed conflicts”.

The agreements envisioned cooperation of the special services and foreign ministers among the CIS treaty significance after the agreement was signed. Zenisking pointed out that “the recent events in Southern kyrgyzstan go beyond the central Asian region and Kyrgyzstan go beyond the central Asian region and fall under the category of International terrorism.” It has added that describing the shift in the focus of CIS that “the collective security treaty was initially aimed at defending CIS countries against an external threat, but its focus has been shifted to combating international terrorism”.

A working session of the secretaries of the security council’s members states of the CIS was held at the resolution placed special emphasis on the need to unite efforts to fight international terrorism.” A joint-military exercise named “Commonwealth shield 2000” was held in central Asia under the aegies of
collective security Treaty in march 2000. Around 10,000 central Asian countries troops participated in these exercise. These exercise demonstrated the viability of CST as a mechanism to combat drug trafficking, cross border Islamic militancy and other dangers the central Asian countries were facing.³⁴

During the collective security meeting treaty in Minsk in May 2000, the heads of the participating countries made a joint declaration in which they, jointly pledged to fight against all kinds of terrorism. Addressing the meeting Russian President Vladmir Putin outlined the need for creating a mechanism which can make the Collective Security Treaty a working instrument capable of reaching to a dynamically changed world. The charter of the summit also put too much emphasis on joint struggle against international terrorism.

In a meeting of collective security council which was held in may 2001, in Armenian capital yerevan the participating countries such as Russia, Kazakastan, kyrgyzstan and Tajikistan decided to establish a collective rapid development force in which each country will contribute army units. The Prime ministers of the participating countries pointed out the “importance of officially combating international terrorism and armed extremism and stressed for creation of regional system of collective security”. Following the summit, a collective Rapid Action Force for central Asia was setup to counter the threat of terrorism. It start functioning from 1st August 2001. The headquarter of the centre was set up in Bishkek.

The llth September 2001 attack on US by the Al-Qaeds radical groups with the backing of the Taliban in Afganistan altered the geo-strategic situation in central Asia. It also vindicated the long standing problem raised by CIS and central Asian countries since 1996, regarding the dangerous role of the Taliban in the whole central and South Asia on 30th November 2001, all the member of the common wealth of Independent states participated in a Moscow Summit to sum up the results achieved in last 10 years. The leaders acknowledged that the cooperation among the CIS countries, and made a joint statement with a positive estimation of the anti-terrorist operation in Afganistan. The 12 presidents of the member countries were also unanimously in their view that the "Struggle of the
world community against international terrorism must be carried out on a comprehensive and long term basis in accordance with the international law and UN statute. The declaration points out, that the people want to see common wealth as Zone of stability and security, ethnic accord and sustainable scientific, political and economic developments as these have been mentioned after the meeting.

In May 2002, at the meeting of the Collective Security Treaty in Moscow, a decision was made at the end of the meeting to turn the mechanism and structures that exist for cooperation with member states into an international regional organisation to be called the collective security treaty organisation. “The meeting provided opportunity to us to discuss whole range of issues on the problems of security” as said by vladmir putin. The Russian prime minister addressing the meeting said, “Collective Security Treaty” meeting urged for joint action within the framework of the international anti-terrorism coalition and coordinated line of handling Afgan settlement issues testify to the efficiency of Collective Security Treaty and Shanghai Cooperation Organisation.

Apart from Collective Security Treaty, the other important transregional organisation is Shanghai cooperation organisation (SCO) through which central Asian republic try to solve their grave problems.

**Shanghai Cooperation Organisation**

Shanghai Cooperation Organisation initially came into existence in 1996 to solve the complex border problems faced by countries of central Asia, china, and Russia. Gradually it moved away from solving complex border demarcation to drug trafficking, growth of religious fundamentalism and trafficking of small arms, which all the countries are facing.

The first summit of SCO was held in April 1996 for confidence building measures in military field in Shanghai, following Moscow summit in 1997 for reduction of military forces in border areas. After Moscow summit the priority of SCO has been shifted towards the problems each other are facing. They decided to fight collectivelly to counter national separatism, political and religious extremism international terrorism, illicit drug trafficking and small arms trade. During this time
China was greatly concerned above rise of Islamic fundamentalism in Xinjiang province, which got direct support from Taliban regime to increase their subversive activities in the Uighur dominated region.

The Islamic radical groups not only fomented trouble in China, but also participated in many subversive activities in central Asian republics and Russia. In order to carry out their objectives the Islamic militants required large huge amount of money. The only way to generate such large sums of money was to carry out narcotic business and other corresponding illicit business. China’s Xinjiang province became the hub of narcotic trade. Drugs from Osh region of Kyrgyzstan used to flow to China. This led to belief among the foreign policy making circles in these countries that a single country would not be able to face its own challenge posed by drug-traffickers and radical Islamic fundamentalist groups.

This realisation compelled the participating countries of SCO to put joint efforts in order to check this imminent danger. In 1998, at Almaty, SCO founding members consisting of central Asian republics, Russia and China passed a resolution in the summit and condemned religious fundamentalism and narcotics trade.

In between Almaty Conference in 1998 and the Bishkek conference in 1999, significant developments were witnessed in central Asian region. The Batken incident which took place in 1999, showed that Islamic fundamentalist force in collusion with foreign countries could wreck havoc and threaten the unity, integrity and solidarity of the nation state system. The fourth conference of SCO in Bishker in 1999 summit of the five states declared solemnly the determination to jointly fight national separation international terrorism and religious extremism which posed a threat to regional security, stability and development by encouraging weapons trafficking and drug trafficking. They also decided to hold anti-terrorism and anti-maneuvers according to the need of the situation.

Following the Bishkek Summit in December 1999 the chief of the law enforcement agencies and special services of the Shanghai Cooperation Organisation met in Bishkek and signed an agreement on mutual understanding and expressed grave concern about the increasing number of acts of International
terrorism, separatism, other manifestation of extremism.

The fifth Shanghai meeting held in Dushanbe the capital of Tajikistan on July 2000. The Dushanbe Declaration also formalised the intention of member countries to fight international terrorism drug trafficking, illegal arms sale, separatism and religious extremism. The sixth Summit of Shanghai Cooperation Organisation was held at Shanghai in June 2001 took a common stand with regard to terrorism, extremism and separatism. It was decided at that meeting the anti-terrorism and separatism coordination centre will be set up in Bishkek to fight against local guerrilla forces. The countries also agreed that they will not provide shelter to militants of respective countries.35

In the post 11th September 2001 incidents the SCO extended its support to US in its fight against Taliban. With the Chinese initiative the foreign ministers meeting took place in Beijing on 7 January 2002 to discuss the security environment in the region. The joint statement emphasized the leading role of United Nations in the struggle against international terrorism. The meeting also stressed that the scope of the anti-terrorist struggle may not be extended arbitrarily. The member states also held that fight against terrorism should also held that fight against terrorism should be carried out at all levels-global, regional and national and with no double standards:

The President of six SCO member countries held meeting in June 2002 at Petersbarg and the Declaration of SCO charter highlighted joint actions to crack down all forms of terrorism, separatism and extremism and other cross border crimes as one of the basic tasks of the organisation. The charter also declared that the participating countries would take essential steps to execute the Shanghai Treaty on cracking down terrorism, separatism and extremism.

**NATO-North Atlantic Treaty Organisation**

Another International Organisation with whom central Asian countries developed relations and also signed number of treaty is North Atlantic Treaty Organisation, which was established in 1949 as a challenge to the soviet bloc has reoriented itself after the ignominious end of the cold war. It soon developed
a number of mechanisms to attract the newly independent countries of eastern Europe and Central Asia. Kazakhstan and Uzbekistan looked up to NATO as a mechanism to fill the vacuum created after the demise of Soviet Union.

The NATO has a suitable goal to assist the democratic development of the states of central and eastern Europe and to facilitate the same to the CIS states and to prevent regional conflict as far as possible. NATO member states, for the purpose of cooperation with these states have committed themselves to prove their accumulated experience and considerable expert potential defence policy.

NATO for the first time made its presence felt in the central Asian region through the participation of central Asian states NATO with Russian other countries started military exercises in Kazakhstan aimed at checkmating radical Islamic force. The joint military exercises known as centralbelt 2000, aimed at boosting military relationship and regional security within the framework of NATO'S partnership for peace programmes. Nazabajev acknowledge that "place and security in central Asia could only be assured through the joint efforts of regional states and with broad international support. The military exercises also aimed at training forces in various fields such as refugee control, patrolling and security operation."

In the post-September 11 phase NATO got an opportunity to play a bigger role in central Asia. Most of the NATO member participated in the International Security Assistance Force (ISAF) in their operation against Taliban and Al-Qaeda. Donald Ramsfeld in an interview to journalists in Washington told that the US-NATO central Asian countries relationship is good for them, good for US and is good for NATO. Though NATO's cooperation, the central Asian army equipped themselves with sophisticated arms and weapons which can help them easily to thwart the militant activities.

Conference on Interaction and Confidence-Building Measures in Asia. (CICA)

CICA is another regional institutional mechanism that have developed at the initiative of central Asian countries particularly Kazakhstan. Through this
organisation the central Asian countries have also come together to fight cross-border terrorism drug trafficking and small arms. The major objective of Kazakhstan initiating such forms is to develop effective mechanism of preventive diplomacy in Asia and development of a new system of relations between the states of vast Asian region.

The participants of CICA agreed to establish a special working Group (SWG) with the task of preparing an broad sheet of organisational and ideological aspects for CICA meeting at the level of deputy foreign ministers. The meeting of the special working group on preparing the CICA summit was held on 12-14 April 2000. The participants fully supported the measures undertaken to combat terrorism, extremism, illegal drug trade, and international criminality.

Another important landmark in the development of CICA was the CICA summit held in June 2002 in the Kazakh capital Almaty. In this conference, 16 countries participated. The participants in the conference expressed deep concern over spread of terrorism activities all over the world, including the CICA member states. The declaration on elimination of terrorism and assisting dialogue between Civilisations pointed out that the heads of state and government from the CICA member countries are resolved to fight terrorism and boast bilateral, regional and international co-operation in line with the UN chapter to meet the challenges.

The conference also outlined that member states unconditionally and unequivocally condemn terrorism in all its forms and manifestations as well as any support or acquiescence to it and failure to directly condemn it. The menace of terrorism has been magnified by its close links with drug trafficking, illicit trafficking of small arms and light weapons. The declaration of CICA also underlined the fact that illicit trafficking in small arms and light weapons posed a threat to peace and security and it was directly linked with terrorist activity, separatist movements, drug trafficking and armed conflict.37

Finally the declaration urged all participating countries to resolve their dispute peacefully through negotiations in accordance with the principles enshrined in the UN charter and international law. The meeting also decided to follow institutional measures to follow the declarations.
Organisation of Islamic Conference (OIC)

The central Asian republics soon after attaining independece became focus of attraction for the Islamic countries particularly saudi Arabia, Iran and Pakistan. The main objectives of these countries in the beginning of 1990s was to bring these central Asian republics into same regional forum, through which they can influence this region. In this process they found organisation of Islamic countries a good forum for them to bring these countries into their fold. The central Asian countries on their part found a suitable regional ally. They also participated actively in this organisation and discussed number of problems they are confronting particularly the growth of radical Islamic fundamentalism.

During its Teheran Declaration of 1977, the OIC vehemently condemned terrorism in all its forms and manifestations and distinguished terrorism from the struggle of people against colonial domination or foreign occupation and their right to self determination. The conference also noted that killing to innocent people is forbidden in Islam and reiterated their committment to the provision of the OIC code of conduct for combating International terrorism and their resolve to intensify their efforts to conclude a treaty to this issue and called on the international community to take all necessary measunes for combating terrorism. In an extra ordinary foreign ministers conference held at kuala lumpur in the aftermath of 11th September, it condemned the barbaric act committed by radical Islamic forces in the United States.

The conference urged the need to convene an international conference on terrorism in order to adopt a balanced international definition of terrorism so as not to leave it in the hands of supporters to lay down a definition which seems their interests and jeopardises others. The conference also noted that the issue of fighting terrorism should be assigned an international role entrusted to it in order to maintain international peace and security.

The central Asian countries also played a significant role in this conference in passing resolutions aimed at condemning terrorism and fostering peace and security. In order to combat drug trade and Islamic fundamentalism the central
Asian states operating through regional security mechanism like collective security treaty, Shanghai Cooperation Organisation, NATO, OCSE, CICA, developed economic relations with other major regional organisations like Economic cooperation organisation and Eurasian Economic Community.\textsuperscript{38}

Among such regional organisation, the two major economic grouping that need mention are the Economic Cooperation Organisation (ECO) and Eurasian Economic Community (EEC) formerly known as customs union.

**Organisation of Security and Cooperation in Europe**

The Organisation of Security and Cooperation in Europe came into existence during cold war to take care of the security of Europe. The Organisation came into force in 1975 during the Helsinki Accord. During the coldwar period, the organisation then known as OSCE, Council of Security and Cooperation in Europe (CSCE) basically confined its role to Europe and even the eastern European countries were not under CSCE, as these countries were ruled by communist regimes.

After the end of cold war CSCE slowly tried to increase its sphere of influence and former communist countries became member of this organisation and many central Asian countries also became member of this organisation by the end of 1992. The central Asian states got admitted to CSCE not by virtue of their geographical location but as a legacy of being parts of the former soviet union. The Central Asia states after getting membership of this organisation have been playing a vital role in contributing towards effectiveness and strengthening of this organisation. The OSCE has also tried to bolster the security, sovereignty, territorial integrity, economic and social progress, development of legislative and democratic institutions, the respect of human rights and national minorities.

In order 1995 OSCE opened a bureau in Tashkent to cover the regional security, stability and economic cooperation. In 1999, at the Istanbul summit, the CSCE member states vowed to cooperate more actively and closely to meet the intractable challenges of international terrorism, violent extremism, organised crime and drug trafficking. In order to combat the growing menace of drug...
trafficking and organised crime, under the sponsorship of UN office for Drug Control and Crime Prevention (UNODCCP) and CSCE chairmanship staged a two day conference in Tashkent on 19-20 October 2000 on "Enhancing security and stability in central Asia". An integrated approach to counter illicit drugs, organised crime and terrorism has been made. The participating countries for coordination at a national, regional and international level in order to adopt measures to prevent, control and eliminate the inter-related, phenomena of drug trafficking, organised crime and terrorism.

On 16 November 1999 at the initiative of European Union and Canada, the OSCE states decided to take effective measures to curb illicit trafficking of small arms. The aim of CSCE document on small arms & light weapons which was endorsed by the Vienna ministerial meeting on 27-28 November 2000 was to "Provide a substantial contribution to the process underway in the United Nations on the illicit trade in small arms and light weapons in all aspects."

The Bishkek International conference of 13-14 December 2001 on enhancing security and stability in central Asia which was organised under the sponsorship of OSCE in the aftermath of 11, September accident. The United Nations office for Drug, Control and Crime Prevention (UNODCCP) also participated in the conference, along with 50 countries and 21 international Organisations. The conference took the first step in following up the CSCE Bucharest Action plan for combating terrorism, by drawing up the programme of action which this conference adopted. The participants in this conference invited international and regional organisation to strengthen cooperation and co-ordination to combat the menace of terrorism and drug trafficking. The conference also outlined the need for Co-organisation which were formed to fight the transnational organised groups and called for checks on accumulation and uncontrolled spread of illicit trafficking of small arms and light weapons. The conference rejected firmly the identification of terrorism with any particular religion or culture as well as the unacceptable attempts by terrorists and violent extremist to present their case as a struggle in defence of religion and culture. The conference also pointed out that terrorism
is a global problem and there must be no safe area for such crimes and their
supporters and stressed for gollbal coaltion.39

**Southeast Asian Regional Counter Terrorism Policy Initiative**

The terrorist groups of different hew and colour have been operating in the
southeast Asian countries of Indonasia, philipines, Thailand and in the Arakan
vallies of Myanmar for many years. These groups have linkages with the terrorist
groups in Pakistan and Afganistan. The Bali explosion of october 2002 was
an eye opener to these countries. This incident showed the extent of the
undetected penetraction of pan Islamic Jihadi terrorist elements in the region.
Another thing that is clear, the damage to the tourist economy and threat to internal
security. The need for greater attention to counter terrorism and greater networking
and cooperation at the bilateral, regional and international levels is widely
accepted now.

There is an emphasis on the need for a comprehensive counter terrorism
policy which deals with international terrorism and its linkages with international
organised crime illicit drugs, illegal arms trafficking, proliferation of nuclear,
biological, chemical and other deadly materials and means of delivery. The new
counter terrorism policy calls for a common committment to meet the crossborder
threats posed by international terrorism. The aim of the regional organisations
such as ASEAN and the APEC are projected not only free trade but also free
and secure trade. For secure and free trade cooperation on counter terrorism
has became an important subject matter in all regional meetings. Plans have
been initiated for strengthening the counter terrorism capability of the countries
of the region and for setting up regional mechanisms for cooperative counter-
terrorism. Important landmarks in this regard are Malaysia’s initiative to set up
the South east Asia Regional Centre for Counter Terrorism (SEAR CCT) at
Kualalumpur and the APEC’S newly created Counter-Terrorism Task force.

The intelligence and counter-terrorism agencies of the USA and Austalia
have been playing an important role in helping the countries of the region to
strengthen their indigenous and regional capabilities.
Action has also been initiated to create a reservoir of non-government expertise in counter-terrorism by promoting initiatives for non-governmental monitoring and analysis of the activities of international terrorist organisations and research and development in the field of counter-terrorism. The non-governmental council on security cooperation Asia Pacific (CSCAP) has been playing an important and active role in this regard.

Confidence building measures and crisis management in specific relation of counter-terrorism have also been receiving sustained attention. As part of the efforts to counter likely threats to economic development from terrorism, an energy security initiative and a cyber security strategy have been launched by the APEC.

Over the last five decades, India has developed a wealth of experience and capability in non-military methods of dealing with terrorism and has considerable knowledge of the working of many Jihadi terrorist organisations, which pose a common threat to this region. India’s experience, knowledge and expertise should benefit the countries of the region. This calls for greater interaction by India, at the government and non-governmental levels, with the countries of the region and their security and counter-terrorism agencies.
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