Chapter 4

The Evolving Regime on Terrorism
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In evaluation the evaluation of the *regime* on terrorism, this chapter begins with attempts undertaken in early 1930s towards the evolution of a *regime* and provides a broad overview of existing international conventions that constitute the *regime*. The second section critically evaluates the limitations and shortcomings of the existing *regime* and the last section appraises the contributions made by India towards the international *regime*.

The Regime

Following the assassination of King Alexander of Yugoslavia and Foreign Minister Barthoru of France 1934, the Council of the League of Nations established an expert committee to study the question of terrorist activity. It was entrusted with the task of drawing up ‘a preliminary draft of an international convention’ conspiracies and crimes committed with a ‘political and terrorist purpose’.\(^1\) The resultant 1937 Conventions was one of the first attempts to define and categorize terrorism. It defined terrorism as all “criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular person, or a group of persons or the general public” and urged that no state should condone such acts on the grounds that they were political in nature and were directed against a particular tyranny. Under terrorism, it

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included all acts as well as attempts that cause death or bodily harm to heads of state or government, their spouses and other public figures; that cause damage to public property; that endanger the lives of the public; and that deal with arms and ammunition for the commission of any of these offences in any state.

However, the political climate was inappropriate for such a far-reaching and ambitious attempt. A number of states sympathetic to decolonization movement were unwilling to support such a document and although 24 states signed the Convention for the Prevention and Punishment of Terrorism, only India, then a dominion ratified it and the Convention never came into force.²

In its early earlier, international terrorism received only tangential attention in the UN General Assembly. The Convention of Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 1963 imposes upon states parties certain obligations to return a hijacked aircraft and its cargo and the release of the passengers and crew. The Convention for the Suppression of Unlawful Seizure of Aircraft (signed at The Hague on December 1970) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (signed at September 1971 in Montreal) made significant progress in identifying and combating air piracy.³

However, the massacre of Israel athletes during the Munich Olympic Games in 1972 spurred real progress in this direction. The UN Secretary-General requested the General Assembly to discuss “measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms.”

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² Saleem Qureshi, ‘Political Violence in the South Asian Subcontinent’ in Alexander, Ibid., p.152
When the General Assembly took up the suggestion, Canada was one of the members that voted to replace the phrase "terrorism and other forms of violence" with "international terrorism." The discussion soon shifted from the question of terrorist acts by individuals or groups, to acts of 'state terrorism' and the legitimacy of the national liberation struggle by oppressed or occupied peoples.⁴

An examination of the identities of the 35 member-ad hoc committee indicates the slant in favour of liberation movements.⁵ Canada sought to distinguish the political and legal aspects of the problems and to sever the causes from acts.⁶ The desire to garner Arab support compelled the Soviets to endorse the Arab demands and the UN finally decided "to study the causes of terrorist acts rather than to draw up international legislation aimed at stemming the acts of terrorism on the model of the anti hijacking resolution of November 1970."⁷ As result of political manoeuvring, states that supported terrorism were able to work within the UN and to turn that issue to their advantage and "what began as an effort to condemn terrorism would become an exercise in its legitimisation."⁸

Since the UN often operates in blocs, the radical Arab bloc with the backing of the Soviet Union and its allies and the Non-Aligned countries, managed to overlook terrorism perpetuated by major players such as the Palestine Liberation Organisation (PLO), SWAPO and African National Congress (ANC). In their struggle against

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⁴ L.C, Green "Terrorism -The Canadian Perspective", in Alexander, n.1, p.19
⁵ ibid., p.20
⁶ Ibid
⁷ Ross E. Butler, 'Terrorism in Latin America' in Alexander, n.4, p.133
⁸ Gerson, n.3, p.52
‘colonial, racist, and alien’ regimes, terrorism became a legitimate instrument of policy. Therefore, as Allen Gerson suggested:

... UN debates on terrorism in the early 1970s focused not on the victims of the Munich Olympics but on the existing conditions that ‘forced a resort to terrorism the victims were to blame in so far as they stood in the way of the achievement of a new order.’

A number of Third World countries were opposed to bringing in the legitimate struggle of peoples under the yoke of colonialism and alien domination within the rubric of ‘terrorism’. This position was also endorsed by People’s Republic of China, which had joined the UN in 1971. Terrorism was seen as a legitimate instrument in the anti-colonial struggle and the underlying causes of violence and terrorism “were misery frustration grievance and despair consequently the only way to deal with terrorism was to deal with these underlying causes.” As a result, it was not until 1985, that the General Assembly adopted resolution that “univocally condemns as criminal, all acts, methods, and practices of terrorism”.

Indeed, two years after the Munich massacre an attempt was made to revise the 1949 Geneva Convention. This ended in 1977 with the adoption of two new protocols. The first one precluded certain national liberation struggles from being considered internal civil war because under the existing international law, third parties could not intervene to end internal strife. “By deeming national liberation struggles to be international conflict” Allan Gerson concluded, “the door was suddenly opened for

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9 Ibid., p.53
10 Finger, n.1, p.330.
foreign powers to freely assist insurgents seeking to subvert or overthrow existing governments."\textsuperscript{11}

Since the Tokyo Convention of 1963, the international legal \textit{regime} on terrorism comprises of the twelve international Conventions and as well as seven regional agreements and these Conventions and Agreements form the core of the \textit{regime}. They are:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, (Tokyo Convention, 1963)
  - Convention for the Suppression of Unlawful Seizure of Aircraft (Montreal Convention, 1970);
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (1973);
- International Convention against the Taking of Hostages (1979);
- Convention on the Physical Protection of Nuclear Material (Vienna Convention, 1980);
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal Convention, 1988);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome Convention, 1988);

\textsuperscript{11} Gerson, n.3, p.53
• Convention on the Marking of Plastic Explosives for the Purpose of Detection, (Montreal Convention, 1991)
• International Convention for the Suppression of Terrorist Bombings (1997);
and
• International Convention for the Suppression of the Financing of Terrorism (1999)

In addition, the following regional conventions make up the international regime on terrorism.

• OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, (Washington, Convention, 1971)
• European Convention on the Suppression of Terrorism, (Strasbourg Convention, 1977)
• SAARC Regional Convention on Suppression of Terrorism, (Kathmandu Convention, 1987)
• Arab Convention on the Suppression of Terrorism, (Cairo Convention, 1998)
• Convention of the Organization of the Islamic Conference on Combating International Terrorism, (Ouagadougou Convention, 1999)
• OAU Convention on the Prevention and Combating of Terrorism, (Algiers Convention, 1999); and
• Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, (Minsk Treaty, 1999)

Through these conventions, the regime seeks to expand the territorial jurisdiction of the state and establishes a correlation between the state and those who committed terrorist crimes. It enables states where the crimes were committed to prosecute the terrorist or to extradite him/her to the state against whom the offences were committed. Second, it enables states to introduce necessary domestic legislations to enforce and punish terrorist offences either within the country or in other states. Three, it establishes a legal framework for cooperation between states in combating terrorism. Last, it provides the framework for bilateral and multilateral arrangement for extradition of people suspected of terrorism.

Of late, the question of combating financing of terrorism draws special attention and the concerns initially emerged from the Western efforts to address the problem of money laundering, especially by various transnational criminal gangs and mafia. The formation in 1989 of a financial task force by G-7 marked the first organised effort to monitor money-laundering operations. The identification and subsequent blacklisting of offshore safe havens proved effective. This gradually evolved to include financing of terrorism and culminated in the 1999 International Convention for the Suppression of Financing of Terrorism.

These Conventions were successfully concluded because they are imprecise and vague. As a result, they could be interpreted and is often interpreted differently. The large measure of discretion "weakens the texts' utility in terms of global security, which
could be enhanced through setting out overriding imperatives." These Conventions, which constitute the *regime*, however, suffers from a number of impediments, limitations and structural inadequacies.

**A Critique of the Regime**

Formal adherence and commitment to international conventions on terrorism does not inhibit states to sponsor, arm, finance or facilitate terrorist groups. Despite formal denials and absence of corroborative third party evidence, the linkage between certain states and terrorist groups are widely recognised; for example, Iran and Hezbollah; and Pakistan and *jihadi* groups operating in the Indian state of Jammu and Kashmir. Indeed, until the 11 September, 2001 events, a number of Arab states openly provided generous financial support to the *Hamas*.

More importantly, the *regime* is confronted with a number of specific problems.

**Problems of Definition**

The *Regime* as manifested by these international conventions is hampered by the basic differences over the definition of terrorism. Since states tend to view it through the national interest prism, lack of consensus becomes inevitable. Western countries, especially if they are the victims, tend to view terrorism as a menace to international peace and security and a threat to world order. Even when not prepared or able to pursue an effective counter strategy, they tend to disregard political motives as a justification for

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13 At one time, the LTTE received political, financial, logistical and even military support from India.
terrorism. The Arab-Islamic countries largely tend to adopt an opposite position. Dominated by their concern and support for the Palestinian question, they differentiate terrorism from national liberation struggle. Though not justifying the killing of the innocent civilians, they tend to focus their attention on the need to end Israeli occupation of Palestinian territories.

At the height of the Cold War, countries of the Third World and to a lesser extent of the Eastern Europe, adopted a sympathetic attitude towards terrorism, especially if it was directed against forces of imperialism, occupation and exploitation.14 At the same time however, whenever they were faced with terrorism in the domestic arena, they followed the West and adopted a resolute position vis-à-vis terrorism. This is true of countries as diverse as Algeria, Egypt, India, Turkey and Pakistan. Despite some progress towards an international consensus following the 11 September, 2001 attacks, as discussed infra the prevailing view in the Arab-Islamic world is tilted in favour of a conditional approach towards terrorism.

At the same time, one cannot overstate the problem of definition, which draws considerable attention and criticisms.15 The basic premise that nations could somehow agree on a common definition of terrorism is flawed. Terrorism is differentiated from other forms of social violence because of its political content or motive. Because it is a politically motivated violence, it is essential and inevitable that nations tend to view it differently. In some form or another, states as well as individuals and groups have

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14 The same can be said about the US, which endorsed and employed terrorism as an effective means of propping up right wing regimes in Latin America.

15 For the problems confronting definition see, Omar Malik, Enough of the Definition of Terrorism, (London: The royal Institute of International Affairs, 2000)
pursued violent means for attaining political objectives. Both colonialism as well as anti-colonialism looked to violence as an effective means towards attaining certain political ends. Under these circumstances, expecting a political consensus among nations over political violence is unrealistic, contradictory and self-defeating.

**Lack of Consensus**

Some degree of consensus is a pre-condition for the effectiveness of any international arrangement or regime devoted to a specific agenda. If different states define the problem differently, they tend to follow different and hence contradictory paths. This in turn would defeat the very purpose of a concerted action against a particular situation. Even when uniformity is not possible, a degree of unity becomes essential for the existence of a regime. Without a common understanding of terrorism, nations would be unable to cooperate with one another, especially when terrorism has transcended national boundaries and is operating like a multinational corporation with branches at different parts of the globe.

Differences over definition result in inability to evolve an effective response to terrorism. Terrorist attacks, even the most gruesome ones, quickly fade from public memory and hence initial uproar and public statements of condemnation are rarely followed by concrete measures. Before long, states tend to reason out and rationalise specific acts of terrorism and due to the absence of consensus, victims are often expected to be understanding of the grievances of the terrorists and of the underlying causes of terrorism.\(^\text{16}\)

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\(^{16}\) Following the 11 September, 2001 attacks, many blamed 'unbalanced' American Middle East policy as the primary reason for the pre-mediated attacks.
**Political/national Interest Calculations**

The enthusiasm with which nations embrace the *regime* is directly proportionate to the terrorist threats facing them. Hence, until they become direct victims, nations tend to adopt an indifferent and unsympathetic view towards terrorism. In some case, tend to see terrorism as a legitimate struggle against colonialism, hegemony, exploitation or a legitimate form of political protest. Even the wanton killing of unarmed civilians did not elicit more than routine sympathetic statements. Referring to the international indifference towards terrorist menace faced by his country, former Jordanian Intelligence Chief Samih Buttikhi observed: "... since the 1970s, Jordan has been warning of the threat posed by terrorism, and has been calling for multilateral cooperation on this issue. *But these warnings went unheeded. Until now, the majority of Western countries considered terrorism as a distant threat.*" Indeed this can be said about a number of states in the world. Until the Sikh militancy in the 1980s, India’s position vis-à-vis terrorism was no different from the Jordanian experience. Until they became victims in mid-1980s, the Soviets were also indifferent towards terrorist menace. The kidnapping of Soviet officials in Lebanon in 1985 significantly altered Soviet position on acts of terrorism aimed at its citizens abroad.

*The regime*’s stability and effectiveness depends upon great powers viewing it as promoting and furthering their national interests. When there is a conflict between the two, the great powers tend to ignore *the regime* and pursue unilateral moves in furtherance of their interests. The prolonged American disdain for multilateral

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arrangements in combating terrorism and its disregard for International Court of Justice and International Criminal Court emanate from its apprehension that such institutions are "likely to be overwhelmed and slow ... compromised by political pressures to be soft on terrorists or too tough on the United States, and unwilling to impose sufficiently severe sanctions...." As a result, the US has been pursuing, even before 11 September, 2001 attacks, a strongly nationalistic policy vis-à-vis terrorism. This penchant for unilateral adventurism however puts Washington at odds with countries such Israel and of late India, when Washington advocates 'restraint' against terrorism.

Moreover, the absence of a uniform national posture vis-à-vis terrorism and the tendency of nations to overlook specific incidents or groups undermine the evolution of an international the regime. For example, the United States State Department terrorism watch-list is largely been a political instrument to punish unfriendly countries and to reward friendlier ones. Even though Syria has been in the US terrorism watch list since its inception in 1979, it was subjected only to bilateral economic sanctions but not special sanctions imposed upon other members of the same list. Syria got this differential treatment because of its strategic importance in American peace initiatives in the Middle East.

This differential approach is apparent in its position vis-à-vis Palestinian groups involved in terrorism; whenever politics demanded, Washington was unwilling to brand

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19 The inclusion of Cuba in the list is primarily due to domestic pressures from the Cuban voters.

certain groups associated with Chairman Yasser Arafat as terrorists. The refusal to include Pakistan in the watch list likewise is based on political calculations and not intelligence assessment. While acting against al-Qaida, Britain for example, has been reluctant to pursue groups such as Hamas and Hezbollah.\textsuperscript{21} Indeed, despite its public campaign against terrorism, Israel did allow a handful of Palestinians who in the past were accused of specific terrorist activities.

\textbf{Lack of Enforcement}

Effectiveness of \textit{the regime} depends not only upon the coming into force of various conventions but also upon the incorporations of these conventions into the domestic legislations. Issues such as extradition for example, would be operational only if they are incorporated into national laws and bilateral agreements/arrangements. These provisions are not only time consuming but also not acted upon unless there were pressing demands. Diversity of political systems makes uniform adherence elusive and cooperation among allies often becomes a troublesome experience.

As highlighted by the 11 September, 2001 attacks, international terrorism is primarily the failure of domestic security measures. Most of those who commandeered jetliners not only underwent security screening on the very same day but also were residents of US while committing the crimes. Most of them legally entered US and thereby questioning the enforcement of American immigration laws.

\textsuperscript{21} Ibid., p.39
Scope for Misuse

States tend to exploit the absence of international agreement on the definition of terrorism to present, portray, prosecute and often persecute legitimate dissent and opposition. Regimes with suspicious legitimacy are inclined to brand its opponents as terrorists and a number of examples can be found in the Middle East; ignoring their political demands, Turkey dismisses the Kurd struggle for autonomy as terrorist campaign. Following 11 September, 2001, the trend has only intensified and China for example, presented its religious cult Falun Gong as terrorists.22

The Conventions have not established any procedure to ensure that while combating terrorism, states do not infringe upon the fundamental rights of the individuals, especially individuals and groups suspected of involvement in terrorism. Due prosecution of suspects thus largely depends upon the democratic norms and legal procedures of the state where the suspect is tried. The Conventions do not guarantee a consistent judicial process. The question of death penalty adds another dimension to prosecution. The 1977 European treaty on anti-terrorism sanctions member states to refuse extradition demand, “if there is a risk that the country to which the convicted terrorists are sent employs the death penalty or practices torture or other demeaning treatment.”23 This would preclude the extradition of any terror suspects to the US where death sentence is widespread.

22 In July 2002, the introduction of a controversial anti terrorism bill evoked criticism in Hong Kong over its possible misuse against its dissidents.

23 Uzi Eilam, “Europe vs. Terror: Too little, too late”, Strategic Assessment (Tel Aviv), vol.5, no.3, November 2002, p.18
Problems of Extradition

The existing regime does not provide for an inviolable extradition regime. Notwithstanding numerous international conventions, regional agreements and bilateral treaties, extradition continues to be a sovereign question and is subjected to the political needs of the extraditing state. The question of extradition has been politicised with nations refusing to comply with such request due to national interest calculations. If countries such as Jordan and Pakistan have been accommodative towards extradition requests, especially by the US, the European track record is abysmal and often being motivated by political calculations, especially if the suspects are of Arab/Islamic origin; for example, in 1977 France rejected the requests of Israel and Germany to extradite Abu Daoud for his suspected involvement in the Munich massacre. Driven by its strategic interests in the Middle East, France cited technical grounds to deny the request and allowed him to flee to Algiers. Italy followed the same pattern in 1999 when it refused to extradite PKK leader Abdullah Ocalan to Turkey.

As the Ramzi Ahmed Youssef affair indicates, the absence of formal agreements does not inhibit states from complying with extradition demands. At the same time, as Yasser al-Sirri (a suspected al-Qaida members suspected of involvement in the assassination of Ahmed Massoud) example illustrates, existence of formal agreements between US and UK did not ensure his extradition to the US. 24 Thus, what Jacques deLisle calls ‘internal law question’ complicates the development of a coherent the regime. Any effective persecution of terrorist cells, their bases and financial network

would “depend on the laws and legal institutions of countries other than the United States.”

**Globalisation**

Terrorism has transcended national frontiers, broken regional barriers and has transformed into an international phenomenon. Globalisation of the economy, easy access to resources and ability to transfer large quantity of finances to various parts of the world significantly enhanced the reach of terrorism. The international legal response to terrorism has to be globalised and is “shaped by multilateral agreements, and international conventions rather than purely domestic contingencies and needs.”

At the same time, these Conventions lack an effective enforcement mechanism. Even though the coming into force of the International Criminal Court (ICC) would partly mitigate the situation, because adherence is voluntary and non-binding, states cannot be compelled to implement the requirements of the conventions. Lacking punitive measure, the legal framework is useful to the extent that the signatories are willing to comply. Even when states have formal bilateral agreements on issues such as extradition, the compliance is not complete and binding.

**Domestic Dilemmas**

The lack of uniform national policy towards terrorist groups is another impediment. For political and strategic reasons, states are reluctant to recognise certain

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25 He further added: “An approach to the battle against terrorism that includes a significant legal element will have to concern itself with the legal systems in countries as diverse as Germany, Pakistan and post-war Afghanistan.” deLisle, n.19, p.303.

26 Dartnell, n.12, p.205.
groups as terrorists and enforce counter-terrorism national legislations. British policy towards *Shin Fein* and Khalistan Liberation Front in the 1980s underscore state's dilemma in confronting terrorism. ²⁷ Likewise, POTA, which bans various Indian groups as terrorists, does not include NSCN (I-M) faction, seen as key Naga militant groups in the Northeast. ²⁸

This dichotomy between various internal pressures spills over into the external arena whereby states take domestic positions that are inconsistent with the policies of the international regime. The EU for example, seeks a distinction between specific terrorist groups and welfare organisation that are used by known terrorist groups; while *Hamas* is proscribed but its social organisations are left unharmed. ²⁹ This approach has another twist. Individual EU countries do not make the same distinctions while dealing with domestic terrorist groups; while endorsing the EU position vis-à-vis *Hamas*, Spain for example refused to be lenient towards *Batasuna*, the political wing of the Basque Homeland and Liberty (ETA). ³⁰ Despite the non-operational support for counter-terrorism within themselves, European states have been dealing with domestic terrorism individually. In short, Europe "gives priority to anti-terror activities when they are compatible with European needs ... but will proceed gingerly lest human rights be trespassed." ³¹

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²⁷ Likewise, while proscribing al-Qaida and its affiliates, London has been reluctant to act against the affiliates of *Hamas* and *Hizbolla*.  
²⁸ For the complete list of 25 groups banned see, *Prevention of Terrorism Act, 2002*, (New Delhi: Commercial Law Publisher, 2002), pp.24-5  
²⁹ The tight compartmentalisation between political and military wings of *Hamas* is not unanimously accepted.  
³⁰ Levitt, n.21, p.38  
³¹ Eilam, n.24, p.21
Terrorism Financing

Even though the US was one of the immediate signatory of the International Convention for the Suppression of Financing of Terrorism, its measures “were partial and much evidence suggests that neither the US Treasury nor the US Congress had its full heart in the effort.”32 The 11 September, 2001 events altered the situation and on 24 September President Bush issued an executive order “blocking property and prohibiting transaction with persons who commit, threaten to commit, or support terrorism.”33 Along with this move, he froze the assets of 27 persons and institutions. Four days later the Security Council adopted 1373, which suggested strong measures to suppress financing of terrorism.

The difficulties of evolving a universally acceptable approach towards financing of terrorism underscore the problems facing the regime.

- Because of the absence of adequate and updated legislative mechanism, a number of countries “cannot prevent the most overt placement of suspicious funds in financial institutions.”34

- Globalisation and easier means of transferring large amount of money across national boundaries through legal as well as illegal channels make tracking financing of terrorism “arduous task.”35

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35 Ibid. p.98.
The presence of legitimate charitable organisations run by or associated with individuals or groups known to be linked to terrorism pose a far more serious challenge. In some cases, such groups function as front organisation for pursuing terrorist designs but in other cases, they are legitimate welfare organisations. The distinction often is elastic and blurred. The Hamas for example emerged from its prolonged social welfare activities in the occupied territories and its leaders claim that a tight compartmentalisation exists between the political and military wings of the organisation. The difficulties in differentiating terrorist outfits from legitimate groups (welfare organisation, business concerns and charitable trusts) are causing a rift between the US and its trans-Atlantic allies in suppressing the financial networks of terrorism. Critics have argued, "by distinguishing between terrorist and welfare wings of Hamas, the EU lends legitimacy to the activities of charitable organisations that facilitate terrorist operations."36 Such differences would continue to haunt and affect the efficacy of regime.

India and the Regime

The Indian position vis-à-vis the regime reflects the prevailing international consensus. Until confronted with the menace, India was not an active player in the regime evolution and merely followed the prevailing trend. For long nuclearisation of Pakistan rather than terrorism dominated the foreign policy agenda. The protracted campaign of terror in Punjab, Jammu and Kashmir and in other parts of the country gradually influenced and hardened India’s position towards terrorism. Besides a systematic campaign of politically driven violence, it witnessed a few assassinations, which fit in to the category of terrorism. The killing of Indira Gandhi and her son Rajiv led to the re-

36 Matthew Levitt, "The network of terrorist financing", Policy Watch (Washington), no.646, 6 August 2002
evaluation of India's somewhat benign attitude towards terrorism. Indeed the ban imposed upon the LTTE, once a beneficiary of India's largesse and logistical support, was a result of Rajiv Gandhi's assassination.

The onset of terrorism in Kashmir in the summer of 1990 and its continuation compelled India to re-evaluate its position vis-à-vis terrorism. Since then terrorism has emerged as its main preoccupation both domestically and in the foreign policy arena. The political, logistical, and perhaps training facilities provided to some of the militant groups operating in Jammu and Kashmir by Pakistan consolidated the Indian stand on the regime. They manifested in the following manner.

At the ideological level, the situation in Kashmir especially the introduction of terrorism to promote the demand for self-determination appeared to have shifted erstwhile sympathy for self-determination causes tainted by terrorism. In the early 80's India adopted an 'understanding' position towards Tamil Tigers in Sri Lanka. The Kashmir imbroglio, coming in the midst of terrorism in Punjab, brought about a change. India moved away not only from its own erstwhile rhetoric but also away from majority view in the Third World. Even while reiterating its support for self-determination, India's prime focus shifted to terrorism. The official statement of 1999 aptly sums up this shift:

... this right, which brought freedom to developing countries, cannot be an argument for their break-up Self-determination in a democracy is exercised through participation in political process. It cannot be the justification for endless demands for secession on the basis of ethnic or religious particularity. To bomb and maim innocent citizens, and then claim the right to self-determination as a justification is a travesty.37

37 Speech by Vasundhara Raje, Minister of State for External Affairs, at the international conference "Terrorism: Threat to the 21st Century" on January 11, 1999, New Delhi, http://gioldirectory.nic.in
In short, the focus shifted from self-determination to terrorism.

Indian contribution towards the evolving regimes manifests in its domestic policies, international conventions as well in as regional agreement at the level of South Asian Association for Regional Cooperation (SAARAC).

Reflecting the growing international consensus, India recognises and portrays terrorism as a 'global menace' 'crime against humanity' and 'a grave threat to international peace and security.' In September 1999, India’s Foreign Minister told the UN:

Terrorism is the great global menace of our age. In this age of democracy, it is a violation of the very basic precepts of it. Because its principal targets become the innocent, it is a crime against humanity, a violation of basic human rights. It is also now a grave threat to international peace and security. That is why I urge that we strengthen international consensus against terrorism. India has given a call for a comprehensive international convention against terrorism. We hope to make progress on the issue in this session of the General Assembly.\(^{38}\)

The suspected presence of training camps for Kashmiri militants made India a vociferous supporter of the demand for ending state sponsorship for terrorism. This has manifested in its concern for

- International financing of terrorism and the need to curb the flow of money into known terrorist groups
- Presence of terrorist camps in countries such as Afghanistan and Pakistan

• Refusal of countries to extradite terrorists or suspected terrorists
• States not fulfilling their obligation to refrain from organising, assisting or participating in terrorist acts in the territories of other States.
• States providing political, diplomatic, moral or material support to terrorism on grounds of ideology

The international character of modern terrorism impedes the ability of states to act unilaterally. Even most power countries such as the US depend upon the help and co-operation of others in their counter-terrorism campaign. Recognising the need for international co-operation, India has included terrorism as a major foreign policy agenda. The establishment of joint working groups on terrorism with major countries is a recognition and manifestation of its contribution towards regime. At present India has such arrangements with Russia (December 1998), US (February 2000), Israel (July 2000), UK (January 2001), Germany (June 2001) and France (January 2003). Besides the periodic meeting of these groups, India has included terrorism as one of the grounds for extradition with other countries as well and has formal arrangements with several other countries including Nepal, Bhutan, Sri Lanka, UAE and Malaysia. Likewise, terrorism figures prominently in India’s dialogue with Algeria, Iran and Saudi Arabia.

Towards implementing international conventions on terrorism it had signed, India has incorporated the provision and commitments in its domestic legislations. Without such follow up measures, international conventions would remain mere declarations of intentions. Some of these follow-up measures are as follows (the corresponding Indian legislations are in italics):


v) International Convention against the taking of hostages, 1979: Section 364 A of the Indian Penal Code, 1960

vi) UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988: Narcotic Drug and Psychotropic Substances (amendment) Act, 1989 which amended the Narcotic Drugs and Psychotropic Substances Act, 1985

vii) International Conventions against the taking of hostages, 1979: Covered, and implemented under Article 364 A of Indian Penal Code


Besides, in an effort to strengthen domestic legislations to fight terrorism, since 1978, India introduced exclusive legislations on counter-terrorism and they are:

- (Jammu and Kashmir Public Safety Act (1978);
- Assam Preventive Detention Act (1980);
- National Security Act (1980, amended 1984 and 1987);
- Essential Services Maintenance Act (1981);
- Anti-Hijacking Act (1982);
- Armed Forces (Punjab and Chandigarh) Special Powers Act (1983);
- Punjab Disturbed Areas Act (1983);
- Chandigarh Disturbed Areas Act (1983);
- Suppression of Unlawful Acts Against Safety of Civil Aviation Act (1982);
- Terrorist Affected Areas (Special Courts) Act (1984);
- National Security (Second Amendment) Ordinance (1984);
- Terrorist and Disruptive Activities (Prevention) Act (1985, amended 1987);
- National Security Guard Act (1986);
- Criminal Courts and Security Guard Courts Rules (1987);
- Terrorist and Disruptive Activities (Prevention) Rules (1986, amended 1987);
- The Special Protection Group Act (1988); and
- Prevention of Terrorism Act (POTA)( 2002))
Of these legislations, *Terrorist-affected Areas (Special Courts) Act of 1984*, which came into force in the aftermath of *Operation Blue Star*, defined a terrorist as

.. a person who indulges in wanton killing of person or in violence or in the disruption of services and means of communication essential to the community or in damaging property with a view to-

(i) putting the public or any section of the public in fear; or

(ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or

(iii) coercing overawing the Government established by law; or

(iv) endangering the sovereignty and integrity of India\(^{39}\)

Under *The Terrorist and Disruptive Activities (Prevention) Act* or TADA, enacted in May 1985, terrorism was defined as follows:

Whoever with intend to overawe the government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people, does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to any person or persons or loss of, or damage to, destruction of, property or disruption of any supplies of services essential to the life of the community, or detains any person and threatens to kill or injure such

\(^{39}\) Sub-section H Section 2 of the Act
person in order to compel the government or any other person to do or abstain from doing any act, commits a terrorist act.\(^{40}\)

Due to persistent opposition over the misuse of the Act and the low rate of conviction, TADA was allowed to lapse. In 2001, the Union Government came out with a more comprehensive *Prevention of Terrorism Ordinance* was promulgated in 2001 and subsequently the parliament approved the *Prevention of Terrorism Act* (POTA) in 2002. Though a section of the opposition was not favourable to the act seen as a revised version of TADA, the anti-terrorism mood following 11 September, 2001 attacks worked in favour of the government and its approval by parliament. Under POTA a terrorist is defined as one who

a. with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisons or noxious gases or other chemicals by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause or likely to cause, death of, or injures to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and

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threatens to kill or injure such person in order to compel the Government or any other persons to do or abstain from doing any act;

b. is or continues to be a member of an association declared unlawful under the Unlawful Action (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.⁴¹

The gradual elaboration of terrorism signifies the expansion as well as the intensification of terrorist acts in India and the need to keep pace with increasing scope of terrorism.

With a view to enlist international cooperation for a comprehensive convention against international terrorism, India submitted a draft Convention to the UN. The salient features of the revised draft convention of India are:

- Terrorism is described as an act intended to cause death or serious bodily injury and covers damage to property including State or government facilities, public transportation system or infrastructure facilities.

- Terrorism offences also cover the commander or superior under whose overall control his subordinates committed the crimes.

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• A terrorist act cannot be justified under any circumstances whatever be the political, philosophical, ideological, racial, ethnic, religious, or other considerations of a similar nature.

• The draft defines the territorial jurisdiction of states in prosecuting terrorist offences.

• It discourages terrorists from seeking safe havens by abusing the regime of asylum and imposes imposed obligation upon States to ensure that persons seeking asylum or refugee are not involved in any terrorist activities.

• Incorporates the universally recognized principle “extradite or prosecute.”

Since then the Working Group held four meetings and made considerable progress even though the process is yet to be completed.

At the regional level, India was active in the conclusion of the SAARC Regional Convention on Suppression of Terrorism that was signed on 4 November 1987. The Convention explicitly declared that terrorist acts “shall not be regarded as political offences or as an offence connected with a political offence or an offence inspired by political motives.” In the absence of a formal extradition treaty between any two member state, the Convention would form “the basis for extradition in respect of the offences” identified by the Convention.

The absence of a binding extradition even on terrorist-related offences, however, proves to be a lacuna of the Convention. Exploiting this position in late 2002, Dhaka refused Indian request to extradite some of the militants who took refuge in Bangladesh. 42

Moreover, despite its noble intentions, the Convention provides a crucial escape clause:

42 Bangladeshi High Commissioner Tufail K Haider’s interview, Outlook, 23 December 2002, p.25
Contracting State shall not be obliged to extradite, if it appears that the requested State that by reason of the trivial nature of the case or by reason of the request for the surrender or return of the fugitive offender not being made in good faith or in the interests of justice or for any other reason it is *unjust or inexpedient* to surrender or return the fugitive offender.\(^4\)

Such a huge caveat nullifies the entire effort.

**Conclusion**

Since the *feeble* attempt by the League of Nations in the early 1930, various attempts have been made towards the evolution of a *regime*. Since the signing of the Tokyo Convention of 1963, a host of international Conventions, regional arrangements, bilateral agreements and national legislations have significantly contributed to the formation of the *regime*. They contribute to existence of a weak international *regime* on terrorism. The inability of an over-arching enforcement mechanism and the conflict national interest calculations however, contribute to a host of problems towards strengthening and consolidation of that *regime*.

\(^{4}\) Article 6 of the SAARC Convention