The problem of terrorism and violence is a complex issue. Governments to this day have problems in formulating an approach to terrorism. The nature and scope of this activity over the years and become international in character. Modern technology, finances and fundamentalism created a climate of fear. The increasing number of attacks on diplomatic envoys, national leaders, international passengers abroad aircraft, maritime passengers and structures and civilians added to the general concern on terrorism and violence in the world. This had the effect of making deep in roads into international law.¹

The Sixth Committee and the International Law Commission had looked into the problem and had sent its report. While most members of the U.N. were prepared to condemn terrorism, they were unable to do so in the absence of an accepted definition.²

² The problem remains the same till date.
In 1972 on the report of the Sixth Committee the General Assembly passed a resolution on Measures to Prevent International Terrorism which endangers or takes innocent human lives. It stated that in an attempt to effect radical changes some people felt compelled to commit terrorist acts. States were called to study the underlying causes, which give rise to such acts. It also condemned acts by repressive regimes. Members were asked to consider all appropriate measures at the national level to eliminate this problem.

An adhoc committee on International Terrorism was established to look into the issue and submit a report. The Committee consists of thirty two members.

Terrorism is a tool in the hands of a few to bring in changes, using a political or religious issue to justify the violent means adopted to create chaos in society. It is aimed at destabilising governments or political democracies. Throughout the ages it has been used to spread fear to overthrow governments or rivals. Civilians have used it to overthrow repressive regimes.

\[1\] Res. 3034 (Gen Ass.) 1972
During the early decades of the last century France brought the issue before the League of Nations. The initiative was prompted by the assassination of King Alexander of Yugoslavia. The committee of the League of Nations deliberated on the topic at great length. Later the Convention on the Prevention of Terrorism was brought about. However it is said that twenty-four nations ratified the Convention. India was the only country to sign this Convention immediately.

The Convention defined terrorism as "Criminal acts directed against a State intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or general public."

The Convention under Article 2 enumerated terrorist acts including death or grievous harm to Heads of state or their spouses, damage to public property willful acts calculated to endanger the lives of the Public. It also mentioned manufacture of supply of arms and all other acts required to commit the same.

The Convention did not come into force because of the 2nd World War. The United Nations had to grapple with terrorism. In the early years specific issues were dealt with eg. Crimes against Humanity, Genocide.
War Crimes etc. States were expected to co-operate and refusal would amount to grave breaches of international law.

A. WORLD TERRORISM – NATIONS RESPONSE

The word terrorism evokes varied responses from the world community. The human angle cannot be over-ruled when some states had to solve problems. Political and religious persecution is not unknown. Persons fleeing for the lives and safety were granted asylum in other countries. Persons fleeing from communist / dictatorial regimes were viewed sympathetically.

Some went to the extent of hijacking aircraft in order to flee such regimes. As various groups and organizations fought against repressive regimes countries had differing standards. Former Soviets could seek asylum in the U.S. or the Urban refugees were welcomed by western democracies. As time went by groups such as the IRA used civilian targets to force a response from the British Government. They targeted civilians in market places or important persons such as Lord Mountbatten. Domestic terrorism became international terrorism over the years. This age old problem had new and modern perspectives, to the multiplicity of terrorists
acts was added a large number of soft targets. The modern nation State had few options left and this reflected in International deliberations at the U.N.

8. NUREMBERG AND TOKYO TRIBUNALS - TERRORISM

The world dealt with the horrors of the II World War by setting up Tribunals at Nuremberg and Tokyo,\(^4\) both individuals and organizations were indicted on various counts. The crimes included the killing of hostages, murder and extermination of the civilian population, and persecution on political, racial and religious grounds. The importance of these tribunals lies in the fact that these principles were recognized by the community of nations, which had outlawed such acts as acts against humanity. The obligation of the member States towards upholding the principles of International law is an important development towards the creation of "International Obligations". This over the years led to jurisdiction over crimes such as hijacking, by member States of the U.N.; consent implies acceptance to the validity of such rules.

International terrorism originated in U.K. with the action of domestic anarchists. Hijacking and holding of hostages, extorting amounts from

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\(^4\) It was decided to prosecute both individuals and organization for the crimes committed.
governments, bombing planes and other acts, shocked the conscience of the World.

The Tokyo Convention⁵ and the Hague Convention,⁶ dealt with offences that could jeopardise the safety of the aircraft, or persons on board the aircraft. However the Tokyo Convention excluded criminal jurisdiction with certain notable distinctions such as security of State etc. This is closely linked to an extraditable offence, but however it failed to usher in a legal regime to control such offences. Most states adopted a humanitarian attitude towards a political offence" and felt that if the hijacker was extradited to the requesting state to face trial, it would be unfair. “Non extradition of political offenders” was an accepted proviso, as in some countries, efforts were made to overthrow repressive regimes. Although States opposed extradition many favoured punishment.

During these deliberations and to give some direction to the member States, the General Assembly brought into being the Declaration on Principles of International Law Concerning Friendly Relation and Co-operation Among States in accordance with the Charter of the United

⁵ Convention of Offences and Certain other Acts committed on Board Aircraft, 1963
⁶ Convention for the Suppression of Unlawful Seizure of Aircraft, 1970
Thus the Convention created International Obligations on all States. Further members were called upon to fulfill their obligations under International Law and refrain from organizing, instigating, assisting or participating in terrorist acts in other States or acquiescing in activities within their territory directed towards commission of such acts”.

The Convention stated that “every state has a duty to refrain from organizing or encouraging the organization of irregular forces, including mercenaries” from entering other states. Cross-border terrorism is discouraged as State Policy.

Further, more important is that the Convention creates a duty on the part of member states to refrain from organising, instigating assisting or participating in ... terrorist acts”, with regard to other States or acts in furtherance which is committed on their territory.

The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 also dealt with problems of “air”

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7 GA Res 2625; 1970
8 GA Res 40/61, Dec. 1989
9 Ibid
violence. This marked the attention of the international community to such incidents involving violence on aircraft.

Most terrorist attacks on aircraft relate to unsolved domestic / international issues, conflict in Middle East and National Movements, eg. for Palestine. The Abu Nidal Gang and others used hijackings to create terror to force the U.N. to accede to its demands. Large ransom, blowing up the aircraft, bombing the airport, holding passengers hostage for various demands has been the strategy opted by these groups and organizations.

C. HIGH SEAS – TERRORISM

On the high seas too various acts have taken place. Well known one was the taking over of the Ship Achille Lauro and the killing of a U.S. Citizen. This brought swift U.S. action by forcing the terrorists as they made their get away on board a flight – to force the aircraft to land in Italy.

Terrorist acts threaten the safety of maritime navigation and therefore the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.\(^9\) was brought about. Escalating terrorist acts world wide posed a serious threat to the safety of persons and property

\(^9\) This convention was brought about the 1980
and the international community. In an earlier Resolution\textsuperscript{11} the General Assembly had called upon States to progressively eliminate the causes of international terrorism and hence the efforts of the International Maritime Organisation were considered at the International level.

The provisions of the Convention cover\textsuperscript{12} the acts of intentional seizing / control of ships, acts of violence on board, of the ship or cargo, destruction of maritime facilities and injuring / killing of people.

Offenders must be or punished. Information regarding the same must be sent to the Secretary General. The States – Party must inform the Secretary – General of the final outcome of the proceedings as found in most U.N. Conventions.

Later a Protocol was brought about in the suppression of Unlawful Acts Against Safety of Fixed Platforms located in the Continental Shelf.\textsuperscript{13}

The provisions of the Protocol covered other maritime structures used at sea such as oil rigs etc. These were targets for terrorists, who would gain wide publicity for the cause. However this could cause serious

\textsuperscript{11} Res. 40/61 1985 / 1980
\textsuperscript{12} Art 3
\textsuperscript{13} Rome 1988
damage to people, flora and fauna and maritime fishing. The State would stand to lose a lot of revenue, because of such acts.

Later the General Assembly requested the International Maritime Organisation to propose appropriate measures to deal with the situation. This lead to the “Measures to Prevent Unlawful Acts which Threaten the Safety of Ships and the Security of their Passengers and Crews. Later a Convention was signed in Rome\(^\text{14}\).

In 1973 the U.N. brought into being the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents.

\section*{D. DIPLOMATIC AGENTS – TERRORISM}

Crimes against diplomatic agents and internationally protected persons were on the increase and cases of kidnapping for ransom or other demands such as securing the release of other members of the group who were in jails, was the order of the day. The convention sought to prevent this by taking appropriate action. The offence comprised of acts against Ministers, members of his family, and agents or Heads of State. The

\(^{14}\text{1988 – Also In Re Piracy Jure Gentium}\)
offence included the commission of murder, kidnapping or violent attack on the person or in the premises.

States Parties were asked to take appropriate action to protect these persons. All relevant information should be sent to the Secretary General. The Offenders must be prosecuted or extradited in accordance with law. Information and other details should be communicated to the Secretary General.

The International Convention Against the Taking of Hostages\(^\text{15}\) was brought about because of the attacks civil aviation. Earlier a protocol came into being for the Suppression of Unlawful Violence at Airports Servicing Civil Aviation. Others also followed dealing with various aspects of terrorism in civil aviation. Various U.N. Conventions dealt with the violence to persons and property in the air and on the seas\(^\text{16}\). In the 1970's and 1980's the concept of jurisdiction over such offences and duties of States developed. Hostage taking is such a crime that occurs in almost all acts of international terrorism.

\(^{15}\) 1979

The increase in such acts posed serious consequences for the international community. This led to the International Convention against the taking of Hostages in 1979. By this, the members of the U.N. focused their attention on the victims of such acts and sought to establish an international regime for the prevention and suppression of terrorism.\textsuperscript{17}

The United Nations concern with terrorism is expressed by discussion on terrorist acts targeting civilians, against taking hostage internationally protected persons\textsuperscript{18} and others.

The U.N. by the 1990's dealt with measures to protect the safety and security of diplomatic missions and the diplomatic and consular staff. Extradition and asylum are within the domestic jurisdiction of States Art 2 (7) of the Charter).

While there are a number of conventions and instruments dealing with different aspects of international terrorism there are a insufficient number of States Parties to these treaties to make their provisions universally applicable and enforceable. Besides denunciations and

\textsuperscript{17} Omer Yousif Elagab

\textsuperscript{18} The Hostages Case U.S. V. Iran. Convention on the Prevention and Punishment of Crimes against Internationally Protected persons including Diplomats.
sanctions there is little that can be done internationally. The lack of solidarity amongst States frustrated concerted action by the world body.

Nevertheless NATO and other regional arrangements had international terrorism on this list of priorities. The Summit Seven (the largest industrialized countries) also discussed the issue of international terrorism.

As terrorist attacks continued to occur around the globe, condemnation\(^{19}\) of such acts, slowly gave way to serious international response to peaceful methods, or tough economic sanctions\(^{20}\) against erring States were discussed at international fora, while the member nations searched for solutions. Could extra territorial force be used to counter terrorism? Was this acceptable under International Law? Were the questions posed by leaders and jurists alike. Armed responses to terrorist attacks is not acceptable to the international community. However the right to self defence and anticipatory self defence are powerful arguments put forward by many countries as a justification for their attack.


\(^{20}\) Recently America imposed sanctions against Spain for allegedly failing to stop anti-US guerillas from entering Iraq. Sanctions include ban on exports and freezing the assets of Syria in U.S. The New India Express, May 12, 2004.
The Vienna Declaration and Programme of Action 1993 formulated detailed recommendations. One hundred seventy one nations of the world gathered together to bring about a stable and peaceful international order. The international community needed to "devise ways and means to remove current obstacles and meet the challenges ahead. This determination is evident in the provisions of this declaration. In order to take effective measures to deal with the present day situation it is necessary to achieve co-operation of the member States. It was noted that violence continued with increasing intensity the world over.

The World Conference called up the world community to combat terrorism as, "the methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy threatening the territorial integrity of States."

21 In 32 ILM 1661 1993 The declaration was accepted by the General Assembly in Res. 48/121, 1993.
22 Ibid
23 Ibid at para 17
With various reports before the world body, the General Assembly decided to adopt measures\textsuperscript{24} to eliminate terrorism which would bring to the forefront concerted action in this regard. It was to be implemented in full by States Parties. The provisions covered both International terrorism and domestic. Appropriate action taken by Governments would in the long run eliminate terrorism and intolerance.

The Declaration in accordance with the principles and purposes of the Charter called upon States to co-operate in combating crimes closely connected with terrorism such as drug trafficking, unlawful arms trade, money laundering, smuggling of nuclear material. In order to achieve this, relevant domestic legislation had to be enacted by the members to tackle this. It stressed the need to bring those responsible for such acts to justice. The aim was to utilize the help of the U.N. and Regional Agencies. It was important to create public awareness working within the scope of various texts, declaration and conventions of the U.N\textsuperscript{25} relating to other aspects. It was necessary for bilateral agreements and regional co-operation among the

\textsuperscript{24} Res. 49/60, 1994

members. This would ensure a comprehensive legal framework for the prevention and elimination of terrorism. The Declaration stated that the acts and practices of terrorism threatened the security of states and constituted a grave violation of the very purposes of the U.N. These acts also posed a threat to the human rights norms of democratic society.

The world body not only condemned the methods and practices of terrorism, as criminal in nature, but that they pose a hindrance to international peace and friendly relations. The acts themselves are unjustifiable whether they are motivated on political, philosophical ideological, racial, ethnic or religious considerations.

Further, states are called upon to desist in instigating, assisting or participating in terrorist acts. They are also called up to prevent all such acts from being encouraged on their territories, including:

1) Instigating, facilitating or tolerating such activities. States need to ensure that territories are not used as terrorist camps / training camps or to make preparations for an attack elsewhere.

2) Terrorists must be prosecuted or extradited in order to meet the ends of justice in accordance with the provisions of International law.
3) In order to do so bilateral agreements or multilateral agreements need to be concluded by States.

4) It is only by co-operation in exchanging information that terrorism can be effectively combated.

5) To screen the refugee to ensure that he has not participated in any terrorist act before granting asylum.

Efforts to combat terrorism can only take place effectively by the States systematically exchanging important information. Also by effective implementation of international instruments as well as judicial assistance in matters of extradition. States must also look into every aspect of international agreements in order to cover all aspects of terrorism in all its manifestations. Those members of the U.N. who are fit to sign or ratify such agreements are urgently called upon to do so and fulfill their international obligations.

Specialised agencies, NGO’s and other bodies were called up to make all efforts to find ways and means to combat and eliminate terrorism.

In particular member States are obliged to give information regarding implementation of various international instruments, the compilation of a compendium of National Laws and regulations would be
brought about. Also important is to analyse the laws and check out all aspects covered in order to eliminate terrorism.

A development to meet the demands of society today would be to build up a stronger legal regime within the frame work of the U.N. Member States continued to express grave concern over the increasing number of terrorist attacks all over the world on the occasion of the Fiftieth Anniversary of the U.N.26

On this occasion, the Secretary General made a strong commitment to "defeat the threats to States and people posed by terrorism, in all its forms and manifestations, viz., transnational organized crime and the illicit trade in arms and the production and consumption of the trafficking in illicit drugs.27

As acts of terrorism persisted, the U.N. General Assembly took a strong view and stated that such acts, methods and practices were not only criminal but also unjustifiable. Reaffirming the resolution 49/60 the General Assembly28 once again called upon all States to effectively implement the provisions of the Declaration.

26 1995
27 National and International Co-operation would enhance the effectiveness of the U.N.
28 G.A. Res. 50/53, Measures to Eliminate International Terrorism.
In the strategy designed to combat terrorism, States were urged to co-operate with each other to ensure that terrorists find no safe haven. This by itself is significant as it marks the inception of co-operation among States fighting terrorism. This marks a divide among states who are willing to fight against terrorism and those who support terrorists or provide such persons with facilities.

It also stressed the role of the Security Council in maintaining international peace and security despite threats to the same.

Follow up action by the Secretary General was requested according to the modalities already formulated. Annual reports on action taken by States to combat terrorism should be submitted according to Resolution.

F. ROLE OF UNITED NATIONS – TERRORISM

The U.N. stepped up pressure on all nations of the world. There was a need to enhance the role of relevant specialized agencies in combating terrorism. Regional agencies were called up to eliminate terrorism. Another General Assembly Resolution29 not only stressed the need to strengthen regional organizations and also make arrangements to tackle the menace of terrorism.

29 General Assembly Res. 51/120, 1996
This resolution mentioned specifically the Organisation of African Unity, Organisation of American States, the Council of Europe, Movement of Non-Aligned countries and the Russian Federation. According to the provisions members were called upon to urgently re-view existing international instruments in order to suppress all forms of terrorism, that was coming to light the world over.

An important consequence of this was the view expressed by many leaders all over the World, that there was the immediate need for a comprehensive legal document to control, combat and eliminate terrorism.

Terrorists were using more sophisticated methods than before and it was necessary to meet the demands of modern developments.

The dissolution of the Soviet Union witnessed religious ideas being "imported" into the newly independent republics by some Islamic Countries. Even European tourism suffered as Islamic fundamentalists objected to western presence in their country. These incidents had a profound influence on terrorist activity the world over. The most serious threat was that of use of nuclear weapons. Chemical and Biological

Chechanya was a problem to the Russian State. The War in Afghanistan posed serious consequences to the Kashmir situation.
weapons were also mentioned. The consequence would be very serious to society in general. Civilian targets became the choice of terrorists.\textsuperscript{31} The compelling need was to prevent the use of nuclear, chemical and biological weapons i.e., weapons of mass destruction. There was the need to implement and supplement the provisions and measures to eliminate international terrorism.

The World body was aware of the threat to nuclear facilities by terrorists and the serious consequences if proliferation of nuclear materials in the hands of a few. A preventive step was taken by the world body. The Convention\textsuperscript{32} on the Physical Protection of Nuclear Material was brought about by the U.N. The Convention provides a comprehensive framework for then protection and recovery of nuclear material states parties are obliged not to import or export nuclear material. This places on onus on governments to strictly adhere to the provisions. In case of theft, the offenders who attempt to export or import such material must be prosecuted or extradited. Co-operation among States is necessary as, if the nuclear

\textsuperscript{31} The use of Sarin gas on Japanese Commuters in Tokyo was said to be the work of the "Armageddon cult of AUM".

\textsuperscript{32} Most governments have strengthened security measures around nuclear facilities.
material got into the wrong hands it could pose a danger for the very existence of the States themselves.

All information regarding the evidence, trial and prosecution must be communicated to the Secretary – General who in turn will keep other States seized of the matter.

The need arose to adopt further measures against such attacks on the general public. The provisions of International Human Rights Law are infringed by every such attack.

U.S. Nationals and European tourism were targets of Islamic fundamentalists, as many objected to the presence of foreigners on their land. Saudi finances, American weapons and Arab soldiers were a fighting force against the Soviet presence in Afghanistan. Pakistan had an important role to play because of its location. Large funds from these countries financed the training camps set up in Pakistan.33

The U.N. besides condemning these acts and methods, responded to the situation by directing States to improve the co-operation between

33 At this time, Osama Bin Laden started operations, the region. He had been expelled from Saudi Arabia for his dangerous activities. He is said to control over 60% of opium cultivated in the region.
agencies entrusted with Security. Co-ordination between agencies would help prevent threats to the public and various other facilities.

It specifically recommended marking of explosives so that their origin could be traced afterwards (after an attack).

As terrorists used electronic communications to keep in touch, States within the sphere of domestic legislation could detect such communications and prevent terrorist acts. It was also necessary to investigate the activities of terrorist organizations who use other agencies / institutions as a cover for their illegal operations.

Law enforcement agencies were capable of preventing and detecting terrorist acts and with this in mind, close co-operation with these agencies at the international level was desirable. Therefore it was necessary to take appropriate action in matter of funding terrorists and terrorist organizations34. Regulatory measures were necessary in order to track down the sources of such funding and relaying information to the relevant agencies. Apart from various measures to combat terrorism, the convention

34 Many Government realised that large amounts were being transacted through "shell" banks Organisations within the country received these amounts as a matter of routine transaction. Provisions to deal with the same had to be urgently brought about.
urged its members, who were not parties to various anti-terrorist conventions to seriously consider signing the same.

Pursuant to this, the U.N. established an Adhoc Committee. The job entrusted to this was to formulate a comprehensive legal frame working to deal not only with international terrorism but also nuclear terrorism.

This is an important development as the threat of the use of nuclear, chemical and biological weapons was felt by many nations as imminent. The threat or use of weapons of mass destruction by fundamentalist militant groups, on innocent civilians was anticipated, intelligence agencies and government departments the world over need to consider provisions relating to these issues. This not only posed a threat to civilized society but also to a stable legal order. The rule of law within the existing framework would be upheld, and the present legal instruments urgently required to be updated in the light of the present day situation.

Another significant aspect of this convention brought about measures to supplement the 1994 Declaration. Accordingly, there was an urgent need for the members to sign bilateral extradition agreement so that

35 The IAEA was also called upon to render assistance. The break up of the former Soviet Union was another worry to many countries.
terrorists could be tried and punished accordingly to law. It was important that they be brought to justice.

However, the practice of some states had come to the notice of the General Assembly. This was regarding the granting of refugee status or asylum. The provisions of international law had been misused by some states in granting asylum to the perpetrators of violence. States were obliged to ensure that the provisions of the Convention relating to the Status of Refugees were not misused. Stressing the importance of international human rights norms, it was necessary to ensure that the asylum seeker had not participated in terrorist act before the granting of asylum.

According to the Convention information exchanged between States would ensure that the provisions of law are upheld and terrorists are prosecuted by legally competent authorities. However extradition being within the domestic jurisdiction of States, members could, in the absence of a treaty, extradite terrorists to meet the demands of justice.
Often States do not extradite persons accused of having committed a political offence. In order to suppress and combat crime in states it is necessary for States to enter into bilateral extradition treaties so that terrorists can be prosecuted.

In order to give assistance to the extradition process that the terrorists can be tried and prosecuted, the General Assembly adopted the Model Treaty on Extradition.

Usually the term “Political Offence” has been viewed differently by judges and jurists of various countries around the globe.

The non-extradition of political offenders is based on human rights law and the laws of natural justice. Usually, it is feared that such offenders would not be treated fairly by the requesting state. Therefore they cannot be treated as criminals who flee after committing a crime. Usually they have not committed a crime against society, all that they have done is the furtherance of their political ideas and objectives.

Under International Law, the right of extradition only exists by treaty. No clear cut definition exists of extradition, it is left to the States concerned.

However due to the serious nature of the crimes that were committed, it changed the attitude of States in this regard. Present "Political offence" as a ground for non-extradition of offenders does not cover the following:

1) The commission or conspiracy to commit the crime of genocide.

2) In crimes of apartheid.

3) In war crimes and crimes against humanity.

4) In crimes of hijacking hostage taking, injury to diplomats, torture including breaches of the four Geneva Conventions.

5) It cannot be used to protect former government officials, accused of human rights excuses. 

6) In the present situation certain offences are not regarded as political offences such as unlawful seizure of aircraft, acts against the safety of civil aviation, crimes against internationally protected persons, terrorism kidnapping, offences involving disruption of public utilities etc.


The U.N. pursuant to its purpose and principles laid down in the Charter, assessed its achievements in the decades of its existence. Member States in order to support strengthen and promote democracy urgently required to promote measures to eradicate international terrorism with this in mind and on the report of the Sixth Committee, which looked into the use of explosives in terrorist attacks. It was found that lethal devices used by terrorists were widespread. It held that such indiscriminate use was illegal. Therefore it was necessary to enact provisions to deal with the devices used in terrorist attacks.

An “explosive or incendiary weapon or device” is designed to cause death or serious injuries and damage to property. The explosion could also occur by the impact of toxic chemicals, biological agents or such substances including radioactive material.

Persons delivering, placing or detonating such explosive or lethal devices, govt. facility or transportation systems are responsible for the offence. Participation in any way would establish criminal liability.

41 Buses, Trains and Governmental agencies were being attacked in the 1990’s and the bombings not only killed innocent civilians, but also destroyed public property.
42 Ibid
States parties are urged to bring about legislation to give effect to these provisions, within the domestic sphere. The necessity assumes is importance due to the increasing number of bombings witnessed all around the world. States parties to the Convention were expected to notify the Secretary General of their efforts in this regard. This is indicative of its importance. Details as to the jurisdiction, receipt of information and communications to other states where necessary are emphasised.

The Secretary General is entrusted with the duty of collecting details from States in such matters. Thus the Convention brings about strict legal provision to deal with bombs and other devices capable of detonation.

States have the option to extradite the offender or prosecute him according to the established provisions of law. Investigations connected with such criminal acts are of equal importance and States may assist one another.

An important aspect of this convention is the fact that the offences listed under the Convention\(^4\) are not regarded as a political offence or one connected with a political offence. Extradition of the offender cannot be refused on grounds of a political offence now.

\(^4\) Art 11 of the Convention
Further an obligation is imposed on States parties to take all measures to prevent and prohibit any such activities from occurring on their territory. This includes groups and organizations that may instigate, finance or perpetrate these offences.

International co-operation is necessary because with the exchange of accurate information the commission of such acts could be prevented. The marking of explosives as discussed earlier is an urgent necessity in order to identify their origin in post-blast investigation.

The General Assembly listed out a set of procedures to deal with the suppression of terrorist bombings. Their importance lies in fact that the Secretary General is expected to play an important role in disseminating information and making the same available to States Parties. The seriousness of the matter is in the measures undertaken by the World body in the matter of bombings in public places. Eg. Public places, local trains etc. The legal framework to deal with this, is within the rule of law envisaged by the world body. Measures to tackle international terrorism have taken into account all terrorist acts and those incidental and connected with it. Thus widening the scope of international law to prevent and combat terrorism and all its aspects.
This has made a deep impact on the domestic jurisdiction of states in dealing with such offenders by criminalizing the offence. Also states are required to prosecute or extradite the offender. Further, is the obligation of member States to keep the Secretary General informed, who in turn will inform other nations about progress and prosecution of the offender. International terrorism has spread to all quarters of the globe and this effort has far reaching consequences for all member states.

This was a very important convention as it established an adhoc committee to deal with terrorist bombing as a means to develop a comprehensive legal framework. The nations of the world considered it a priority area as the next step was to deal with the financing of terrorism. The framework established by the previous conventions has been followed in this one too. It is directed against financing terrorism in order to combat it. The members are required to exercise criminal jurisdiction over unlawful collection of funds where there is knowledge that they would be used to carry out terrorist acts. Further they are obliged to impose criminal, civil or administrative liability on the persons responsible for management and control of finances and funds. The Convention establishes a framework by providing a list of measures to be followed to prevent the
financing of terrorist acts. States parties can track and stop international financing of such acts.

Currently, several countries have stringent financial measures prohibiting international financing of terrorism. While focusing attention\textsuperscript{44} on the offense of financing of terrorism the Convention\textsuperscript{45} indirectly provides a definition of terrorism. This can serve as a basis for all states to address the issue of terrorism at the International level.

Illicit arms deals and drugs are the main sources of funds suspected for alleged terrorist activities. This Convention is the next i.e., U.N. Convention to deal with the suppression of terrorism. It is well known that drug deals fund such unlawful activities. Appropriate measures taken by States could stop the funds from reaching the group or organization (charitable or otherwise) from utilizing the funds to spread terror and undermine the territorial integrity of states.\textsuperscript{46}

\textsuperscript{44} Clifton M. Johnson in 39 ILM, 268.
\textsuperscript{45} Convention for the Suppression of Terrorism Financing, 1999.
The various provisions considered in the past by the General Assembly do not deal with funding of terrorists and terrorist organisations.

The offence of international funding is declared criminal if directly or indirectly any person provides or collects funds with the intention of carrying out any act” intended to cause death or serious bodily injury to a civilian or any other person not taking an active part in the hostilities in a situation of armed conflict”. the purpose or nature of which is to intimidate a population or compel a government or an international organization to do or abstain from doing any act.47

Participation, direction or contribution made to others in order to facilitate commission of the crime is also included. States are called up to take all necessary measures available under domestic laws to legalise its criminality and make the offense punishable by the laws of the land. This jurisdiction should cover any legal entity such as dummy corporations or "charitable organizations, religions groups etc. Criminal liability should be attached to the management. Efforts in this regard, would significantly reduce transfer of funds. Further it would enable banks to check the amounts received and help trace the source of funding.

47 Art 2 of the Convention.
Jurisdiction over such offences extend not only over territory, by air, sea or through a national of the State. It extends to facilities abroad like diplomatic or consular premises; or to compel other governments to act in a particular manner.

States parties to the Convention are obliged to take all necessary measures and inform the Secretary General.

Further States parties are obliged to seize and freeze the funds and their proceeds thereof. Information regarding this should be given to other states on a case-by-case basis. The funds seized may be used to compensate victims. This detailed procedure is a new development noticed in such conventions. A set of measures to combat terrorism is put in legal context in order to uphold the rule of law. A regular exchange of information between governments is necessary in order to prevent such offences. “Bank Secrecy must not be used as an excuse to consider the transaction confidential so that the details remain shrouded in secrecy”. This offence is not to be considered a “political offence” for purposes of

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48 Art 7 Ibid
49 Ibid, Art 8
extradition. Prosecution and punishment should follow according to the provisions of law.

Like the previous Conventions, this too imposes a significant number of tasks on the States Parties. The legal regime covers issues that are considered within the domestic jurisdiction of States. In order to combat terrorism and for the sake of international peace and security States are obliged to bring their laws in conformity with international obligations. All practical measures have to be undertaken, either to bring about new legislation or adopt existing legislation to cover the offence. Various measures and regulations need to be prescribed to prevent the occurrence of such acts on their territories.

An entire set of fiscal regulations are detailed in the Convention\textsuperscript{50}. Account holders must be identifiable. Unusually large transactions must be reported. Banking institutions are required to maintain records stringently.

\section*{H. ROLE OF SECRETARY GENERAL:}

Mutual communication and co-operation between States and relevant agencies is desirable. The Secretary General under the convention is entrusted with the duty of disseminating the information collected. An

\textsuperscript{50} Ibid, Art 18.
important aspect is the fact that by placing on the Secretary General the additional responsibility, the U.N. has firmly established the fact that would take all steps to suppress, prevent and combat international terrorism. The role of the Secretary – General is enlarged and his duties to the world body is enhanced by this Convention.

Most conventions need to be signed and ratified by member states before international norms are brought into the sphere of domestic jurisdiction. Many countries take a long time to sign and ratify such instruments. In such situations the rules of the Convention are yet to come into force. Therefore detailed measures brought about to suppress and prevent terrorism are inoperative. While concern has been expressed by many over the state of affairs little can be done. As acts of terrorism increase the member States must work in unison to combat terrorism.

I. IMPORTANCE OF THE SECURITY COUNCIL

The General Assembly is the plenary body of the U.N. Its various committees take care of every aspect of the working of the World body. The Security Council has been entrusted with the maintenance of international peace and Security. Acts of terrorism pose a threat to this peace and must be combated by all possible means. Aware of the
difficulties faced by States in implementing the conventions, the Security Council realized the need for closer co-operation with all states and decided to take timely action.

Acting under Chapter - VII\(^1\) of the Charter it was decided that all States would suppress the financing of terrorist acts on their territory. In order to meet international obligations member states should criminalise the willful collection of funds by its nationals if there is sufficient information that it would be used for terrorist acts.

It would freeze funds, financial assets and economic assets of persons/entities who commit or participate in terrorist acts. Also they should prevent their nationals from receiving such funds, financial assets or economic resources, directly or indirectly for the commission of such acts.

Further the Resolution goes on to state that no support of any kind should be provided and, efforts made to eliminate the supply of weapons to terrorists. Safe haven should be denied to those who plan and support such acts. It would also extend to the prevention of use of territory for acts against its own nationals or other States. Any information of a sensitive nature affecting other States must be given immediately to the State. Such

persons must be brought to justice by prosecuting and punishing them. Travel documents must be issued only after careful scrutiny. These measures are to be followed by all members of the U.N. This resolution has gone beyond the convention.

These rules are applicable to all members of the U.N. regardless of whether they have acceded to the Convention or not. They create binding international norms from which no derogation is permitted. An important way to control terrorism is by preventing movement of terrorists and groups by border checks and scrutiny of documents. Emphasis is on the rules of international law and human rights law under which these provisions are made.

In recent years there appears a close nexus between transnational organized crime and international terrorism. Illicit arms sales, sale of drugs and military equipment, money laundering, illegal movement of nuclear chemical and biological and other potentially dangerous material is creating a serious situation for the international community.

\[52\] In such cases evidence needs to be collected to help the prosecution and investigating authorities.
The Security Council has stepped up efforts in combating terrorism by taking all necessary steps to secure full implementation of this Resolution. It declared that all methods and practices of terrorism are contrary to the principles of the U.N. including financing and planning terrorist acts.\textsuperscript{53}

The importance of the Resolution lies in the fact that the Security Council established a Committee to monitor its implementation. Further all states were expected to file a report on the steps they have taken on its domestic application within ninety days. Thus, by appropriate means and detailed procedures, the Security Council would remain seized of the matter. Therefore all members states have no option but to follow the procedures regarding implementation; it is mandatory. The World community was committed in its approach to combat terrorism from every angle, by all means available. Threats to international peace, and security are caused by terrorist act, which affect the friendly relations between States.

\textsuperscript{53} Ibid, Art 5
Conscious of the growing danger of all forms of terrorism the Security Council held a high level meeting on combating Terrorism. In the globalised world, sophisticated technology, and finance could make it easy for terrorists to exploit them to achieve their criminal objectives. While there was an urgent need to stem the flow of funds and finances by procedural safeguards it was also necessary to take other steps to prevent criminal activities. Transnational organized crime, drug trafficking, arms trafficking and money laundering are other activities closely linked to the crime of terrorism. This could only be eliminated by a "sustained comprehensive approach" with the active participation of States at the international, regional and national levels.

The Security Council therefore calls upon states to:

(a) Become a party, as a matter of urgency, to all relevant international conventions and protocols relating to terrorism, in particular the 1999. International Convention for the Suppression of the Financing of Terrorism and to support all international initiatives taken with

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55 U.N. Convention Against Transnational organized Crime was brought about to deal with the same.
that aim and to make full use of the resources of assistance and guidance which are now becoming available;

(b) Assist each other to the maximum extent possible, in the prevention, investigation, prosecution and punishment of acts of terrorism, wherever they occur;

(c) Co-operate closely to implement fully the sanctions against terrorists and their associates, in particular Al-Qaeda and the Taliban and their associates, as reflected in resolutions 1267 (1999), 1390 (2002) and 1455 (2003) to take urgent actions to deny them access to the financial resources they need to carry out their actions and to co-operate fully with the Monitoring Group established pursuant to resolution 1363 (2001).

All those who finance, plan and support terrorist acts must either be prosecuted or extradited to face a fair trial elsewhere.

J. ROLE OF THE COUNTER TERRORISM COMMITTEE

The Counter-Terrorism Committee (CTC) must review the reports of states on the measures adopted at the domestic level pursuant to their obligations as States parties to the various conventions.
A constructive dialogue must be established by the CTC and other members States. The world body needs to prioritise its actions in the context of the present day. The need was for all members of the U.N. to comply with their international obligations in every way. In this endeavour international organizations must enhance their actions against terrorism and methods to combat the same. Agencies and organizations that control or deal with the use of nuclear, chemical or biological or toxic materials need to comply with their legal obligations regarding use, non-proliferation or disarmament as the case may be. Regional co-operation was necessary with the CTC.

In its continuing efforts to combat terrorism, the CTC would spare no efforts to have a dialogue with groups and organization, solve regional conflicts and issues in order to sustain the continuing fight against terrorism.

Further it called upon States to co-operate in efforts to bring about an international convention for the suppression of acts of nuclear terrorism.

In its fight against terrorism the security council, post 9/11, took a number of important decisions. While it had condemned terrorism as a Criminal act, it recognized the right to self defence under Art. 51, of the
Charter. Another significant step towards the eradication of terrorism was the adoption of Resolution 1373\textsuperscript{6}.

Under this the Counter-Terrorism Committee was established under Chapter – VII of the Charter. This represents a corner stone of the work of the security council with regard to terrorism. It firmly established the concern of the U.N. to deal with various international efforts and finally took over the work that had hither to been carried on by the General Assembly. The Security Council is empowered to deal with threats to peace and security and under this imposed obligation on member states to be followed strictly. This is a development in the law of nations and is a departure from the old methods and techniques. The aim of the CTC is to raise the level of governmental performance in the transnational context.

While the various conventions and protocols, were binding on States Parties who signed, others kept out of the ambit of the law of nations by not signing. This created loop-holes in the application of anti terrorist legislation. A concerted approach required including uniformity of action in tackling the problem by all states.

The Counter Terrorism Committee has three committees comprising of experts. The Counter Terrorism Committee monitors the implementation of the Resolution, which is binding on all members i.e., 1991 of the U.N. They are expected to transmit reports of the implementation of Res. 1373. By using its powers under Chapter-VII it practically ordered all States to act (or not) in a particular given situation.57

Specific procedures are not laid down, and its working is dependant on the role adopted by its chairman. Presently the efforts are towards establishing a lasting dialogue between international, regional and sub-regional organizations. The idea is to build a global regime against terrorism. Its importance lies in the fact that all 191 members have sent reports of their compliance with Res. 1373. Res. 1373 of the Security Council dealt with threats to international peace and security caused by terrorist acts58. The provisions are under Chapter-VII of the Charter and have the force of U.N. action behind it.

58 40, ILM 1278, 2001
It was decided that states would take proper action against entities or persons involved in the commission of terrorist acts, by suppressing recruitment of members and by stopping the supply of weapons.

Further States were asked to:-

1) Provide early warning to other states where information was available.
2) Deny safe haven to those who support and finance terrorist acts.
3) Ensure that those involved in any manner are brought to justice.
4) Such offences must be established as criminal offences under domestic laws.
5) Extend assistance in criminal investigation and proceedings.
6) Establish effective border controls to prevent movement of terrorist groups and other arms and ammunition. Scrutiny of documents would be effective in this regard.

Further the members were called upon to:

1) Exchange necessary information traffic in arms, and possession of weapons of mass destruction.
2) Co-operate on administrative and judicial matters.
3) Enter into bilateral and multilateral agreements to prevent such attacks and bring the guilty to justice.
4) Accede to the various U.N. instruments regarding measure to eliminate terrorism and the suppression of financing of such acts.

5) To scrutinize the documents of persons before granting refugee status to ensure that the asylum seeker has not planned any such acts.

6) To respect the provisions of international law, by not recognizing grounds of political motivation as a valid excuse for refusing extradition of the alleged terrorist.

The Security Council declared that the methods and practices of terrorism are contrary to the principles of international law. Placing importance on measures to seek international co-operation in this regard, the Security Council, under its rules of procedure established a committee to monitor the working of this resolution.

The Security Council called upon states “to fight the scourge of international terrorism”59. It also called upon the CTC to “explore ways” of eliminating terrorism by entering into a dialogue with regional and sub-regional agencies / organisations. By exploring all ways to combat terrorism i.e., technical financial regulatory and legislative, the U.N. called upon all State to eliminate the scourge of terrorism.

By establishing a legal regime against terrorism, the Security Council has dealt with the issue as a threat to international peace and security. Many countries of the world have resolved to use force in the face of threats posed by terrorist states to the international order.

In recent times the Security Council has brought into being a resolution on combating terrorism. Clearly stating that terrorists must be prevented from making use of other criminal activities to enhance the effectiveness of their methods at global violence and transnational organised crime must be put to an end.

A comprehensive approach of all members could put an end to terrorism. Assistance and full co-operation among states was required. Also as a matter of urgency member states were called upon to become a party to the various conventions and protocols relating to terrorism. Also states were called upon to take action to implement the sanction against the Al-Qaeda and the Taliban.

The counter Terrorism Committee was called upon to take adequate steps to implement the procedures of reviewing the reports of the members and to facilitate international assistance. Further it called up the thirteen States who had not submitted their reports to do so. Also states were called upon to fully co-operate with the Counter Terrorism Committee and enter into a constructive dialogue.

International organizations were obliged to enhance their effectiveness in combating terrorism. It also noted that unresolved regional conflicts must be resolved thereby focusing attention on particular regions of the world.\(^{62}\)

Most reports received by the Counter Terrorism Committee reveal that a large number of States have enacted laws or revised the provisions of law in order to comply with Res. 1373. Also, more State have become party to the various conventions and protocols regarding terrorism with the establishment of the Counter Terrorism Committee many states have come forward to sign the Conventions on Terrorist Bombings and Financing of Terrorism.\(^{63}\)

\(^{62}\) In many such regions Low Intensity Conflicts are an ongoing problem that governments are faced with.

\(^{63}\) Prior to 9/11 U.K. and Botswana were signatories to the twelve U.N. protocols and conventions on terrorism, since then about twenty-nine members are parties to them.
In the present situation the CTC needs more experts and a large amount of funding for various activities. The developed nations are expected to give assistance otherwise the CTC will lose its efficacy.

While prioritising the work of all members to combat terrorism, there is a chance that there will be an overlap of functions, putting it within the ambit of the domestic jurisdiction of states.

More important is the need to define terrorism, without which it will be difficult to assess the compliance of the members. Difficulty exists in prosecuting the accused. In the present context, the nature and content of the violent act may be looked upon as terrorist.

India has suggested a Comprehensive Convention on International Terrorism. Presently the Sixth (Legal) Committee is discussing various aspects of such a Convention as to what must be kept in mind is the close nexus that exists between efforts to combat terrorism and human rights. Most important are the efforts of 191 members of the U.N. to come together in a major effort to combat terrorism in keeping with the principles and purpose of the Charter. As countries faced the multifarious challenges posed by terrorism. India also made efforts to combat terrorism.

See Annexure for text of draft submitted