CHAPTER - IV

EXTRADITION AND TERRORISM

Jurisdiction is an attribute of state sovereignty. A state Jurisdiction refers to the competence of the state to govern persons and property by its municipal law including the civil and criminal law. This competence embraces jurisdiction to prescribe, to adjudicate and enforce the law. Jurisdiction is primarily exercised on the territorial basis, thus under International law, a state by virtue of its sovereignty exercise its authority over persons and things, on the basis of four generally accepted principles namely:

a. Territorial principle
b. Nationality Principle
c. Protective or Security Principle
d. Universality Principle

These principles were accepted by the Harvard Research draft convention of 1935. The bases of Jurisdiction are not listed in any hierarchy. No state can claim precedence simply on the principle on which it exercises Jurisdiction.¹

a. Territorial principle: Every state claims jurisdiction over crimes committed in its own territory. Sometimes a criminal act may begin in one state and is completed in another; for instance a man may shoot across a frontier and

¹ Rebecca M.M: International law, 2nd edition, Sweet and Maxwell; 1995, pp. 105-112
kill some one on the other side. In such circumstances both states have jurisdiction under the subjective territorial principle, and the state where the act is completed has jurisdiction under objective territorial principle. For example in the LOTUS CASE, 1927, the court emphasized the need for prohibition to be evident under international law for a state's jurisdiction to be instituted. Otherwise the state enjoyed a wide measure of discretion in the exercise of its jurisdiction. Both the states may claim jurisdiction and both may do so legitimately. The one which will actually exercise jurisdiction will most probably be the one which has in its custody the alleged offender. There is no rule of International law which gives a state where a crime has exclusive jurisdiction. The state in which the crime was initiated is, in other words, not restricted from exercising jurisdiction. Such a state may bring preparatory criminal act within the ambit of its criminal law.

b. Nationality principle: A state may prosecute its nationals for crimes committed anywhere in the world. The rule is universally accepted and continental countries make extensive use of it. English courts only claim jurisdiction on

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3 Ibid, p 253.
4 Rebecca M.M.: op. cit, p-109
this ground over a few crimes, such as treason murder and bigamy where as United States do not challenge the extensive use of this principle by other countries. It has restricted prosecution on the grounds of nationality to such crimes as drug trafficking and crimes by or against the armed forces.  

c. **Protective or security principle**: allow a state to punish acts prejudicial to its security even when they are committed by foreigners abroad for e.g., plots to over throw its government, spying, forging its currency, and plots to break its immigration regulation. Most countries use this principle to some extent and is therefore seem to be valid, although there is a danger that some states might try to interpret their security too broadly. However, the justification lies in need to protect a state from the prejudicial activities of an alien when such activities are not, for instance, unlawful in the country in which they are being carried out. For e.g. "Lord Haw Haw" was found guilty of treason because of his pro-Nazi propagandist radio broadcast from Germany to Britain during the war. His duty of allegiance was founded on his having acquired a British passport albeit fraudulently. 

d. **Universality Principle**: The interpretation of universality principle is that it gives jurisdiction to a state over all crimes perpetrated by foreigners abroad. Such an interpretation is not regarded as being in confirmity with

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6 Akherust Micheal, op.cit, p-103  
7 Ibid, p.-103  
8 Rebecca M.M. op., cit. pp 110 111.
international law. It is only in respect of international crime i.e. offences which are prohibited by international law and international community as a whole. The idea of universal crime over which all states could exercise jurisdiction regardless of alleged offenders nationality evolved with piracy.

Under customary international law the crime of piracy has long been recognised as one over which all states could exercise jurisdiction provided that the alleged offender was apprehended either on the high sea or within the territory of the state exercising jurisdiction. The arresting state may also punish pirates. This rule of customary international law is reaffirmed in article 19 of the 1958 Geneva convention on the High seas and article 105 of the 1982 convention of law of sea.

War crimes and genocides are widely accepted as being susceptible to universal jurisdiction. The 1971 United Nation's General Assembly resolution No:2784, XXVI characterised apartheid as a crime against humanity and two years later a convention was adopted identifying apartheid as a crime subject to universal jurisdiction. The universal jurisdiction principle covers all crime which threaten the international community as a whole and which are criminal acts in all countries.

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10. Ibid. article 1; The convention has only been adopted by one third states, U.K., U.S.A. are not parties to it.
The above principles of exercise of state authority sometimes give rise to overlapping claims to jurisdiction by states. Thus in the field of criminal jurisdiction, the process of commission of an offence in a state may commence from the territory from a foreign state or involve a foreign national operating outside the former state, giving a plausible basis for jurisdiction claims by more than one state, by virtue of both the territoriality principle as well as the protective principal. Pursuant to the nationality principle, a state may claim jurisdiction over its national for allegedly committing and offence in a foreign country, equally the later may seek its jurisdiction with respect to foreign national for an offence allegedly committed within its territory.  

The universality principle vests all members of the International community with authority to exercise jurisdiction regardless of the applicability of the other three principles. A criminal may take refuge in a state which has no jurisdiction to try him, or in a state which is unable or unwilling to try him because all the evidence and witnesses are abroad. To meet this problem, international law has evolved the practice of extradition. Individuals are extradited by one state to another state in order that they may be tried in the latter state for offence against its laws.  

States, since time immemorial have practiced the process

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of extradition. Extradition is the transfer of a person from one state to another state for prosecution and is the oldest form of co-operation between states in the struggle against crimmality. Its origin go back to the very begining of formal diplomacy. The oldest document in diplomatic history, the peace treaty between Rames II of Egypt and the Hittite, Prince Hattusite III (1280 B.C.), provision was made for return of the criminals of one party who fled and were found in the territory of the other.\(^{13}\)

The law of extradition, have been evolved through bilateral and multilateral conventions, and through the customary international laws. Extradition involves formal rendition or handing over by a state of a convicted or alleged offender to another state to be dealt with according to the latter's crimmal law. Under international customary law, a state has no obligation to extradite persons to another, although it is not precluded from extraditing a person either on a voluntary basis or on the basis of reciprocity. Since extradition implies removal of a offender or an alleged offender from one sovereign jurisdiction to another with the consent of the former, any forcible or clandestine removal of an alleged offender from one country by another without the formers consent amounts to an act of impermissible intervention. The clandestine removal of ADOLF EICHMANN\(^{14}\)

\(^{13}\)Shearer. I.A., Extradition in International law, 1971, p-5

1961 from Argentina by Israeli agents thus rightly invited the condemnation of United Nations security council in 1961. Similarly, the international community did not take kindly to the forcible removal of General Noreiga from Panama in 1990 or the abduction of a Mexican national Dr. Humberto Alvarez Machain in 1992 to stand trial in the United States according to the United States laws, although these action have been supported by the American Jury, despite the many violations of international law they constituted. 15

The existing framework of co-operation between countries to facilitate administration of criminal justice by allowing rendition of person accused or convicted of offence by one country to another where they must face the due process of law consist chiefly of a large number of bilateral treaties of extradition often backed by domestic extradition enactments. This practice is largely a post, eighteenth century phenomenon. In the absence of such treaty undertakings, there is no obligation on the part of a state to extradite an offender or an alleged offender to another state. In fact this discretion of states to decide whether or not to extradite person was largely inhibited even in cases where extradition was governed by bilateral treaties till 1970s. Most traditional extradition treaties contained a clause usually referred to as the "political offences exception". Thus most extradition treaties seek to facilitate extradition of person

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alleged to have committed common crimes usually defined in the treaty itself, which are known as extraditable offences or extraditable crimes while there is no duty to extradite political offenders.\textsuperscript{16}

What constitutes a political offence is still left to the wide discretion of the state dealing with the request of extradition. Difficulty however, arises in the application to the acts of terrorism. \textsuperscript{17} No existing bilateral or multilateral extradition convention and no internal extradition law mentions terrorism as an extraditable offence. Terrorism refers to certain acts of crimes which are recognised as punishable act. Terrorists crime not only threatens the life and property of individuals but also concurrently constitute danger to the whole world and its civilization, by jeopardizing simultaneously social order, international public order and the broader interest of humanity. Terrorism means an international modus operandi of crime characterize by terror, violence, intimidation, with the purpose of obtaining predetermined goals and purposes. Viewed from point of extradition, however, there is difficulty in the fight against terrorism because it is necessary to overcome the terminology in order to establish a line of demarcation between terrorist acts and crimes called political crimes.\textsuperscript{18}

\textsuperscript{16} Ibid. p-74
\textsuperscript{17} Nanda: A treatise on international criminal law, volume 1, 1973, p-440.
The concept of a political offense, as a formal limitation on the practice of extradition, is of relatively recent origin. The extradition treaties of ancient times and the Middle Ages were very largely designed to secure the surrender of political enemies rather than common criminals, while the treaties of the eighteenth century evidenced a continued interest in the surrender of political criminals and also in the return of deserting troops, who in modern time have become like political offenders both in extradition law and in practice of asylum. As late as 1834 a treaty between Austria, Prussia and Russia engaged the parties to deliver up persons guilty of high treason, armed rebellion or acts against the security of the throne or the government, and with France's introduction of the exception of political offenders into its treaties after 1834, the idea soon gained wide currency.\(^1^9\)

The concept of political offences exception to extradition of criminals or persons accused of crimes was for the first time incorporated in the Franco-Belgian extradition treaty of 1834. Slowly, the practice gained wider acceptance. The origin of this practice is usually traced to the need to protect the liberal ideas that emanated from the French Revolution and continued to challenge monarchies and despotic forms of government. Ironically, however, the concept is now often confronted by democratic societies as a justification

\(^{19}\) Ibid. P-392.
for political terrorism.\textsuperscript{20}

In practice, the terms such as "the political offences" and the offences of political character" have elicited a broad spectrum of definitions variously relying on the motive of the offender, the effect of the offence, the identity of the victim, the purpose of the offence, the immediate circumstance of a political conflict whether amounting to a law-and-order situation or a state of siege. In other words, there has been no agreement among the national courts dealing with extradition requests, on the criteria to determine the political character of an offence.\textsuperscript{21} When in a case of political asylum the International Court of Justice sought to define it in terms of imminence of danger to the person involved justifying grant of diplomatic asylum in the Latin American context \textsuperscript{22} The Latin American countries decided to recognise the broad discretion of an asylum-giving state to determine unilaterally whether and under what circumstances the conduct of an asylum seeking person would constitute a political offence.\textsuperscript{23}

Francis Deak cites three British cases highlighting the differing judicial interpretations of the term "political

\textsuperscript{20}. Mani. V.S. op.cit., p-77.

\textsuperscript{21}. Ibid., pp-77-79.

\textsuperscript{22}. See Asylum case, International court of justice report. 1950, p-266.

\textsuperscript{23}. Inter American convention on diplomatic asylum. Caracas, 28th March 1954, Also see Organization of America State's treaty. Serico., No.18, Volume 161, p-570.
offence" or "offence of a political character. In re Castioni, the British court defined it as an act done in furtherance of, done with the intention of assistance, as a sort of overt act in the course of acting in a political matter, a political rising, or a dispute between two parties in a state. In RE MEUNIER year 1894, the court said, there must be two or more parties in the states each seeking to impose the government of their choice on the other. In RE KOLENZUNSKI et al, 1955, the British court extended the meaning of a political offence to include not only the political object of overthrow of a government, but also the object to avoid political persecution or prosecution for political deviation.

In the INACIO DE PALMA case, a 1967 case, the Paris court of appeals rejected a Portugues request for extradition of a Portuguese national who took refuge in France after committing a bank robbery in Portugal, because, on the basis of evidence, the facts alleged in the Portuguese warrant of arrest "although of especial seriousness, were linked to political activity had in fact been committed for a political motive and uniquely for a political motive". The court thus applied the political offences clause of the Franco-Portuguese Extradition

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On the other hand are the cases wherein the judiciary has restrictively interpreted the political offences exception, probably in weighed against the post second World War acts of political offences exception, probably in weighed against the post second world war acts of political terrorism. Thus Oppenheimer says that the English comes are reluctant to question the good faith of a request for extradition or doubt the possibility of the requesting state not complying with the rule of speciality. In re Government of India and Mubarak Ali Ahmad involving a request for extradition for an offence of forgery, the British court refused to look into the allegation that the case had political implications or that the prisoner would not get fair trial if extradited. In the Teja case, the court rejected the contention that the case was political, as it held, that simply because a person was the subject of a political controversy in the requesting state, he could not necessarily claim that his punishment would be sought on account of his political views.

The "political offences" clause in the extradition treaties has in the past rendered many an extradition treaty ineffective in facilitating extradition of person accused of terrorism, particularly in cases where the state from whom extradition is sought, is sympathetic to the cause of the terrorists, or considers such cause to be of political nature.

27. Ibid. p. 78.
However, the gross violations of human rights of innocent civilians involved in most acts of terrorism, have led to legal developments to strengthen international co-operation among states for combating terrorism, as also to curb the discretion of States in deciding whether or not to grant extradition pursuant to an extradition treaty. At least three developments may be noted here.  

First, the international community has endeavoured to grapple with specific types of acts of international terrorism and provide for their prevention and punishment of offenders. These categories of acts include terrorist acts against civil aviation, maritime transport, and off-shore installations, and marking of plastic explosives, international organisations such as the International Civil Aviation Organisation and the International Maritime Organisation have played a commendable role in evolving these international legal instruments. Most of these conventions provide for an obligation on the part of a state party to exercise its jurisdiction in respect of an alleged offender found within its jurisdiction, if it decides not to extradite him.

Secondly, at the regional level, the European Community has adopted a convention specifically on international terrorism whereby this obligation is further sharpened and crystallised into a more definitive obligation to extradite or prosecute. Finally, some of the post 1970 bilateral extradition treaties have set a new trend in clarifying

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offences which would not be considered political offences thereby drastically limiting the requested state's discretion to reject a request for extradition. 30

The Above developments, thus portend the emergence of three principal features of the modern extradition law, at least in selected fields, namely

(a) An obligation to exercise jurisdiction to prosecute or to extradite;

(b) An obligation to assist in such exercise of jurisdiction by another state with rendition of assistance including any evidence in the possession or control of a state.

(c) Drastic limitation, if not elimination, of the political offences exception even in cases of bilateral extradition treaties. 31

There is no universally accepted definition of terrorism in the world other because what is called terrorism by one side is understood to be struggle for just rights by others. The oldest definition was enunciated by the League of Nation convention on terrorism in 1937. 32 According to Article 1 terrorism are "Criminal acts directed against a state and intended and calculated to create state of terror in the minds of a particular person or a group of persons of general public. Article 2 provides enumeration of such acts with particular emphasis on any wilful act causing death and grievous bodily

30. Ibid. p-75.

31 Ibid, p P-75-76

harm or loss of liberty to the following:

(a) Heads of states, their hereditary or designated successor.
(b) The wives and husbands of person mentioned above.
(c) Persons holding public position and attacks directed against them in that capacity. Article 3 of the convention further includes commission of crime, attempts and conspiracy and incitement, wilful participation and knowingly giving assistance.

Latest definition of terrorism has been given by Walter Laquer "Terrorism, according to Laquer is an attempt to destabilise democratic societies and to show that these government are impotent." Wanter Laquer definition lacks comprehensiveness and does not cover matters of state terrorism of racists and illegal occupationists; it emphasizes that it is the democratic societies which are more prone to terrorism.

Terrorism has been used by one or both sides in anticolonial conflicts, such as by, Ireland and United Kingdom, Algeria and France, Vietnam and France United States in disputes between different national groups over possession of a contested homeland; palestinian and Isreal in conflict between different religious denominations such as catholic and protestant in Northern Ireland and in internal conflicts

33 S.P.Sharma world facus February 1986, p. 8
34 Ibid. p-9-10
between revolutionary forces and established forces and established government of Malaya, Indonesia, Philippines, Iran, Nicargua, Elsalvador and Argentina. 36

On the mention of word terrorism the following questions comes to mind what is it exactly and how it differs from ordi -y crimes? Is all politically motivated violence terrorism? Is terrorism synoymous with Guerilla war? Is this term reserved for the people trying to overthrow the governments? Can Governments also terrorise? ect. ect.

Terrorism has no precise and widely accepted definition. Terrorism is violence designed to create an atmosphere of fear and alarm in a world to terrorise and there by bringing about some social or political change. According to South American Jurists Terrorism consists of acts that in themselves may be classic form of crime, murder, arson, use of explosives, but differ from classic crime in that they are executed with deliberatic intention of causing panic, disorder and terror in an organised society.37 In early part of this century the Russian Socialists revolutionaries were proud to call themselves terrorists and militant wing of the organization as terrorist Brigade. Basic aim was to create terror among the ruling elite through selective killing. These days most of the governments term all violent acts of their political opponents as terroristic and the political opponents charge the


37 Inter American Jurisdictional Committee, "Statement of Reasons for the draft convention' on terrorism and kidnapping". 5th October 1970.
government of state terror. Media has complicated the matter further by giving an impression that irrespective of the cause, terrorists acts are wrong ways of fighting. The controversy of legitimate or illegitimate way of fighting for a cause has further complicated the matter of defining terrorism.

According to International lawyers laws of war are a possible solution to the difficulty of defining terrorism. Terrorist also claim themselves to be soldiers and not criminal and claim the right to violate ordinary laws. Existing laws of war should be applied to them rather than the new treaties which are not likely to ratified by most of the Nations. At most all nations have agreed on the trial of war criminals. Under this approach all such acts committed in peace time should be branded as acts of terrorism. It is quiet logical as to why a person not being a soldies should have more power to commit violence than a soldier has during peace time. The problem of defining terrorism has not been solved satisfactorily, though terrorism differs from ordinary crime in its political purpose and primary objective. All politically motivated violence need not to be terrorism. Terrorism is not synonymous with Guerrilla war or any other kind of war and not rescued exclusively for those trying to overthrow governments. The terrorists and security forces working under the direction of ministry of interior, both use

the same tactics for the same purpose to instill fear and alter a political situation. 39

The impact of terrorism on public mind has been greatly enhanced due to the use of modern communication media. Any act of violence is certain to get television coverage. This brings the events directly into millions of houses and exposes Viewers to terrorism or to terrorists demands, grievances and political goals. Modern terrorists differ from the past because its victims are frequently innocent civilian who are picked at random or who merely happen to be in terrorists situation. Many groups lacking a base of popular support among extremists substitute violent acts for legitimate political activities such acts include kidnapping, assassination, hijacking and bombings. 40

Since the lasts two decades terrorists activities have increased manifold. The biggest advantage to terrorists is that they can strike at will. There is no absolute defence yet against the terrorists attacks. The magnitude of terrorism can be Judged from the fact that it was terrorism which triggered the two world wars and lately in 1990 the Indo-Pak War had nearly broken out because of Pakistan's active support to terrorism in Punjab and Jammu and Kashmir. Terrorism apart from immediate violence compels state to take counter measures to stop violence thus adversely affecting human rights and

39 Ibid., pp 39-41.

40 Encyclopaedia Britannica 1985, p-651
fundamental rights.\textsuperscript{41}

Terrorism is not a new phenomenon. History is full of ways and means adopted by terrorists from ancient to modern times. What is new is its exponential growth, proliferation of its groups alarming magnitude and growing concern for mankind. In 1984 more than 40 terrorists groups left their mark on world history.\textsuperscript{42} The causes of terrorism are many. It is not yet been decided as how an individual reacts at different times, different places and under different circumstances. terrorism might be because of some factors at one place and at the same time might be because of some factors at another place. Generally the origin of terrorism is because of different causes like colonialism, racialism, communalism political persecution, human rights violation, economic exploitation, unemployment, alienation, communication gap, and over all moral decay in society.\textsuperscript{43}

For studying the various causes of terrorism following points need to be probed.

(a) Political relationship between individual and state: It is a state of contract between the state and the individual. As long as both the parties are sincere and are mutually and constantly modifying the contract, the relationship work

\textsuperscript{41} Dhakohlia. R.P. "Terrorism and international law, national international dimensions" Indian Journal of International Law, volume 26, April, - Sept. 1987, pp-158-160.


\textsuperscript{43} Brian M. Jenkins., "International Terrorism, a new kind of warfare". Rand papers, 18 June, 1974.
well; but it sours the moment one party becomes suspect of the intentions of the other and the contract is not modified according to radical changes occurring in the society; leading to conflicts. These conflicts if not settled amicably well in time and to the satisfaction of all the parties the agitational terrors takes place. A study has revealed that a high rate of terrorist acts (40.5%) has been found in the western democracies as compared 0.2% in the East European countries. Simple answer to this difference is that there are more causes for terrorism in western democracies as compared to those in eastern European countries. But western scholars refute this and state that the lower level of terrorists violence in the earstwhile soviet union and communists Nation is due to the totalitarian nature of the state, and the ruthlessness of secret police surveillance and control. Under conditions of such severe repression it is very unlikely that terrorist movement could find support.

(b) Terrorism normally manifests itself in a democratic system, the main reason being that there can be no repression. According to waller laquer while in the nineteenth century terrorism frequently developed in response to repression but in more recent times the more severe the repression the less the terrorism for e.g. the terrorism in Spain gathered strength after General Franco died. The terrorist activities

\[ \text{References:} \]
\[ 44 \text{ Gord Languth. op. cit., p-176} \]
\[ 45 \text{ Wilkinson Paul. "Terrorism International dimensions", Conflicts studies, No.113, 1979, p. 79.} \]
in West Germany, France, and Turkey showed upward trend under democratic governments. In a democratic set up terrorists have access to the media and the hope of getting international support. This is one of the reasons that the Sikh terrorists groups are able to operate from the western liberal democracies of U.K., Canada, and USA. Here they feel free to collect fund, the training get support of influential pressure groups, political figures and manage to establish contacts with other international terrorists movements.46

United Nation Secretary General while introducing the item of terrorism in the agenda of General assembly stated, "The roots of terrorism and violence in many cases lie in misery, frustration, greivances and despair, so deep that men are prepared to sacrifice human lives, including their own, in the attempt to effect radical changes"47

If this globe is to remain peaceful. International institutions and regulations will have to be either created or existing once be improved for elimination of the causes and effects of terrorism. Many antiterrorists tactics have been tried in different parts of the world for instance in West Germany against Ped army faction (RAF), in Israel to fight against Arab terrorism, Britan use force against Irish Republican army (IRA) and in USA for countering world wide terrorism. Except in west Germany's success against. RAF other

47 United Nations Documents A/8791/A
have not been able to achieve sucess. Israel has been in the forefront of state terrorism in supressing the Arab militancy. Arab Israel terrorism has been continued for the past forty years, four wars have been fought but the. Palestinian freedom struggle is still on with the same magnitude. The reason is simple; when one freedom fighter or terrorist is killed during Israeli air raids on palestinian Liberation Organization refugee camps, ten more freedom fighters are born. Inspite of full co-operation from Republic of Ireland the terrorism in Northern Ireland has not been eradicated fully.\textsuperscript{48}

To combat terrorism the measures should always be taken through negotiation and bullet for bullet type approach which only aggravates the problem should be left. Consensous political and public co-operation are the two ways in a society which effectively fight terrorism.

**LEGAL ASPECT OF TERRORISM:**

After having identified the problem of terrorism the next step is to consider a strategy for countering it. Legal system for containing terrorism has a unique place if properly framed and earnestly applied with universal acceptance and co-operation. However the legal frame work applies to state relation; i.e. the issue of extradition act. A terrorist does not respect any domestic or international law. With regard to his activities hence the victim of terrorism, the state should develop its own counter terrorist measure, and in addition,

research and training programme for its security experts must be developed.

There are extradition treaties, coupled with domestic legislation which usually lay down the procedure for extradition. The state requesting extradition must comply with three cardinal principles.

(i) The offence i.e. an offence for which extradition is requested must be envisaged under the treaty.

(ii) The offence must be criminal offence in both the countries.

(iii) There must be prima facie case established against person whose extradition is being sought.

Added to these essential conditions are the human rights requirement that the persons to be extradited must be assured of a fair trial, and that upon extradition he can only be tried for the offence for which his extradition was requested i.e., the rule of speciality is follow.

While devising a strategy it should be remembered that ultimate aim is to preserve what the terrorists seeks to destroy; democracy, freedom and hope for a world at peace. Terrorism indeed has no place in a civilized society. Vigourous steps should be taken to ensure that it is not imported from abroad, hence, the battle should start at the state level so that the terrorist acts can be prevented within the state borders. We seek a world in which human rights are respected by all governments, a world based on the rule of law and not the one, where the innocent are victimised and the
guilty go unpunished. The civilized nations should respond to the terrorist threat with in the rule of law, lest we become unwilling accomplice in the terrorists scheme to undermine the civilized society. Legal system is an important tool for containing terrorism as it has a unique place and has the dimensional capability if properly framed and earnestly applied with universal acceptance and co-operation. Legal response to international terrorism has a long history. Attempts to control terrorism at global level will always tend to focus on legal and treaty obligation rather than on action oriented measures. Due to political and diplomatic implications possibility of having an international strike force is rather difficult to put into reality, even legal treaty obligations are full of difficulties which can jeopardise its eventual success.

Since most of the conventions and treaties are formalised through legal proceedings it is vital that all concerned must agree on a common definition of terrorism and its connected terms. Efforts in this regard have been going on for over hundred years yet there is no universally accepted definition of internation terrorism. The confusion about an agreement on as to what constitutes act of terrorism for the purposes of international convention has contributed to the escalation of terrorism. A meeting on International penal law was held

49 Wardlow Grant "Political terrorism Theory, Tactics and counter measures". Cambridge University Press, 1982, p. 103.

50 Ibid, p-104.
from July 26-28, 1926 at Brussels. In the subsequent congress, the issue of political crime was considered and it was only in 1935 that the term "terrorism" was used after the assassination of King Alexendra -I of Yugoslavia and French foreign Minister, Louis Barthau in Marseilles on October 9, 1934 by Yugoslav freedom fighter. Despite the fact that the assassins had a just cause with political grievances. International conference which produced the convention; paid little attention to the cause of the act. League of Nations considered two measures for dealing with terrorism. The first was the 1937 convention for the prevention and punishment of terrorist acts at international level involving heads of state and other internationally protected personality including destruction of the public property of a country and the injuries to the citizen of one country by the citizens of another. The second for the creation of International court. The first convention was signed by 24 states and ratified by only one (India) and the second by none. With the advent of second world war, the hopes of any international agreement or support unfortunately ended. 51

United Nations and the Regulation on terrorism:

If the theory or just war is accepted and those fighting for national liberation are released from the rules of warfare it is difficult to outlaw the activities of the modern

international terrorists. Acceptance of this, is one of the main reasons for the failure of international community to achieve an agreement to prevent and fight terrorism.

International accord on terrorism through the medium of United Nations also faced the similar difficulties of definition of terrorism like the League of Nations. Following the Massacre at Lod Airport in Tel Aviv and Munich Olympic games the UN Secretary General Kurt Wellhein proposed on September 8, 1972 that the general assembly should consider measures to prevent terrorist and other form of violence which endanger or innocent lives or jeopardise fundamental freedoms. Instead of being welcomed the issue evoked protests against considering terrorism without considering its causes and as a result the UN secretary general acceded to these protests for considering the underlying situation which give rise to terrorism and violence and also reassured that the issue did not seek to amend the General Assembly's principles regarding colonial and dependent people seeking independence and liberation. These two concessions appear innocuous but had significant fallout, but attributing acts of terrorism to injustice and frustration, terrorist acts can be covered as an excuse if not a justification and by the same logical independence and liberation amply justify the terrorist acts.

52 United Nations Documents A/8791 (1972)

53 Duggard, J. "Towards the definition of International Terrorism". American Journal of International Law, Volume 67, No.5, November 1973, pp.94-100
General assembly on September 23, 1972 included amended measures to prevent international terrorism which could endanger or innocent human lives, or jeopardise fundamental freedoms. The causes of those forms of terrorism and acts of violence which like in misery, frustration, grievance and despair and which cause some people to sacrifice human lives including their own in an attempt to effect radical changes.

It became a difficult task for the United Nations to either condemn terrorism or take any immediate action. In another observation Yonder Amos explained "in reality a simultaneous study of causes and measures is a condition impossible to sustain. One of the most frequent manifestations of acts of violence is air violence or air piracy; yet measures have been found without studying the causes. Further the commission of International law adopted a draft convention on the protection of diplomats without first having elucidated the reasons for the acts of violence directed against them. The demand to consider the question en bloc was in reality nothing more than a manoeuvre designed to reduce terrorism and to prevent concrete measures from being adopted".

The formulation of the adhoc committee on terrorism under the UN General assembly resolution No: 3034 1972 could not form a consensus, hence, no United Nations convention on

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terrorism could be formulated. Under these circumstances the member states were invited to become party to the existing International Convention repeating various aspect of International terrorism and to take appropriate steps at national level for a speedy end to the problem of terrorism. This was followed by warning that states should bear in mind the provision relating to the inalienable right to self determination and independence in particular and struggles for national liberation. In this regard L.C. Green observes by wording its resolution in this fashion, "the general assembly has clearly elevated the right to self determination and asserted that if undesirable acts which some might describe as terrorism, are undertaken in the name of self determination or national liberation, then such acts are beyond the scope of condemnation and are legal."

Another attempt was made to legitimise terrorism through the Geneva Conventions. The conference was held under the auspices of the International Committee for the Red cross to improve upon the laws of war set forth in the Geneva Convention in 1949. Conference produced two additional protocols to the Geneva conventions. Protocol I dealing with International armed conflict and protocol-II concerning non international armed conflict. Though the conference developed


many conservative ideas to help minimise suffering of combatant and non combatants in war but from very beginning the Palestinian Liberation Movement and many other radical groups attending as observer status sought to extend the law of International armed conflict to cover their activities.\textsuperscript{58}

Though United Nation failed to reach agreement on the general control of terrorism. Yet it finalised two convention concerning specific issues of terrorism. Due to disagreement and the Vested interest of the member states these convention have been diluted to such an extent that it has reduced their effectiveness. The two convention adopted are:

(a) United Nations convention adopted on December 14, 1973 on prevention and punishment of crimes against internationally protected person, including diplomatic agents. Under the convention it was made mandatory on the part of signatories to make the international commission of acts listed in the convention as offences under respective domestic legislation. These include murder. Kidnapping or other attacks upon person or property of internationally protected persons, or the violent attack upon the officials premises, private accommodation and means of transport of these persons. The United Nations again diluted the convention by providing that the General assembly recognises that the provisions of the annexed convention could not in any way prejudice the exercise of the legitimate right to self determination and independence of people. Struggle against colonialism, alien

\textsuperscript{58} Yonder Amos. Op. Cit., P.511.
domination foreign occupation, racial discrimination and apartheid. \(^{59}\)

Due to this convention one wonders what is the difference between this convention and the Vienna Agreement of 1961 and 1963 on diplomatic relations. With lack of consensus among the various members only 40 have ratified it till 1974, hence not applicable to many parts of the world.

(b) Another agreement at United Nations was reached on hostage taking. West Germany introduced a draft convention on hostage which sought to depoliticise the act of hostage taking, for avoiding the difficulties which were encountered by United Nations while formulating earlier convention. This approach had been successful in the regional agreements on the suppression of terrorism, because the parties concerned shared broad values and concerns, the factor missing from the larger international bodies. On December 15, 1976 adhoc committee consisting of 35 member states was formed for the consideration and seeking consensus on the West Germany proposal.

During the meeting Western block argued that the German proposal was based on the principle "either extradite or punish" without any allowance for the political motivation of hostage taking and making the preparators fully understand that they could not escape punishment. Reasons for the failure of United Nations and International Organization in the

\(^{59}\) United Nations General Assembly 28th session 1974, Resolution No.3166
suppression of terrorism.\textsuperscript{60}

It appears that there are two main reasons blocking the formulation of any effective international treaty or convention for the control of International terrorism.

(a) Self determination. There appear no chance of universal agreement on what constitutes a legitimate struggle for self determination. According to L.C. Green there seems little chance of terrorism being controlled on anything like a universal basis, as long as International Organisation or individual states are prepared to apply a double standard. Whereby they confer legality and respectability upon acts of violence that are committed by those with whom they symapathise especially when they can be presented in the language of the new International order that places self determination and independence above any other principle or obligation.\textsuperscript{61}

(b) Right of Asylum: Most of the states including those that favour anti terrorist convention are reluctant to give up the right to grant asylum to those who commit political offences. This has a direct link to the definitional problems. Once the political offences are codified to the agreement, the problem will solve itself because any crime outside the parameters of the qualification of this code would automatically qualify as terrorist act. Legal expert Duggard states, when a person


commits an act which threaten the stability of other states or undermine the international order, he ceases to be a political offender and becomes a criminal under international law like the pirate or hijacker.^^

Duggard also lists the following reasons for the failure of United Nations in combating terrorism:

(a) After the failure of League of Nations, it became apparent that the legal approach would not work. Hence the United Nation adopted political approach to the problem of aggression and terrorism. Legal systems work on certain values and these do not exist in today's United Nations Organisation.

(b) United Nations member states value independence and sovereignty more than security against international terrorism. Though most of the states agree individually on the principle of extraditing or prosecuting but refuse to give up the right to grant asylum.

(c) Ideological differences between states make them consider different actions as terroristic. Also independence inhibits states from taking strong stand at the United Nations against terrorism. For example, the entire third world is dependent for oil or the middle east, hence, they fear commenting on Palestinian terrorism.

(d) United Nations has a limited military enforcing capability to contain terrorist activities. However, in the Gulf War the armed action against Iraq tells a different story.

(e) International law also lack strong enforcing machinery for the prevention and punishment of international terrorism.

(f) States pursue different interests often conflicting with those of other states hence, they refuse to ratify various treaties.

(g) Most of the International Organizations have two lobbies, one, interested in the causes of terrorism and the other interested in punishment. The endless debate continues without any fruitful result. Recent happenings have shown that the failure of United Nations is not so bleak in controlling the menance of International terrorism. After the Gulf War, precedence has been set up that in future strong Nation will rise to the call of United Nations for enforcing its resolution. The latest imposition of sanctions against Libya by United Nations against International terrorism has been widely acclaimed.  

European convention on the suppression of terrorism of 1977 is a further step towards the suppression of terrorism. It delinks many offences of protection afforded by the political exception clause exempting politically motivated acts from criminal category. Article 1 of the convention indicates the offences outside the purview of political exception clause. Other important points are:

(a) Offences within the scope of 1970 Hague convention for unlawful seizure of aircraft.

(b) Offences within the scope of 1970 Montreal convention

\[63\] Ibid. P-98
for the supression of unlawful acts against the safety of civil aviation.

(c) Serious offences involving an attack against the life, and physical integrity and liberty of Internationally protected person including diplomatic agents.

(d) Offences involving kidnapping hostage, taking or serious unlawful detention.

(e) Offences involving the use of bombs, grenades, rockets, automatic weapons where people lives are endangered.

(f) Attempts to commit any of the above offences or being an accomplice to such an offence or attempts to commit them.

Article 2 further states the serious acts involving innocent person to be regarded as non-political. Much of the convention and Article 7 states that refusal to extradite under this convention requires the detaining state to extradite in order to initiated prosecution action.64

The convention appears worthwhile, but has not been ratified by all members and contains no enforcement provision for breaches by signatories. Hence, there is no guarantee that all members will honour it. The biggest flaw in International treaties is that member nations place national interest above international treaty obligation particularly in crisis situation.65

Panul Wilkinson states European convention represents the

64European convention on the suppression of terrorism. 1977.

65In 1977 France permitted Abu Daud to leave the country knowing that he was wanted by both Germany and Israel for his part in Munich massacre.
optimal mechanism for European co-operation in the fight against terrorism in the given present condition of International relations. Rather then expanding more time and effort in discussing fresh institution and mechanism, we should pursue the more mode t aim of making the existing machinery work effectively. Moreover the recent afforts by the Council of Europe and the European community towards a greater degree of convergence in the Jurisdiction, legal codes, and Judicial procedures of the European states could immeasurably assist in smoothing the path for convention on the suppression of terrorism.

On a whole the European convention appears satisfactory, as it deals directly with most live issue i.e. suppression of International terrorism, however the concept of political offence exception have blocked it. Extradition is political offence exception and this convention has failed to define a political offence or to differentiate between common crime and political crime. Dublin accord attempted to strengthen the extradition clause applicable to all signatories including those who invoke the political offence exception clause. None of the European countries participated in the Dublin accord and the proceedings are yet to be satisfied due to the basic causes of disagreement on definition and political offence exception.

Various International and National convention appears to have taken a very narrow approach towards limiting political

terrorism and touch specific aspects of International terrorism. The rule is that after committing a terrorist act, the offender flees to another country, he or she can only be prosecuted if the country where he or she is apprehended is willing to return the culprit to the country where the crime is committed. In view of the facts stated above to some, a terrorist is a hero and the return of the criminal if not only possible, but is also highly unlikely.

With regard to the above conventions there are three other major conventions on hijacking.

(a) The 1963 Tokyo convention on offence and certain acts committed on board aircraft dealt with the question of jurisdiction over hijacked aircraft in mid air. This convention states that the country of registry of the aircraft has jurisdiction over the hijackers. On landing, these hijackers will be handed over to the local authorities. The receiving states are to extradite the hijackers either to their country or to the country of registration of the aircraft. However, this convention is silent on the political aspect of hijacking and the subsequent issue of right of asylum.

(b) The Hague convention of 1970 for the suppression of unlawful seizure of aircraft deals with the apprehension and punishment of International hijackers. As per this convention hijackers are to be extradited to either to the country of registry of the aircraft or to the country where the aircraft with hijacker landed or the country which chartered the plane.
If hijackers are not extradited the detaining country is to try them legally.

(c) The Montreal convention of 1971 for the suppression of unlawful acts against the safety of civil aviation was concerned with acts of Sabotage. Signatories were required to either prosecute or extradite persons who commit acts of Sabotage or damage or destroy or interfere with the smooth operation of aircraft.

These convention are moving though in the right direction but lack from real impact. Terrorists have not been deterred because they reasonably believe that their actions will not be subject to the written restriction. The existing multilateral arrangements on extradition among the commonwealth countries was grossly inadequate as it did not consider actions like incitement and funding of terrorism as extraditable offence. Thus states resorted to bilateral agreements.

An attempt is made in this chapter to portray the institutions of extradition as a mode of bilateral cooperation in the administration of criminal justice, and examine the recent Indo-British extradition treaty as an emerging example of bilateral cooperation in containing terrorism.

**THE INDO-BRITISH EXTRADITION TREATY, 1992**

One of the important features of modern terrorist activities is that there exist linkages between various terrorist groups the world over. there are also linkages
between them and drug traffickers. These linkages take the form of transfrontier financial deals, arms supply or other material support to terrorists. This realisation on the part of states has contributed to the emergence of stronger extradition treaty relations. Three important areas of bilateral co-operation have been identified, namely

(1) Tightening up of the rule of prosecution or extradition;

(2) Bilateral assistance in relation to facilitation of prosecution of persons accused of terrorist acts; and

(3) Bilateral assistance in respect of tracking down and seizure of the sources of financial and material support to transboundary terrorism. The first two aspects have in fact come to be accepted in varying forms and levels of obligations, through the recent multilateral treaties such as the Hague convention for the suppression of Unlawful Seizure of aircraft 1970, the Montreal Convention for the suppression of Unlawful Acts against the safety of civil aviation 1971, the 1988 protocol to the 1971 Montreal convention, the convention against the taking of Hostages 1979, and the Rome convention for the suppression of unlawful acts against the safety of maritime navigation 1988, along with its companion protocol on offshore installations. The third aspect of bilateral co-operation is expected to be covered by the Indo-british agreement on reciprocal seizure of assets of terrorism and drug traffickers, which is still in the process of being brought into effect, as a companion
agreement to the Indo-British Extradition Agreement of 1992.\textsuperscript{67}

The Indo British extradition treaty signed in 1992 was ratified on 15 November 1993. This treaty has been negotiated and drafted with a view to containing terrorist activities in India sponsored or promoted by elements in the United Kingdom. It was easy to evolve a broad agreement on the part of both parties because both share a threat perception of terrorism, having borne the brunt of acts of terrorism particularly directed against innocent human beings. While India places emphasis on combating terrorism, Britain has a special concern to combat drug trafficking. The preamble to the treaty itself gives two reasons for the treaty:

(a) Desiring to make more effective the co-operation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders;

(b) Recognising that concrete steps are necessary to combat terrorism.\textsuperscript{68}

This also amounts to an admission that the extradition arrangements existing until recently have not been good enough, particularly for the purposes of containment of terrorism. The Indo-British treaty encompasses, through its 23 articles, a broad gamut of matters bearing upon extradition of persons.

\textsuperscript{67} Mani. V.S. Op. Cit., pp.75-76.

\textsuperscript{68} Indo British treaty is published in the Gazette of India extraordinary. No. 458, 30th December 1993. Also See appendix-I.
1. Offences Covered by the Treaty

An "extradition offence" under the treaty is an offence for which the extradition of a person is sought which should carry a sentence of imprisonment of at least one year. The offence need not be a criminal offence, it may relate to taxation or revenue or may even be of "a purely fiscal character". This expansion of an extradition offence to include fiscal offences is an innovation. An offence for which extradition is sought need not have been committed in the territory of the requesting state; it might have even been committed in a third state by a national of the requesting state.

It is not just the place of commission of an offence or the nationality of the person allegedly involved, that is material. even if an offence is committed whether wholly or party within the territory of the requested state, extradition shall be available if the conduct of the prisoner and its actual or intended effects, taken in totality, amount to the commission of an extradition offence in the territory of the requesting state. In other words, the cumulative effect, actual or intended, of an offending conduct rather than the place of the conduct, may be material in determining a request for extradition.

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70. Ibid., article (2)
71. Ibid. article 2 (3).
72. Ibid., article 3.
2. The Political Offences Exception

A typical political offences exception clause in an extradition treaty, would provide that extradition shall not be granted. The Indo-British extradition treaty states the traditional formulation of the political offences exception as follows: Extradition may be refused if the offence of which it is requested is an offence of a political character.\(^7\)

Taking into account the above history of the political offences exception and particularly the vagaries of the judicial process, the Indo-British Treaty has sought to take the sting off that political clause, by clarifying a number of specific offences which shall not be regarded as offences of a political character. These offences are:


(b) Offences under the Montreal convention for the Suppression of Unlawful acts against the Safety of Civil Aviation, 1971.

(c) Offences under the convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic a...ers, 1973.

(d) Offences under the convention against the taking of hostages, 1979;

(e) the serious criminal offences such as murder, manslaughter, assault, causing bodily injury, grievous hurt, "causing of an explosion likely to endanger life or
cause serious damage to property" making or possession of an explosive substance with criminal intent, possession of fire arms or ammunition with criminal intent or with intent to resist arrest, damaging property with criminal intent or with reckless disregard of another's life, kidnapping, abduction, false imprisonment or unlawful detention, taking of a hostage, any other offence relating to terrorism which at the time of the request is, under the law of the requested party, not to be regarded as an offence of a political character" and any attempt, or conspiracy to commit any of the above offence or abetment in such attempt, conspiracy or commission.\footnote{74}{Mani V.S. Op. Cit. p-79-80.}

A formidable list of exceptions to the political offences exception indeed! But it apparently takes care of a broad spectrum of terrorist activities. The offences other than these enumerated exceptions for instance, sedition, inciting national or social disaffection religious or ethnic intolerance, and other criminal law offences not enumerated above, and also taxation, fiscal and revenue offences, will continue to be subjected to the "vagaries of the judicial process", to determine their political character at any point in time and each judicial determination is likely to vary with the Chancellor's foot, if the past history were any guide!

The upshot of the above, however, is that most typical terrorist acts have been saved under the Indo-British treaty from the unruly phantom of political offences exception. Quite
possibly these provisions of the Indo-British treaty appear to have been influenced by the other anti-terrorist international instruments such as the European Convention for the suppression of terrorism 1977.

Yet it may be rather premature to conclude that the phantom of political offences exception has at last been brought under leash. The phantom might lie dormant under some of the international instruments such as the convention against the taking of Hostages, 1979. Article 12 of the Anti-hostages convention provides that where the humanitarian laws of armed conflict apply, the anti-hostages convention shall not apply. And "armed conflict" would include one "in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self determination." In the face of such exceptions made in some of the anti-terrorist international instruments, one cannot be too sure how long the phantom will stay dormant!

3. **Extradite or Prosecute**

One of the legal techniques recently evolved to combat terrorism and to ensure that a terrorist does not go unpunished, is to impose on a state a clear-cut obligation to prosecute the culprit, should it decide not to extradite him. This has been embodied in the Indo-British Treaty. The incorporation of the obligation to extradite or prosecute in the treaty is accomplished in three ways which are mutually reinforcing. Article 8 of the treaty states the central
principle that if the requested party refuses to extradite it shall submit the case to its competent authorities to consider prosecution. And if these authorities decide not to prosecute, the request for extradition must be reconsidered. This obligation to reconsider the extradition request is novel.

Secondly, to facilitate prosecution of an offence in case of refusal to extradite, the Indo-British Treaty requires both India and Britain to incorporate in their respective domestic laws all the offences enumerated in Article 5 of the treaty, in such a way that an offence committed in either country will simultaneously be taken to be an offence under the laws of the other country as well. In fact this innovation may have a double advantage. First, it would enable an extradition-refusing state to prosecute. Second, the courts of either party will be slow to apply the political offences exception, keeping in view their own domestic law.

Thirdly, the treaty also lists the grounds for refusal to extradite. These are:

(i) Proof of ulterior motive of the requesting state which intends to prosecute or punish the prisoner on account of his race, religion, nationality or political opinions.
(ii) Proof of possible prejudice at trial or punishment after extradition on account of these grounds;
(iii) Proof of injustice or oppression, if extradited, for reasons of:
    trivial nature of the offence involved,
    lapse of time, or
lack of good faith in charging of offence,

(iv) The offence involved being not an offence under general criminal law, but a military offence;

(v) An offence being one for which the prisoner has been convicted with a sentence of less than four months;

(vi) An offence in respect of which the prisoner has already been acquitted or convicted one.

While Article 9 of the treaty enumerates the above grounds of refusal seeking thereby to restrict or inhibit the scope for refusal to extradite, quite possibly it may help revitalise the otherwise weak political offences exception by permitting subjectivity in appreciation of evidence regarding ulterior motives and malafides of the requesting state on account of the prisoner's race, religion, nationality or political opinions.\(^75\)

4. Mutual Assistance in Extradition and Prosecution Proceedings

The Indo-British Treaty provides for mutual assistance at least in three important respects. First, under article 19, it contains a general provision whereby each state "shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested". Second, when a request is granted, article 18 stipulates that the requested state shall, "upon request and so far as its law

\(^{75}\) Ibid. p-81.
allows" deliver to the requesting state "article which may serve as proof or evidence of the offence". The handing over of such articles would, of course, be without prejudice to the rights of any persons in respect of them. These two provisions would, no doubt, go a long way in assisting prosecution of terrorists.

The third important provision promoting mutual assistance relates to the provisional arrest of the person to be extradited, on the application of the requesting state, even as that state intends making a request for extradition. This provision in article 12 seeks to ensure the co-operation of the potentially requested state in preventing the possible escape of a terrorist from that state, even as the other state considers making a request for his extradition, though such a request has not actually been made.\textsuperscript{76}

Beyond these principal features, the Indo-British treaty contains provisions for extradition of nationals of the requested state, postponement of surrender of the fugitive pending completion of legal formalities, extradition procedures, the rule of speciality (i.e. the rule that a person extradited shall be prosecuted by the requesting state only for the offence he was extradited for or any lesser offence as disclosed by the facts before the extradition proceedings or any other offence for which the requested state may consent), evidence, competing requests, capital punishment, surrender, documents and expenses, territorial

\textsuperscript{76}. Ibid. p-82-83.
application, and ratification and termination. 77

The Indo-British extradition treaty and the companion agreement for reciprocal seizure of assets of the suspected terrorists and drug-traffickers have indeed been a trailblazer in promoting bilateral co-operation in containing international terrorism. The proof of the pudding is, however in the eating. Let us hope that both countries would show equal zeal and promptness in implementing such agreements as occasions may demand. At least in the short run, these arrangements have had some effect on the sponsors of terrorism who, until recently, used bases in the United Kingdom to aid and promote terrorist activities in India. Many of them are reported to have fled to some of the European countries in the wake of the twin treaties.

**Unilateral (Self help)**

After having exhausted all channels for finding ways and means for combating international terrorism. The target states have the capability started resorting to self help method. Entebbe rescue mission is Israel of 1976. The rescue mission in Iran in April 1980 of USA, and the USA military strike of Libyan presidential place in 1986 are some of the finest example of unilateral approach. The biggest drawback of this method is testimony before the Vs. Sanati foreign committee August 1, 1985. under the term self defence, that it can only be adopted by a military strong state. Even strong states need

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77 Ibid p-83-89.
some support of another friendly country for USA's 1986 the strike of Libya, United Kingdom provided refuelling facilities to the USF-III planes but France refused permission to overfly its territories. Hence US aircraft had to take a circuitous route. Such dichotomy in political outlook is merely the tip of the iceberg.

In the absence of strong international legal provisions against terrorism as on date the democratic states have enacted their own anti terrorist legislation and invoked emergency powers, as has been done in liberal democratic system like in India, Germany and Britain. And the status of the offence was to be determined by the circumstances attending the alleged crime at the time of commission and not by the motives which subsequently led to the prosecution.

In the case STATE V SCHUMANN 1970, the court of appeal at Ghana in allowing the request for extradition observed in order to constitute a political crime there must be some disturbance or upheaval or some physical struggle between some opposing political parties for the mastery of the government of the country and that the offence must have been committed in furtherance of that disturbance or struggle or with a view to avoiding political persecution or prosecution for political offences. In this case Schumann was wanted on a charge of murder in connection with the extermination of Jews in concentration camp.

The non-surrender of political offenders became consistent with the new concept of theory and the purpose of
extradition, but there were several problems also, for instance the offence was political, it was not recognised as an offence in the eyes of the state of asylum one state does not legislate to punish acts committed against other states if these acts do not harm its own political order. Moreover to decide that such offences justified extradition would involve passing judgement upon the injured state, and might imply ceasure of the existing government and the leading of moral support to a rebel faction which would be akin to intervention.

Popular feeling is often aroused on account of political offenders, and cannot be ignored by the state of refuge on the one hand, public opinion at home might sympathize heartily with the fugitive and severely condemn the surrender, while, on the other hand, the judge in the demanding state might be influenced by a prevailing sentiment against the accused, and be unable to show impartiality in his judgement. The fear that the fugitive, if returned, will be punished out of proportion to the severity of the offence is a deterrent to surrender.

Along with the practice of extradition states, have also indulged in the practice of expulsion or deportation of undesirable persons, usually foreigners, as a method of resolving some of the problems of administration of criminal justice. But there are differences between extradition and deportation. Deportation is usually a unilateral act, where as extradition is bilateral act and it is the part of the criminal justice process, i.e. acquisition of custody of the
accused for trial, or where the person has escaped from prison for completion of his sentence. Extradition process is mentioned in bilateral treaties, supplemented by provision in codes of criminal procedure. Extradition anticipates a prior judicial proceeding in the requesting state, followed by another judicial extradition proceedings in the requested state and often culminates in further judicial proceeding in the requesting state after extradition, where as deportation does not necessarily entail judicial proceedings before or after an act of deportation. 78

It must be admitted that the present unsettled state of international practice in the matter of characterization of terrorism results largely from the ideological differences that divide the world community. As Professor Bassiouni stated "what is terrorism for the one side, is heroism for the other".

Thus, future of the rule of no extradition of political offenders depends partly upon the political offenders themselves and partly upon the future of the state making up the present world order. Anarchist have in many cases brought upon them selves a wholesome condemnation by virtue of the terrorists method which they employ. Since all states have a common interest in suppressing crime against society, none are willing to grant political asylum to anarchists. Therefore if political offenders in the future are going to employ methods

of atrocity out of proportion to the political end in view, they are likely to receive Scant Sympathy.

It is on this principle that the capitalists states, in practice, remove communists from the category of political offenders when they use terrorist method with respect to world order, there may develop an integration of political organisation to such an extent that each state or division in the organization would feel an interest in itself punishing attacks directed at any one of the group regardless of where the act, might be committed. At present however in view of the strong feeling of nationalism and the principle of territorial sovereignty, there seems to be no trend in this direction and the problem of what constitutes a political offence for extradition purposes will therefore be frequently present itself for solution.

The attainment of world peace is dependent upon the maintenance of rules designed to safeguard world public order and to establish legal channels as alternatives to the violent means which prevail in their absence. The rule of law is not an ideological equalizer or a method of compromising opposing political doctrines, but a process of ordering and channeling conflicts through legal institutions designed for the peaceful resolution of conflict in a judicial context. It is gradual building of needed international legal structures, not by ideologically superimposing such structures on the nations-states, but by creating them so as to service special purposes designed to eliminate direct confrontations between states
which have potential for disruption of world public order.

An international court must be established on the model of European commission and the European court of human right. Terrorism once defined as involving specific crimes such as hijacking, kidnapping, assassination, letter bomb and other acts should be considered like other international crimes, i.e. genocide, as a crime against humanity. Both the genocide convention and the Hague convention on aircraft hijacking, adopt the position that such acts are international crimes for which there is universal jurisdiction and give the state the option to prosecute. Or extradite, which means that in the absence of prosecution Extradition is mandatory and the political offence exception is inapplicable.

Notwithstanding the fact that the resolutions of international conferences and association encourage state to grant extradition also in the absence of an extradition treaty and that new forms of legal assistance in criminal matter like the transfer of criminal proceedings and the execution of foreign judgement may diminish the importance of extradition, extradition treaties will remain of primary importance as the only sources of a states duty to extradite.

For several reason an effective assurance of human rights and effective use of civil and criminal sanctions against the deprivation of human rights by governments and private preparators will bring an end to terrorism.

The fact that the states continue to conclude new extradition treaties and to replace older treaties by new ones
clearly underlines their necessity. Uniform extradition system in a given geographical area do have their advantages, but one may doubt whether multilateral conventions reflecting only the minimum standard of joint convictions, abstaining after, from providing the necessary details and being subject to reservations, are the best solution to the problem. Bilateral extradition have proved more flexible in this respect and should be given preference. Article 33 of Inter-American convention of 1981, leaving it to the states to decide whether the conventions shall supersede bilateral treaties in force strongly support this view, while Article 28 of the European convention appears to be too narrow in allowing only for supplementry agreements.