TERRORISM: INTERNATIONAL LEGAL CONTROL

REGIME

The genesis of conflict and violence goes back to the history of civilisation. Since the end of World War II, international terrorism has proliferated throughout the entire world. While on the one hand the UN came into existence to safeguard global peace and security, on the other hand, it was the beginning of the cold war between the superpowers. The polarisation of nations during the Cold War and the advancement of pre-emptive strike technologies compelled militants, and even nation-states, to engage in or support terrorist activities. Today international terrorism has emerged as the biggest threat to the nations of the world. Terror attacks, diplomatic crises and armed conflict are becoming normal in international relations. International Terrorism is a result of international lawlessness, where people opt for violent destructive acts to draw attention to their grievances, for which they feel the system does not offer any remedy or solution.

Today, how a state treats its citizens has become a matter of international concern. Terrorism is bad, but those fighting terror can be very nasty too. And the manner in which they fight can make things better or much worse. We have many treaties and other international mechanisms to deal with terrorism, but their effectiveness is far from satisfactory. Innumerable state-sponsored terrorist groups have mushroomed in different parts of the world. The governments of various countries are unable to provide basic security guarantees to their citizens. There are various legal measures, which have been enacted to deal with this problem, but this menace still exists. This is also because there is almost a total lack of agreement on either the cause or the cure of international terrorism. Although we all acknowledge the necessity of dealing with terror-violence, there is almost no urgency towards creating viable juridical procedures and implementing effective legal controls.¹

Even Cindy Combs says that, “In the international community, while there may be general agreement on the undesirability of such things as war, racial

discrimination, genocide and other violations of basic human rights, there has been a significant reluctance to translate that agreement into workable treaties with enforcement powers.\textsuperscript{2}

Some people mistakenly believe that there are some international laws but in reality 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. In that sense, today there is indeed no international law in the world, in the absence of which there is total lawlessness in the world reflected in the increased instances of international terrorism. Today, international terrorism demands enforceable international law because international terrorism can only be curbed through enforceable international law and not by war, whether between two or more countries or even a World War.\textsuperscript{3}

Why is it that we cannot reach a workable consensus to get rid of this evil? It is because firstly there is a lack of legislative authority. The United Nations was certainly never designed to "rule" the nations of the world or to create rules for its governance.\textsuperscript{4} It doesn't make laws but only offers a forum for discussion. There is no governing system in the real sense. Moreover there is no judicial system to which we all have recourse and whose decisions are binding at the international level.\textsuperscript{5} Also there is an absence of law enforcement officers. With these constraints it has become difficult to deal with the problem effectively.

**International Legal Regime**

The principle thrust of international efforts to counter terrorism has two aspects, which focus on the foreign element of terrorism:

(i) the prevention of the use of territory of one state to commit terrorist acts in another state; and

\textsuperscript{3} 2\textsuperscript{nd} International Conference of Chief Justices of the World. On the internet at: http://www.cmseducation.org/article51/confwhy_4.htm
\textsuperscript{5} Statute of the International Court of Justice.
the denial of safe havens within a foreign state to terrorists who commit offences in another state and escape into the territory of the former.

The obligation of a state not to allow its territory to be used for acts contrary to the rights of other states has acquired recognition as a fundamental principle of International Law. It has found expression in decisions of courts, such as in the decision of the International Court of Justice in the Corfu Channel case, where the court referred to the principle as "a general and well recognised principle," and also in resolutions and declarations of the United Nations. The draft Declaration on Rights and Duties of States prepared by the International Law Commission recognised the duty of the state "to ensure that conditions prevailing in its territory do not menace international peace and order."

Although attempts by the international community to construct general treaties dealing with terrorism have been largely unsuccessful, but those treaties and conventions which deal with specific aspects of terrorism, greater progress has been achieved. Let us examine the international instruments prevalent today dealing with this problem.

**Before World War II**

The first attempt to deal with the problem was by the League of Nations in 1937. In the nineteenth century anarchists (especially Russians and Spaniards) were the dominant group engaged in terrorism. In the 1920s and the 1930s most terrorists came from the extreme right-wing. The League of Nations drafted the first international convention on terrorism, but it never came into force. This action was in response to the assassination of Alexander I of Yugoslavia by a Macedonian nationalist, who fled to and received support from fascist Italy. King Alexander I of Yugoslavia and Mr. Louis Barthou, President of the Council of the French Republic, were assassinated at Marseilles on October 9, 1934. The League of Nations called a conference to deal with the resurgent problem of international terrorism. The Geneva conference of 1937 produced the Convention for the Prevention and

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6 The Corfu Channel Case (United Kingdom v. Albania), April 9, 1949, *ICJ Reports* 1949, p.4, 22.
Punishment of Terrorism. However, besides India no other country ratified it.\(^7\)

In the same conference another resolution was passed, for the creation of an International Criminal Court. The first draft was submitted to the UN by the International Law Commission in 1951, the second in 1954.\(^8\) But it again failed to obtain a sufficient number of ratifications and therefore never entered into force. Therefore this never got off the ground and since then terrorism has been addressed issue by issue, in response to particular outrages, rather than comprehensively.

### The Geneva Convention for the Prevention and Punishment of Terrorism, 1937

The provisions of the Convention broadly covered five major areas. They were:

(i) The principle of non-use of territory for terrorist activities against another State;

(ii) Definition of “terrorism”;

(iii) Identification of acts of terrorism committed within one State against another State, which are to be regarded as criminal offences;

(iv) An extradition regime;

(v) International co-operative measures to prevent acts of terrorism.

The League of Nations in the 1937 convention had proposed a definition: "All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public". But since the convention never came into force this definition was rendered useless.

One obvious difficulty is defining “terrorism” and “terrorist”. “One man's terrorist is another man's freedom fighter” is frequently quoted and there were 109 different definitions advanced between 1936 and 1981, with more since. The lack of agreement on a definition of terrorism has been a major obstacle.

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7 Even France and Yugoslavia, the affected parties in the Marseilles incident did not ratify the convention.  
to meaningful international countermeasures. Without a law defining terrorism, there can be no enforcement of the would-be law.

Instead of concentrating on the definition of terrorism, International law has chosen to address specific forms of terrorism, such as hijackings and abduction of foreign dignitaries, and to introduce measures to ensure international cooperation to combat and investigate terrorist incidents. For example, four UN conventions address aircraft and airport seizure or sabotage (1963; 1970; 1971; 1988), and a recent resolution issued by the UN Security Council requests UN-member states to report on their counterterrorism measures within 90 days (Resolution 1373, issued September 28, 2001).

The 1937 League of Nations Convention for the Prevention and Punishment of Terrorism contained important distinctive features, which reflected its origins as an initiative directly influenced by the political assassination of the Yugoslav Sovereign on foreign territory. The principle objective of the Convention was to deal with acts of terrorism which were politically motivated and in which an "international element" was present. However despite the positive elements, the Convention suffered from substantial infirmities, as far as the development of legal principles for the prevention and punishment of acts of terrorism were concerned.

The Draft Convention for the creation of an International Criminal Court provided an optional procedure for a state to discharge its obligations under the Convention for the Prevention and Punishment of Terrorism. It covered cases where due to political constraints or other domestic compulsions, a state wished neither to extradite nor to prosecute an offender before the domestic courts. In such a situation it was open to such state to hand over the offender to the International Criminal Court for the purposes of prosecution.

The Conference on the passing of the Draft Convention, recognised as a matter of expediency, that States which were not prepared to become signatories to the International Court Convention had reservations of a fundamental nature with regard to any extension of the jurisdiction of the International Criminal Court which would provide for the trial of their nationals.

The Conference recognised that on the question of international criminal
jurisdiction, the international community was not yet, prepared to adopt an absolute concept of universality and left the matter to be governed by general international law.9

Post War Period

Since the League of Nations had obviously failed to prevent the war, a new international order was constructed. In 1945 the United Nations was founded. Also, in order to prevent such devastating war from occurring again and to establish a lasting peace in Europe, the European Coal and Steel Community was born in 1951 (Treaty of Paris (1951)), which became the predecessor of the European Union. As the leading international governmental body, the UN has undertaken the responsibility of developing uniform approaches to combating terrorism.

Although the Convention for the Prevention and Punishment of Terrorism issued by the League of Nations was not revived by the United Nations after World War II, terrorism has been the subject of UN attention for the purposes of the codification and progressive development of international law since the early 1950s and for the maintenance of international peace and security since the 1970s.

Ever since its foundation, the predicament of the United Nations Organisation has been that of enforcement of the general principles of international law as set out in the Charter. The goal of United Nations is ‘to save the succeeding generations from the scourge of war’, which is proclaimed in the Charter’s Preamble. If it succeeds in its mission, it will be possible to preserve world peace. The mandate of the United Nations is to maintain international peace and security and to promote friendly relations and co-operation among States.10

Chapter VII of the United Nations Charter deals with action with respect to threats to the peace, breaches of the peace, and acts of aggression. It says that the Security Council shall have the primary responsibility in that respect. The Security Council shall determine the existence of any threat to the peace,

breach of peace, or act of aggression and shall make recommendations, or decide what measures shall be taken to maintain or restore international peace and security.\textsuperscript{11} One of the important provisions is contained in Article 51. It says that nothing in the present Charter shall impair the inherent right of an individual of collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Article 51 of the Charter stipulates that acts of self-defence must be reported to the Security Council, but it does not define the content of the right. Self-defence is a part of customary international law – an informal, unwritten body of rules derived from the practice and opinions of states. Necessity and proportionality are the key requirements. Powerful countries however always shape the international law to suit their advantage. The United States for example has modified the international law regarding self-defence. States now have the right to engage in self-defence against states which actively support or willingly harbour terrorist groups who have already attacked the responding state.\textsuperscript{12}

On this point a pertinent document is the U.N. General Assembly's Declaration on Principles of International Law Concerning Friendly Relations and Co-Operations among States in accordance with the Charter of the United Nations, adopted without vote on October 24, 1970. Among the various provisions, the relevant one says:

\begin{quote}
Every State has the duty to refrain from organising or encouraging the organisation of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.
\end{quote}

\textsuperscript{11} Id., article 39.
Every State has the duty to refrain from organising, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organised activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force. 13

In committing acts of terrorism, the terrorist chooses the instrument of indiscriminate violence and the target is the “innocent civilian”. This is done through the use of weapons, which create a collective danger to the lives of innocent civilians like bombs, grenades etc. The legal basis of the principle of the protection of “innocent civilians” is derived from the laws of war, as codified by the Geneva Conventions of 1949. 14 Article 3, common to all Conventions, enshrines the fundamental principle that parties to a conflict should refrain from inflicting any acts of violence upon persons taking no active part in the hostilities. These principles were also reinforced in the 1977 Protocols to the Conventions which extended the humanitarian provisions of the Geneva Conventions to national liberation movements and to armed conflicts which are not of international character.

Protocol I, which supplements all the Geneva Conventions and applies in international armed conflicts, improves the protection afforded to the civilian population under applicable rules of international law. To further this, a provision has been incorporated on the limitation on the right of parties to a conflict, to choose method or means to combat, the prohibition of attacks against the civilian population or of indiscriminate attacks, the protection of civilian objects, of cultural objects and places of worship, the protection of objects indispensable to the survival of the civilian population, the protection of works and installations containing dangerous forces, and the banning of reprisals against civilians. Protocol II, which applies to victims of non-international armed conflicts, contains similar provision for the protection of the civilian population against the effect of hostilities.

International law has so far responded to the problem of terrorism by: (i) conducting studies on the problem of terrorism; (ii) codifying traditional

humanitarian law; (iii) evolving new norms to prevent and punish specific acts of terrorism; and (iv) helping in the development of regional and international institutional arrangements to combat terrorism.15

After the 2nd World War, in the early 1970s, the General Assembly became preoccupied with the question of terrorism, which was included in the agenda of its 27th session in 1972 and which led to the establishment of an Ad Hoc Committee.16 The first ever text of the UN on international terrorism was adopted on 18th December 1972 by the General Assembly. The subject of the text was described as the ‘Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardises fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair, and which causes some people to sacrifice human lives, including their own, in an attempt to effect radical changes.’17 The purpose of adopting this resolution was to draw attention and co-operation of member states. The resolution also concerned itself with the struggle for independence of people under colonial domination. It marked the beginning of the UN intervention to curb terrorism.

In furtherance of its efforts the United Nations General Assembly appointed a 35 member Ad Hoc Committee on International Terrorism (AHC) in 1973 to examine the details towards prevention of international terrorism. Under this three separate committees were established to study three distinct issues relating to the question of international terrorism. They were (a) the definition of international terrorism; (b) underlying causes of international terrorism; and (c) measures for the prevention of international terrorism. No consensus was reached on the matter of definition as the house was divided. They decided to drop the subject of definition and to focus on prevention of international terrorism. Even on the underlying causes of international terrorism, they failed to reach any finality because of the divergent political

perceptions and priorities of the respective groups. No conclusion could be reached but nevertheless it was a start in this area.

It took very long for the UN to define international terrorism. From 1973 to 1987 they struggled to distinguish between freedom fighters and terrorism. It managed to arrive at some sort of a definition in 1987 because by that time most of the colonies were free. In 1987 the Secretary General convened an international conference to define terrorism and differentiate it from freedom fighting.

The United Nations has since then adopted different conventions dealing with terrorism. In the absence of an umbrella act or legislation against terrorism, we have a host of conventions, covering a range of terrorist attacks. The conventions that the UN sponsors have the weight of primary sources of international law once they enter into force. Today we have 12 United Nations conventions and 7 regional conventions directly pertaining to the subject of international terrorism:


18 Article 38 of the Statute of the International Court of Justice states:
1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
(a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
(b) international custom, as evidence of general practice accepted as law;
(c) the general principles of law recognised by civilised nations;
(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.


Recently the Ad Hoc Committee established by the United Nations General Assembly vide resolution 51/210 of 17 December 1996, submitted its report on suppression of acts of nuclear terrorism. Thereafter the General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism, 2005. It is not yet in force. Out of the 12 international conventions, there are four primary conventions directly addressing the subject of terrorism. They are the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (CPPCIPP); the International Convention against the Taking of Hostages (ICTH); the International Convention for the Suppression of Terrorist Bombings (ICSTB); and the International Convention for the Suppression of the Financing of Terrorism (ICSFT). These conventions have all entered into force and therefore have
become binding international law at least for those States who are parties to the conventions.19

Overview of the International Conventions

The important and more relevant provisions of eight conventions are stated hereunder. The rest four more important conventions directly pertaining to terrorism will be discussed in detail thereafter.

Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963
- applies to acts affecting in-flight safety;
- authorises the aircraft commander to impose reasonable measures, including restraint, on any person he or she has reason to believe has committed or is about to commit such an act, when necessary to protect the safety of the aircraft and for related reasons;
- requires contracting states to take custody of offenders and to return control of the aircraft to the lawful commander.

Convention for the Suppression of Unlawful Seizure of Aircraft, 1970
- makes it an offence for any person on board an aircraft in flight (to) "unlawfully, by force or threat thereof, or any other form of intimidation, (to) seize or exercise control of that aircraft" or to attempt to do so;
- requires parties to the convention to make hijacking punishable by "severe penalties";
- requires parties to have custody of offenders to either extradite the offender or submit the case for prosecution;
- requires parties to assist each other in connection with criminal proceedings brought under the convention.

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971
- makes it an offence for any person unlawfully and intentionally to perform an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft; to place an explosive device on an aircraft; and to attempt such acts or be an accomplice of a person who performs or attempt to perform such acts;
- requires parties to the convention to make offences punishable by “severe penalties”;
- requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution;
- requires parties to assist each other in connection with criminal proceedings brought under the convention.

Convention on the Physical Protection of Nuclear Material, 1980
- criminalises the unlawful possession, use, transfer, etc., of nuclear material, the theft of nuclear material, and threats to use nuclear material to cause death or serious injury to any person or substantial property damage;
- requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution;
- requires parties to assist each other in connection with criminal proceedings brought under the convention.

- extends the provisions of the Montreal Convention to encompass terrorist acts at airports serving international civil aviation.
- establishes a legal regime applicable to acts against international maritime navigation that is similar to regimes established against international aviation;
- makes it an offence for a person unlawfully and intentionally to seize or exercise control over a ship by force, threat, or intimidation; to perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of the ship; the place a destructive device or substance aboard a ship; and other acts against the safety of ships;
- requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution;
- requires parties to assist each other in connection with criminal proceedings brought under the convention.

Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988
- establishes a legal regime applicable to acts against fixed platforms on the continental shelf that is similar to the regimes established against international aviation;
- requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution;
- requires parties to assist each other in connection with criminal proceedings brought under the protocol.

Convention for the Marking of Plastic Explosives for the Purpose of Identification, 1991
- designed to control and limit the use of unmarked and undetectable plastic explosives (negotiated in the aftermath of the Pan Am 103 bombing);
- parties are obligated in their respective territories to ensure effective control over “unmarked” plastic explosive;
- generally speaking, each party must, among other things: take necessary and effective measures to prohibit and prevent the manufacture of unmarked plastic explosives; take necessary and effective measures to prevent the movement of unmarked plastic explosives into or out of its territory; take necessary measures to exercise strict and effective control over possession and transfer of unmarked explosives made or imported prior to the entry into force of the convention; take necessary measures to ensure that all stocks of such unmarked plastic explosives held by the military or police, are destroyed or consumed, marked or rendered permanently ineffective within fifteen years; and, take necessary measures to ensure the destruction, as soon as possible, of any unmarked explosives manufactured after the date of entry into force of the convention for that state.

- Does not itself create new offences that would be subject to a prosecution or extradition regime, although all states are required to ensure that provisions are complied within their territories.

These are the basic provisions of the eight international conventions. Let us now analyse the important provisions of the four conventions for an in depth study. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (CPPCIPP) deals with crimes against internationally protected persons including diplomatic agents. Those protected under this convention are a Head of State or Government or a Minister of Foreign Affairs, any representative or official of a State or international organisation.\footnote{Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, article 1.} Under this convention crime constitutes of the intentional commission of murder, kidnapping or other attack upon the person or liberty of an internationally protected person; a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty; a threat to commit any such attack; an attempt to commit any such attack; and an act constituting
participation as an accomplice in any such attack. Since these crimes require intent they are more difficult to prove. It further says that the States shall cooperate amongst themselves and shall communicate information to the concerned state.

This convention incorporates the "extradite or prosecute" principle. Article 7 says that the State party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Hence this convention creates a jurisdictional obligation to redress certain terrorist activities against protected persons or in the alternative to extradite the offenders. The convention further treats all crimes for the purpose of extradition between State parties, as if they had been committed not only in the place in which they occurred but also in the territories of the State Parties. This recognises the universal jurisdiction over the offences at issue. It grants domestic jurisdiction over the offences committed extraterritorially and without regard to the nationalities of either the offenders or their victims.

The International Convention against the Taking of Hostages (ICTH) considers the taking of hostages as a matter of grave concern to the international community. It recognises the urgent necessity to develop international co-operation between states in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism. Under this convention the offender is a person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the

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21 Id., article 2.
22 Id., articles 4 and 5.
23 Id., article 8.
24 One of the international criminal law principles to combat terrorism, is the principle of “universality of jurisdiction”. This principle permits a state to exercise jurisdiction over crimes irrespective of the place of the commission of the crime and the nationality of either the criminal offender or the victim and irrespective of the protection of any interest of the prosecuting state. The fundamental premise of the principle is that certain types of offences constitute crimes against humanity. See Amrith Rohan Perera, International Terrorism, (Vikas Publishing House Pvt. Ltd., New Delhi, 1997), pp. 186-187.
‘hostage’) in order to compel a third party, namely a State, an international 
intergovernmental organisation, a natural or juridical person, or a group of 
persons, to do or to abstain from doing any act as an explicit or implicit 
condition for the release of the hostage; who attempts to commit an act of 
hostage-taking; or participates as an accomplice of anyone who commits or 
attempts to commit an act of hostage-taking.26 In this convention the act of 
crime does not require intention to be proved, therefore making it easier to 
prosecute. The convention seeks the nations’ co-operation for the prevention 
of the offence27 and for taking the required judicial action28.

Article 8 again gives voice to the “extradite or prosecute” principle. 
Further, pursuant to the convention, no extradition of an alleged criminal 
should be granted if the State requesting extradition has reason to believe 
that the request was made “for the purpose of prosecuting or punishing a 
person on account of his race, religion, nationality, ethnic origin or political 
opinion.”29 Article 10 makes it clear that hostage-taking shall be deemed as an 
extraditable offence in any extradition treaty existing between the two states. 
It further reiterates that if a state receives a request for extradition from 
another state with which it has no extradition treaty, the requested state might 
at its option consider this convention as the legal basis for extradition in 
respect of the offence. A similar provision is also mentioned in the CPPCIPP. 
This convention also establishes hostage-taking as a crime warranting 
universal jurisdiction.30 In addition this convention does not apply when the 
offence is committed within a State, the hostage and the alleged offender are 
nationals of that State and the alleged offender is found in the territory of that 
State.31 Instead the State has complete sovereignty to prosecute the alleged 
offender, as it deems fit. By adding this provision, the UN made it clear that it 
doesn’t intend to interfere in the domestic affairs of member nations, and this 
is why this convention was adopted by consensus.32

26 International Convention against the Taking of Hostages, article 1. 
27 Id., article 4. 
28 Id., article 5. 
29 Id., article 9. 
30 Id., article 10(4). 
31 Id., article 13. 
32 See Prabha, supra 17 p.16.
The International Convention for the Suppression of Terrorist Bombings (ICSTB) speaks of the urgent need to enhance international co-operation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators. Under this convention an offence means where a person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with the intent to cause death or serious bodily injury; or with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.33 Also covered under this are persons who attempt to commit and are accomplices of such offences. Here again intent is required to prove the commission of the offence. As with the ICTH, here also there is an exception that if the offence is committed within a single state, the alleged offender is found in that States' territory, then the convention shall not apply.34 The State would be free to exert its sovereignty over the matter. The ICTB further clarifies that none of the offences are to be considered political offences or as offences connected with a political offence or as offences inspired by political motives.35 If this were not the case then the offences might be considered as acts for political freedom or other political motivation, which might lead to other international rules of law to be applied.36

Article 8 uses the “extradite or prosecute” language and article 9 provides universal jurisdiction. Also, as with ICTH, if a state receives a request for extradition from another state with which it has no extradition treaty, the requested state might at its option consider this convention as the legal basis for extradition in respect of the offence.37 The ICSTB also enables States to refuse extradition or mutual legal assistance in cases when they have substantial grounds for believing that requests for either are being made for the purpose of prosecuting or punishing a person on account of that

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33 International Convention for the Suppression of Terrorist Bombings, article 2.
34 Id., article 3.
35 Id., article 11.
36 See Rickles, supra 19 p. 48.
37 ICSTB, article 9(2).
persons’ race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that persons’ position for any of these reasons.\textsuperscript{38} The United Nations has the responsibility of looking after the interests of the entire international community. Therefore along with preserving international peace and security it also must preserve the right to self determination. Such a right cannot be compromised as it has often been characterised as jus cogens.

The ICSTB also gives us and exception regarding the activities of armed forces during an armed conflict.\textsuperscript{39} Their activities are governed by the existing conventions and other rules concerning international humanitarian law. During armed conflict many of the activities covered by this convention may occur, but they are not considered offences under this convention.

Finally the \textbf{International Convention for the Suppression of the Financing of Terrorism (ICSFT)} is the latest among the conventions on the subject of the suppression of the financing of terrorism. It is based keeping in view the General Assembly resolution 51/210 of 17 December 1996, paragraph 3(f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organisations, whether such financing is direct or indirect through such organisations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds.

An offence under this convention is committed when a person directly or indirectly, unlawfully and wilfully, providing or collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: an offence listed in other treaties

\textsuperscript{38} Id., article 12.

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or any other act intended to cause death or a serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act. While this Convention does not actually define an act of terrorism, it does come significantly closer. For the first time, the Convention specifically targets the financial sponsors of terrorist activity, rather than simply the actual perpetrators of the specific acts. Further it is not necessary that an act of terrorism has taken place. The intention or knowledge of the use of funds collected or provided is sufficient.

Article 10 of the ICSFT contains the “prosecute or extradite” principle. Article 11 says that in case a State receives a request for extradition from a State party with which it has no extradition treaty, it may consider this convention as the legal basis for extradition. Similar to the ICSTB this convention does not regard the offences as political offences. Further the convention recognises that state parties bear no obligation to grant any requests for extradition or mutual legal assistance made for the purpose of prosecuting or punishing a person on account of that persons’ race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that persons’ position for any of these reasons.

The most important tool of bilateral co-operation is extradition. One reason why India has not been able to seek the full co-operation of Pakistan in combating terrorism is the absence of extradition treaties. Sometimes extradition arrangements have their own limitations. Therefore the emphasis should not be on extradition but on the application of *dedere aut judicare*, i.e. ‘extradite or prosecute’ principle. No state has the right to compel another state to enter into an extradition treaty, but every state has the right to seek the application of ‘extradite or prosecute’ principle. This principle is a concrete expression of the principle of ‘international co-operation’ in combating terrorism.

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39 Id., article 19.
40 International Convention for the Suppression of the Financing of Terrorism, article 2.
41 Id., article 14.
42 Id., article 15.
43 See Pachnanda, supra 15 pp. 70-71.
The **International Convention for the Suppression of Acts of Nuclear Terrorism** which is not yet in force, defines ‘radioactive material’ and ‘nuclear material’. This convention which has been recently adopted by the United Nations is open for signature at the United Nations Headquarters in New York from 14 September 2005 to 31 December 2005. Under this convention a person is an offender if he possesses radioactive material or uses it in any manner with intent to cause death or serious bodily injury or with intent to cause substantial damage to property or environment.\(^{44}\)

There are certain shortcomings in these multilateral conventions. First of all, there are not enough states that are party to them and especially those countries that matter, have not adopted the conventions. This is a big drawback as the convention loses its effectiveness at that point. Secondly the conventions become ineffective in the absence of any enforcement provisions. Therefore if a country which is a party to the convention and fails to comply with it, the other countries can actually do nothing about it.

Also countries that are stronger are able to give a different interpretation to the established rules of international law to suit their convenience. For example the United States has refused to extradite terrorists even when their guilt is well established. This happened in the case of one Emmanuel Constant, the leader of the Haitian paramilitary forces that were responsible for thousands of brutal killings in the early 1990s under the military junta, which Washington officially opposed but tacitly supported, publicly undermining the Organisation of American States’ embargo and secretly authorising oil shipments. Constant was sentenced in absentia by a Haitian court. The elected government repeatedly called on the US to extradite him. Haiti’s request was ignored time and again.\(^{45}\) Therefore for countries like the United States the law changes to suit their personal beliefs.

**Overview of the Regional Conventions**

In recent times, the movement towards regionalism has witnessed the growth of regional organisations and associations in different regions of the


world. The advantages of adopting a regional approach to international issues are that such an approach provides for the accommodation of the particular concerns of a region, which may not be possible in a wider international initiative. A regional organisation provides an effective forum where the specific priorities and concerns of a region are given expression.

In addition to the international conventions, there are 7 regional conventions adopted by different groups of nations to further their efforts against the fight on terrorism. Out of these the following four will be discussed. CE European Convention on the Suppression of Terrorism, 1977, the OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, 1971, the SAARC Regional Convention on Suppression of Terrorism, 1987 and the CIS Treaty on Co-operation among the States Members of the Commonwealth of Independent States in Combating Terrorism, 1999.

In the European Convention for the purpose of extradition between the contracting states, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; (c) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; (d) an offence involving kidnapping, the taking of hostage or serious unlawful detention; (e) an offence involving the use of bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; (f) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence. Therefore these offences are covered by this Convention and it has been specifically stated that these offences are not political in nature. Apart from supplementing and

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strengthening the extradition regime established under existing Conventions, the European Convention covers a wide range of other offences, which are deemed to be “non-political” for the purposes of extradition.

Further article 5 says that there is no obligation to extradite if the requested state has reasons for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion or that, that person’s position may be prejudiced for any of these reasons. Whereas the political offence exception relates to the political character of the offence, the persecution clause is concerned with the motives of the requesting State in seeking the return of the fugitive offender. It is generally felt that the most important issue which a State considers in the grant of political asylum, relates less to the nature or the character of the alleged offence, than to the motives of the requesting State in seeking the fugitive’s return.47

Article 7 contains the “prosecute or extradite” principle. The “extradite or prosecute” regime, established under the European Convention and the provisions relating to the exclusion of the political offences exception in relation to offences of “a terroristic character” is capable of extension even outside the member-states of the European Community.

The Organisation of American States (OAS) is an inter-governmental regional organisation comprising of Latin American States and the USA. The principle objectives of the OAS include the maintenance of international peace and security in the Western Hemisphere, the peaceful settlement of disputes among member-states and the taking of joint action to counter aggression and other problems confronting the region.

The OAS Convention upholds the institution of asylum and the principle of non-intervention. Article 2 says that for the purpose of the Convention kidnapping, murder and other assaults against the life or physical integrity of those persons to whom the state has the duty according to international law to give special protection, as well as extortion in connection with those crimes, shall be considered common crimes of international significance, regardless of motive. These acts against persons entitled to special protection under
international law are acts of international significance because of the consequences that may flow from them for relations among states. It has been specifically mentioned that any person deprived of his freedom through the application of this Convention shall enjoy the legal guarantees of due process.48

The OAS Convention is based on the ‘Aut Dedere Aut Judicare’ (extradite or prosecute) principle. It thus contains provision for extradition in respect of the Convention offences and provision for prosecution before national courts where the requested state decides not to grant extradition. Lastly article 6 grants the right of asylum.

Rather than dealing with the problem of terrorism in general, the convention has set out for itself certain limited objectives, i.e. to prevent and punish specific offences against persons entitled to specific protection, which was of particular concern to the American region. In this sense, the scope of the OAS Convention is narrower than the European Convention or the SAARC Convention which attempt to deal with the problem of terrorism in a more comprehensive manner, and paid special attention to the acts of indiscriminate violence, endangering innocent persons.

The major drawback from the point of view of an effective extradition regime, is the lack of a specific provision in the Convention designating the offences covered by the Convention as “non-political” for the purposes of extradition. The discretion given to the states in terms of Article 3 to determine the nature of the acts, and to decide whether the standards of the Convention are applicable, and the right of asylum preserved in Article 7, introduces and element of uncertainty to the issue of treating the Convention offences as “non-political”, despite the obligation under Article 2 to treat them as “common crimes” of international significance, regardless of motive.49

The **SAARC Convention** resolved to take effective measures to ensure that perpetrators of terroristic acts do not escape prosecution and punishment by providing for their extradition or prosecution. The Convention

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48 OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, 1971, article 4.
says that for the purpose of extradition the offence shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. The following offences are covered under a terrorist act: (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970; (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971; (c) an offence within the scope of the Convention on the prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed at New York, on December 14, 1973; (d) an offence within the scope of any Convention to which the SAARC member States concerned are parties and which obliges the parties to prosecute or grant extradition; (e) murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offences relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property; (f) an attempt or conspiracy to commit an offence described in sub-paragraphs (a) to (e), aiding, abetting or counselling the commission of such an offence or participating as an accomplice in the offences so described.50 Again it is clearly specified that these offences are not to be regarded as political offences. The Convention very carefully avoids the question of defining terrorism.

The SAARC Convention, contains several positive features. On the offences to be regarded as terroristic and 'non-political' for the purposes of extradition, the SAARC Convention covers a broad range of offences and is wider in scope than the European Convention. It covers a range of general criminal offences such as murder, manslaughter, assault causing bodily harm, etc., which is distinct from the group of offences involving the use of devices which produce indiscriminate violence and offences.

Secondly the Convention does not contain any provision comparable to Article 13 of the European Convention which permits reservations to be

entered by a Contacting State to the fundamental provision in the Convention declaring that it reserves the right to refuse extradition in respect of any offence which it considers a political offence.

Article IV contains the “extradite or prosecute” clause. In addition Article VII says that contracting states shall not be obliged to extradite, if it appears to the requested state that by reason of the trivial nature of the case or by reason of the request for the surrender or return of a fugitive offender not being made in good faith or in the interests of justice or for any other reason it is unjust or inexpedient to surrender or return the fugitive offender. This gives a very wide power to the requested State to refuse surrender and can be misutilised. The vagueness of the expressions like "trivial nature of the offence", “request not made in good faith”, or “in the interest of justice” etc. hardly needs to be overemphasised and leaves enough room for arbitrary interpretation. Consequently, Article VII dilutes the effectiveness of the whole Convention. The dilution of the ‘extradite or prosecute’ regime brings into focus the pre-occupation of some member states with the element of sovereign state discretion in the extradition or prosecution of terrorist offenders.

Further another problem with the Convention is that even mutual assistance and co-operation among the contracting states in connection with suppression of terrorism has been subject to their national laws. Article VIII says that contracting States shall cooperate among themselves to the extent permitted by their national laws with a view to preventing terroristic activities through precautionary measures.51

In January 2004 the SAARC member countries, signed an additional protocol to the SAARC regional convention. The definition of terrorism was left to the individual countries to decide. While condemning terrorism the declaration said, “A terrorist violates the fundamental values of the UN and the SAARC charter and constitutes one of the most serious threats to international peace and security. We agree to fully implement the relevant international conventions to which we are parties.”52

52 The Indian Express, Chandigarh, January 7, 2004.
The association of states consisting of the United Kingdom and the self-governing nations, whose territories originally formed a part of the British Empire, constitute the Commonwealth of Nations.

The CIS Convention is the only Convention, which actually defines a terrorist act. For the purpose of this treaty “terrorism” means an illegal act punishable under criminal law committed for the purpose of undermining public safety, influencing decision-making by the authorities or terrorising the population, or taking the form of: violence or the threat of violence against natural or juridical persons; destroying (damaging) or threatening to destroy (damage) property and other material objects so as to endanger people’s lives; causing substantial harm to property or the occurrence of other consequences dangerous to society; threatening the life of a statesman or public figure for the purpose of putting an end to his State or other public activity or in revenge for such activity; attacking a representative of a foreign State or an internationally protected staff member of an international organisation, as well as the business premises or vehicles of internationally protected persons; other acts classified as terrorist under the national legislation of the Parties or under universally recognised international legal instruments aimed at combating terrorism. This definition has a very wide parameter. In addition technological terrorism is given a separate meaning.

This Convention also calls for the co-operation between different member States and the exchange of information in the process. Article 9 says that the rendering of assistance shall be denied if the requested party believes that the fulfilment of the request may impair its sovereignty, security, social order or other vital interests or is in contravention of its legislation or international obligations. The rendering of assistance shall also be denied if the act in relation to which the request was made is not a crime under the legislation of the requested Party. This particular provision is again an area, which can be exploited by the terrorists to their advantage.

The basic problem with the international conventions is that there is no single convention applicable to the whole world and the regional conventions tend to differentiate between political offence and terrorism. Since terrorism is most of the time inextricably connected with a political offence, acts of terrorism pass as political violence and in the process avoid the applicable
Therein also arises the problem of extradition. No international or regional treaty with the exception of the 1977 European Convention and the 1987 SAARC Convention does anything to prevent terrorism from flourishing in the name of ‘political unrest’.

As seen under the laws of many nations, “political offenders” are accorded special status. Those believed guilty of political offences are eligible for the granting of political asylum by friendly states. States granting asylum are under no legal obligation to prosecute the perpetrator for the crime. Even if they are prosecuted they are accorded special status. Therefore those who classify terrorism as a political crime do so in order to enable the perpetrators to evade the payment of the penalties. The concept of “political offence” has become a loophole through which terrorists try to escape extradition or even punishment. To overcome this attempts have been made to make terrorism as an international crime, punishable in international courts.53

Further these conventions carve out an exception for the treatment of alleged offenders who might be prosecuted on the basis of their race, religion, nationality, ethnic origin or political opinion. However such provisions can serve as a safeguard for individuals who want to avoid the net of law. We need to overcome these loopholes which give an advantage to the terrorists.

Analysis of the definition given by the convention of the Organisation of the Islamic conference on Combating International Terrorism in 1999, provides and interesting outlook.

A terrorist crime “is any crime executed, started or participated in to realise a terrorist objective in any of the contracting states or against its nationals.” This is a very thorough definition; however, in Article 2 of this regional convention by the Conference of Islamic States, it says, “people’s struggle including armed struggle against foreign occupation, aggression, colonialism, hegemony, aimed at liberation in accordance with the principles of international law, shall not be considered a terrorist crime.

This means that attempts to define the attack on the World Trade Centre or the attacks on the Indian parliament would be scuttled by the Conference of Islamic States. The Islamic states insist that fighting an

53 See Combs, supra 2 pp. 164-165.
occupation cannot be considered terrorism. In fact, under international law there is no such right to resistance to occupation.

Overview of Security Council Resolutions

The atrocities of the Second World War and the Nuremberg precedent precipitated the growth of international law against terrorism. This evolution took various forms, including the promulgation of different conventions that we have discussed and certain Security Council resolutions. Pursuant to Articles 24 and 25 of the UN Charter, the Security Council has the power to issue directions to maintain international peace and security. Therefore the members of the United Nations are bound by the decisions of the Security Council.


Resolution 1189 concerns the terrorist bomb attacks of 7 August 1998 in Kenya and Tanzania. The resolution stresses that every Member "has the

United Nations Charter:

Article 24(1) In order to ensure prompt and effective action by the united Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Article 25 The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

duty to refrain from organising, instigating, assisting or participating in terrorist acts in another State or acquiescing in organised activities within its territory directed towards the commission of such acts."

Foreign Ministers and Heads of States of Non-Aligned Movement (NAM) met on 23rd September 1999 in New York. Reiterating decisions of its previous meetings, the NAM members called for a conference under the auspices of the UN to form a joint Action Group against terrorism. On a similar line a separate Terrorism Prevention Branch was set up in the Centre for International Crime Prevention of Vienna to enhance UN capabilities through research etc. meanwhile, taking note of all the efforts at the general Assembly, Security Council also adopted a resolution 1269 on 19th October 1999. Resolution 1269 talks of international co-operation in the fight against terrorism. It condemns all acts of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which could threaten international peace and security.

Resolution 1368 concerns the terrorist attacks of 11 September 2001 in New York, Washington D.C. and Pennsylvania, United States of America. The Security Council recognises the inherent right of individual or collective self-defence; calls on States to work together urgently to bring to justice the perpetrators, organisers and sponsors of the September 11 attacks; calls on the international community to redouble their efforts to prevent and suppress terrorist acts by increased co-operation and full implementation of the relevant international antiterrorist conventions and Security Council resolutions; and express the Security Council’s readiness to take all necessary steps to respond to the terrorist attacks of September 11 and to combat all forms of terrorism in accordance with its responsibilities under the Charter of the united Nations. This resolution simply condemned the attacks, and ‘decided to remain seized of the matter’, without making any other decision.

Resolution 1373 concerns international co-operation to combat threats to international peace and security caused by terrorist acts. Under this the Security Council decided that all States must take measures to prevent, suppress and criminalize the financing of terrorist acts. Further it decided that all States shall refrain from proving any form of support, to entities or persons
involved in terrorist acts. It also calls upon States to find ways of intensifying and accelerating the exchange of information; to become parties to the relevant international conventions. It also requires States to take appropriate measures, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts. In addition it requires States to ensure that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts, and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists. Finally it established a Counter-terrorism Committee to monitor the implementation of this resolution. The character and scope of the Committee’s mandate and working methods represent an important innovation and open new possibilities for inter-State co-operation. Resolution 1373 spells out in some detail the obligations laid on all States to suppress "terrorist acts". But it does not lay down how these obligations are to be implemented, that is up to each State to work out. It says there should be controls on the issuing of identity papers but does not require States to have Identity cards.

Under resolution 1373 the Security Council for the first time imposed measures not against a State, its leaders, nationals or commodities, but against acts of terrorism throughout the world and the terrorists themselves. It is one of the most expansive resolutions in the history of the Council. This resolution affirmed the right of self-defence in its preamble, but did not sanction any use of force under Chapter VII of the Charter of the UN. There occurred a failure of international legality because the United States began its military campaign four weeks after the attacks of September 11, and continued for more than three months, and yet the Security Council neither authorised, endorsed nor condemned any of these actions, let alone acting itself to preserve international peace and security, as required by the Charter.

Resolution 1378 recognised the urgency of the security and political situation in Afghanistan. It condemned the Taliban for allowing Afghanistan to be used as a base for the export of terrorism by the Al-Qaida network. The Security Council expressed its support for the efforts of the Afghan people to establish a new and transitional administration leading to the formation of a government.
Resolution 1390 noted the continued activities of Usama Bin Laden and the Al-Qaida network in supporting international terrorism, and expressing it determination to root out this network. The Security Council decided that all States shall take the following measures: (a) freeze the funds and other financial assets or economic resources of this organisation; (b) prevent the entry into or transit through their territories of these individuals; (c) prevent the supply, sale and transfer to them of arms including weapons and ammunition and technical assistance or training related to military activities.

Resolution 1438 condemned the bomb attacks in Bali, Indonesia on 12 October 2002, in which so many lives were claimed and people injured.

Resolution 1455 stressed the need for improved coordination and increased exchange of information between the Committee established pursuant to resolution 1267 (1999) and the Committee established pursuant to resolution 1373 (2001).

Resolution 1516 condemned the bomb attacks in Istanbul, Turkey on 15 November 2003 and 20 November 2003.

Resolution 1526 decided to impose certain measures with respect to Usama bin Laden, Al-Qaida and the Taliban. These included the freezing of funds and other financial assets or economic resources of these individuals; groups etc., preventing the entry into or transit through the states of these individuals and prevent the indirect and direct supply of arms, weapons and ammunition, military vehicles and equipment etc to these individuals.

Resolution 1530 condemned the bomb attacks in Madrid, Spain by ETA on 11 March, 2004.

Resolution 1535 endorses the report of the Committee established under resolution 1373 for it revitalisation. This Committee will be assisted by the Counter-Terrorism Committee Executive Directorate to be established as a special political mission for an initial period ending 31 December 2007 and subject to a comprehensive review by the Security Council by 31 December 2005 so as to enhance the Committee’s ability to monitor the implementation of resolution 1373.

Resolution 1566 says that those acts which constitute and offence under various international conventions and protocols on terrorism are under no circumstances justifiable by considerations of a political, philosophical,
ideological, racial, ethnic, and religious or other similar nature. It also calls upon states to become parties to the international conventions relating to terrorism.

Resolution 1611 dealt with the London terrorist attacks of 7 July 2005 and regards those acts of terrorism as a threat to peace and security.

Resolution 1617 strongly urged the member states to implement the comprehensive international standards embodied in the Financial Action Task Force's (FATF) Forty recommendations on money laundering and the FATF Nine Special Recommendations on Terrorist Financing. Further it urged the member states to take all possible measures to counter the threat of terrorism.

These conventions and Security Council resolutions do not give a detailed definition of terrorism. They just give examples of terrorism, which include the 11 September attacks, the acts of specific groups like the Al-Qaeda. These resolutions only seem to deal with the problems concerning the more influential members of the Security Council. It limits the application to other areas in the world, which are also suffering from some form of terrorism. They need to be more global in their content.

The UN has set the basic agenda and has provided innumerable prescriptions for the elimination of terrorism. The problem is not with the lack of legal instruments only. It is also with the lack of proper implementation. Terrorists take advantage of the lack of co-operation between different countries and continue to commit crimes. The effectiveness of any international legal regime depends on its implementation and support by states.

Recent Developments

The United Nations is striving to find a solution to this problem of terrorism. There are some steps, which it has taken to further its cause. They are discussed below:


The terrorist attacks on USA on 11 September 2001 caused the international community to focus on the issue of terrorism with renewed
intensity. Within the span of a few weeks, the Security Council unanimously passed resolutions 1368 (2001) and 1373 (2001). The Policy Working Group on the United Nations and Terrorism was established at the behest of the Secretary-General in October 2001, within that context and to those ends. Its purpose has been to identify the longer-term implications and broad policy dimensions of terrorism for the United Nations and to formulate recommendations on the steps that the United Nations system might take to address the issue.

The Policy Working Group established relationships with groups both within and outside the United Nations system, including the Terrorism Prevention Branch of the United Nations Office for Drug Control and Crime Prevention, the International Peace Academy and the Centre on International Organisation at Columbia University. The Group has not attempted to devise a definition of terrorism, identify its diverse roots or address specific instances of terrorist activity. The group does not believe that the United Nations is well placed to play an active operational role in efforts to suppress terrorist groups, to pre-empt specific terrorist strikes, or to develop dedicated intelligence gathering capacities. Rather, the Group has focused on practical steps that the United Nations might take in the following areas of activity: (a) dissuading disaffected groups from embracing terrorism; (b) denying groups or individuals the means to carry out such acts; and (c) sustaining broad-based international co-operation in the struggle against terrorism on the basis of respect for human rights and fundamental freedoms.

The report focuses on international legal instruments, human rights and behavioural norm setting- which are powerful instruments for dissuasion. It further addresses the three key tools for denial: the United Nations efforts at disarmament and curbing weapons of mass destruction; implementation of the provisions of resolution 1373 (2001) and the work of the Counter-terrorism Committee; and the contributions that United Nations peace-building and conflict-prevention efforts can narrow the space in which terrorists operate. It further considers ways of sustaining co-operation among the Member States, of working with non-United Nations multilateral initiatives, and of fostering greater coherence within the United Nations system. It also gives us a list of recommendations for efforts to counter terrorism.
The Role of the UNODC

In the context of the UN’s efforts to prevent and combat terrorism, the United Nations Office on Drugs and Crime (UNODC) has an expanded programme of work for technical assistance to counter terrorism that is based on mandates recommended by the UN Commission on Crime Prevention and Criminal Justice and approved by the General Assembly. UNODC’s operational activities focus on strengthening the legal regime against terrorism. This involves providing legislative assistance to countries, which enables them to become parties to, and implement, the universal anti-terrorism conventions and protocols and Security Council resolution 1373 (2001).

Overall the, UNODC aims at responding promptly and efficiently to requests for counter-terrorism assistance, in accordance with the priorities set by the Commission on Crime Prevention and Criminal Justice and the CTC by:

- Reviewing domestic legislation and providing advice on drafting new laws;
- Providing in-depth assistance on the ratification and implementation of new legislation against terrorism through a mentorship programme or other follow-up action; and
- Facilitating and providing training to national criminal justice systems with regard to the practical implementation of the universal instruments against terrorism.

European Union

The key provision of the September 2001 European Commission proposal for a Framework Decision (COM(2001)521 Final) to combat terrorism is the one defining terrorist offences (Article 3) which says that each Member State according to its national law shall ensure that:

"the following offences, which are intentionally committed by an individual or a group against one or more countries, their institutions or people with the aim of intimidating them and seriously altering or destroying the political, economic or social structures of those countries will be punishable as terrorist offences"
However, the Council of Ministers of the EU, representing the 15 EU governments, has put forward a broader definition of "terrorism" to that in the European Commission's proposal. The Council of Ministers' definition would include actions:

"with the aim of seriously..., affecting or destroying the political, economic or social structures of a country or of an international organisation"

The Council's version thus not only widens the definition of "terrorism" to action which might "affect" political, economic and social structures but ominously adds actions seeking seriously to "affect" an "international organisation".

The European Union has taken a leading role in the field of police and judicial co-operation. The measures include the establishment of Europol on the lines of Interpol and Eurojust, which is a co-ordination body composed of magistrates, prosecutors and police officers.

Concluding Remarks

The dilemma confronting international initiatives to combat international terrorism was aptly summarised by Robert A. Freidlander in his statement: "For some, terrorism exists in the mind of the beholder, depending upon one's political views and national origins. For others terrorism consists of a criminal act or acts, according to the law of any civilised society."56

In the international arena, while we have conventions, agreements and customs that make many terrorist acts universal crimes, international practice and doctrines greatly limit the enforceability of these norms. Furthermore, we lack anything like an international police force to apply rules of conduct or courts routinely to enforce them through punishments. Even when we can lawfully apply force against terrorists, its utility is often limited by the value we attach to human life.57

Terrorism today has spread across the globe and is like an international industry, through which millions are being fed. It has become an instrument of international politics. It is therefore shocking that there is no

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single multilateral treaty that can claim to control if not stem the rise of international terrorism.

The existing international instruments relating to terrorism do not create an integrated system and there are innumerable gaps. Also the pace of ratification is very slow. Further there is very little awareness of the relevant instruments relating to international terrorism. The United Nations should make efforts in these areas and try to launch a more comprehensive programme to counter international terrorism. It should also promote the role of international law in combating terrorism. Further it should encourage the member States to implement the Security Council resolution 1373 (2001). It would help the States more effectively to control their borders, regulate trade and control the activities of illicit traffickers; organised crime etc. In order to render international efforts to counter terrorism effective, co-operation between the United Nations and other international actors must be made more systematic.

We need a proper framework for the preparation of a convention against terrorism, the preparation of an International Code of Crimes against the world and human security. This would have a positive impact on the unification of the efforts of the states and the international community in the struggle against the crime of terrorism. Further international law must recognise terrorists as combatants and not as civilians.

Also we must create one international convention of extradition, which should become the *jus cogens* of International Law, and which should be binding on all nations. This is one of the first imperatives for a comprehensive legal framework in the global war against terrorism.

The international community has been engaged over the years in the task of Codification of International Criminal Law, as a necessary aspect of an international co-operative framework to combat ‘international crimes’, which affect the very foundations of international society and humanity as a whole. We need to create meaningful enforcement mechanisms through both

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58 Principles of International Law so fundamental that no nation may ignore them or attempt to contract out of them through treaties. For example, genocide and participating in a slave trade are thought to be *jus cogens*. 

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bilateral and multilateral arrangements. We must also strive to overcome the reluctance to extradite terrorists.

The last recourse, for those seeking a legal remedy to global terrorism, is the International Criminal Court (ICC). It has ultimately come into being half a century after the notion was proposed. France had first proposed the creation of ICC after the dual murder. The 1937 Geneva Conference had passed a resolution for the creation of an International Criminal Court with jurisdiction over terrorist crimes. Friedlander has aptly put the problem in perspective, “to create an international criminal court without first having an international criminal code is putting the cart before the horse.”

As several situations during the last decade of the 20th century demonstrated, the need for a court to deal with such crimes was needed. The genocide which occurred in Bosnia and Kosovo, as well as that occurring in Rwanda and Zaire, created an intense international awareness of the need for an international court capable of trying individuals involved in these heinous acts of terror. The effort to resolve the issue of responsibility for the explosion of the Pan Am plane over Lockerbie also focused attention on the need for an international tribunal with jurisdiction over such crimes. While in each of these cases an ad hoc tribunal was convened eventually, no permanent solution was established.

Initially when the proposal for the setting of the ICC had come up, it had meant only to deal with terrorist attacks and not genocide. The topic however was viewed by the court’s creators as “too politically difficult” to be included in the court’s jurisdiction. After 1948, the US and its allies changed the very purpose of the ICC to deal with the perpetrators of the Holocaust. The Rome Statute now grants the court jurisdiction over the crimes of genocide, war crimes and crimes against humanity if they occur in the territory of a state party or were committed by its nationals. Therefore the sphere of operation of the ICC has been limited to a great extent, wherein it does not

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include acts of terrorism. It does not create a forum for trials of person’s accused of crimes of terrorism. This is an aspect, which needs rectification. Also the countries which have not ratified the treaty including India and U.S.A should ratify it immediately.

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 should consider incorporating the prosecution of terrorist acts into the jurisdiction of the International Criminal Court (ICC) – a step which is not necessarily detrimental to national sovereignty insofar as the ICC’s jurisdiction is defined on the basis of complementarity with national jurisdiction. Article 123 of the Rome Statute says that in the year 2009 a Review Conference will be held to consider any amendments to the statute. The United Nations and the countries of the world must consider including acts of terrorism within the jurisdiction of the ICC. All United Nations member states that are seriously committed to combating terrorism should consider joining the International Criminal Court to document their unequivocal commitment to the international rule of law and to the principle of personal accountability (without which any counter-terrorist strategy lacks efficiency). By this step, the states having proclaimed a “global war on terror” would be particularly able to demonstrate the credibility of their efforts.

The inclusion of terrorism under ICC jurisdiction is well founded. It would serve a stabilising purpose between two competing interests. On the one hand many states wish to prosecute foreigners for terrorist acts perpetrated on their soil. On the other hand, states also want to protect and shelter their own nationals from terrorist attacks. In the latter scenario, those states often express the view that they themselves should exercise jurisdiction over crimes committed against their own civilians, regardless of the location of

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the perpetration. In order to resolve this tension, referring such matters to the ICC would definitely constitute a reasonable compromise.

For example, take the case of the Lockerbie decision, wherein two Libyan nationals were accused of participating in the bombing of Pan Am flight 103, in which a number of American nationals were killed. The Libyan government refused to extradite its nationals as they were uncertain of the treatment that would be afforded to the terrorists. The Libyan leader Muammar Ghaddafi did not trust the United States to prosecute nationals from his country. On the other hand America probably felt that those two nationals would not get the required punishment deserving of such an offence. In such a situation the referral of the matter to an independent international tribunal like the ICC might have been the proper response to the dilemma.

Instead of "military commissions" established on the basis of domestic jurisdiction (such as the Guantanamo "courts"), only institutions that are truly independent – i.e. operate on the basis of a genuine separation of powers – should prosecute international terrorist acts. In view of its complementary jurisdiction with national courts, the International Criminal Court, although legally not being a United Nations organ should be accepted as arbiter by the member states of the United Nations in all matters related to the prosecution of crimes of international terrorism.

The goal of the United Nations should be that counter-terrorism must be firmly grounded in international law. For this the importance of signing and ratifying the conventions on terrorism in particular the International Convention on the Suppression of the Financing of Terrorism, 1999 cannot be emphasised enough. Also the States should be encouraged to implement the provisions of the Security Council resolution 1373(2001). The co-ordination

and coherence of activities between different countries should be stressed. The United Nations should play its role of norm setting, co-ordination, co-operation and capacity-building effectively, which would also help the regional organisations.