Chapter 1
The Anti-Terrorism Debate

In recent times, terrorism has come to be a far more complex issue evoking serious concern from individual states and the international system. While terrorism has been perhaps as old as history, until the late 1980s, it was often overlooked as a “nuisance” within the realm of individual entities, such as states or communities.\(^1\) Terrorism, during the Cold War period was understood as primarily an ethno-nationalistic/separatist phenomenon, involving a certain community of people. The ‘international characteristic’ of terrorism, during this period, has been viewed much more as a manifestation of power politics driven by the policies and goals of certain states, rather than, acts of unacceptable offence against targets of significance both within states and internationally.\(^2\) Since the 1990s, however, there has been a rethink of the fundamental assumptions and beliefs on the motives, goals and the scope of terrorism.

From what has been conceived as acts of revenge or retribution, by individuals or groups within a small theatre, terrorism has gradually come to be viewed as a “state of war” between entities, including nations, with doctrinal innovations of

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\(^{1}\) Walter Laqueur points out that in the past “even the bloodiest terrorist incidents” affected only “a relatively few people” and could be conceived of as a “nuisance” rather than a grave threat. Laqueur, Walter, The New Terrorism: Fanaticism and the Arms of Mass Destruction (New York: Oxford University Press, 1999), pp. 3-4.

\(^{2}\) During the Cold War, the USSR, for example, has been accused of directly controlling ‘international terrorists’. Charles Townshend points out that the “terror network idea” inspired by Claire Sterling’s The Terror Network: The Secret War of International Terrorism, (New York: Holt, Peinhard and Winston, 1982), propelled the political rhetoric “the evil empire” that implicated the USSR of using terrorists to propound the socialist ideology as against democratization that was taking place in many of the newly liberated nations. Townshend, Charles, Terrorism: A Very Short Introduction (London: Oxford University Press, 2002), p.27.
offense and defense, with serious implications both for the nation state and the international system. This new thinking has been attributed to the increasing inability of states to counter the threats posed by terrorists within their own domains and the subsequent spillover across borders. New developments, such as, the amorphous nature of modern terrorist groups, the developments in weapon systems and information and communications technology, logistic and financial support for these activities by certain established states, the changing rationale and innovative tactics of the actors, and the massive destruction each terrorist act has caused have all contributed to this new conception.

This changing nature of terrorism has occasioned varying and shifting opinions on counter strategies. Various approaches have been proposed and debated. The topics of debate have been numerous, encompassing all aspects of security – national, international, human, environment, aviation, maritime, nuclear and so on. There have been varying opinions as to whether anti-terrorist measures should be military-related/campaign-oriented, political-dialectical in nature or a domain of the police and the judiciary. The debates have also for the first time begun to examine the serious role of civil society in an area regarded as exclusively the

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3 For example, a RAND study identifies three doctrinal paradigms since the 1960s, under which, terrorists have operated. From the 1960s to the 1980s, terrorism was used as a “coercive diplomacy tool” to achieve specific concessions. During this period some sort of proportional relationship existed between the force level employed and goals sought. The failure of coercive terrorism gave way to what they call the “war paradigm”. A war paradigm implies taking a strategic, campaign-oriented view of violence that makes no specific call for concessions from, or other demands upon, the opponent. The strategies of terrorists, according to the study, during this period have been to inflict maximum damage on the enemy, as part of what they view is “ongoing war”. The third doctrinal change is what they call “the new world paradigm”. Religious justifications of violence to usher in a new world have been the chief motivation of terrorists in this context. See Lesser, Ian O., et al., Countering the New Terrorism (Santa Monica: RAND, 1999), pp. 5-10.
concern of governments and policy-makers. Utility service managers, religious leaders, sportsmen, cultural troupes, environmentalists and others have all become part of the anti-terrorist debate and discourse since the 1990s.

However, a number of fundamentally opposed normative views on the use of violence to achieve political goals have rendered a certain degree of uncertainty to attempts at institutionalisation or operationalisation of norms and principles on anti-terrorism. This uncertainty has been reflected not only in the inconsistency in conceptualizing terrorism but also in the multilateral and domestic sphere of decision-making. This chapter intends to trace these conflicting opinions in the contexts in which they evolved.

The Definitional Debate

Conceptualizing terrorism has been beset with a number of problems. Scholars are still grappling with defining the term itself and the main components of what would generally be accepted as terrorism. A common yardstick on the term 'terrorism' itself would have far-reaching policy implications in efforts to tackle terrorism. The debate that ensued in this regard has, however, eluded consensus. The main problem, argues Brian Jenkins is the "emphasis given to different elements by analysts in their definitions that has caused confusion in defining terrorism." 4 Alex P. Schmid remarks how "the question of a definition of a term like terrorism cannot be detached from the question of who is the defining

agency.” Donald Hanle similarly argues that “any definition of terrorism is necessarily an arbitrary one, the primary purpose of which is to establish a point of reference or departure for further discussion.”

Many others make similar arguments – of an analyst’s cultural, professional or political biases in any attempt to define terrorism. Even attempts at developing typologies of terrorism to do away with the confusion have been steeped in subjectivity. Analysts have divided terrorism into types such as repressive, revolutionary, pure, religious, state, state-sponsored, millennialist, issue-based and others. The problem, however, as James Hamilton suggests, is that “almost as many typologies seemed to materialise, as there were analysts.”

Jessica Stern traces a number of these prejudices and biases to two fundamental and diverging normative views on the use of violence to achieve political goals. The first is the ‘deontological ethicists’, for whom the value of an act is intrinsic. Here, the ‘goodness’ or ‘evilness’ of the act must be understood in and of itself, whatever the motivations. The point being terrorism involves innocent people and targeting the innocent is evil, regardless of its ultimate consequences. Secondly, there are the ‘consequentialists’ for whom the right act in any situation is the one that will produce the right overall outcome. This implies that terrorism may be

permissible or is even desirable under certain circumstances even at the expense of innocent lives if the outcome of the 'act' makes society better than it was.

This moral contestation has particularly made it difficult to agree on which acts of violence would be regarded as terrorism. Contextually, terrorism has largely been associated with the struggle between the sovereign rights of the State and the legitimacy or illegitimacy of the 'demands' of a certain people within that state. Central to this, thus, is the subjectivity with which the acts of violence are perceived. For instance, acts of national self-liberation by a certain group of people within a state is viewed by the State as attempts at undermining its sovereignty and hence terrorism. Terrorism, therefore, often "becomes a catch-all label for virtually all types of civil strife" rendering itself conceptually ambiguous and serving "no useful analytic purpose." ⁹

There is a general acceptance that these mutually opposed normative stands would be difficult to bridge and would continue to factor in the discourse on terrorism. Most scholars argue for the need to work on the 'core' moral issues in both the traditions for the purpose of ultimately helping us in evolving a consensus to at least distinguish terrorism from other types of violence, even if we cannot define it. In other words, individual acts or groups could be assessed on merit, depending on the scale of violence used, the targets chosen, or the nature of the political struggles, and not be defined by an overarching definition.

Scholarly attempts to synthesize the various concerns of all have only further compounded the definitional dilemma. Alex P. Schmid, for example, evolved a definition by taking the aid of 109 different definitions, over fifty scholars and by including identifiable elements in the definitions depending on the frequency with which they appeared. He defined terrorism as:

> [a]n anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human targets of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorists (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.10

Such a synthesis, however, has come to mean ‘everything and nothing’. Nothing in the sense that these types of definitions tend to be “all-inclusive” and thus in most cases have “diminishing utility” as far as policy outcomes are concerned.11 Grant Wardlaw also notes that academic definitions do not have much of a “prescriptive value” because many “students of terrorism seem to find little difficulty in labeling an event as ‘terrorist’”.12

A number of analysts suggest that the range of definitional foci on terrorism must be understood contextually. David Rapoport and Bruce Hoffman, for instance, argue that the changing nature, goals and motives of terrorism have contributed to the difficulty in reaching a definitional consensus. Rapoport also points out that the “most compelling reason perhaps is because the meaning of the term has changed frequently over the past two hundred years.”

Hoffman writes:

> [N]ot surprisingly, as the meaning and usage of the word have changed over time to accommodate the political vernacular and discourse of each successive era, terrorism has proved increasingly elusive in the face of attempts to construct one consistent definition.

Both Rapoport and Hoffman study terrorism in phases, which had its own special character, dominating purposes and peculiar tactics. They see terrorism as shifting meaning, from one with revolutionary connotations to state repression, to anti-colonial sentiments and struggle, to nationalism and separatism outside the colonial framework, to religious fundamentalist activities and to state-sponsored activities in other countries. The latest understanding of terrorism is that it has become an accepted form of warfare, covert in character but posing as a major threat to states and the international system.

It has increasingly become evident that terrorism is a highly political subject. This has been significantly reflected not only in scholarly exercises across nations and ideologies but also in the political decisions to counter terrorism. Academic and

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normative analyses have largely replicated the political perceptions of the milieu and the times. In a sense, this linkage has been one the most important causes for the inability to agree on a common standard on terrorism. In an anarchic international system, terrorism has been used as a state instrument of the strong, the hostile and the weak in the furtherance of their interests. And, as long as it is useful for them, states will continue to use it despite serious moral implications.

Strong states have used terrorism to establish friendly regimes or bring down unfriendly ones in other countries. For example, in the early 1970s, the United States through its agents was involved in clandestine efforts to remove Salvador Allende, including the assassination of Rene Schneider, who did not approve of US plans.¹⁵

Weak states have used terrorism as a substitute for conventional weapons inferiority while engaging a hostile state. India’s charge that Pakistan is fuelling terrorism in Kashmir is generally accepted today. Despite Pakistan’s decade of denials that it is only providing moral support to Kashmiri aspirations, there is significant evidence to prove that the Pakistani military is deeply involved in the smuggling of anti-Indian militants across the Line of Control.¹⁶

Many politically unstable states have also used terrorism as an instrument to consolidate their positions domestically and internationally. In the post-Islamic

Revolution period, politically unstable Iran sponsored assassinations of the Shah Shahpur Bakhtiar and his family members, and Kurdish leaders even while they were living away from Iran in places such as Cyprus, Paris, Karachi and Berlin in the early 1990s in order to eliminate all opposition to the Islamic regime.\textsuperscript{17} Iran also attempted to play a major role in Middle East politics by trying to unite conservative Muslim sentiments by particularly assisting Yasser Arafat’s Fatah and Hizbollah in the Israeli-Palestinian conflict.

Many states in the international system do not see terrorism entirely as a common concern. Most states prefer to handle terrorism and its consequences within the domestic realm for two reasons. First, states know that the root cause of terrorism lies within their own boundaries and it involves sovereignty, security, legitimacy and/or other issues. Hence, treating this as an international subject could bring international concern or criticism and subsequent interference.\textsuperscript{18} Secondly, terrorism is seen by a majority of the world community as a powerful weapon against political, cultural and material exploitation by the powerful states. Many states would be unwilling to surrender this weapon. It is, hence, a highly emotionally charged term. As long as individual nations do not agree on a common value-laden prescription for terrorism, scholars will find it increasing difficult to provide a solution to the definitional problematic.


\textsuperscript{18} Terrorism in some countries may be synonymous with ‘state-terrorism’, which may have two variants. First, states have used covert and terror tactics to eliminate political opponents or suppress dissent. Secondly, it may be used as an instrument for specific foreign policy objectives, which may include support such as funds, weapons, training facilities, logistics, intelligence and diplomatic facilities to terrorist groups.
Terrorism as War?

The move, in recent times, to define terrorism as 'war' has evoked intense debate especially among the epistemic community. This has been the result of the focus given to the "violence" aspect of terrorism and the support for such activities by legal and political entities or groups. K. J. Holsti, for example, studies wars in the post-1945 period and says that most have been low-level and intrastate in nature. This characterization is very close to what is understood as 'terrorism' today, that in most cases, have been low-level, protracted violence by sub-state actors and intrastate in nature. Holsti calls these types of war as "wars of a third kind." A RAND Conference, in 1982, termed terrorism a "low-level conflict" akin to war.

The United States and some West-European democracies, particularly in the aftermath of the September 11 attacks, acknowledge that a state of 'war' exists between them and terrorists and/or certain states that sponsor terrorism against them.

Donald J. Hanle argues that terrorism meets the criteria that govern the general understanding of war. The most important aspect he argues is that:

[T]errorism represents a clash of wills between two contending parties. If both parties employ force to resolve this clash of wills, and if both parties seek a political end through this conflict, then a state of war exists, and terrorism used by either belligerent constitutes a form of war.

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Terrorism has also been considered as war because there has been increasing
evidence of states sponsoring terrorism in various garbs. It has come to be
associated with a type of covert or surrogate warfare, whereby weaker states can
confront larger, more powerful rivals without the fear of retribution.22

There are, however, others who argue that terrorists are not warriors. Cindy
Combs studies the profile of the contemporary terrorist and concludes, “[m]odern
terrorists are, for the most part, fanatics, whose sense of reality is distorted.”23 She
further argues that terrorism is distinguished from guerilla warfare by deliberate
attacks upon innocent civilians. The difference between a terrorist act and war
activity is that terrorist acts are perpetrated deliberately upon innocent third
parties, in an effort to coerce the opposing party or persons into some desired
political course of action.24 Terrorism, according to Friedlander, involves the
deliberate disruption of norms, the violation of generally accepted standards of
decency, including the laws of war as they apply to the innocent and helpless.25

Rohan Gunaratna points out that modern terrorists are very difficult to distinguish
from ordinary criminals.26 And criminals cannot be treated at par with warriors,
who are characterised by certain attributes of character, rules of conduct and

22 Hoffman, Inside Terrorism, p. 27.
23 Combs, Terrorism in the Twenty-First Century, p. 66.
24 Ibid., pp. 9-10.
25 Friedlander, Terrorism: Documents of National and International Control, Vol.1, (New York:
Oceana, 1979), p. 286, quoted in Cindy C. Combs, Terrorism in the Twenty-First Century (New
26 Gunaratna, Rohan, “Emerging Trends in South Asian Terrorism and Guerilla Warfare”, a paper
presented at India International Centre, New Delhi, 7 December 2000.
principles. On the other hand, treating terrorists as warriors accord them a political legitimacy.\textsuperscript{27}

In the context of spectacular terrorist attacks such as 9/11 some analysts argue that terrorism must be considered as an act of war and defence against such attacks must be qualified under the United Nations Charter that provides for "self-defense" in case of acts of aggression/war by another state.\textsuperscript{28} Critics, however, of such a conception, argue that treating terrorism as war has serious international implications since 'act of aggression' can be defined by a state according to exigencies or on the basis of certain national interests.\textsuperscript{29} For certain powerful countries this would be a license to impinge on the sovereign rights of less powerful nations for political expediencies.

Terrorism, thus, has been seen by a majority of experts in the field as a terminology of convenience both for analysts and policymakers. This has had serious implications on the anti-terrorism discourse. It may noted, however, that there are a number of scholars who hold the view that although under certain circumstances terrorism is 'permissible and desirable' certain general rules regarding the use of permissible and acceptable means of violence must be


\textsuperscript{28} Article 51 of the UN Charter declares the "inherent right of individual or collective self defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken necessary measures to maintain international peace and security."

\textsuperscript{29} The most instructive of this is perhaps the "war against terrorism" led by the United States against the Taliban regime. The terminology "war" itself became an issue of debate. Many argued that while the September 11 attacks was a serious act of 'aggression', it did not qualify as an act of war and hence "war" against terrorism was actually according some sort of legitimacy attributed to terrorist acts.
emphasized. Such a conceptual orientation is expected to narrow the ‘means’ and ‘ends’ debate and contribute to theorizing terrorism. The theory-practice predicament arising out of the significant influence exerted by political imperatives while using ‘terrorism’ as an analytical tool, in recent times, however, seem to better explain the definitional dilemma. Theoretically the need to delink the political or the ideological from the moral aspects of terrorism has been pitted against the practice of treating it fundamentally as a political phenomenon in an international system characterized by dissimilar views on international politics, domestic politics and the political-economy of conflict. Many analysts see terrorism as an enduring debate into the future.

The Multilateral Debate

In the debates to build a common agenda to tackle terrorism, fundamental tenets that touch upon the heart of international cooperation and regime building have emerged. While the term itself is contested, terrorism has come to be the most socio-politically sensitive subject debated in the international arena. This has overwhelmed many a multilateral negotiation on building an international anti-terrorist regime. Recent debates, particularly in the aftermath of the attacks on the

31 One strain of the debate, for example, has emphasized that any measure to combat terrorism should have serious human rights appeal and work upon the elimination of the root causes of terrorism that may lie in the ethnic, political, administrative or territorial aspirations of a certain group of people. International organizations dealing with civil and political rights have taken this line of argument. The other group has focused on a ‘no-nonsense counter-terrorist approach. For example, RAND has consistently come up with analyses that focus on military strategies and tactical measures to combat terrorism. One of the most instructive of this focus has been the book by Ian O. Lesser. et al., Countering the New Terrorism (Santa Monica: RAND, 1999).
World Trade Center and the Pentagon in the United States, have revealed a perceivable shift among nations in the United Nations on terrorism. Individual states have particularly taken a proactive stand on terrorism affirming, in many instances, their readiness to join other nations in tackling the problem. However, nations still continue to be plagued by their unwillingness to treat terrorism completely as a common international concern for various reasons, thereby undermining multilateralism as an instrument in dealing with the threat.

The United Nations has been the forum where 'one man's terrorist' has been pitted against 'another man's freedom fighter'. The countries that have particularly suffered under colonial domination in the past and suspect oppressive international policies from powerful nations argue that terrorism or any measures to eliminate terrorism must first of all take into account the 'underlying misery and frustration'. These countries see any armed struggle against domination as 'legitimate'. It may be noted that in all UN conventions dealing with terrorism the issue of 'legitimate armed struggle' against oppression past and present has been a persistent demand by the Third World states, which make up a substantial majority of the states in the international system. Issues such as this have exposed the vulnerabilities of the UN conventions on the one hand, and most likely the operational ineffectiveness of the conventions on the other.

32 For example, in the aftermath of the 11 September attacks in the United States, the UN General Assembly held two marathon sessions debating on measures to eliminate terrorism from October 1-5, 2001 and November 10-16, 2001. Two Security Councils Resolutions (Nos. 7158 and 1377) were also passed urging for cooperative effort against terrorism.
As part of the multilateral approach, attempts at tackling terrorism in a cooperative environment was for the first time reflected in the 1937 Convention for the Prevention and Punishment of Terrorism. It was specifically aimed to deter criminal attacks on heads of states or diplomats. The Convention never took off. Since then, thirteen United Nations international conventions have been held dealing with various aspects of the problem, such as, punishment of crimes against internationally protected persons, taking of hostages, suppression of terrorist bombings, suppression of the financing of terrorism, offences and other acts committed on board aircraft, suppression of unlawful seizure of aircraft, unlawful acts against the safety of civil aviation, physical protection of nuclear material, suppression of unlawful acts against the safety of maritime navigation and marking of plastic explosives for the purpose of detection. To some extent, the issue of terrorism has been addressed in the 1948 Genocide Convention, the four 1949 Geneva Conventions and their 1977 Protocols, the 1984 Convention against Torture and the 1998 Statute of the International Criminal Court.

Although many of these multilateral mechanisms have been in place, in some cases, for decades, states have been rather careful about fully acceding to them and particularly those, which they believe directly impinge on their policies and affairs. Two significant UN Conventions dealing with major aspects of terrorism were negotiated in the General Assembly in the 1990s, but they did not receive a wide response from a majority of the states. These are the Convention for the Suppression of Terrorist Bombings, adopted on 15 December 1997 and
Convention for the Suppression of the Financing of Terrorism, adopted on 9 December 1999. Till 2004 only 97 parties have accepted the first Convention while 87 parties have acceded to the second leaving majority of the states to yet become parties to the Conventions.

The themes that have evoked debate in the above two UN conventions have included international monitoring of disputes between states in case of conflict between signatories, jurisdiction of domestic laws with regard to the convention directives, the scope and the definition of terrorism and extradition among other issues. Of the states party to the 1997 Convention for the Suppression of Terrorist Bombings, as of 2003, fifteen countries declared their reservation that they will not be bound by the article that deals with ‘arbitration’ in case of dispute between parties or certain other objections and in case of failure, to take their case to the International Court of Justice (ICJ). Similarly, a number of states raised their reservation against Article 24 of the Convention for the Suppression of the Financing of Terrorism 1999, which deals with international monitoring on parties in case of disputes. 33

This issue of ‘legitimate armed struggle’ was raised by Pakistan during the debates on the Convention for the Suppression of Terrorist Bombings 1997.

33 Article 20 of the Convention for the Suppression of Terrorist Bombings and Article 24 of the Convention for the Suppression of Financing of Terrorism reads, “[a]ny dispute between two or more State Parties concerning the interpretation or application of this Convention which cannot be settled through negotiations within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.”
Although it was evident that this issue was raised in the context of Kashmir, the underlying principle has reflected the views of the Third World on terrorism in the United Nations. Pakistan declared that nothing in this Convention should be applicable “to struggles, including armed struggle, for the realization of right of self-determination launched against any alien or foreign occupation or domination, in accordance with the rules of international law.”

Majority of the states, however, objected to the Pakistani declaration arguing that it was a reservation that sought to “limit the scope of the Convention on a unilateral basis” and was therefore “contrary to its objective and purpose, which is the suppression of terrorist bombings, irrespective of where they take place and of who carries them out.” Further, they argued that the declaration was contrary to the terms of Article 5 of the Convention, according to which States parties commit themselves:

[t]o adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention (...) are under no circumstance justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Another thorny issue during the Convention for the Suppression of Terrorist Bombings 1997 debates has been the question of ‘extradition’. Most of the member-States stood by the ‘political exception’ clause that reserves the right of
the contracting parties to refuse extradition or mutual legal assistance in case the crime for which the extradition is sought is of a political nature. In clear terms, this has been indicative of the prominence given to domestic laws over international legal instruments by individual states.

The United States and Cuba argued over the term “armed forces” under Article 1 para 4 and Article 19 of the Convention for the Suppression of Terrorist Bombings 1997, which provided that “The activities of the armed forces ... governed by other rules of international law, are not governed by this Convention.” Cuba firmly argued that “the use of the armed forces of one state for the purpose of aggression against another cannot be condoned under the present Convention” since the main purpose of the Convention was combating “one of the most noxious forms of crime faced by the modern world.”

The United States said that it understood the term “armed forces” as not applying to “the military force of a state in the exercise of their official duties.”

Other multilateral mechanisms have suffered from certain disagreements like the above making them practically ineffective. Two fundamental flaws may be noted. First, the inability to agree on a common standard on terrorism at the many multilateral meetings has been because the effort to do so has been consistently fed by the attempt to reduce terrorism to a ‘political question’. The nature of

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38 One of the earliest indications took place on 8 September 1972, when the UN Secretary General, Kurt Waldheim, requested the UN General Assembly to include in its 27th Session “[m]easures to
crime that comes within the jurisdiction of these conventions has largely remained undefined. The parties to these conventions, in fundamental ways, have been given the onus to determine what they would accept as crime under the convention. Although certain acts have been identified as terrorist acts in some of these treaties, they have been seen as piecemeal approaches and dealing only with certain manifestations of terrorism. For example, 'crime' as understood in the Genocide Convention of 1948, the 1949 Geneva Conventions and Convention against Torture of 1984 is applicable only in the time of war. These three conventions also deal primarily with state actors and not with non-state actors.

Secondly, the question of enforcement has become a perennial problem with these treaties. States have rejected any form of enforcement mechanism. In some of the treaties, the role of the International Court of Justice (ICJ) has been limited to adjudication, and not as an enforcement mechanism. Even here most of the state parties to the treaty have rejected the provision that urges them to refer their cases to the ICJ.

prevent terrorism and other forms of violence, which endanger or take innocent lives or jeopardize fundamental freedoms". The item was referred to the legal committee who returned the document with major amendments which read "[m]easures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study 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 changes." This was perhaps the first attempt to lend a political colour to the problem of terrorism at the United Nations and since then this issue has consistently featured in any attempt to build an international consensus against terrorism. See Goswami, Arnab, Combating Terrorism: The Legal Challenge, Military Affairs Series, (New Delhi: Har Anand, 2002), p. 56.

In the debates on enforcement mechanisms, the roles of international institutions such as the ICJ and the International Criminal Court to deal with terrorism have featured very strongly. While a number of countries have agreed on the need for external supervision through such international institutions, others see these as having major operational problems. Here again the question of what would constitute a punishable act and who would define it has been a core contention because most states would defy these international directives if it went against their ‘vital’ interests.

Alfred Rubin, for example, argues that the definition of ‘crime’ within the jurisdiction of the courts has been the most difficult thing to resolve.\(^40\) Furthermore, he notes that in a politically sensitive area such as this, the selection of court officials would be a highly political decision. The question of who would be prosecuted and how in case a state party is found guilty of particularly non-compliance to the treaty provisions has also brought to the fore the issue of enforcement. It has been argued that the power of the Security Council, if any, with regard to enforcement, under Article 7 of the UN Charter, is limited to the pursuit of “international peace and security”.

Due to such fundamental contradictions, substantially, only four of the thirteen United Nations international conventions have actually translated into effective agreements given the number of signatories and the nature of their


Regional Forums

At the regional level too there have been a number of multilateral conventions and agreements for cooperative effort against terrorism. These include, the Organization of American States Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, of 2 February 1971; the European Convention on the Suppression of Terrorism, concluded at Strasbourg in France on 27 January 1977; the South Asian Association for Regional Cooperation Regional Convention on Suppression of Terrorism, signed at Katmandu, Nepal on 4 November 1987; the Arab Convention on the Suppression of Terrorism, signed in Cairo on 22 April 1998; the Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou, the capital of Burkina Faso on 1 July 1999; the Organization of African Unity Convention on the Prevention and Combating of Terrorism, adopted at Algiers,

Quite unlike the UN, the issue of 'legitimate armed struggle' has received better acceptance at the regional multilateral forums. The Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou, the capital of Burkina Faso on 1 July 1999, and the Organization of African Unity Convention on the Prevention and Combating of Terrorism, adopted at Algiers, Algeria on 14 July 1999, have provided for the non-inclusion of "armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self determination" as terrorist acts. This inclusion is suggestive of the dominant perception in the two regions that they are highly vulnerable to foreign interference for various reasons. This may not be, however, said of the South Asian Association for Regional Cooperation (SAARC). South Asia, although, for long, has also been a hot spot of international concern, the two most important countries, India and Pakistan, have refused to look eye to eye at the Kashmir struggle - an issue which Pakistan has labeled as "legitimate" and which India calls terrorism. In a sense, regional conventions with regard to terrorism have been much more defined than the UN conventions but here too it is quite

42 For instance, Pakistan observes 5 February as 'Kashmir Solidarity Day'. The Prime Minister of Pakistan on 5 February 1998, in a message said "Today the 130 million people of Pakistan observe the 'Kashmir Solidarity Day' to demonstrate their unflinching support for the valiant people of Kashmir in their legitimate struggle against illegal Indian occupation." See the text of the speech at http://www.un.int/pakistan/1498025b.htm
evident that individual states’ concerns play the bigger role in shaping these agreements.

The regional treaties have also suffered a similar fate as the UN Conventions albeit in somewhat different ways. Most of these treaties have dealt with certain aspects of terrorism and have formulated limited measures to tackle the problem. The European Convention on the Suppression of Terrorism of 1977, perhaps, the most successful of these, is effectively an extradition treaty. The fundamental problem with the European treaty is that, while, it has spelled out acts that would be treated as ‘terrorist acts’ and not as ‘political acts’ for the “purpose of extradition”, it has also a provision whereby the contracting states reserves the right to define a political act. The OAS Convention of 1971 attempts to tackle only kidnapping, hostage taking and murder. The OIC and OAU Conventions that have provided for “legitimate people’s struggle”, many feel, have both moral and organizational implications.

The SAARC treaty, like the European Convention, deals with extradition. But this treaty has been held hostage by the derailed relationship between India and Pakistan. What has been unmistakable in these regional efforts has been the little focus given to a “comprehensive normative fabric” but rather on “bits and pieces

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43 Article 1 of the European Convention says, “...for the purposes of extradition between contracting states none of the following offences shall be regarded as a political offence...”. Article 13, however, reads, any state “reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence...”.
of overlapping norms”. The question of an effective enforcement mechanism of the treaty obligations has also not been adequately addressed in these conventions.

The issue of human rights is a core aspect in any effort to tackle terrorism. However, this aspect has been inadequately addressed in the multilateral debates on terrorism. The issue of human rights at the UN is dealt with by the Commission on Human Rights and other sub-commissions under the auspices of ECOSOC. Some analysts feel that the focus in the UN has been more on political human rights violations by the state or its agents. Human rights violations arising out of terrorism or anti-terrorist measures have rarely been discussed during the Conventions against terrorism. No reference has been made in the treaties with regards to the UN Human Rights Commission or instruments such as the International Covenant on Civil and Political Rights (ICCPR). The nature of debate on human rights in the UN can be understood, for instance, in the manner in which Cuba brought into a limited focus the issue of human rights when it declared that none of the provisions of the Conventions for the Suppression of Terrorist Bombings 1997:

[c]ontained in article 19, paragraph 2, shall constitute an encouragement or condonation of the threat or use of force in international relations, which must under all circumstances be governed strictly by the principles of international law and the purposes and principles enshrined in the Charter of the United Nations.

44 Bassiouni, “Legal Control of International Terrorism”, p. 89. The question of "comprehensiveness" would also necessarily address both state and non-state 'terrorist' activities.
Cuba further interpreted the provisions of the Convention as "applying with full rigour to activities carried out by armed forces of one state against another state in cases in which no armed conflict exists between the two."47 This declaration, while dealing with unprovoked and unwarranted intrusion and interference by an adversary in another country and state terrorism or state-sponsored terrorism, also reflected human rights concerns given the earlier experiences of abuse of rights and liberties in such circumstances. Except for the European Convention that provides for external supervision of the actions taken by states within their own respective territories, none of the larger UN conventions has provided for external supervision or enforcement of human rights.48

It is evident that multilateral debates on terrorism will be continually held under the shadow of 'individual interests' of the contracting parties. International principles in this regard have been adhered to by member states as long as it does not impact on their sovereignty. In the present, even though its impact is being felt worldwide, states are unwilling to treat the issue in all its dimensions beyond their respective jurisdictions.

47 ibid.
48 Most of the state parties to the UN Conventions have objected to external supervision by the International Court of Justice. For example, Article 24 (2) of the Convention for the Suppression of Financing of Terrorism, allows state parties to reject Article 24 (1), which deals with reference to the ICJ in case of any dispute. The European Convention, however, does not have such provisions. On the other hand, Article 10 (2) of the European Convention says, "[T]he arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final."
The Domestic Debate

In the domestic realm of individual states, counter-terrorist motivations have largely determined all attempts at defining or understanding terrorism resulting in a much more defined acceptance of what would constitute terrorism. This is not to say, however, that in this context fundamental normative issues have been insignificant or have not evoked debate. While at the multilateral discussions states have put their sovereign rights and interests before agreeing to a common agenda on terrorism, the same sovereignty has allowed individual states to define terrorism, which in many instances have been done through politically convenient interpretations of events. For example, Badey points out that the US State Department’s definition contained in Title 22 of the United State’s Code, Section 2656(d), clearly defines terrorists as either “sub-national groups or clandestine foreign state agents.” This can be considered is a highly political decision.

Further, at the domestic level the debate has been much more people-, region- or issue-specific involving territorial, legitimacy and/or socio-economic issues. States have also been particularly concerned about the use of terrorist organizations by “enemy” states to destabilize certain regions within their territories. Other issues have dealt with sub-nationalist aspirations of certain groups of people that have posed as a serious threat to the territorial integrity of a state. The question of state-violence on the civilian population, in the guise of anti-terrorist detentions or operations, has featured strongly especially from organizations dealing with civil and political rights. They have been particularly

concerned about the free hand given to certain agencies in monopolising violence. At the level of individual states the various aspects of the debate on terrorism may be studied under the following themes.

Defining the Term 'Terrorism'

For states too defining the concept of terrorism has been equally controversial. The main contentions that have featured at the multilateral forums have also surfaced at the domestic level. However, the formulation of a comprehensive legal basis for combating terrorism has not been altogether challenged as in the international attempts to bring about a legal mechanism. On the other hand, it has been pointed out that an objective definition of terrorism within a domestic setting remains the most important strategy to control terrorism. There are some political strategists who say that terrorism should be defined by a country according to what it thinks is best, based on the circumstances, provided they don’t overstep the legal framework that affects the fundamental rights of their

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50 This, however, is not to say that definition of terrorism has not caused concern among certain groups. For example, in the wake of the promulgation of the Prevention of Terrorism Ordinance, 2001, in India, many have argued against the arbitrary way in which the provisions of the Ordinance has allowed the authority to define what would constitute a terrorist act. A.G. Noorani, for example, argues that even peaceful demonstrations come within the ambit of terrorism in the new Ordinance. A.G. Noorani, “The Truth about POTO,” Frontline, December 21, 2001. The same problem albeit from a different angle, has been faced by the United Kingdom with regards to the Irish problem. UK faces the problem of ‘sub-nationalist’ terror on the one hand and ‘loyalist’ terror on the other. The Ulster Volunteer Force (UVF) – a loyalist organization was supposed to have received covert support from the British army. The paramilitary Ulster Defence Regiment (UDR) formed in 1971 to back up the Royal Ulster Constabulary (RUC) in Northern Ireland publicly admitted that its members were involved in at least 30 known cases of murder of Catholics. See Ashley Brown, “Loyalist Terror in Northern Ireland”, in Encyclopaedia of Violence, Peace and Conflict, Vol. 3 (London: Academic Press, 1999), p. 605.

51 For example, “self-help”, according to Arnab Goswami is the most effective way to control terrorism. Multilateral attempts will be ever elusive. The roots of terrorism and hence the most effective control of terrorism lies within the domain of individual states. In this sense, debates on what constitutes terrorism within a domestic setting have serious implications with regards to its control. See Goswami, Combating Terrorism, pp. 71-2.
peoples. In this sense, the state should define it according to "threat perceptions and the psychological climate." Further, certain aspects of a state's anti-terrorist mechanism that need to be changed or reviewed have not been a complicated process and have been resolved through amendments or repeals. The problem of enforcement also does not exist.

Fundamentally, the debate on defining the concept has taken two parallel and not diverging directions in this case. The first deals with the view that states should define terrorism according to threat perceptions. In this sense, laws should be flexible to deal with the 'ever changing' manifestations of terrorism. The second, while not challenging that states should define terrorism according to the above criteria, has argued for a clearly defined set of acts that would invite penal actions under anti-terrorist laws to remove apprehensions that these laws can be misused by the authority on its citizens or even citizens of other states. This concern has been felt strongly due to the misuse of these laws by the authority, particularly, for political benefits.

The domestic debate has been less controversial because it has involved two important compulsions. First, these measures are aimed at facilitating jurisdictional responses to acts directed against 'vital' interests of the state. For

53 In India, for example, the arrests under the Terrorist and Disruptive Activities Act (TADA), were supposedly carried out to score political disputes. More than 98 per cent of those arrested under the Act had to be released for lack of evidence. For statistical details on the arrests and conviction under TADA, overall and state-wise, see South Asia Human Rights Documentation Centre, Prevention of Terrorism Ordinance, 2001: Government Decides to Play Judge and Jury (New Delhi: SAHRDC, 2001), pp. 31-34.
example, the Law Commission of India’s Working Paper on Legislation to Combat Terrorism has argued for the re-enactment of a ‘comprehensive’ anti-terrorism law to fill up loopholes in existing legislation (in this case the Terrorists and Disruptive Activities Prevention Act, 1987, which has since lapsed) in the face of escalating terrorist threats.\(^{54}\) Secondly, political definitions have been primarily intended to counter subversive activities by foreign agents against a country on its soil or its facilities, personnel and interests abroad. The US Anti-Terrorism and Effective Death Penalty Act, 1996, the Terrorism Act 2000 of the United Kingdom, and so on, all contain provisions to effectively deal with terrorism against the state from foreign groups or agents.

The most stringent criticisms on the definitional aspect of terrorism in the domestic sphere have come in on two accounts. First, in some cases, the definition has tended to encompass the ‘types’ of crime, traditionally in the realm of the Criminal Codes, resulting in the dilution of the meaning of terrorism with serious implications for policy making. Secondly, certain activities of dissent have been incorporated willfully in these laws and designated as ‘terrorism’ to serve as political weapons for the people or the political party in power. Such abuse of state power has been particularly felt in Third World multiparty democracies.

\(^{54}\) Law Commission of India, *Working Paper on Legislation to Combat Terrorism*, 2000. The paper discusses at length the need of a comprehensive legal instrument that will provide counter-terrorist agencies, the ability to combat terrorism in view of the declining security situation of the country.
The sovereign right of states to determine their own conceptions of terrorism and anti-terrorism may also be explained by the trend in anti-terrorist law-making by various states and by the authority it exerts to silence critics in the face of real threats to its security. This has been made evident in the aftermath of the 9/11 attacks on the World Trade Center and the Pentagon in the United States. The debates that ensued favoured the formulation of various measures even in states traditionally free of terrorism. The event and the response to it by the international community while exposing the scope of the terrorist threat has indicated the extent to which states are ready to go in order to preempt or contain the threat.

What has been particularly significant has been the ‘urgent’ way in which individual states have responded to the event. Despite contentions that states were being unnecessarily uptight about their own domestic situations, many of the states introduced new and stringent laws, increased security surveillance on aviation, designated buildings of critical infrastructure, dignitaries and the borders. Movement of people within their respective countries was monitored and security forces were kept at an all time alert. Even states that had very little or no experience with terrorism in the past put up an elaborate anti-terrorist mechanism.

In the United States, the events of 9/11 saw the enactment of several pieces of legislation (long time legislations and ones that required immediate floor action) dealing with various aspects of the terrorist problem. Some of the bills which were signed into law include: Uniting and Strengthening America by Providing

The Department of Homeland Security institutionalizes a comprehensive national strategy for the US by consolidating 22 agencies into one single functional agency. The strategy includes six areas of focus, intelligence and warning, border and transportation security, domestic counter-terrorism, protecting critical infrastructure, defending against catastrophic threats and emergency preparedness and response. The US has made countering and investigating terrorist activity the number one priority for both law enforcement and intelligence agencies. The Bush Administration also authorized the transformation of the FBI into an agency

55 There were a whopping 134 pieces of legislations/resolutions in the United States that were formulated in response to the terrorist attack on September 11, 2001. A full list of all enacted legislations/resolutions after 9/11 is available at http://thomas.loc.gov/cgi-bin.
whose primary mission is to prevent terrorist attacks and increased its budget by 60 percent.\textsuperscript{56}

Apart from the increased action against terrorism within its borders, the U.S. devised an overt military policy that aimed to bring to book the Al Qaeda, which it accused of perpetrating the attack. For instance, there has been an attempt by the U.S. to unite various nations in what it called a “war against terrorism”. The Taliban regime in Afghanistan which was accused of harbouring Osama bin Laden, the chief mastermind of the terrorist attacks, was routed and a new government put in place in Afghanistan.

In Europe, many governments rapidly reviewed anti- and counter-terrorism capabilities and terrorism-preparedness on a national basis, giving priority to domestic policies and measures and looking at strengths and weaknesses within their own borders.\textsuperscript{57} The United Kingdom was at the forefront of the US-led response to the attack by particularly assisting the United States with an initial dispatch of 1,700 combat troops which included 45 Royal Marine Commando in the wake of \textit{Operation Anaconda} in Afghanistan.\textsuperscript{58} It also put into place a comprehensive anti-terrorism Act – the Anti-Terrorism, Crime and Security Act, 2001. This Act enhanced the powers of the security apparatus to “counter the

increased threat to the UK following the events of 9/11. There was increased security coordination in several other European countries such as the Netherlands, Belgium and Finland, countries with negligible experience with terrorism. In other countries such as France, Germany and Spain, although there was no introduction of new legislations, an elaborate counter-terrorism mechanism involving the various governmental security departments were put in place and coordination among them was enhanced.

Canada and Japan were other two nations that came up with a new piece of legislation after 9/11. The Anti-Terrorism Act was formulated in October 2001 in Canada and in Japan the Anti-Terrorism Special Measures Bill was passed by the Diet on October 29, 2001. This bill was intended to enable Japan to contribute actively to the efforts of the international community for the prevention and the eradication of international terrorist acts.

In South Asia, Nepal was one of the first nations to come up with an anti-terrorist legislation that was aimed at the Maoist insurgents after talks broke down in October 2001. In the third week of November 2001, the Maoists attacked the administrative and military installations in Dang district of the mid-west, Syanja district of western and Solukhumbu district of eastern Nepal, which led to the full-
scale deployment of the armed forces on 26 November 2001 along with the declaration of a state of emergency and promulgation of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO). India also came up with the Prevention of Terrorism Ordinance (which subsequently became law) during the period. Both Pakistan and India became an ally of the United States in the ‘war against terrorism’.

Many of these legislations came about in the background of overwhelming support it received. The debate swung in favour of ‘national security’ in the event of attacks such as 9/11. States with long periods of experience with terrorism were awakened to the magnitude of the threat and the ingenuity of modern terrorists. Cynics were either silenced or made to be part of the national campaign against terrorism.

It is apparent that domestic debates have emphasized on the need to devise mechanisms to respond to the specific/unique characteristics of terrorism of that particular area rather than whether anti-terrorist legislations are needed or not. It is also seen that states have made the response very flexible. Even within a country different agencies have different definitions of the term. Many states in the international system prefer to call ‘terrorists’ those perpetrators who belong to

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63 For example, in the US, the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI) and the State Department all have different definitions of terrorism.
other states and carry out criminal activities in their states. Terrorism, as an instrument for specific foreign policy objectives has become much more intolerable.

*The Question of Human Rights*

Amongst others, it is the human rights organizations that have put up the most stringent opposition to any anti-terrorist lawmaking. This has come about due to the notion that the first victims of such laws are the basic rights and liberties of the people, usually innocents. There have been three areas where human rights workers and lawmakers have consistently been in conflict over anti-terrorist measures and lawmaking.

First, human right workers have been particularly concerned about the status given to their respective national human right commissions and hence the underlying powers, which has been in most cases ‘consultative’ in nature. They argue that this has allowed lawmakers to ‘rebuff’ the commissions’ directives as and when they desire.64 Further, these organisations point out that states tend to reject international monitoring of human rights situations in their respective territories. This, according to them, gives the government a free hand to manipulate the human rights conditions of their peoples.

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64 On 12 July 2000 the National Human Rights Commission of India recommended that “there was no need for enactment of the Prevention of Terrorism Bill 2000 or similar law and that existing laws were sufficient to deal with any eventuality, including terrorism.” However, on 13 July 2000, in what was termed as a clear rebuff to the NHRC, the Indian Home Ministry stressed the need to introduce an anti-terrorist law and asked the Law Commission to draft an anti-terrorist law. South Asia Human Rights Documentation Centre, *Prevention of Terrorism Ordinance 2001: Government Decides to Play Judge and Jury* (New Delhi: SAHRDC, November 2001), pp. 13-4
Secondly, human rights organizations argue that lawmakers resort to ‘knee-jerk’ and panic formulations in crisis times, often, without carrying out a proper examination resulting in an inadequate assessment of the implications of anti-terrorist measures. This results in not only the curtailment but also widespread abuse of the rights and liberties of innocents. This is compounded particularly in societies where ‘rule of law’ is weak and the police/military institutions yet to be fully developed.

Thirdly, these groups point out that state authority, in this regard, has been abused in a number of ways. In counter-terror operations, such as random search and arrests, custodial killings, fake encounters, preventive detentions and ‘special’ trials, innocent people have been subjected to these abuses. They also argue that the policies to curtail terrorists have, in certain cases, strengthened the hands of those in power to settle political scores with opponents, on the one hand, and to manipulate the provisions of these laws to continue to remain in power on the other.

Lawmakers justify these formulations on the basis of threats to national security. They argue that ‘security’ necessarily entails a certain amount of sacrifice of civil liberties of the people concerned. Further, that in times of renewed terrorist activities the question of human rights takes a back seat while security comes to the fore. This argument has been starkly manifested in the post-September 11
period, wherein, many states came up with anti-terrorist laws following the Security Council directive under Resolution No.1373 on the basis of threats of similar magnitude.65

Amnesty International,66 Human Rights Watch67 and others came up with major commentaries on post-9/11 policymaking in the United States, United Kingdom and other parts of the world. Their main arguments may be summed up as:

While we recognize that the threat of terrorism requires specific measures, we call on all governments to refrain from any excessive steps which would violate fundamental freedoms and undermine legitimate dissent. In pursuing the objective of eradicating terrorism, it is essential that states strictly adhere to their international obligations to uphold human rights and fundamental freedoms.68

These human rights bodies argue that they share parallel goals with the state. But their contention is that in the means to achieve the goal states have treated human rights and fundamental freedoms as dispensable – particularly of the innocents.

A number of scholars have also critically viewed the proactive response of states in the post-9/11 period. Thomas Carothers, for example, makes a scathing attack of the US post-9/11 policy by arguing how the US has failed both in its stated objectives of promoting democracy around the world and upholding the rights and liberties of its own citizens.69 The post-war on terrorism policy towards Pakistan,

65 Resolution 1373 (2001) deals with “international cooperation to combat threats to international peace and security caused by terrorist acts.” The resolution further urges the member states to devise anti-terrorist mechanisms within their own domestic domains to fight terrorism.
the Central Asian Republics of Uzbekistan, Kazakhstan, Kyrgyzstan, Turkmenistan and Indonesia, according to Carothers, belies US objective of promoting democracy given that the governments in these states are autocratic. He also argues that "large scale detention of immigrants, closed deportation hearings, and the declaration of some US citizens as "enemy combatants" with no right to counsel or even to contest the designation" in the post-September 11 period has severely curtailed the civil rights of particularly the immigrants in the United States.70

Human rights and fundamental freedoms will continue to remain a core issue in the discourse on terrorism. The policies on anti-terrorism necessarily entail a human rights appeal not only for the purpose of upholding the rights and liberties of the people but also for operational effectiveness.

**Terrorism and Development**

In the context of individual states, terrorism, for long, has been associated with the manifestations of minority sub-national identities and 'violent' demands for a territorial or political or social space. The debates, therefore, in a number of these states have centred around, not only facing these challenges through predominantly military and repressive measures, but also through negotiations for cessation of violence through social, economic and political and other initiatives. Lawmakers have understood the legitimate struggles of these groups and have

70 Amnesty International also came up with a list of "human rights concerns" in this regard. See *War on Terror: Must Not Be an Excuse to Deny Human Rights, Summary of AI's Concerns*, Amnesty International, 14 March 2002.
devised mechanisms and schemes to respond to these violent socio-economic or political manifestations.

The debate, in this regard, has highlighted a number of arguments. Social and economic development policies can weaken local support for terrorist activities by, for example, benefiting the core group who has traditionally been the support base for these kinds of activities. It also flows from this argument that developmental incentives can discourage terrorist recruits by providing "economic alternatives" particularly, for those who tend to be easily influenced due to poor economic conditions. It has, however, been noted that inadequately funded and poorly executed social and economic policies, on the other hand, may not fulfill the inflated expectations and renew support for terrorism.

In a number of cases policy makers argue that protagonists of conflict are driven by the motive of attracting pacifiers in the form of financial incentives. These groups promote conflict for selfish gains. And in such circumstances, economic incentives only act as conflict multipliers.

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Critics have, however, not taken kindly to social and economic prescriptions to violent forms of conflict which are fundamentally political in nature. It may also be worth noting here that time and again, in answer to national debates in this regard, most of the groups involved in various conflicts have announced that their activism do not represent a demand for economic benefits/development but are political or territorial or administrative in nature. The critics argue that in situations of conflict, economic and other developmental packages become victim to political and administrative insecurity and malpractices resulting in such benefits accruing only to certain individuals and/or groups of people.

Many have, however, argued for a much more serious focus on the economic and social dimensions of conflict for a long-term resolution of these problems. A systematic implementation of economic and social policies has paid dividends in controlling the spread of terrorism. National debates have also promoted the idea of fighting sub-national terrorism through economic and social alternatives.

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73 See, for example, two studies done in this regard. Peterlini, Oskar *Autonomy and the Protection of Ethnic Minorities in Trentino-South Tyrol: An Overview of the History, Law and Politics* (Trento: Presidium of the Regional Parliament Trentino-South Tyrol, 1997), deals with Italian constitutional provisions that benefits all the linguistic groups in the region – Italians, German and Ladins. The tension in the region had developed into 'high voltage' violence during the 1960s. The groups have been provided administrative autonomy within Italy and there has not been a resurgence of violence. Cragin, Kim and Chalk, Peter, *Terrorism and Development: Using Social and Economic Development to Inhibit a Resurgence of Terrorism*, MR-1630, RAND, 2003, also examines social and economic developmental policies enacted by Israel, the Philippines and the United Kingdom in their respective jurisdictions and argues how these have in many instances had a positive fallout on the conflict.
The Context and Purpose of this Study

The nature of debates on anti-terrorism enumerated above highlight a number of fundamental features that define both the problems and prospects for evolving a viable and effective anti-terrorist approach. Broadly, academic exercises, even while displaying deep theoretical insights have not been altogether free from the 'politics' associated with the term 'terrorism'. This has resulted in a situation where explanations of the cause of terrorism in one context or a region do not necessarily hold true in another context or region. The changing rationale and justification for the resort to terrorist violence by legal, non-legal and sub-state entities will also perennially plague efforts to identify the necessary ingredients to evolve terrorism as a concept. And, as is evident, multilateralism in this regard, has succeeded only in aspects of terrorism where there has been least disagreement among the parties, despite the ever-looming threat of international terrorism.

At the level of individual states delineating acts of terrorism and establishing a legal basis for actions against terrorists have been much more defined. A state's sovereignty allows it the necessary flexibility to respond to local imperatives. The roots of terrorism are also largely confined within the political, social, economic, territorial and religious fabric and circumstance of individual states. States know this and hence prefer the domestic approach towards the issue.
It is also at the domestic level that facing the threat of terrorism has involved much less complex issues. Broadly, security and security-related issues have constituted one end of the anti-terrorist debate, while legal principles of anti-terrorism have characterized the other end. And as mentioned, the problem of enforcement is completely absent. All these suggest that it is in the realm of individual states that anti-terrorist measures can be most effectively operationalised.

This study, while intending to assert the above proposition, will inquire and focus on the legal anti-terrorist measures. Anti-terrorist laws have often been seen in a democratic bad light due to the inconsistency between theory and practice and yet the most viable answer to terrorism are democratic norms and principles that are largely embodied in the principles of jurisprudence. As argued, it has become increasingly difficult to delink the 'political' from the 'moral' aspects of terrorism, and hence the endeavor here will be to examine the political debates that precede anti-terrorist decisions and law-making, without going into the legalities of whether the laws are right or wrong.

In the present, it has been argued that legal measures are meant to augment military and police strategies of offense and defence against terrorists. It is not difficult to assume, however, that the military/police strategies are short-term in nature often to respond to certain expediencies. The basis for these strategies still remain the legal norms and principles of anti-terrorism.
Two democratic states – the United Kingdom and India – with a long history of conflict and violence have been chosen for the purpose of this study and for the following reasons:

In both the United Kingdom and India, the 1980s featured a significant change in the policies dealing with terrorists from earlier strategies. In the UK, the Prevention of Terrorism Act (PTA) 1989, extended the provisions of the Act to the whole of the UK, while the earlier 1974 PTA focused only on ‘Irish terrorism’. It also introduced a new Part III, which provided for, among other things, ensuring the disclosure of terrorist funds held in the UK and to block their transfer. 74

In India, the term “terrorism” was specifically included in the Terrorist Affected Areas (Special Courts) Act, 1984, signaling a departure from the ‘anti-national’ label used earlier. The first comprehensive anti-terrorist Act – the Terrorist and Disruptive Activities Act, was passed in 1985. Rajni Kothari, for example, identifies 1984 as the defining year for the rise of the “terrorist state” in India. 75 These departures in the two cases indicated a counter-terrorist strategy of a more comprehensive kind on the one hand and militaristic/counter-insurgency nature on the other.

A serious appraisal of these shifts is expected to highlight the rationale and the recourse to these policies which have been seen as 'extreme measures' against terrorists. It will also underline the nature of debate and decision-making during the period and in subsequence anti-terrorist policies and practices. Despite other democratic states with similar problems and laws, the two makes valuable cases for comparison for the following reasons:

First, both are parliamentary democracies where the custom of open debates on all issues is an inalienable part of the political process and practice. In both cases, however, it is seen that the Cabinet plays the pre-eminent role in all matters relating to internal security and under which terrorism has for long been the core issue. This is evident, for example, in the executive's power to issue Ordinances or Orders-in-Council, as the case may be. It may be also noted here that many procedures of British administration and governance have been allowed to continue in India after her independence.

Secondly, both have experienced a prolonged conflict characterized by a mix of a political/territorial/ethnic/religious discords. Protracted domestic conflict is more likely to lead to anti-democratic practices and the erosion of civil liberties and the gradual isolation of public opinion from governmental actions and policies. The operative method in both cases has been a mix of insurgent guerilla warfare (some of it irredentist), sectarian killings and attacks, inter- and intra-factional conflicts.
between communities, punishment shootings and in some cases senseless violence.

Thirdly, a third party, foreign to both the states have played a crucial role in determining the nature and intensity of the conflict. In the UK, the Irish Republic was involved and in India, Pakistan is involved. It may be even pointed out that a much cooperative attitude of the Irish Republic, for a resolution of the Northern Ireland issue, has created a favourable climate for a dialogue of all parties involved and has resulted in a much efficient way of dealing with the issue. The revocation of ‘Direct Rule’ and the establishment of an Intergovernmental Conference in November 1985 to enable ministers from London and Dublin to discuss matters of common concern have allowed the UK to focus on political measures culminating in the Good Friday Agreement in April 1998.

In India, however, non-cooperation between Pakistan and India on Jammu and Kashmir and India’s accusation that Pakistan has been regularly supporting terrorist infiltration into the state has forced India to adopt a consistently tough posture on terrorism in the region. The extension of the Armed Forces Special Powers Act 1958 to Jammu and Kashmir on 5 July 1990 may be understood in this context.

Fourthly, in principle, both have followed a ‘defensive military response’ notwithstanding excesses committed by them in the name of counter-
terrorism/national security rather than an all-out ‘offensive military counter-terrorism action’. This is an important aspect because this gives legitimacy to state action. It is also seen that in both cases there is preference for applying the criminal process in dealing with terrorists rather than treating them as “political” actors.

India and the United Kingdom present ideal cases for a critical examination of democracies at work in the background of long experiences with political conflict. While many aspects of a liberal democratic political system are similar in both cases, one cannot fail to be sensitive to various other dissimilarities such as, the level of political development, the ethnic composition, secular fabric of the two societies, the economic conditions of the people, the political party system, the level of consensus achieved during making of critical national decisions, and so on. These must be considered while assessing their impact on policy-making. The following chapter will examine the nature of the terrorist threat, in the background of which the anti-terrorism debate has taken place. It must be asserted that the ‘threat’ itself, in both cases, has also been a matter of debate. The attempt, therefore, will be to expose these contestations while studying their impact on anti-terrorist debate and decision-making.