CONCLUSION AND SUGGESTIONS

Terrorism has emerged as the enemy of our generation. Global terrorism and the likely access of the terrorist groups to weapons of mass destruction has the potential to devastate mankind. Terrorism today is not a malaise that afflicts one nation. It has spread across the globe and has almost become an international industry. It has become more diffuse and amorphous than earlier. The rise of state sponsored terrorism in the recent years and the threat of weapons of mass destruction has awakened us out of our slumber.

Terrorism is inherently in conflict with the processes and values of democracy. The experience of democratic states in the 20th century suggests that what is needed to counter terrorism effectively is a concerted, multi-pronged approach, carefully calibrated to the level required to deal with the scale of terrorism employed and combining the most valuable elements of political, legal, police, and socio-economic measures. No individual state has all the answers to combating domestic and international terrorism.

The current approach to fighting terrorism is like a doctor treating brain cancer with aspirin. Using deadly weapons to keep the peace is like using antibiotics to fight the common cold: it just makes the enemy more resistant. The root cause of terrorism – oppressed people who are completely deprived of freedom or hope and have no alternatives – must be addressed. As long as countries like Saudi Arabia and Israel can act with impunity because they have oil or they have the right friends, terrorism will continue to exist. Corrupt governments that exploit the masses are equally responsible for nurturing terrorism and revolution. Addressing the root causes of these symptoms properly would be cheaper and certainly more sustainable than fighting a war against terrorists.

Things have changed and our acceptance of this change is illustrated by the following example. In the old days, we were told to securely lock our baggage. Now at the airports they routinely open and rummage through our checked in baggage, not relying merely on the x-ray machine. They do it


276
behind our backs but the point is that nobody is complaining. As Shekhar Gupta says “terrorism is losing its shock value. The world is learning to live with terrorism, putting up with its occasional shocks and minor inconveniences.”

Terrorism is a fundamental challenge to the Weberian state as the wielder of ultimate power monopoly in a given territory. Terrorism and state terrorism, national and international, will tend to make the rule of law, municipal as well as international, backed up by the *ultimo ratio regis* of national or world governments, less realistic than ever. It is not obvious that order can be restored, or obtained internationally, through the old formula of power monopoly to the centre, the government, under anything like the present circumstances. It is also possible that the mode of governance has to be compatible with the means of destruction, to use an old formula in a new way. In short, we may be at an end of an era, and terrorism is only one of the causes and consequences.

David Charters enunciated a number of general principles of democratic counter-terrorism strategy: a definition of terrorism agreed on and understood by government and its polity that clearly delimits what is and is not terrorism (and thus determines which events require a counter-terrorism response), sophisticated analysis to distinguish between types and levels of terrorist threats, flexible policy, policy language that matches words to deeds in a consistent and credible manner and a realisation that there are no simple solutions and ideal outcomes. As far as the requirement for a definition is concerned it cannot be emphasised more. Until and unless we have a proper definition of terrorism, we cannot have a law that curtails it.

Though the term ‘terrorism’ finds a place in common international and national parlance, there is yet a need for a comprehensive definition of the term. The debate relating to an appropriate definition was sparked off as early as 1972 when an Ad hoc Committee on Terrorism was set up by the United Nations.

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It is impossible to create a universally acceptable definition of terrorism. Definitions of terrorism, like the act itself, continue to undergo changes. Therefore the way out is to specify certain features common to the concept of terror. According to Cindy Combs, a loose definition of the term would comprise of “an act of violence, an audience, the creation of a mood of fear, innocent victims, and political motives or goals.” All acts of violence are not terrorist acts. The line between acceptable types of violence and unacceptable types is, unfortunately, not always clear. Violence by revolutionaries and by the state is sometimes difficult to categorise clearly as “terrorist”. To understand terrorism is to be at least half way towards evolving a way to deal with it. For this, it is necessary to understand the processes of terrorism.

There is an inherent subjective implementation of even the most precise, narrow definition of terrorism. This is why even a one-line definition of the kind former Israeli Prime Minister Benjamin Netanyahu proposed, that “Terrorism is the systematic and deliberate and systematic assault on civilians to inspire fear for political ends” is subject to innumerable interpretations. This is perhaps why at the international level, there is no legislation, no convention, which can be used as a tool for global co-operation against terrorism. Bridging the ideological divide between nations could perhaps be the first step towards a universally acceptable definition and hence a campaign against terrorism.

However to reach a common ground in this regard will be an arduous task due to the varying perceptions of countries relating to the definition of terrorism. An established duty of all states is to take all measures to prevent and suppress attempts to commit crimes against life or property where such activities are directed against other states. This can only be achieved if there is a consensus regarding the definition of terrorism.

Terrorism is not a modern phenomenon. The statement that “one man’s terrorist is another man’s patriot” illustrates the historical nature of the concept of terror. Terrorism in the twenty-first century is quite different from that experienced in the twentieth. In order to understand what terrorism may be like in the twenty-first century, it is important to know the history of terrorism.

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278
terrorism. Terrorism continues to exist, but it is changing. Evaluating present trends on the basis of the past can offer useful insights for policymakers in the new century. The chapter on the history of terrorism has dealt with the changing aspects of terrorism, in this regard.

Terrorism has become a hallmark of a number of political movements. Technological advances such as automatic weapons and compact electrically detonated explosives give the terrorists a new mobility and lethality.

The terrorists today have an inherent advantage. The terrorists know exactly where we are and where we can go, while they can hide. They can take out their weapons and shoot and then hide the weapons again. Whereas when the army shoots, they are accused of shooting civilians. We are fighting a faceless enemy. This is the bane of our generation.

In the terrorists of today, we have large numbers of people ready to commit suicide, and ready to do it by making themselves into human bombs, and that too by using the most normal instruments of daily life, like an aeroplane, a car or a phone. They have created a weapon that is undeterrable, undetectable and inexhaustible. Thomas Friedman, the famous columnist talks about Islamic terrorists that they are neither a state, subject to conventional deterrence, nor individuals deterred by the fear of death. And their home societies have not stigmatised their acts as ‘shameful’. The religious orientation of the Islamists also breaks down deterrence. How do you deter someone who is not only willing, but also eager to die?

All this does not mean that there is no way out. We cannot deter Islamic fundamentalists but we can weaken them. There are other paths to security. For one thing, global co-operation is now much easier. Most countries are united in wanting to hunt down terrorists. Without this, terrorism cannot be fought.

Classic international law deals with two generic situations: war and peace. There are rules that apply during wartime and different rules, which apply when there is peace. During wartime, people are divided into two different categories. They are either civilians or combatants. Even in

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7 Thomas L. Friedman, “This is World War III, get used to it”, *The Indian Express*, Chandigarh, January 9, 2004.
peacetime, people are divided into two categories. They are either law abiding citizens or they are criminals, who are then dealt with by the police and the courts. Where does a terrorist fit in all this? Until now we have not envisaged a situation wherein there is something beyond war and peace. The question for the moment is how to deal with this situation?

Is the terrorist a criminal? Are we supposed to send the police to catch him? How do you catch a person who is a suicide bomber? Should the police catch him or kill him? He hasn't done anything yet. If he is a criminal offender, he cannot be shot because he hasn't blown himself up yet. He is a potential terrorist who hasn't done anything. No country in the world has come up with an answer to this problem.

The Statute of the International Criminal Court (ICC) introduces objective norms, along with judicial proceedings that are neutral and respect the right of defence that may prove useful in the fight against international terrorism. Though the States decided that the crime of terrorism did not come under the jurisdiction of the Court, the final Act of the Rome Statute recommends that a Review Conference be held in 2009 pursuant to article 123 of the Statute of the International Criminal Court which could consider the crime of terrorism with a view to arriving at an acceptable definition and its inclusion in the list of crimes within the jurisdiction of the Court. Besides, from the moment of its implementation, the court will be able to examine acts of terrorism that fall under the qualification of genocide, crimes against humanity or war crimes, since those crimes come under the Court’s jurisdiction. However few countries including USA and India have not signed the Statute which means that they are not amenable to the jurisdiction of the Court. This is an anomaly, which needs to be rectified as the importance of such an international tribunal is otherwise undermined. Also to make international law effective on the subject of terrorism, acts of terrorism need to be included within the purview of the ICC at the earliest.

As a means to combat terrorism, international law appears to lack effectiveness. International law is not an effective deterrent to terrorism because it lacks the mechanisms for enforcement. It relies more on loose association of states than on a proper legislative body to draft conventions, which in turn makes it less coherent and indecisive. The absence of an
adjudicative body and the lack of an executive or a police force to enforce the laws have left international law as a patchwork of treaties. Even the present treaties deal with only specific aspects of terrorism and none of them really tackles the problem. These instruments have further been hampered by political concerns relating to issues regarding jurisdiction, prosecution, extradition and political asylum.

Another major loophole under the law of nations is the concept of "political offence". Under the laws of different countries, political offenders are accorded a special status. Those believed guilty of political offences are eligible for the granting of political asylum by friendly states. The states granting asylum are under no obligation to prosecute the perpetrator for the crime. Even those who are prosecuted are afforded special treatment. This allows the offenders to escape extradition and even punishment. Therefore those who classify terrorism as a political crime do so in order to enable the perpetrators to evade the payment of penalties. This point has been a matter of debate for many legal experts. Even the formation of the ICC is of no use as it still excludes the crime of terrorism from its jurisdiction. To resolve this issue, the need is for a proper International Criminal Code, which is applicable equally to all nations.

Countries around the world look up to the United Nations to resolve the problem of global terrorism. Despite the inherent drawbacks, the United Nations realises the threat posed by the monster and is doing whatever it can on its behalf. The United Nations Security Council passed resolution 1373 to create a special committee on counter-terrorism and set forth several specific actions for all states to take to alleviate the global terrorist threat. The Secretary General of the United Nations also established a Policy Working Group on the UN and Terrorism with several subgroups to look into the many aspects of such a threat. Ultimately everything rests in our hands. If we want to make the United Nations more effective, every country would have to be willing to be a part of the global plan. Till the time, we disregard this international body, there can be no answer to this menace. It will require a

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8 See Combs, supra 5, pp.164-165.
concerted effort wherein every country will have to give up its individuality for the sake of betterment of mankind.

An example of the consequences of disregard of the United Nations was seen in Iraq. The United Nations was bypassed in Iraq, which in turn did not bear well for the United States. The countries around the world condemned the action of the USA and the US bombardment and occupation was viewed as a selfish strategy, which led to the ratings of the US going down. Whereas, if America had done all this with the sanction of the United Nations, it would not have not invited the wrath of the other countries. The United Nations umbrella would have had one enormous advantage in Iraq – the occupation would have been viewed as an internal one instead of American. The countries around the world would have been more willing to send their troops under the banner of the United Nations. This would certainly have helped the US to cut its costs in Iraq, whether it was in terms of soldiers or financially.

International law will have to evolve and adapt itself to the new reality. The countries, which do not face the problem of terrorism, are the most disinclined to change the law. There is a bloc of Arab countries who want a solution to the law relating to terrorism. Yet if international law wants to survive this new period, it must give the countries and their armies the tools to fight terrorism.

Soon after September 11, on October 26, 2001, President Bush approved the USA Patriot Act to deter and punish terrorist acts in the United States and around the world. The Act gave sweeping powers to domestic law enforcement and international intelligence agencies. The US President also signed a Military Order on November 13, 2001, authorising the detention, treatment and trial of certain non-citizens as part of the war against terrorism. It stated that the terrorist attacks on September 11, 2001 had created a situation where it was “not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognised in the trial of criminal cases in the United States district courts”.9

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The question which arises is, for how long and to what extent can the rights and freedoms of the citizens be taken away in the fight against terrorism? States often justify the curtailment of civil and political liberties on the basis of the need to secure the general welfare of their subjects. This is one of the issues confronting Britain today in its struggle with terrorism in Northern Ireland. The Irish resistance has been going on for over two hundred years. The problem is essentially demographic and sectarian, with the minority Catholic community in Northern Ireland resisting direct rule from London. Like in the case of Kashmir, there is ample evidence of support from across the border. Also the government has tried to crush terrorism rather than find a permanent answer.

The legislative acts promulgated by the Parliament to stop the spate of terrorist activity, compromise on civil liberties. Even one of the oldest democracies like Great Britain has compromised on its ideals. The Irish Republican Army is not an easy organisation to contend with. To create some semblance of a social order, Britain has given away some rights and freedoms of its Northern Ireland citizens. These rights include the right to trial by a jury, the right to be charged with a crime when arrested etc. The police have been given extraordinary powers, which lend themselves to misuse.

The United Kingdom already had a Terrorism Act of 2000, with a comprehensive definition of terrorism. In the wake of September 11, another Anti-Terrorism Crime and Security Act (ATCSA), 2001, was passed, which is even wider in scope and includes provisions for additional powers to the police, measures relating to information sharing and security of airports and laboratories. The ATCS Act further empowers the Secretary of State to ‘certify’ an individual as an international terrorist if the Secretary of State ‘reasonably’ (a) believes that the concerned individual’s presence in the UK is “a risk to national security”; and (b) “suspects that the person is a terrorist”. Upon certification, a non-UK national can be detained without charge or trial for an unspecified and unlimited period of time if the concerned individual’s removal or deportation from the UK cannot be effected.10 Can we ever imagine having such a provision in the laws in our country?

10 See Prakash Singh, supra 9
Terrorism has come to stay in India. India is a signatory to almost all human rights instruments. This means that we accord these rights a special place in our society. We therefore have to be extremely careful with laws like TADA and POTA, which by giving wide powers to the police has led to rampant use of extra-legal methods.

The *raison d’etre* of a government is to protect its citizens and punish those who endanger the life, liberty and well-being of the citizenry. When a functionary of the government behaves like a terrorist, he becomes more dangerous than terrorists since the law works against terrorists but not against the government functionary who takes the law in his own hands. If the rulers themselves direct their officers to disobey laws, then there is no safeguard in the legal machinery.\(^{11}\)

Governments are known to have encouraged the breaking of laws and the entire criminal justice process has vacillated back and forth in response to political pressure groups and militant groups. The police is also not allowed to enforce the law fairly and impartially without fear of reprisal. The misuse of these anti-terror laws does not provide an effective answer in this fight against terror. They in turn meet terror with terror. The terrorists need to be trapped under the law and not the innocents.

POTA was criticised on the ground that it gave extraordinary powers to law enforcement agencies. Prakash Singh, the former Director General of the BSF has said, “If a law is to be scrapped because it is misused, then perhaps most of our laws will have to be dumped in the Indian Ocean. The proper approach in such cases is to punish those who misuse the law.”\(^{12}\)

Perhaps the worst misuse of POTA, 2002 was the Gujarat fiasco, wherein it was used to exclusively target the Muslims. The fact that one is a Muslim is sufficient to be branded as a terrorist. The irony is that apart from gutting a train compartment in Godhra, allegations under the POTA cases usually are for conspiracies rather than any actual crime. Out of these the accused are almost invariably with no previous criminal record. Most are from working class backgrounds, self-employed young Muslim men, including

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12 See Prakash Singh, *supra* 9
electricians, drivers and radio and TV mechanics. Zakia Jowher, the human rights activist is right when he says, "There is no reprieve against the might of a State determined to brand an entire community as terrorists."  

The most controversial provision of POTA which has been targeted is that of a confession made to a police officer being admissible in evidence. However we cannot do away with a law just because it is likely to be misused or is being misused.

The USA Patriot Act of 2001 enacted in the aftermath of the 11 September attack does grant certain additional powers to the federal government and the Attorney General and establishes a new criminal prohibition against harbouring terrorists. However, it does not alter the criminal trial process for terrorism cases, nor does it accord the Executive powers immunised from meaningful judicial review.

Under the United Kingdom's Prevention of Terrorism (Temporary Provisions) Act 1989, the detention of an individual can be extended up to five days, but only with the permission of the Home Minister. Further, the European Court of Human Rights has held that this provision is in breach of Article 5(3) of the European Convention on Human Rights. The contrast with POTA is stark: POTA provides for extension of detention up to 180 days. However now after the London bomb blasts there is a proposal for a new law on terrorism which will extend the detention to 60 days.

POTA has been repealed and a new ordinance passed. The laws in our country are changed not because they require upgradation but because the party in power doesn't like the ones enacted by the previous government. In India the parties in power cannot reconcile their differences. The Congress government has now come up with the Unlawful Activities Prevention Ordinance, 2004. In doing so, the UPA has fulfilled its commitment to the Common Minimum Programme but the country has regressed in its commitment to fighting international terrorism.

The subject of anti-terrorism laws has become an issue of political wrangling. We seriously require some kind of introspection. Have we been able to control cross border terrorism in Jammu and Kashmir? Have the

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13 Harsh Mander has quoted him in his article on “Pota and its phantom limbs”, The Hindustan Times,
insurgent groups of North-East been tackled? On the one hand, we have been crying hoarse at the international fora that India is a victim of cross-border terrorism that the ISI is promoting fundamentalism within the country that Bangladesh is sheltering North-East's insurgent groups and on the other hand we can't decide upon a proper anti-terrorism law. "It is indeed most unfortunate that the leaders of our country are playing political games with the country's national security."14

K.P.S. Gill says that the situation which is prevailing in J&K and the North East is that of a state of war. He says, "the Army and the paramilitary forces are engaged in a battle to regain control over large areas of the sovereign territories of the Indian Union, against an utterly unscrupulous and heavily armed enemy —backed by an established neighbouring state that supports, arms and trains them — and who recognise no constraints of law, convention or humanity. It is consequently imperative that the Indian government and Parliament should debate on and define the appropriate criteria to judge the actions of those who fight these wars on behalf of the Indian State and its people."15

We enact such harsh laws because the attitude is not merely that normal laws are inadequate for solving terrorist crime. It is that militants do not deserve such niceties as fair trial or democratic handling of the issue. The feeling that terrorism does so much damage to life and liberty that such niceties to terrorists must be ignored probably dwells in the minds of a layman.

The problem lies not with the inadequacy of ordinary law but the degeneration of our criminal justice system. Therefore we need a strong criminal law, which is above board and actually calls a crime a crime. To strengthen our legal system we also need actual conviction of terrorists. The common complaint of the police is that they capture these hardcore terrorists with such great difficulty and then they see them going scot free because the court could not convict them for lack of evidence. Walter Lippman has said,
“Man cannot be made free by law unless they are in fact free because no man can buy and no one can coerce them.” An efficient democratic government will attempt to remain sensitive to the needs of all sectors of society and take effective action to remedy widely perceived injustices before they fester into full-blown rebellion.

K. Balagopal says, “the total answer to crime lies not in the criminal justice system alone, but in combining adequate political and social responses with it. The two attitudes evidently reinforce each other. To the extent that political and social responses are pushed into the background, the criminal justice system carries a greater burden. And to the extent it carries a greater burden its perversion through the enactment of unfair laws and the legalisation of brutal practices is rendered more necessary and rational.”

In the heart of its democracy, India has been able to define an identity respectful of each and everyone’s specificity. It is home to one of the largest Muslim communities of the world, with over 120 million believers. The religious patchwork of India offers to each minority, whether it be the two million Christians, the 16 million Sikhs or the Buddhists, Jains and Parsis, the possibility of keeping alive their own religious beliefs in harmony with the Indian identity.

In countries like Pakistan, some people encourage terrorist acts and in turn depend on the proceeds of drug-peddling or terrorism and terrorist related activities for their business. Terrorism in fact has become an instrument of international politics where the superpowers patronise the terrorists. The best example is that of Taliban.

The global consensus on tackling terrorism seems elusive. In India especially we need to start by making an honest attempt at making the application of the law above board. Lord Denning has said, “the freedom of the individual must take second place to the security of the State.” Unfortunately in our country, political considerations take precedence over all other factors, including national security.

17 Dominique De Villepin, “India has major role in new multipolar world order”, The Indian Express, Chandigarh, February 16, 2004.
Today, nothing threatens more the strong than the blind determination of the weak. The terrible succession of terrorist attacks in India, Iraq, Pakistan, Afghanistan and again very recently in London and Russia show that extremist groups can maintain a climate of fear and lasting instability. To face up to this new situation, the unity of the international community is the best guarantee of efficiency. It provides our action with legitimacy which guarantees, overtime, the support of the people. The fight against terrorism implies close co-operation of all the countries both at law-enforcement and judicial levels, in order to put an end to illegal trafficking which feeds terrorist networks. To clip the wings of terrorism, the international community must target the roots of frustration and the feeling of injustice, which prosper in all regions of crisis. Also for this reason, this is why France supports at the United Nations the Indian project of a global convention on terrorism.  

What happens in times of terror: illegal detentions, denials of due process and invasions of privacy. If the war on terrorism is open ended that means that emergency measures can go on indefinitely. What we will ultimately have is a police state. Even from the people detained under the anti-terrorism laws, we try to use all kinds of pressures to extract information from them. This includes all kinds of torture from sleep deprivation to isolation, to all sorts of beatings. But a person who has been subjected to such conditions will often say almost anything their captors wish them to say.

Another major problem that we face today is that a number of states provide safe havens for terrorists or actively encourage terrorism and use terror as a weapon in their war against free governments.

Further dispensing justice for terrorist acts is also problematic. The States are implementing exceptional judicial proceedings to try presumed terrorist individuals. The suspects are deprived of appropriate defence. The evidence supporting the charges remains secret. Justice is given by exceptional or military courts whose working and composition undermine basic principles of equity.

There are specific concerns, which are symptomatic of problems with anti-terrorist laws throughout the world. These include increased powers of

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18 See Villepin, supra 17
preventive detention, threats to the right against self-incrimination, extensive powers of the authorities to impinge on privacy rights of citizens and no clause to review such legislation. Some aspects of these national security laws and some increased security are justified, provided they actually serve to increase human security. “This is because trust is built into every aspect of our society. We trust that when we board a plane, the person next to us isn’t going to blow up his shoes. Without trust there is no open society because there aren’t enough police to guard every opening in an open society.”19 Nonetheless we cannot afford an endless state of emergency justifying infringements on rights and freedoms.

Often a doubt is raised about the possible conflict between respect for human rights and combating terrorism. Actually there is no such conflict. Terrorism has to be condemned and countered by taking “all, necessary measures in accordance with the relevant provisions of international law and international standards of human rights to prevent, combat and eliminate terrorism, whenever and by whomever committed”. This has to be achieved within the framework of the rule of law. The Vienna Declaration and program of action adopted on 25 June, 1993 categorically asserted:

“The acts, methods and practices of terrorism in all its forms and manifestations, as well as linkages in some countries to drug trafficking, are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and legitimately constituted governments. The international community should take the necessary steps to enhance co-operation to prevent and combat terrorism.”

We are fighting a war against the biggest enemy of our generation, which neither respects lives nor the rule of law in a civilised society. But in our fight against terrorism, we must not cross the boundaries of the law. This is not an easy task, but ultimately the winner has to follow the righteous path. It is these ideals which distinguish civilised people from barbarians.

The armed forces when called upon to deal with insurgency and terrorism have to bear in mind the parameters within which they have to

19 See Friedman, supra 7
function. Rule of law is the yardstick to follow. Terrorism is not to be countered with state terrorism. Under international law Article 4 of the International Covenant on Civil and Political Rights (ICCPR) provides that certain human rights are non-derogable under any circumstance. It also provides a very specific and constrained regime for temporarily derogating from some human rights in a state of emergency. Therefore we have to limit ourselves to work within the confines of law.

The most important and attractive aspect of terrorism as a mode of vicarious warfare is that it is more cost effective than other modes of warfare. Furthermore there are no requirements of accountability of the funds received unlike formal establishments. Terrorists function secretly and enjoy the patronage of powerful and wealthy organisations. The drug trade funds a lot of the terrorist outfits. Just as terrorism provides a cost effective method for the perpetrators, it proves to be just as exorbitant for the governments to combat.

The cost of the war against terrorism, if carried out by each state alone, could be quite high. Moreover its effectiveness is limited. Therefore the need for greater co-operation. Furthermore, it is necessary to balance the value of a strategy for eradicating terrorism against the all-too-often concomitant loss of other democratic values and civil liberties when a nation decides to “wage war” on terrorism. Terrorists can be said to have won in some respects when emergency measures are enacted. As this leads to the government being forced to rake distasteful measures, which could serve to reduce both its legitimacy and its stability.

We must organise ourselves more effectively to deal with terrorism by treating international law enforcement as a routine aspect of foreign relations. We must get ahead of the terrorists in technology. The fight against terrorism through law will take ingenuity, endurance and money. But we must not give up.

What democracies must strive for is a balance. That balance is easier to attain if the terrorists realise that democracies are not fragile in the face of

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21 See Combs, supra 5, pp. 188-189, 198-199.
terrorist attack and that they can defend themselves. Ultimately the truth is that the number of terrorists is limited and can be contained and reduced by government policies. We should also realise that there is no simple solution to terrorism. There are ideological, psychological and other differences between different terrorists and different incidents. There is not one modular solution, which would be applicable in all situations.

In order to address the problem of terrorism, countries in the world should take collective actions to address the root causes of terrorism. A comprehensive approach is required to redress economic and social gaps between the developed and the underdeveloped world. This would help the underdeveloped countries and societies establish strong and stable governments allowing those countries to tackle their own social and economic problems independently.

Furthermore, the international community should enhance the values of human security and raise the tolerance level of different religions so that different religions and values can co-exist equally, and not lead to war and conflicts. War against terrorism should be conducted only in a limited way so as to prevent chain-reactions associated with punishing terrorism. Retaliation can serve as a deterrent against further terror attacks, but cannot heal the root causes of terrorism.  

The United Nations is the appropriate forum to address the problem of terrorism in a productive manner. It has long history of dealing with terrorism. There are 19 international treaties on terrorism and numerous Security Council, General Assembly and UN Commission on Human Rights resolutions which touch upon various aspects of terrorism. The work of the UN is multilateral, fairly transparent and carried out within the framework of international law.

Terrorists know that security forces in a liberal democracy are forced to operate with their hands tied behind their back. Judicial restraints and civil control and accountability prevent the security forces from deploying their full strength and firepower. This means that the task of countering terrorism in a democracy especially under the constant scrutiny of the media is demanding.
and difficult. Nevertheless this should strengthen our resolve to defeat terrorism within the framework of the rule of law and the democratic process.

To combat terrorism in the true sense, the strategies adopted must not be confined merely to identification of terrorists and their elimination by revenge, not justice, but must extend to diagnosis of the malady and finding a permanent cure. Combating terrorism under the rule of law must necessarily have this meaning. A limited approach may help eliminate some present terrorists but not the causes or the phenomenon of terrorism, which produces terrorists; and that too at the cost of violation of human rights of many innocents. A proper balance between the need and the remedy requires respect for the principles of necessity and proportionality. Performance of this balancing trick is the mission of the rule of law to which our nation is committed. Let us not be carried away by possible short-term gains at the cost of long-term interests. The war against terrorism must be won under the rule of law.23

The quest for a balanced approach between anti-terrorism legislation and the protection of public freedoms should take into account:

- the need to promote substantive laws at the national level that respect human rights, e.g. protection against torture and inhuman treatment;

- the need to promote procedural safeguards for those who are arrested under national security related laws, including access to lawyers, expeditious access to the courts and independence of the judiciary;

- the need to address the concerns of special groups such as women, children, refugees/asylum seekers, minorities and indigenous peoples;

- the need to ensure that there are checks and balances against abuses of power and that States power is not untrammeled;

- the need to abide by international human rights standards, particularly to ensure that those national provisions attempting to

23 See Verma, supra 20, p. 113.
derogate from human rights do not derogate from non-derogable rights such as right to life and freedom from torture and that derogations are reasonable, proportional to the threats and in conformity with the fundamental interests of society and democracy.24

The fear of the likely use of the chemical and biological weapons has created an unprecedented panic amongst the nations of the world. If the nuclear weapons fall in the hands of the terrorists it would be a disaster for the world. We need some form of protection against the misuse, which is expected out of this monster. George Fernandes, our ex-Defense Minister says, that the ultimate answer to terrorism is a just world in which:

- exploitation of man by man and of nation by nation is ended;
- discrimination based on gender, race, caste or religion is done away with;
- the wealth of the world is shared equitably among the people of all nations;
- the power to destroy the world through weapons of mass destruction is abjured by every nation now holding it; and
- a world parliament is established which becomes the mirror of the hopes and aspirations of the people of all nations.

He further says that as a prelude towards reaching this ultimate answer, the nations of the world must collectively put their finger on the hurts nursed over the centuries within nations and between nations, and draw up a plan for global peace by bringing about reconciliation on all these issues.25 If people are heard and their grievances are addressed in the right manner it would certainly lead to resolving of certain issues which have become entrenched in their minds.

It is essential that we seek not only to fight, but also to prevent terrorism. One way of working for prevention is to examine the environments, which give birth to future terrorists. The risk of terrorism will decrease when

there is true democratic development, when dissent and antagonism are constructively engaged in the non-violence of democratic politics. This requires the right to equality and justice in political outcomes at the national, regional and international levels, with concrete improvements in the health, education, and prosperity of all people.

Dick Cheney, Vice President of United States spoke intelligently about the dangers of terrorism. He noted that today’s technology makes possible the killing not just of 3,000 people but 30,000. The solutions that he provides are: help end the ideologies of violence by promoting reform in the greater Middle East; increase co-operation among countries to battle terrorism and if and when diplomacy fails, take decisive action.26

What after all is the ultimate answer to terrorism? Should we adopt the strong line approach as advocated by many people, or do we follow the Gandhian principles? Arun Shourie says, “wars are won by overpowering the opponent with overwhelming force. And so it must be in the case of terrorism, and of the states that sponsor it: not ‘an eye for an eye, a tooth for a tooth’; but for an eye, both eyes, for a tooth, the whole jaw. Not just society in general, the ordinary, individual citizen too must be acting in concert with the authorities.”27 Is it really advisable to defang the devil by taking on his horns is a matter which needs contemplation. Although, a certain amount of punitive action is certainly necessary if we want to contain the problem. The terrorists should also feel the costs of having inflicted the violence that they did. However the people must empathise and support the government agencies in their fight to secure their citizens.

To help our enforcement agencies to secure the citizens, he advises the people to help them in any manner to whatever extent they can. He says, “the passenger who kicks up a fuss when he is frisked at an airport, the house-owner who insists that being advised to inform the neighbourhood police station about the new tenant is an intrusion in his private affairs – such individuals unwittingly help terrorism: on the one hand, the terrorist has an

26 Fareed Zakaria, “Uncle Sam, are you listening to us?”, The Indian Express, Chandigarh, January 28, 2004.
easier time establishing the safe-house from which he will carry out his next explosion; on the other, the average policeman is discouraged from doing his assigned duty. 28

In our fight against terrorism everyone will have to make some contribution and some sacrifices. The media for example will have to cut down on the coverage, which is given to the terrorist actions. There is no need to highlight the negative aspect of a terrorist event, which actually leads to the increase in circulation of the newspaper. This gives a terrorist a high which in turn makes him a sort of a celebrity, albeit an infamous one. While dealing with the IRA, Mrs. Thatcher rightly said, ‘Publicity is the oxygen on which the terrorist lives. Success is the food on which he multiplies.’

The vexing question of how to effectively deal with terrorism within the parameters of law requires some kind of plausible solution. Taking into consideration the suggestions made by various respondents and the study conducted for this purpose, this is what I propose.

• Violence for one is certainly not the answer. Destroying a few terrorists will not root out the network of terrorists who are hiding everywhere. Also the killing of terrorists also results in the killing of innocent civilians which in turn invites the wrath of the general public. We need to address the root causes of terrorism. Without addressing the conditions of misery and injustice that nourish and aggravate terrorism, we cannot stop it.

• We need to emphasise the importance of States to work together in the prevention and suppression of acts of terrorism. This can be done particularly through increased co-operation, the ratification and the proper application of the International and Regional Conventions on terrorism.

• It is also suggested that these international instruments be incorporated in the municipal law of the States, which would promote the principle of universal jurisdiction.

• All states must settle on a definition of terrorism. This is certainly a contentious issue. But resolving it will go a long way in reaching some

28 See Shourie op. cit.
sort of a concrete path for settling the debate. It is the lack of precision over the definition that allows counter-terrorism policy to go off the rails. There must be a certain kind of a limit as to how each country is going to define terrorism.

- any new international and regional convention on the definition of terrorist crime must;
- take into account the various authors of acts of terrorism (individual, group, State);
- avoid the pitfall of excessively broad coverage, which could in reality hinder individual and collective liberties or which could include such risk.

• We need to have an International Convention on Extradition which should be made the *jus cogens* of international law and which is binding on all nations. This would to a certain extent help the nations in prosecuting offenders according to their own law.

• Today there is no enforceable international law which would be universally applicable on all the countries and peoples of the world. A law that has no legal sanctity is not legally enforceable and if it does not carry a penalty for its violation it cannot be called a law at all. What we need is a proper and a specific international law on terrorism and not conventions which deal with different aspects of terrorism. Also it is advisable for all countries to ratify these conventions at the earliest as without it the law holds little value.

• As far as the legal level is concerned, *international criminal jurisdiction* should be established for the crime of terrorism in addition to strengthening the procedures of domestic jurisdiction. Generally, terrorism should be situated within the domain of universal jurisdiction. The state parties to the Rome Statute can consider incorporating the prosecution of terrorist acts into the jurisdiction of the International Criminal Court.

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• Countries like India and the United States should ratify the Rome Statute at the earliest. This would certainly help India if the International Criminal Court incorporates acts of terrorism within its jurisdiction.

• State terrorism is no answer to terrorism. It only gives rise and legal sanctity to what we are trying to crush. It is actually counter-productive as it provides a justification for terrorism.

• In India, we have good laws on terrorism. We just need to curtail the misuse of these laws at the hands of the various forces of the criminal justice system. When an innocent man is picked up and tortured, we in turn create terrorism.

• Our anti-terror legislation must contain a limited and specific definition of terrorism, such as that contained in the Prevention of Terrorism Act of the United Kingdom. We require a clear conceptualisation and definition of the complex patterns of crime that constitute ‘terrorism’ and ‘organised crime.’ It is crucial, here, to bear in mind that these are unique categories of criminal behaviour.

• The transfer and use of illegal revenues is the lifeblood of both terrorism and organised crime, and stringent laws must be devised to deprive criminal and subversive groupings of funds. This will require the implementation of harsh penalties on illegal transfers and money laundering, as well as the criminalisation of a range of economic offences, including the use of such resources in legitimate businesses.

• The legislative framework must also provide for the suppression and containment of subversive and extremist activities by religious institutions and organisations. These organisations fuel anti-national sentiments in the garb of religion.

• Penalty provisions must be commensurate with the offence. Punishment for terrorist activity should be made more stringent so that the person committing the act at least thinks twice before doing so. Harsh punishment may bring down the rate of terrorism.
The investigating agencies should also evolve a more stringent approach for the collection of evidence as this is a weak link in our judicial process.

The police force in our country, the equipment made available to the police and the technology should be modernised keeping in view the training, the equipment and the technology of the terrorists.

Further the trial process must be made shorter and easier, so that it results in quick conviction of the offender. The terrorists are encouraged when they know that the case is going to take long and when it finally comes up, the evidence would lose its effectiveness. When a terrorist knows that after being caught he will be convicted in the next 60 days it will definitely have a deterrent effect.

Another weak link in the criminal justice system is the witness system. Even if citizens are willing to help, the extent of harassment that witnesses are subjected to is so enormous that no one comes forward to undertake the trouble. Witnesses should not be made to wait from morning to evening. So long as we fail to provide minimum courtesy and comfort to witnesses, people will not come forward to depose. Also many witnesses are scared of giving any evidence for fear of their life. We need to give a serious thought to an exhaustive Witness Protection Programme without which the courts will be unable to dispense justice.

There is also a serious lack of intelligence input. There is lack of co-ordination between our intelligence agencies with the red-tape making the information stale. By the time the information reaches the relevant authorities it has already lost its usefulness. We need to cut down on the time spent in the dissemination of the information and also delete some links in the chain so that it is sent expeditiously to the required source.

Today prisons in most countries have the task of education and rehabilitation. We should make sure that this system works properly. There is no reason why we should not make more effort to educate and rehabilitate the offenders. We should inject more expertise in the prisons to cope with the special problems of the terrorists. This would
definitely help in stopping the terrorists from returning to their careers of violence when ultimately released.

- We should adopt tough measures to penalise the sponsors who provide terrorists the financial assistance, explosives and most of all a safe haven.

- Terrorists are highly motivated compared to our police. There should be a special force of the police who are specifically trained for tackling such crimes. Even for the crime of cyber-terrorism, the police are unfit to deal with it. The use of the net has come up so fast that institutionally the police has not been able to come to grips. Therefore the need for a specially trained, educated and motivated police force to deal with this aspect.

- The Information Technology Act is already redundant to deal with the crime of cyber-terrorism. For cyber-terrorism we need laws which are amended and modified from time to time. We need a group of professionals who could act as a think tank for this area. They should help in progressively updating the law from time to time.

- The separation of investigation from the prosecution has led to the decline in the conviction rate. The investigation seems to lose interest as soon as the charge sheet is filed. Thereafter the prosecutor has no means to investigate the lose ends and to secure the presence of witnesses. We could look into the American system, where not only does the institution of criminal cases rest with the prosecuting attorney, but he is authorised to intervene and exclusively control the investigation under the overall control of the Attorney General of the state.

- We need to seriously consider the involvement of common men like jurors with the criminal justice system. Sometimes common men can provide better results than the independent, the educated and the articulate.

- We also need to look at this problem from a social point of view. We have to take care of people living below the poverty line. It is hunger fuelled by religious sentiments which is one of the major causes of
terrorism. Social and Secularism should not be mere words in the Preamble to our Constitution. They should be adhered to in letter and spirit.

- Finally terrorism is less a legal and more a political problem. Therefore political process national and international must play a dominant role. Space for dialogue must never be eliminated.

All together, we have to realise that to win the war against terrorism, it is imperative to constitute a global coalition for peace, human development and democracy.

Terrorism is no longer a theoretical issue. It affects every one of us in this part of the world. We need to adapt out thinking and find a way to reach the correct balance between protecting human rights, protecting civilians, and allowing governments the freedom to deal with those terrorists, because people who are fighting without reference to the rules don't deserve any protection.

Success in the struggle against terrorism will to a large extent depend on continued international co-operation. At the same time we must also come to terms with the fact that the threat of the phenomenon of terrorism and the problems that fuel it can never be eradicated completely. There is no single solution, which can be applied pari passu. We need to come up with creative solutions that in a sense will reduce the effects of terrorism in our lives.