Chapter IV

CROSS BORDER TERRORISM IN INDIA: INTERNATIONAL AND NATIONAL LEGAL PERSPECTIVE

Undoubtedly, terrorism is a complex problem and its origin is diverse. It is resorted as willful choice by organization for political and strategic reasons. Those who practice it assume collective rationality. It is selected as a course of action from a range of perceived alternatives. It is a policy of violence designed to promote desired outcomes by instilling fear in the public at large. The key element is public intimidation. That is what distinguishes it from other form of violence. In customary violence the victim is personally targeted but in terrorism the victims are incidental whereas, terrorists intended objectives are used simply as a way to provoke social conditions designed to further their broader aims.

Due to globalization, the reach and speed of communication, reduced travel barriers, and increasing environmental interdependency, the political and the personal are moving towards convergence. We are living in a world where rapidly evolving international conflicts have the overwhelming safety and security everywhere. Conflicts in Afghanistan, Sudan, Brazil, and Yemen can no longer be ignored, as they touch our lives in increasingly significant ways.\(^1\) Nearer home the Liberation of Tamil Tiger Emblem (LTTE) in Sri Lanka and various organizations in Pakistan have gained prominence. The situation in Kashmir is well known to everyone where the number of incidents of violence is peaked with highest rate of casualties. The terrorist collect huge sums in the name of religion and utilize it for creating political instability. In India the naxalities in Andhra Pradesh and Bihar carry out terrorist activities everyday indulge in mass killings.\(^2\)

Terrorism is thus a disease, an ailment caused due to variety of reasons which have been endeavored to be eradicated from time to time by enacting laws to curb and efface it. Recent, Ahmedabad, Delhi and Mumbai bombings resulting in horrible killings

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\(^2\) Editorial column, ‘What We Talk about Law When We Talk about Law’, The Indian Express, September 25, 2008.
have understandably caused indignation at the almost total failure of intelligence machinery. Those attacks have revived the debate on terror and the state’s inability to deal with it.

Cross border terrorism has been the most powerful hazard to international security, and terrorism driven by religious extremism, is even double so. Plural and open democracies are the target of the very root of tolerance, mainstay of civil society in a free world. India has been witnessing terrorist violence since 1980, initially in Punjab, and since, 1989, in J&K and other parts of North East and North West of India. India is in favour of a collective international policy to combat the reinsurance of international terrorism. Time and again, India has raised its voice at the UN and other international Forums to draw world community’s attention towards this burning issue. India strongly advocates that cross border terrorism should be seen along with other international crimes like drug trafficking, money laundering and trafficking in arms and personal, and should be accorded top priority during the next few years.

However, it is clear that the fight against terror should not be confused with the necessity of appropriate and effective legislation to deal with terrorists. The harshest of laws are not an impediment in the way of terrorist organizations in spreading terror. Terrorism postulates that a terrorist is willing to sacrifice his life for whatever cause he espouses, since his arm is not to avenge a personal grouse through violent means, but to terrorise the community at large, to have it pay attention to his perceived mission. No laws, no matter how harsh, can stand in his way. The most powerful nation in the world with the most modern technologies at its command cannot stop terrorist activity in Iraq or prevent American soldiers becoming victims of such attacks.³

India has been among the major victims of terrorism – mostly cross border state sponsored Terrorism -for over two decades. Despite the intolerably high cost in terms of human lives, people and material, India has steadfastly pursued a counter strategy which gives primacy to dialogue, democratic political processes and the rule of law. Armed counter actions are based on the doctrine of “minimum use of force” within the

framework of the Constitution which guarantees human rights. As it is mandatory to give complete protection to the human rights of each and everyone within the territory otherwise this would also turn out to be one of the main cause of eruption of terrorism when somebody’s human rights have been infringed.

4.1. INTERNATIONAL LAW AND TERRORISM

However, all the forms of terrorism are criminal and unjustifiable and therefore it has to be curbed. In the past, a number of attempts have been made to control international terrorism within and outside the League of Nations and UN. The question of combating terrorism at international level has been constantly on the agenda of the international law and the international institutions especially UN even prior to the Second World War. After the assassination of King Alexander I of Yugoslavia and the Prime Minister Louis Barthou of France on October 9, 1934, the Council of the League of Nations on December 10, 1934 unanimously passed a resolution to institute a Committee of Experts with a view to draft a tentative international convention to curb any scheming or offences in pursuant of ‘political terrorism’. Later on, an international conference was convened in Geneva which met from November 1 to 16, 1937. The Conference examined and adopted two conventions: The Convention for the Prevention and Punishment of Terrorism and the Convention for the Creation of an International Criminal Court. The Conventions did not come into force for want of requisite ratifications. Subsequently many more conventions have been concluded for the suppression of specific forms of international terrorism, after the establishment of UN. As terrorism is no doubt an old and dynamic concept as its roots and implications are subsisting in the society since ages. Therefore time and again effective efforts have been undertaken as the steps to curb this menace by the nations as such. Hereby, a review of these efforts has been made under the following headings:-

4.1.1. United Nations and Terrorism

However, in front of one of the substantial and fundamental international organization UN, terrorism is a burning as well as debating issue which is of great

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5 The first Convention received only one ratification that of India on January 1, 1941. the Convention did not enter into force.
concern. The problem of terrorism in general, has been under consideration of the General Assembly since 1972. On September 23, 1972, the Assembly recommended the following item to be included in the agenda and brought before the Sixth Committee.⁶

Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes 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 cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes.

In the deliberations of the Sixth Committee divergent views were taken by the representatives of different States. On its recommendation the General Assembly on December 18, 1972 adopted a resolution⁷ wherein it decided to establish an Ad Hoc Committee on international terrorism of 35 members. The Committee held its first session in 1973 without achieving any positive results. However, the Committee submitted its report to the Assembly. The latter was unable to consider the item for want of time until the thirty first session held in 1976. In 1976, the Assembly adopted a resolution wherein it invited the Ad Hoc Committee to continue its work in accordance with the mandate originally entrusted to it. By the same resolution, the Assembly also invited States to submit their observations as soon as possible to the Secretary General so as to enable the Committee to perform its mandate more efficiently, and it requested him to transmit to other Committee and analytical study of those observations. The Ad Hoc Committee met in 1977 and submitted a report to the Assembly without any further progress. In 1979 session, the Ad Hoc Committee worked out general recommendations relating to practical measures of international terrorism. These recommendations reflected a common view of fundamental importance. On the recommendations of the Ad Hoc Committee, the General Assembly on December 17, 1979 adopted a resolution⁸ wherein the act of terrorism was condemned and it urged all States, unilaterally and in cooperation with other States as well as relevant UN Organs to contribute to the progressive elimination of the causes underlying that kind of terrorism.⁹

⁷ General Assembly Resolution 3034 (XXVII), December 18, 1972.
⁸ General Assembly Resolution 34/145, December 17, 1979
⁹ Ibid.
By the resolution, the Assembly called upon all the States to fulfill their obligations under international law to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts.\textsuperscript{10} Since 1979, no further progress has been made in the following years excepting the endorseement of the resolution adopted in 1979.\textsuperscript{11}

It was only in the year 1994, a declaration on Measures to Eliminate International Terrorism\textsuperscript{12} was adopted by the Assembly which stated that terrorism includes criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes. The Declaration further stated that such acts are in any circumstances unjustifiable whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious, or other nature that may be invoked to justify them. In 1996 the Supplementary Declaration\textsuperscript{13} was adopted which condemned all acts and practices of terrorism as criminal and unjustifiable whenever and whosoever committed and urged all States to take measures at the national and international levels to eliminate international terrorism.\textsuperscript{14}

Since the present multilateral conventions on international terrorism do not cover all means and a method used for commission of terrorist’s acts, India proposed at the 51st General Assembly the adoption of a comprehensive convention on international terrorism. In resolution 54/110, the Assembly mandated the Ad Hoc Committee on International Terrorism, established on 17 December 1996, to elaborate the Convention. India then submitted a revised draft text. Similar to the provisions of the International Convention for the Suppression of the Financing of Terrorism, the draft distinguishes between terrorist and non-terrorist crimes, when they are committed to intimidate a population or to compel a Government or an international organization to certain actions.\textsuperscript{15} It considers as criminal and any act causing death or serious bodily injury to any person, or causing serious damage to public or private property, a place of public use,

\textsuperscript{11} General Assembly Resolution 38/130.
\textsuperscript{12} General Assembly Resolution 49/60 of December 9, 1994.
\textsuperscript{13} General Assembly Resolution 51/20 of December 17, 1996.
\textsuperscript{15} Ibid.
a public transportation system or an infrastructure facility. States parties are required to
establish these offences as criminal offences punishable by appropriate penalties, taking
into account their grave nature. A State is required to establish jurisdiction over these
offences when committed in its territory, on board its ships or aircraft, or by its nationals
or habitual residents in its territory, and also when an act committed outside its territory
results in an offence within its territory. States are not required to adopt legislation to
ensure that the offences are not justifiable by any ideological, religious or other
considerations, nor in extradition proceedings give grounds to perpetrators to claim that
their acts were politically motivated. States are also obliged to extend mutual legal
assistance and required to prohibit and prevent training camps and financing of those
offences, deny asylum to those connected with terrorist activities, and extradite or
prosecute them if found in their territory. Many provisions of the draft were generally
acceptable to delegations, and it was hoped that the Convention can be finalized at the
session of the General Assembly, providing an effective instrument for international
cooperation against international terrorism.\textsuperscript{16} Unfortunately the draft did not enter into
force.

The Ad hoc Committee in the year 2002 restarted negotiations on a
comprehensive international treaty on terrorism. The Committee began deliberation on
difficult topics to tackle terrorism including those dealing with a definition of terrorism
and its relation to liberation movements, possible exemptions to the scope of the treaty, in
particular regarding the activities of the armed forces, and how to advance the level and
types of international cooperation to combat terrorism. The Ad hoc Committee in its
seventh session held in April 2003 made a recommendation that the Assembly’s Legal
Committee consider the setting up of a working group to continue the elaboration of two
draft conventions on terrorism – a comprehensive convention on international terrorism
and an international convention for the suppression of acts of nuclear terrorism.

How far the Assembly would succeed in curbing international terrorism is a
question which is difficult to answer in affirmative. It has been considering the topic
since 1972 without any success. Divergent views taken by the States before the Ad hoc
Committee shows that unless and until States come close on certain broad issues, general

\textsuperscript{16}Ibid.
recommendation would be of little use. The imminent and indispensable task in suppressing the act of terrorism is therefore to achieve international co-operation. Measures to combat terrorism on international level would be grim as long as the attitude of the States is not changed.

4.1.2. Role of Security Council

The fundamental organ of UN, Security Council also became active to curb the terrorism after the terrorists acts that took place in New York, Washington and Pennsylvania on September 11, 2001. The Council condemned unequivocally the attack by adopting resolution 1368 on September 12, 2001\(^{17}\) and called on all States to work together urgently to bring the perpetrators to justice.\(^{18}\) On 28 September, the Security Council unanimously adopted resolution 1373 (2001), declaring that terrorists' acts, methods, and practices of terrorism, as well as their financing, planning and incitement are "contrary to the purposes and principles of the UN".\(^{19}\) The Council noted with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money laundering and illegal movement of nuclear, chemical, biological and other deadly materials. It emphasized the need to enhance the coordination of efforts to strengthen a global response to combat threats to international peace and security caused by terrorist acts, and expressed its determination to take all necessary steps to fully implement this resolution.

Acting under Chapter VII of the UN Charter, which makes its provisions mandatory on all States immediately, the Council laid out wide-ranging strategies to combat international terrorism, and established a Committee, consisting of all Council members, to monitor implementation of the resolution. It called upon all States to report within 90 days on actions they had taken to that end. The resolution requires all States to prevent and suppress the financing of terrorism, as well as criminalize the willful

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\(^{17}\) Security Council Resolution 1373/2001, dated September 28, 2001. Earlier the Security Council had adopted Resolution 1269 (1999) on the initiative of Russia, the first comprehensive anti-terrorist resolution on a global scale in the history. The resolution laid the groundwork for the establishment of the counter-terrorist coalition, articulated its key principles and defined the areas for collective efforts. Before that, the Council had considered some specific cases related to terrorism as in the case of sanctions against Taliban.


\(^{19}\) Ibid.
provision or collection of funds for such acts. The financial assets of those who commit, attempt to commit or facilitate terrorist acts should also be frozen. The Council decided States should prohibit their nationals or people in their territories from making funds or services available to those involved in terrorism, refrain from providing support to people involved in terrorism, take steps to prevent terrorist acts, and deny safe haven to those who commit or support terrorist acts or provide safe havens.\textsuperscript{20}

States are also required to prevent terrorists from using their territories for those purposes against other countries, bring to justice anyone who has participated in terrorism, and ensure that terrorist acts are established as serious criminal offences in domestic laws and are punishable accordingly. States should further assist one another with criminal investigations or proceedings relating to the financing or support of terrorist acts, and prevent the movement of terrorists or their groups by effective border controls and regulation of identity and travel documents. The Council called on all States to intensify and accelerate the exchange of information regarding terrorist actions or movements, forged or falsified documents, traffic in arms and sensitive material, use of communications technologies by terrorist groups, and the threat posed by the possession of weapons of mass destruction. States should also become parties to the relevant conventions and protocols to combat terrorism.

The Council called on States to ensure that before granting refugee status, in conformity with international law, including international standards of human rights, asylum seekers had not taken part in terrorist acts and that refugee status would not be abused by terrorists. Claims of political motivation, it said, should not be recognized as grounds for refusing requests for the extradition of alleged terrorists.

The Security Council by the same resolution also decided to establish a Committee of the Security Council consisting of all the members of the Council. The mandate of the committee is to monitor implementation of the resolution with the assistance of appropriate expertise. The Council called upon all States to report to the Committee, no later than 90 days from the date of the adoption the resolution and thereafter according to a time table to be proposed by the Committee, on the steps they

\textsuperscript{20} Supra note 8.
have taken to implement it. The Council directed the committee to delineate its tasks, submit a work programmed within 30 days of the adoption of the resolution.\(^\text{21}\)

The main thrust of the resolution is on the financing of terrorist operations and to stop providing safe havens to anyone who supports terrorists or their organizations. The resolution invoked Chapter VII of the UN Charter which makes it mandatory for all the members.\(^\text{22}\) However, the resolution does not provide for any action against those States which violate the provisions of the resolution. Further, the resolution does not define terrorism which is an important element as some of the States are seeking to differentiate between terrorism and freedom struggle (or to say terrorists and freedom fighters). Thus it is difficult to draw the boundaries between the legitimate and illegitimate, use of terror and between the right way to fight and wrong way to fight. It is also to be noted that resolution uses the terms ‘terrorist groups’ but the Council has not identified them and therefore States might feel difficulty in implementing the resolution.

These points go to conclude that it is premature to say as to the implementation of the resolution by the States. However, the Committee of the Security Council known as Counter-Terrorism-Committee (CTC) established by the resolution has received reports from a number of countries on the steps they have taken from implementing anti-terrorism measures as required therein.\(^\text{23}\) The three countries – Sao Tome and Principe Swaziland and the Vanuatu have not submitted even a preliminary report by the end of March 2003 and 51 States were late in submitting a follow-up report. The Security Council called on them urgently to do so as required by its resolution 1373.\(^\text{24}\) Submission of reports by such a large number of States is indeed a demonstration of ‘excellent cooperation’ by the states in the implementation of the resolution.

Member States through the General Assembly have been increasingly coordinating their counter-terrorism efforts and continuing their legal norm-setting work. The Security Council has also been active in countering terrorism through resolutions and by establishing several subsidiary bodies. At the same time a number of programmes,

\(^\text{23}\) Alex Conte (2010), *Human Rights in the Prevention and Punishment of Terrorism*, USA.
offices and agencies of the UN system have been engaged in specific activities against terrorism; further assisting Member States in their counter-terrorism efforts.\textsuperscript{25}

To consolidate and enhance these activities, Member States in September 2006, embarked upon a new phase in their counter-terrorism efforts by agreeing on a global strategy to counter terrorism.\textsuperscript{26} The Strategy marks the first time that all Member States of the UN have agreed to a common strategic and operational framework to fight terrorism.

The Strategy forms a basis for a concrete plan of action: to address the conditions conducive to the spread of terrorism; to prevent and combat terrorism; to take measures to build state capacity to fight terrorism; to strengthen the role of the UN in combating terrorism; and to ensure the respect of human rights while countering terrorism. The Strategy builds on the unique consensus achieved by world leaders at their 2005 September Summit to condemn terrorism in all its forms and manifestations.\textsuperscript{27}

The UN Global Counter-Terrorism Strategy adopted by Member States on 8 September 2006, serves as a common platform, bringing the efforts of the UN system entities that work on counter-terrorism related issues into a common, coherent and more focused framework. The Strategy gives support to the practical work of the UN Counter-Terrorism Implementation Task Force (CTITF), established by the Secretary-General in July 2005 to ensure overall coordination and coherence in the counter-terrorism efforts of the UN system. Member States expressed support and appreciation for the work of the Task Force when they met to examine progress in the implementation of the Strategy in September 2008. In June 2009, the Secretary-General made initial arrangements to institutionalize the Task Force by establishing a CTITF-Secretariat in the Department of Political Affairs (DPA). CTITF aims to catalyze and mobilize counter-terrorism efforts of various UN system entities to assist Member States in implementing the Strategy.\textsuperscript{28}

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\textsuperscript{26} Ibid.
\textsuperscript{27} Ibid.
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However, in the strategy there are certain agendas and proposed targets which are required to be achieved by all the members of the international communities. Following is the full text of the Resolution and the Plan of Action:

- **Measures to address the conditions conducive to the spread of terrorism**
- **Measures to prevent and combat terrorism**
- **Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the UN system in this regard**
- **Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism**

The General Assembly held its first review of the implementation of the Strategy on 4-5 September 2008, and adopted a **resolution** reaffirming its commitment to the Strategy and its implementation. As one of the inputs to this process, the Secretary-General has compiled a **report** on activities of the UN system in implementing the Strategy.\(^{29}\)

On 9 September 2008, the Secretary General convened the first ever global **Symposium on Supporting Victims of Terrorism.** A **report** summarizing the key themes and recommendations of the Symposium and a **video summary** have been produced and were released at a discussion with Victims, Member States, and NGOs on 18 March 2009. In June 2009, the Secretary-General made initial arrangements to institutionalize the Task Force by establishing a CTITF-Secretariat in the Department of Political Affairs (DPA).\(^{30}\) CTITF aims to catalyze and mobilize counter-terrorism efforts of various UN system entities to assist Member States in implementing the Strategy.

### 4.1.3. International Conventions and Terrorism

Several conventions have come into force from time to time, to effectively face the challenges posed by ever increasing international act of terrorism, jeopardising the human life, fundamental freedoms and property across the globe. A wide range of subjects are being covered by these conventions, which are withering directly or indirectly related to counter the terrorism at international level. The resolutions of the General Assembly, the UN Charter itself and several covenants on Human Rights

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\(^{29}\) Supra note 8.

\(^{30}\) Supra note 21.
promising to protect and secure the civil, political, economic and cultural rights of the people of the world. The Genocide Conventions etc. are also there but a few which have shown a great concern and the anxiety to curb international terrorism.

Some of the international conventions which embody the international law and principles governing the checking of international terrorism, however, need a special mention in this regard:


This convention as well as, incidentally, other documents of a similar character, had been worked out in view of the events which the international community could not pass over. The convention, which is the result of the efforts of the League of Nations, consists of a preamble and 29 Articles and emphasizes that the convention is designed to make more effective the prevention and punishment of terrorism of an international character. The important provisions of the convention include, duty of every state to refrain from any acts designed to encourage terrorist activities developed against another state to make municipal legislations fixing liability for such acts, to conclude extradition arrangements.

Further, the convention also reaffirms the principle of international law in virtue of which it is the duty of every state to refrain from any act designed to encourage terrorist activities directed against another state.


The General Assembly on December 13, 1973 adopted the convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents. The convention came into force on February 20, 1977. As on September 17, 2001, the convention had 107 states parties. The convention defines an internationally protected person as a Head of State, minister of foreign affairs, representative or official of a State or an international organization that is entitled to special protection from attack under international law. The main object of the adoption of

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the convention was to render inescapable the punishment of the crimes committed against persons entitled to protection.\(^\text{32}\)

The convention required each party to criminalize and make punishable by appropriate penalties, which take into account their grave nature. The international murder, kidnapping, or other attack upon the person or liberty of an internationally protected persons: a violent attack upon the official premises, the private accommodations, or the means of transport of such person, threat or attempt to commit such an attack and an act constituting participation as an accomplice.

Although the ‘**Principle of Inviolability**’ of the diplomatic and diplomatic missions, the principle of protection of consular officers and premises and the inviolability of the representatives of the sending States and that of the members of the diplomatic staff of a special mission as well as the premises of that mission is envisaged by the provisions of adopted to specify the range of persons and objects, the commission of an act of violence against whom, or threat of such an act or attempt at committing one, or acting an accomplice in any such act.

The important provisions of the convention include, an elaborate definition of the term internationally protected person, the State parties to make certain offences punishable under laws such as murder or kidnapping or other attempts on the person or liberty of an internationally protected person, the State parties to take measures to establish jurisdiction over the crimes mentioned in the convention, ensure the presence of the offender for the purpose of prosecution or extradition.

**C). The International Convention against the taking of Hostages, 1979**

A review of the substance of terrorist acts falling within the scope of international law indicates that in a number of instances the commission of such offences involves the taking of hostages. Through international law already have some perceptions in force to ban hostages taking in specified circumstances. With a view to have a uniform international convention against the taking of hostages, under the auspices of UN, this

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convention has been concluded on December 7, 1979. As on September 17, 2001, the convention had 96 State parties.\textsuperscript{33}

The preamble of the convention clearly laid down that the taking of hostages is an offence of grave concern to the international community and that it is urgently necessary 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 and manifestation of international terrorist. The convention provides that any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a their party, namely, a State, an international inter-governmental organization, a natural or judicial person, or a group of persons, to do or obtain from doing any act as an explicitly or implicit condition for the release of the hostage commits the offence of taking of hostages within the meaning of this convention.

The convention under Article 8 stipulated that the State party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged to summit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. This is, therefore, in line with one of the major principles of the convention machinery assuming inescapable punishment of the crimes committed ‘extradition or prosecution’.

The convention makes it imperative for the signatory States to prosecute under criminal law or extradite and person committing, an act of hostage taking and also take appropriate measures of punishment, thus some progress towards resolving the question of hostage taking has been made through international law.

D). \textbf{Convention to Ensure the Safety and Security of the UN and Associated Personnel, 1994}

The General Assembly on December 9, 1994 adopted a convention the safety of UN and associated personnel.\textsuperscript{34} The convention consisting of 29 Articles covers UN personnel engaged or deployed by the Secretary-General as members of a military police or civilian component of an operation, as well as officials and experts on missions,

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associated personnel are defined as those assigned by a government or an international organization to carry operation.

The convention obliges States to establish jurisdiction over crimes including murder, kidnapping or threat of attack against UN and associated personnel. It defines the duties of States to ensure the safety and security of such personnel and to release or return those captured or detained. The convention calls on host States and the UN to quickly conclude arrangements on the States of the UN operation and personnel.35

The convention also addresses such issues as prosecution or extradition of alleged offenders. The convention came into force on January 15, 1999. As on September 8, 2003, the convention had 66 States parties.36


The General assembly on December 15, 1997 adopted an international convention for the suppression of terrorist bombings. The convention consists of 24 articles, as on convention has 26 States parties.

This is yet another convention added to the armoires of international law, for the suppression of terrorism bombings. In recent times, the world has witnessed the increasingly wide spread terrorist attacks by means of explosives or other lethal devices, in crucial areas of States, targeting innocent civilians and property. Accordingly responding to the need for strengthening the hands of international law to curb the terrorist bombings, at the initiation of UN General Assembly, the convention has come into existence.

The important provisions of the convention include, definition of the offence of terrorist bombings, making of domestic laws to punish such crimes, taking up of measures to establish jurisdiction to try and punish the offenders or otherwise, take steps to secure the presence of the offenders or extradite for facing the trial.

The convention defines a terrorist bomber under article 2 as a person who unlawfully and internationally delivers, places, discharges or detonates explosive or other lethal devices in, into or against a place of public use, a state or government facility, a public transportation system or an infrastructure facility: (a) with the intent to cause death

36 Ibid.
or serious bodily injury; or (b) with the intent to cause extensive destruction of such place, facility or system, where such destruction results in or is likely to result in major economic loss.\(^37\)

An attempt to commit the above offence shall also be treated as an offence under the convention. Further, any person who participates as an accomplice in an offence or any person who organizes or directs other to commit an offence shall also be considered to have committed an offence is committed within a single state, i.e., where the alleged offender is found in the territory of that State and the alleged offender is found in the territory of that State and no other State has a basis to exercise jurisdiction.

The convention provides under Article 8 that states shall either prosecute or extradite those accused of terrorist bombings within their territory and also calls on state to adopt further measures to present terrorism and strengthen international cooperation in combating such crimes. Article 9 of the convention lays down that the offence of terrorist bombings shall be deemed to be included as extraditable offences State parties before the entry into force of this convention. Further, State parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

F). Convention for the Suppression of Financing of Terrorism, 1999

The General Assembly on December 9, 1999 adopted the convention for the suppression of the financing of terrorism which was opened for signature on January 10, 2000. The convention provides that it is a crime for anyone to provide or collect funds to be used to carry out acts that are considered as a terrorist activities, as defined by existing treaties. The term ‘Funds’ has been defined under article 1 as assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, concluding, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shows, securities, bonds, drafts, litters of credit.

Any other act intended to kill or harm civilians in order to intimidate them or a government or international organization would fall under the treaty’s jurisdiction. The

treaty also compels countries to confiscate funds found to be intended for use in terrorist activities and to investigate information that a person who has or is alleged to have committed such a crime is in its territory. The convention came into force on April 10, 2002 after it received the required 22 ratifications.\textsuperscript{38}

It is to be noted that above conventions and a few other international and regional conventions have not been able to suppress the acts of terrorism. Mainly because these conventions whether international and regional conventions have not been ratified by most of the States of the world. For instance the convention on the prevention and punishment of crimes against internationally protected persons including diplomatic agents has been ratified only by 107 States by September 2001.\textsuperscript{39} It is submitted that one of the most effective ways in which the substantial progress could be achieved for curbing international terrorism lies in the universal adherence to these conventions by all or most of the States.

4.1.4. Human Rights and Terrorism

Terrorism brings suffering and miseries to human beings. It being immoral and inhuman act puts under threat the rights and freedoms of innocent people. It, therefore, abuses the fundamental human rights of the victims, particularly, the right to life, the right to physical integrity and the right to personal freedom. The increasing number of innocent persons including women, children and the elderly have been killed, massacred or maimed by terrorists in indiscriminate and random acts of violence and terror which in no case can be justified. It has put a question mark on the most essential and basic human right of the people, i.e. right to life. The General Assembly has repeatedly expressed its deep concern about the worldwide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedom and security impair the dignity of human beings.\textsuperscript{40}

Terrorist acts and methods, on the one, do provoke or give an excuse for serious violations of human rights and fundamental freedoms by the government which feel threatened by terrorism, and on the other hand, it has put into a difficult situation in

\textsuperscript{38} This Additional Protocol supplements the SAARC Regional Convention on Suppression of Terrorism, done at Kathmandu, November 04, 1987, available at http://mea.gov.in. (Last Viewed on April 17, 2009).
\textsuperscript{39} Ibid.
\textsuperscript{40} J.N.Sexena (1998), \textit{International Terrorism: State Terror and Human Rights}, p.46.
maintaining and safeguarding the basic rights of the individuals in accordance with the relevant international human rights instruments. The above account shows that there is inescapable link between terrorism and human rights violations. Terrorism is clear threat to the concept of human rights and underlines the creation of the UN and to the life and dignity of the individuals.41

It is unfortunate that the concept of human rights with reference to terrorism has not been taken up seriously by the human rights bodies though the problem of international terrorism in general has been under consideration eliminate international terrorism which endangers and jeopardizes 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 cause some people to sacrifice human lives, including their own, in an attempt to take radical changes. It was only in the year 1993 following the Vienna World Conference on Human Rights, the General Assembly, on the recommendation of the Third Committee started to adopt resolutions on Human Rights and Terrorism.42

The resolution on Human Rights and Terrorism adopted by the general Assembly since 1993 stated that terrorism creates an environment that destroys the freedom from fear of the people.43 They condemned all acts, methods and practices of terrorism, as activities aimed at the destruction of human rights, fundamental freedoms and democracy. They also refer that terrorism constituted gross violations of human rights perpetrated by terrorist groups.

Killing innocent people destroying property and fostering an atmosphere of alarm and terror amount not merely to a violation of the rights of the victims, but it also poses threat to the society and to the State. The authorities of the State which is responsible for bringing the terrorist violence to an end are entitled to respond with counter terrorist measures and may not be constraint by the normal limits of official measures for the prevention of ordinary crimes. In such cases, no doubt, there will be repression and violation of human rights of the terrorists but such acts shall be justifiable as they are taken in the larger interest of the society and the State. Terrorism is an assault against the

41 Id.
43 Ibid.
society and the institutions which protect the liberty and society of the citizens. It has to be curbed in order to maintain peaceful international relations and cooperation.

Punishment to the terrorists is not a new proposition. UN has managed to adopt a number of Conventions with specific cases of terrorism such as aircraft hijacking, taking of hostages, prevention and punishment of crimes against internationally protected persons. They all are anti-terrorist’s conventions and they provide either for extradition or for the prosecution so that terrorists may not go unpunished. Further, a few regional conventions are also anti-terrorists in the sense that they provide the application of the extradition or prosecution principle which is known by the maxim Aut Dedre Aut Judicare. This derogation to human rights is permissible if they are proportionate to the danger that those events represent.

4.1.5. International Criminal Court and Terrorism

By March 20, 2002, a total of 55 countries has ratified the treaty of setting up the new such court, which will have the power to try people accused of violating international humanitarian law.

The existing International Court of Justice (ICJ) in The Hague deals only with States, not with individuals. Just five more ratifications were needed before the International Criminal Court (ICC) comes into force. If the threshold of 60 countries would reached, the Rome Statute, setting up the ICC, would come into effect on July 1, 2002. Since the statute does not operate retrospectively, that data will mark the start of the court’s jurisdiction over genocide, crimes against humanity, and war crimes. If the US had not campaigned so hard against the ICC, it is possible that the treaty could have been ratified in time to try any captured terrorist accused of attacks on September 11, 2001.

However, individuals who commit war crimes and other grave offences after the statute comes into effect will be at risk of prosecution, even though the court’s prosecutor and judges will not be elected before next year.

4.1.6. Law Applied by the Court

Article 21 of the statute lays down the law which shall be applied by the court. It is mentioned that the application and interpretation of law must be consistent with

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45 Ibid.
internationally recognized human rights and be without any adverse distinction founded on grounds such as gender, age, race, colour, language, religion or belief, political or other opinion, national ethnic or social origin, wealth, birth or other status.

The court while deciding a case shall apply the general principles of criminal law. Article 33 of the statute says that the fact that a crime within the jurisdiction of the court has been committed by a person pursuant to an order of a government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless

- The person was under a legal obligation to obey orders of the government or the superior in question
- The person did not know that the order was unlawful
- The order was not manifestly unlawful

The statute also lays down that orders to commit genocide or crimes against humanity are manifestly unlawful. The fight against terrorism in 21st century will be a complicated task. Hence, a concrete action is required to combat terrorism. Unity of efforts requires ways to integrate the actions of various responsible agencies - national as well as international. For waging a successful war against terrorism, an international political will coupled with cooperation and coordination among the states is required.

4.1.7. United Kingdom (UK)- Anti- Terrorism Laws

The UK has a long history of exposure to terrorism coming from within, in the 1970’s the skinhead movement began among the working-class youths as a countermovement to the hippies; it also engaged in violent acts and racial harassments against the Asians and Blacksi.

Thus, it is normal for this state to have terrorism laws existing in its legislature long before the September 11, 2001 attacks on the US. The difference is that after these attacks which coincided with the rise of radical Muslims in European countries generally, more attention has been given to national terrorism, security and asylum laws and acts. In the years following the September 11th attacks, a large number of Muslims have been arrested and detained; and most of the time released without being charged. Some European governments have passed laws with the intention of tightening security and

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seeking more protection, however, these laws are greatly affecting one's personal life, liberty, and in many cases future.

The rise of radical Muslims in the UK and other European States could be the consequence of a number of reasons both national and international such as the military presence of these countries in the Middle East under the banner of the war on terror, and/or the discrimination faced by the Muslim minorities on national levels, and segregation from the dominant society. Radicalism could also be due to "public provocation" acts such as the recurring publication of the "Danish cartoons" of Prophet Mohammed (PBUH) under the notion of defence of freedom of expression, while knowing that laws criminalizing holocaust denial and incitement show that there could be limits to freedom of expression in Western societies.

After worldwide criticism, the British Government has passed the Terrorism Act, 2000. Britain had been fast turning into a haven for terrorist groups and organizations that used the loopholes in the country’s law to carry on their operation unhindered. The UK's Home Office states that the Terrorism Act 2000 is the primary piece of counter-terrorism legislation and contains the most vital counter-terrorism measures. This act aims at tackling international terrorism and has replaced previous anti-terrorism temporary legislation that specifically dealt with Northern Ireland.\(^{48}\) The salient features of this Act are as follows

- **The definition of terrorism** is drawn very widely. It includes actions that cause serious damage to property, interfere with or seriously disrupt electronic systems or endanger public health. It matters not which governments are being influenced or where the actions take place. Thus direct action groups, groups supporting struggles against repressive regimes, or even unions on strike in the health sector could be classed as terrorist, with all that implies, under this bill.

- **The home secretary can prescribe organizations he believes are concerned with “terrorism”**. Once proscribed membership of, professed membership of and support for an organization becomes an offence punishable by 10 years in prison. Both the wide definition of terrorism and the vagueness of the grounds for proscription could

\(^{48}\) Ibid.
lead to this being abused to shut down legitimate protest organisations. It is also there that proscription occurs **without a case being proved in court**.

- Powers to arrest and search without a warrant are granted where police suspect someone to be a terrorist.
- Powers to stop and question anyone in Northern Ireland is granted with respect to a “recent” explosion or incident that endangered life or to anyone killed or injured in recent explosion or incident endangering life. Failure to stop and answer the questions to the best of your knowledge and ability would result in a fine.
- The burden of proof is reversed for several offences, so that the defendant has to prove his or her innocence, rather than the prosecution proving guilt.
- Collecting or possessing information likely to be useful to terrorists is made an offence.
- **Possession of an article in circumstances which arouse suspicion that it is for terrorist purposes is made an offence.**
- Wearing clothing in public that arouses suspicion that you may be a supporter or member of a proscribed organisation, such as the IRA, is made an offence. You could be banged up simply for wearing clothes that made the authorities suspicious of you!
- Failing to inform the police of any suspicions or knowledge you have that someone might be engaging in terrorist activities is made an offence. Investigative journalists look out!
- Scheduled offences in Northern Ireland will be tried without a jury, but the court will still have the same powers as a crown court in such a case.
- Arranging a meeting which will be addressed by someone belonging to or professing to belong to a proscribed organisation will become an offence. A meeting is defined as a meeting of three (3) or more people.

In response to the September 11 attacks, Britain passed the **Anti-terrorism, Crime and Security Act 2001**; which gives more powers to the police to investigate terrorist acts and other "serious" crimes. However, following the 7th of July London bombings the **Prevention of Terrorism Act 2005**, also known as the Control Order Act, were introduced. The 2005 Act, permitted control orders to be imposed on suspects of terrorism (UK nationals or not, and whatever the nature of the terrorist
activity). Breach of such order without valid justification is considered a criminal offence and meets a sentence of up to 5 years. In 2006, a more "controversial" legislation was passed by the government. **Terrorism Act 2006**, created a number of new offences which once brought to force would be considered a criminal offence to commit. Such offences cover Acts Preparatory to Terrorism, Encouragement to Terrorism, Dissemination of Terrorist Publications, and Terrorist Training Offences. The 2006 Act, also amends existing legislation–particularly the 2000 Act,- as it introduced warrants to enable the police to search any property owned or controlled by a terrorist suspect, extended terrorism stop-and-search powers to cover bays and estuaries, extended police powers to detain suspects after arrest for up to 28 days (though periods of more than two days must be approved by a judicial authority), improved search powers at ports, increased flexibility of the proscription regime, including the power to proscribe groups that glorify terrorism. The Terrorism Act 2006 came in after the 7 July London suicide bombings. It was the source for the Commons row over 90 day’s detention, with MPs finally settling on 28 days. It also introduced offences including preparing a terrorist act and glorification of terrorism.

4.1.8. **United States (US)- Anti- Terrorism Laws**

Since its passage following the September 11, 2001, attacks, the Patriot Act has played a key part and often the leading role in a number of successful operations to protect innocent Americans from the deadly plans of terrorists dedicated to destroy America and our way of life. While the results have been important, in passing The Patriot Act, Congress provided for only modest, incremental changes in the law. Congress simply took existing legal principles and retrofitted them to preserve the lives and liberty of the American people from the challenges posed by a global terrorist network. Congress passed the **US Patriot Act** in response to the terrorist’s attacks of September 11, 2001. The Act gives federal officials greater authority to track and intercept communications, both for law enforcement and foreign intelligence gathering purposes.

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Undoubtedly, the US Patriot Act contains a number of immigration provisions that will improve our ability to identify and either exclude or prosecute aliens with terrorist ties. It is equally clear, however, that this new law represents only a first step in the immigration-policy reforms that are necessary to combat terrorism effectively and to protect Americans from future terrorist attacks.

It seeks to further close borders to foreign terrorists and to detain and remove those within U.S. borders. It creates new crimes, new penalties, and new procedural efficiencies for use against domestic and international terrorists. Although it is not without safeguards, critics contend some of its provisions go too far. The so-called Patriot Act in the US is applicable to non-citizens as far as definition is concerned and the American Civil Liberties Union is opposing it and this Act is likely to be challenged in the courts.

The US House of Representatives passed the Anti-Terrorism Bill on October 24, 2001, with a vote of 357 to 66. The Senate adopted the legislation very next day with 98 to 1 vote. The act provides expanded powers to the federal government to fight terrorism in the wake of September 11 attack on US. The House approves the measures that gives federal law enforcement agencies broader wiretap powers as well as rights to keep suspect immigrants in detention.

On September 24, 2001 US released a list of Foreign Terrorist Organizations (FTO) and vowed to wage a war against them. It froze their assets to starve them financially. It also allowed blocking US assets of foreign banks who refuse to freeze terrorist assets abroad.

4.1.9. Pakistan Anti Terrorism Laws

In 2002, ordinance was issued for the inclusion of military officers in the panel of judges to try terrorist offences. This not only undermines the independence of the judiciary but makes the anti-terror law in the country even more draconian. Described as necessary that appropriate administrative and judicial measures be adopted to fight a spate of terrorist activities and commission of heinous offences in Pakistan these anti-

terrorism laws opened the door to grave violations of human rights including the right to life, the prohibition of torture, the right to liberty and security and the right to fair trial. Inter alias, they provide for the creation of anti terrorist courts and give wide powers of arrest and interrogation to the police and army. Amnesty International has criticized the legislation in its report,

It is important to note that the existing legal and judicial system is already equipped to deal with offences referred to in the act. The problem then seems to be a lack of implementation, not a lack of laws. However, in an attempt to hide this inefficiency, Pakistan adopted the anti-terrorist acts which provide speedy trial without necessary guarantees for the accused, unfair trials and license to kill etc.

The right to shoot and kill 1997 Anti-Terrorism Act Under Section 5(2)(1): an officer of the police, armed forces and civil armed forces may: (i) after giving prior warning use such force as may be deemed necessary or appropriate, bearing in mind all the facts and circumstances of the situation, against any person who is committing, or in all probability is likely to commit a terrorist act or a scheduled offence, and it shall be lawful for any such officer, or any superior officer, to fire, or order the firing upon any person or persons against whom he is authorized to use force in terms hereof The enactment of broad provisions empowering summary executions is not the way a modern civilized state ought to act. Rather the government should set strict limits to the circumstances in which firearms could be used to prevent arbitrary killing by the security forces. The broad powers given to the police and consequently, to the military and civil armed forces contravene major international standards of human rights.

Indemnity for acts done in good faith: Section 39 of the act says: No suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under this act. This is tantamount to providing impunity to the security forces for abuses, including extra judicial killings. To explicitly place any acts of police or other law enforcement personnel, including possibly random resort to lethal force, outside scrutiny and accountability may give law enforcement personnel the impression that they may commit such acts with impunity if only they can claim to have done them in good faith. It breaches a basic requirement of the rule of law,
namely its equal and exception less application to everyone. **Confessions to police made admissible in court:** The provision in the act in section 26 which says: The special court may, for admission of the confession in evidence, require the police officer to produce a video tape together with the devices used for recording the confession.

**Article 14(2) of the Constitution of Pakistan prohibits the use of torture, though only in the limited context of extraction of confessions:** No person shall be subjected to torture for the purpose of extracting evidence. However, Pakistani law enforcement officials, to extract confessions from the accused, routinely use torture. Lending greater legal weight to confessions and putting pressure on police to speedily resolve crime may indirectly contribute to the continued and perhaps increased use of torture. **The right to be tried in a public place without prejudice to the defendant:** Section 15 of the 1997 Anti-Terrorism Act states,

The government may direct that for the trial of a particular case, the court shall sit at such place including the place of occurrence as it may specify. This is intended to expose the defendant to public expressions of outrage, anger or even violence for his deeds, to humiliate him and to deter others by the specter of public exposure; it does not appear to serve the purpose of helping the judiciary establish the truth and do justice in a detached circumspect manner and in calm circumstances.

**The right to be presumed innocent:** The act lays down that only special courts may grant bail to people tried for offences under the act but they may not release a defendant on bail if there are reasonable grounds for believing that he has been guilty of the offence with which he has been charged and unless the prosecution has been given an opportunity to show cause why he should not be released. This gives the prosecution the right to veto to deny bail.

**The right to appeal:** Section 31 of the act reads: A judgment or order passed, or sentence awarded, by a special court, subject to the result of an appeal under this act shall be final and shall not be called in question by any court. The possibility of the defendant to appeal to a court in the regular judicial system, either to the provincial high court or the Supreme Court of Pakistan is therefore excluded. People convicted and sentenced by the
special courts are clearly disadvantaged in so far as their legal remedies are restricted: they have only one possibility of appeal, whereas people convicted by regular courts may also appeal to the Supreme Court. This provision violates the principle of equality before law laid down in the Constitution of Pakistan. It is one of the fundamental principles of international human rights law. Moreover, the right to appeal is restricted in so far as it is subject to severe time limitations. The defendant may not in seven days be able to present an adequate appeal while the prosecution has 15 days for the appeal.

Moreover, the right to appeal of those facing the death penalty also appears to be seriously infringed under the act. Death penalty: **Under Section 7(1) of the 1999 Amended Anti-terrorism Act, for terrorist acts resulting in death, courts have to mandatory impose the death penalty.** This does not give any discretion to the judiciary. Section 22 of the 1997 Anti Terrorism Act, The government may specify the manner, mode and place of execution of any sentence passed under this act, having regard to the deterrent effect which such execution is likely to have?. Section 22 opens the possibility for public executions of the death.

### 4.1.10. Role of South Asian Association for Regional Cooperation (SAARC) to Combat Terrorism

The SAARC was established in 1985 with India, Srilanka, Maldives, Bhutan, Bangladesh, Nepal and Pakistan, as its seven members. It is for the first time in its 22-year-old history that the association that groups Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka has expanded its membership. The 13th SAARC Summit in Dhaka in November 2005 had approved Afghanistan’s request for membership. The issue of combating terrorism has been on the active agenda in the SAARC summit since its inception.

The two days meeting of the Foreign ministers of SAARC meeting at Dhaka in the second week of August 1986 condemned terrorism and called for concrete steps to fight it. But the summit of the SAARC which was concluded on November 19, 1986 in New Delhi failed to define terrorism. Thus one of the most formidable problems facing the legal control of terrorism is the precise definition of terrorism.\(^53\)

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On November 4, 1987, the member States of the SAARC adopted SAARC Regional Convention on Suppression of Terrorism. Article 1 of the provision provides that subject to the overall requirements of the law of extradition, conduct constituting any of the law of extradition, conduct constituting any of the following offences, according to other law of the contracting States shall be regarded as terrorist and for the purpose of extradition 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:

- An offence within the scope of the convention of the suppressing of Unlawful Seizure of Aircraft, signed at Hague on December 16, 1970.
- 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.
- 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.
- 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.
- 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.
- An attempt or conspiracy to commit an offence described in sub-paragraphs, aiding, abetting or counseling. The commission of such an offence or participating as an accomplice in the offences so described.

Article III of the convention provides that the provisions of all extradition treaties and arrangements applicable between contracting States are hereby amended as between contracting States to the extent that they are incompatible with this convention. Article IV, however gives very wide power and discretion to the contracting States with regard to extradition. It provides 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 the reason of the request for the surrender or return of a fugitive offender not being made in good faith or in the interests of the justice or any other reason it is unjust or inexpedient
remarked. “The law of extradition has obstructed international reaction against terrorism though all States agree that terrorism should be effectively suppressed.”

With a view to give effect to SAARC Regional Convention on Suppression of Terrorism, on April 26, 1996, the Parliament enacted the SAARC convention (Suppression of Terrorism), 1993. Reference may also be made to the Delhi declaration adopted by the Eight summit of SAARC held at New Delhi on May 2-4, 1995. Though this declaration the Heads of the State or Government expressed serious concern on the spread of terrorism in and outside the region and reiterated their unequivocal condemnation of all acts, methods and practices of terrorism as criminal. They deplored all such acts for their impact on life, poverty, socio-economic development and political stability as well as on regional and international peace and cooperation. They once against emphasized that highest priority should be according to the enactment of enabling legislation at the national level to give effect to the SAARC Regional Convention on Suppression of Terrorism.54

The 11 SAARC summit held at Kathmandu decided that setting aside, mutual differences the members emphasized on implementing the UN Security Council and anti-terrorism resolution 1373 in totally. The SAARC declaration emphasized the need for international cooperation to combat terrorism. It asserted that terrorism violates fundamental values of the UN and the SAARC Charter and constitutes one of the most serious threats to international peace and security in the 21 century. The member States unanimously agreed that regional cooperation which includes police-networking could go a long way in rooting out this scourge which afflicts almost all members (Apart from Pakistan and Bangladesh all the members implemented domestic legislations against terrorism).55

The 15 SAARC Summit in Colombo throws some light on the issues and challenges facing the forum and offers some suggestions to improve the functioning of the SAARC in order to curb terrorism. Eight SAARC nations, namely Sri Lanka, Pakistan, Nepal, Afghanistan, Bhutan, India and Maldives met in Colombo on 2-3 August, 2009 essentially to discuss issues including trade imbalance, poverty, food crisis,

price-rise, climate change and terrorism. Rising tensions in Kashmir, deadly bombs blistering through Indian cities with Indian media-cum-intelligence speculation that Muslim “militants” are behind the series of blasts, issues of nuclear power and prestige, these, rather than poverty alleviation of a third of the world’s population who call this region their home, will most likely dominate the talks even as the summit winds down today. Its non cooperation is best reflected by the fact that intra-regional trade of SAARC is still said to be only approximately 5.5% of the total trade of the member countries. In negotiations it is more a focus on the differences rather than the similarities that hold sway.

While discussing “terrorism” the leaders always skip the major component of terrorism, the state terrorism. Unfortunately, the issue of so-called “terrorism” has been haunting the SAARC, rather than any joint economic enterprises. India, the major player in the region with its new economic muscle got out of the public sector sales, has been using the SAARC to strengthen its hold over Kashmir and to warn the freedom seeking Kashmiris and hence “terrorism” has remained the focus of its addresses. That seems to be the crux of the weakening scenario in the South Asian region. Invariably acts of terrorism take place on thieve of international summits and SAARC is no exception. That India remains focused on anti-Pakistanism and anti-Kashmiris is not news for the world. It is because India occupies its neighbor Kashmir that terrorism is sustained and promoted by New Delhi to gain sympathy form the US-led West. India also is always talking about combating the menace of “terrorism” but the facts are not unknown to SAARC.

Terrorism in Kashmir is the creation of New Delhi strategists to suppress the freedom movement and secret grave-yards characterize Indian democracy and neo-Gandhian approach to settle crises. New Delhi believes it should control the Kashmiris seeking their sovereignty back from occupier India with an iron hand which India has successfully done so far. India slams Pakistan as a routine matter to evade any serious business in SAARC.

Violence has always been on the top of the agenda of SAARC summits. A declaration was made in 1987 at the Kathmandu summit due to the increase in sectarian violence in Sri Lanka and the rise of militancy in J&K. The myriad problems of SAARC
countries cannot be solved through a one-off resolution on terrorism. Security, prosperity and economic integration can only be achieved by the strength of equality, unity, fraternity and soft borders. Due to these opposing forces, SAARC has failed to achieve its objectives of integrating the region as an economic, social, cultural and scientific entity. This is highly evident when it comes to the free movement of peoples across the region. There are visa restrictions, mostly for visitors traveling from Sri Lanka, Pakistan and Bangladesh to India.

It is been generally noticed by the Heads of State or Government that terrorism violates the fundamental values of the SAARC Charter and the UN, and constitutes one of the most critical threats to international peace and security. The Heads of State or Government expressed their satisfaction at the ratification of the Additional Protocol to the SAARC Convention on Suppression of Terrorism by all Member States and called for putting in place effective mechanisms for its implementation. They strongly condemned terrorist violence in all its forms and manifestations, agreed that terrorism is a challenge to all States and a threat to all of humanity, and cannot be justified on any grounds. They underlined that there should be no double standards in the fight against terrorism. In view of the continuing and recent terrorist attacks in the region and their impact on security, economic stability and social development, they expressed their determination to unite in their efforts in preventing and combating terrorism. They also noted the UN Security Council resolution 1373 (2001) in this regard.

However, the Heads of the States called for early and effective implementation of the Additional Protocol to the SAARC Convention on Suppression of Terrorism. They underscored the need for an early conclusion of a Comprehensive Convention on International Terrorism. They also agreed that Member States would strengthen their cooperation in such important areas as exchange of information, coordination and cooperation among their relevant agencies. They decided that SAARC Interior/Home Ministers would meet annually preceded by a meeting of the Interior/Home Secretaries. The Heads of State or Government directed that concrete measures be taken to enforce the provisions of the Regional Convention on Narcotic Drugs and Psychotropic Substances through an appropriate regional mechanism.
4.1.11. Role of ASEAN Regional Forum (ARF) to Combat Terrorism

The ASEAN Regional Forum (ARF) was established in 1994, with the intent to “foster constructive dialogue and consultation on political and security issues of common interest and concern” and to “make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia-Pacific region” which operates on the principles of non-intervention, informal dialogue, and non-binding confidence building measures. There are 10 ASEAN members, in addition to that there are extra additional members among them India is one of an active member. The 10 ASEAN members – Brunei Darussalam; Cambodia; Indonesia; Lao Peoples Democratic Republic; Malaysia; Myanmar; Philippines; Singapore; Thailand; and Vietnam. Non ASEAN members – Australia; Bangladesh; Canada; the People’s Republic of China; the European Union; India; Japan; North Korea; South Korea; Mongolia; New Zealand; Pakistan; Papua New Guinea; Russia; East Timor; and the United States.

In their counterterrorism mandate which was set forth at the 2002 ASEAN Regional Forum, where Senior Officials provided recommendations on the future direction of the ARF. Recommendations included plans to strengthen measures to combat terrorism including: the enhancement intelligence-sharing, police cooperation, and financial measures against terrorism, the establishment of an Inter-Session Group on Counter-Terrorism and Transnational Crimes (ISM on CTTC), and the enhanced role of the ARF Chair. The majority of the ARF’s regular work on counterterrorism takes place under the auspices of the In ISM on CTTC and the Inter-Session Group on Confidence Building Measures. Topic specific seminars and workshops have also been held where ARF participants meet, share best practices, discuss cooperative counterterrorism efforts and provide recommendations for the meetings of senior officials and foreign ministers.

In July 2007, operating rules were established for the creation of “Friends of the ARF Chair,” an ad hoc group designed for quick reaction to emergencies. The group will consist of the current ARF Chair along with three foreign ministers to be chosen by all ARF participants based on the issue at hand.

In addition to the official dialogue process, the ARF also includes a “Track II” process, which seeks to incorporate contributions from non-governmental experts primarily from the ASEAN Institutes of Strategic and International Studies and the Council on Security Cooperation in the Asia-Pacific.

In 2004, ASEAN established the small ARF Unit, which is located within the ASEAN secretariat. The ARF Unit works to increase interaction with regional and international organizations. Aside from the ARF Unit, ARF counterterrorism responsibilities primarily fall on the individual foreign ministers at the ISMCTTC. The ARF Unit does not have a mandate to monitor compliance of the voluntary commitments made by ARF countries on a number of counterterrorism-related matters.

4.1.12. Achievements of ASEAN Regional Forum (ARF)

Since its formation in 1994, the development of ARF has been deliberate and incremental. As conceived in the 1995 ARF Concept Paper, ARF has proceeded from the promotion of confidence-building measures, to the development of preventive diplomacy mechanisms, and ultimately to conflict resolution.

ARF leaders have issued non-binding statements since 2001 related to counterterrorism on a range of issues, including the financing of terrorism; border security; piracy and maritime security; transportation security; non-proliferation; and information sharing, intelligence exchange and document security. In these statements, ARF participants have, among other things, have agreed to improve border security by adopting measures proposed by ICAO, the IMO, and the WCO. This includes a commitment to implement ICAO standards for Machine Readable Travel Documents. It also issued a statement supporting national implementation of UN Security Council Resolution 1540, which focuses on taking steps at the national level to prevent weapons of mass destruction and their means of delivery from getting into the hands of terrorists and other non-state actors.

Until recently, the ARF focused primarily on short-term preventative measures against terrorism, such as maritime security. Through nonbinding consensus statements, workshops, and seminars, ARF has aimed to prevent terrorist attacks at ports and on ships in the highly trafficked waters of the region. The establishment of the “Friends of the ARF Chair” quick-action group has the potential to act more swiftly and decisively in
implementing the UN Strategy. To date, however, the ARF’s counterterrorism contributions have been limited by its weak institutional capacity and strict adherence to ASEAN principles of non-interference.

The 2007 ISM on CTTC focused on addressing the “conditions conducive to the spread of terrorism,” which involves a “sustainable strategy to win the hearts and minds of the people.” ARF participants reiterated the importance of “nation-building measures such as the provision of basic economic and social services, the importance of good governance and institution-building, the necessity of achieving national political consensus through reconciliation and negotiation, and the importance of national will.” The participants officially endorsed the UN’s “Alliance of Civilizations” Initiative as well as the UN Global Strategy Counter-Terrorism Strategy. To this end, the ARF convened a "Special Informal Session on Inter-Civilisational Dialogue," and has actively promoted initiatives aimed at facilitating Inter-Civilizational Dialogue in the region, such as the Asia-Pacific Inter-Faith Regional Dialogue.57

On the future direction of the ISM on CTTC, the participants in the 2007 meeting suggested that ARF efforts to counter terrorism and combat transnational crime continue to encompass concrete cooperation such as information sharing among civilian and military agencies, capacity building, and practical cooperation in areas such as anti-money laundering and maritime security.

It is unfortunate that terrorism is being committed by the State for achieving their own ends in spite of its prohibition. It is so mainly because International Law regarding the implementation and enforcement of its rules is not as strong as it should be. Weaknesses have resulted in committing the terrorism by states especially by those which are enormous and powerful. It has become a part of the system and as a weapon of warfare used by a government against another government. If States are at all serious to curb terrorism, they themselves have to realize that the immoral and inhuman act of terrorism brings sufferings and miseries to human beings. Its elimination therefore depends primarily upon the political will of the States.

57 Ibid.
4.2.  LEGAL REGIME IN INDIA TO CURB TERRORISM

After the discussion on the international efforts to curb the menace of terrorism, it is also pertinent to have a mention of Indian efforts in this regard. International measures alone are not capable in combating the acts of terrorism unless States themselves are not enthusiastic in suppressing it. The General Assembly on realizing the importance of the role of the States in this regard has called on States to take ‘appropriate measures’ at the national level and to co-operate with each other to eliminate terrorism. To deal with the problems of terrorism India has taken several initiatives at various levels.

4.2.1.  At the International Level:

All too often we are reminded that terrorism continues to inflict pain and suffering on people’s lives all over the world. Almost no week goes by without an act of terrorism taking place somewhere in the world, indiscriminately affecting innocent people who just happened to be in the wrong place at the wrong time. Countering this scourge is in the interest of all nations and the issue has been on the agenda of the UN for decades.

Therefore, being as an active member of UN, right from its inception, India supports a strengthened and revitalizes UN with its various organs functioning within their mandates in accordance with the UN Charter. India supports an enhanced role for the UN in development and development cooperation dialogue. India firmly believes that development should be central to UN’s agenda and be pursued in its own right. It is an indispensable prerequisite to the maintenance of international peace and security. India has actively participated in all reforms and restructuring exercises that could enhance the capacity of the UN in the fulfillment of its primary tasks.58

- India has been supportive of all efforts, particularly in the UN to combat terrorism and has played a leading role in shaping international opinion and urging the international community to prioritize the fight against terror. Its consistent and basic stand before the international community has been that-
  - There could be no justification for terrorism on any grounds: religious, political, ideological or any other.
  - The fight against terrorism must be given the highest priority

To be effective, the fight against terrorism has to be long term, comprehensive and sustained.

Strengthening of international cooperation is vital to ensure that action is not restricted simply to the perpetrators but also encompassed States, which sponsor, support, or provide safe haven to terrorists.

Ad hoc and selective actions have limited chances of success and compartmentalization of actions in terms of regions, religions or organizations is bound to be counterproductive

4.2.2. Multi-Lateral Arrangements and Agreements

- It welcomed UN Security Council Resolution 1373 and is fully committed to implement it. It has submitted its national report on measures taken to implement UN Security Council Resolution 1373 in December 2001 and also submitted a supplementary report on specific queries by the Counter Terrorism Committee under the Security Council.

- It is signatory to all the thirteen UN Sectoral Conventions on Terrorism. It has been supportive of all measures within the UN General Assembly, the sixth Committee and the UN Security Council. It has supported UN Security Council Resolution 1269 and 1368, which clearly identify terrorism as a threat to international peace and security. In addition, India has supported and fully implemented Resolutions 1267, 1333 and 1363 relating to terrorism by the Taliban Regime in Afghanistan.

- It has piloted the comprehensive Convention on International Terrorism (CCIT) in the UN with the objective of providing a comprehensive legal framework to combat terrorism

4.2.3. Regional Arrangements

- At the regional level, India is a party to the SAARC Regional Convention on Suppression of Terrorism 1987 and has enacted the enabling legislation in the form of the SAARC Conventions (Suppression of Terrorism Act) 1993.

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60 Ibid. Dr54
• The ASEAN Regional Forum (ARF) was set up in 1994 as a regional security dialogue platform with ten ASEAN countries of which India is also a member

4.2.4. Bilateral Arrangements

India has entered into three types of bilateral treaties to combat international terrorism

1. Agreements to combat terrorism and organized crimes, drug related offences, etc. Such agreements are essentially framework agreements to facilitate the exchange of operational information and development of joint programmes to counter organized crimes and terrorism

2. Extradition Treaties to facilitate transfer of fugitive offenders and suspected terrorists. Such treaties have been signed with seventeen countries, signed but not exchanged with eight countries in addition to extradition arrangements with eleven countries.

3. Bilateral Treaties on Mutual Legal Assistance (MLATs) in criminal matters to facilitate investigation, collection of evidence, transport of witnesses, location and action against proceeds of crime, etc. Such MLATs have been signed with ten countries in addition to those signed but not exchanged with nine countries.

4.2.5. General Agreements

In order to combat growing cross border terrorist activities and insurgency problems, the armies of India and Bangladesh will jointly conduct a counter terrorism exercise in the northeastern state of Assam. The training would be held from Feb 22 to Mar 7, 2009 at Jorhat in Assam. The joint exercise would be held as part of confidence building measures between both the neighbouring nations threatened by terrorism. Five officers and 15 other personnel from Bangladesh will be taking part in the exercise and will train with the special para-commandos of the Indian Army. The exercise by Indian and Bangladeshi Special Forces will comprise of airborne operations. The modalities of the combat maneuvers were finalised during a military conference held in Kolkata December 2008.

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61 Jorhat is located on the fringes of dense forests and riverine plains of Assam, India.
India has been training and also conducting counter-terrorism exercises with various countries in Mizoram. With India keen on securing Bangladesh’s firm cooperation in fighting anti-Indian terror and insurgent outfits operating from its soil, the armies from the two countries will come together to hold their first-ever counter-terrorism exercise. The Indian army and the security forces have been fighting the ULFA cadres in the state.62

Even Indian and Chinese army personnel celebrated as they pulled the curtains down on their nine-day joint anti-terrorism exercise in Belgaum, Karnataka. The joint drill, named "Hand in Hand 2008", was held here from December 6 to 14, 2008, and was a continuation of the ongoing military cooperation between both countries as part of the Annual Defence Dialogue (ADD) initiated in 2006.

Chinese troops from the 1st Company of the Infantry Battalion of the Chengdu Military Area Command and troops from India's 8 Maratha Light Infantry Battalion participated in the exercise. Both Indian and Chinese officials said such exercises help enhance military to military cooperation. The experience has been fantastic. Indian troops have got much more experience as far as counter-terrorism is concerned, than the PLA troops, since 1950s, India is fighting terrorism. Contingents of both countries trained in joint tactical manoeuvres and drills, interoperability training and joint command post procedures. A joint directing panel of Indian and Chinese army officials supervised the training and manoeuvres. The first-ever joint army exercises between both countries were held in Kunming, China, in 2007.63

This drill is aimed to enhance mutual understanding and trust and strengthen bilateral exchanges in the field of anti-terrorism and promote the development of the bilateral strategic partnership. The aim of this programme is also to safeguard regional stability and security.

4.3. LEGAL POLICIES OF INDIA FOR RAPPROCHMENT PROCESSSS

There is also a requirement to look into India’s legal policies with its neighbouring countries in order to curb the scourge of terrorism. As this revision of legal

63 Ibid
policies is a kind of indicator which indicates about where all these nations are standing and what more is required by India and its neighbouring countries towards merging the diverse positions.

4.3.1. India and Pakistan

India and Pakistan have fought four wars over Kashmir and have held several rounds talks to resolve this old issue, but without any tangible success. The only progress thus far has been that India has agreed to discuss the issue as a part of the composite dialogue process and Pakistan has shown willingness to explore options other than the UN resolutions on Kashmir. Although both India and Pakistan appear trying to breakaway from the past and think afresh on Kashmir, yet both fail to bring about any significant policy swifts. For Pakistan, it still is the ‘problem of Kashmir’, i.e Kashmir a ‘disputed territory’ and an ‘unfinished agenda’ of partition; for India, it is the ‘problem in Kashmir; suggesting that the accession of Kashmir to India is final and complete and the challenge now remains of addressing cross-border terrorism, and development and grievances of the people of Kashmir.

The thaw and improvement in relations could lead to atleast re-establishment of a balanced relationship between the two countries is closely linked to the resolution of the Kashmir issue. Various policies and steps are taken by India and Pakistan which fathoms the prospects of a rapprochement on Kashmir and combating cross border terrorism.  

A). Establishment of Bilateralism

For the first time in Shimla Agreement, 1972, between India and Pakistan, bilateralism was considered as the basis for all Indo- Pakistan negotiations purposes to govern the relations between the two countries. This is also mentioned there that two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. It was also mentioned in it that in J&K, the Line of Control resulting from the ceasefire of December 17, 1971, shall be respected by both sides without prejudice to the recognized position of either side.

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Almost three decades later, the Lahore Declaration signed between Atal Bihari Vajpayee and Nawaz Sharif on February 21, 1999, reiterated bilateralism enshrined in the Shimla Agreement. Similarly, January 6, 2004, Indo-Pakistan joint statement also makes similar commitments.\(^6\)

However India’s position was vindicated when cross border terrorism as a serious threat to stability was put on the agenda of the composite dialogue process in Male in 1997, but with very little success so far. In the last round of talks held on September 6, 2004, in New Delhi, no progress was made. India talked of ‘cross-border terrorism’ whereas Pakistan talked of ‘human rights’ abuses in J&K. The divergence in the interpretation of terrorism seems to be shaped up the two sides but larger stand on the Kashmir issue.

B). India’s Kashmir Policy

In contrast to Pakistan’s stand, India considers the J&K as an internal matter and focuses on addressing it internally. India’s thrust has been to accommodate the grievances and demands of the people of J&K within the constitutional framework and deal with the ‘problem in Kashmir’. Combating cross-border terrorism is the main ingredient of India’s Kashmir policy. Weeding out terrorism is the core of India’s multi-pronged strategy in J&K. It has following characteristics:

1. Directly countering terrorism through security measure undertaken by J&K police and security forces.
2. Accelerating economic development, improved provision of services and good governance to maintain satisfaction level among the people of J&K.
3. Willingness to talk to the people of J&K, especially those who eschew the path of violence.
4. Strengthening the political process through elections at all prescribed levels and encouraging open debates.

India has sought to find solutions to the problems in J&K at the local level. It has adopted a range of measures to offset the impact of terrorism on the people with an

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emphasis on planned and balanced regional development, building/strengthening physical and social infrastructure and improving the productive potential of the state. Indian Government has taken several peace initiatives and also achieved to some extent.

i). Border Fencing: In a significant step towards checking infiltration of terrorists in J&K, a decision was taken to fence the LOC, which has turned out to be a very effective measure in countering terrorism. According to the Ministry of Home Affairs’ annual report 2003-04, on the India – Pakistan border, out of 2,003km, a length of 1,641 km has already been fenced.\textsuperscript{67} Besides, fencing has been done in the Gujarat and Rajasthan sectors, while in Jammu it is about to be completed.

The Centre and the J&K Government jointly adopted several other measures also for combating terrorism. These include strengthening border management to check infiltration, pro-active action against terrorist within J&K, gearing up intelligence machinery, greater functional integration through an institutional framework of Operations Groups and Intelligence Groups of the unified headquarters at various levels, and improved technology, weapons and equipments for security forces and action as per law against ground supporters of the terrorists. Checking infiltration through improved border management has also been undertaken.

ii). Democracy: In spite of internal turmoil, democracy has prevailed in J&K. The conduct of municipal elections in January – February 2005, after a gap of 27 years in all the 14 districts, is another illustration of the State’s democratic success and the people’s resolve to come out to vote in defiance of the boycott call from terrorist groups. It is also reaffirmed people’s faith in democracy. The overall voter turnout was between 30-35 percent. Qazigund, in Anantnag, a distributed area, recorded 78.9 percent turnout. Pulhwama with 56.6 percent, Doru with 65.99 percent and Jammu with 65 percent showed much promise for the troubled state. In Srinagar, the terrorist groups boycotted elections and even gunned down several candidates, both before and after the elections yet, ignoring all this, people came out to vote and the turnout was recorded at around 20 percent. The positive outcome of these elections was that mainstream parties returned to

the democratic fold. Another striking feature of these elections was the large turnout of women voters. People’s participation in this election gave a strong message – “freedom can wait but development cannot”.

iii). **Economic Development**: Economic development of J&K has been another concern of the Centre. The Central Government envisaged planned and balanced regional development for building physical, economic and social infrastructure, thereby improving the productivity of the State. In 2003-2004, the State’s annual plan outlay has been increased to Rs. 2,500 crores. Several important schemes have also been introduced in the infrastructure sector – railways, power, communication and roads.

iv). **India- Pakistan Rapprochement: Discussing Kashmir:**

**In the Year 1997** – May in Male, then Prim Minister Inder Kumar Gujral and Mr. Nawaz Sharif initiated the composite dialogue process which created eight baskets of issues (6=2) namely, J&K, Siachin, Wullar Barrage/Tulbul Navigation Project, Sir Creek, Terrorism and Drug Trafficking, Economic and commercial cooperation, peace and security, and promotion of Friendly Exchanges in various fields.

**In the year 1998** – under the composite dialogue process, the first round talks on J&K were held in Islamabad from October 15 -17, though they ended without success. Pakistan’s insistence on third – party intervention was rejected by India, but the need to reduce the risk of a conflict by building mutual confidence in the nuclear and conventional fields was reiterated.

**In the year 1999** - In early 1999, Prime Minister Atal Bihari Vajpayee undertook a historic bus trip to Lahore, where he signed the Lahore Declaration with his counterpart Nawaz Sharif on February 21, 1999. Among other issues, the Declaration also said that the two parties “shall intensify their efforts to resolve all issues, including the issue of J&K”.

**In the year 2001**- India’s policy decision of ‘no talks’ in the wake of the ‘Kargil war’, the military coup in Pakistan and terrorist attacks on the Indian Parliament, was reversed in July 2001, with Vajpayee inviting General Pervez Musharaff for talks in Agra.

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68 Jehangir Rashid, ‘It’s a Vote for Progress, Development in Puhwara’ available at http://www.kashmirtimes.com, (Last Viewed on October 18, 2008)
69 Supra note 60
71 Ibid.
Unfortunately, in the absence of proper groundwork, disagreement, antagonism and brinkmanship wrecked the initiative with not even a joint declaration being produced.

Several place initiatives have been undertaken in recent years to address the Kashmir issue. Despite peace initiatives and international pressure on Pakistan to combat terrorism as a foreign policy instrument terrorist violence has been continuing to J&K. During year 2002, approximately 839 civilians and 469 security forces personnel were killed during the year and some 1,714 terrorist were killed by the security forces in counter-terrorism operations. This was a little less than the 1067 civilians, 590 security personnel and 2850 terrorist killed in 2001.\textsuperscript{72}

These trends showed that peace initiatives do not necessarily imply a respite from violence. The increase in civilian causalities, however, was marginal, and there was also a decline in the total number of incidents recorded. The pattern continued in 2002 with terrorist violence erupting whenever peace moves were initiated. While 44 percent of the votes turned out to vote during the State Assembly election in October 2002, the State’s cleanest elections were also its bloodiest. In 45 days of campaigning, 46 political activists were killed. Most of them including a state minister, belonged to the ruling National Conference Party. The 1996 elections had witnessed skeletal turnout with 13 political workers getting assassinated.\textsuperscript{73}

\textbf{v). Renewed Efforts for Peace}

\textbf{In the year 2003} – In April 2003, Prime Minister Atal Bihari Vajpayee again made an offer for talks, which was duly reciprocated by his counterpart, Zafarullah Khan Jamali. This time around the two sides chose to first do the groundwork. As a result, snapped rail, road, air and diplomatic links were resorted to boost mutual trust and confidence.

\textbf{In the year 2004} – the ensuing rapprochement enabled the two sides to reserve talks on the eight baskets of issues. The talks were held on July 27-28, 2004, in New Delhi led by Indian Foreign Secretary Shashank and his counterpart Riaz Khokhar. The Pakistan Foreign Secretary termed the talks as “useful” and a “good first step”, and Indian External Affairs Minister Natwar Singh described the talks as “positive and concrete”.

\textsuperscript{72} Sunil Sondhi, “Combating Terrorism in South Asia”, South Asia Politics, Vol. III, New Delhi, (March, 2005).

\textsuperscript{73} Ibid.
The joint statement reaffirmed the “need to promote, a stable environment of peace and security”. The two sides also reaffirmed their commitment to the joint press statements of January 6, 2004, in Islamabad. The Foreign Secretaries expressed the hope that the dialogue would lead to a “peaceful settlement of all bilateral issues, including J&K, to the satisfaction of both sides.”

**In the year 2004** – As part of composite dialogue between Pakistan and India, talks on combating terrorism and dealing with the menace of narcotics and drug cartels were held on 10-11 August 2004 at Islamabad. On these sensitive issues very little could be expected to emerge in the first round of talks. India and Pakistan reaffirmed their determination to combat terrorism and emphasized the need to eliminate this menace. As expected, there was no headway however on the issue of terrorism as both sides had divergent positions on what “terrorism” meant. Pakistan and India, for political reasons define “terrorism” in different ways and it was therefore difficult to arrive at a consensus in the first round of talks.

**In November 2004**, Prime Minister Manmohan Singh visited J&K to deliver ‘peace and dignity’ to the people. He announced a Rs. 24,000 crore “Reconstruction Plan for J&K”. Towards addressing grievances and concerns he said, “Outdoors are open to anybody who wants to talk to us”. However, the most significant step was the announcement of the reduction of troops from South Kashmir, to boost people’s confidence and also the peace process which was welcomed even by the Pakistan Foreign Ministry spokesman Masood Khan said, “This is a positive development and a good beginning”.

Nevertheless, in an effort to change the political climate that surrounds the issue, the two sides discussed confidence building measures, such as the bus services between Srinagar – Muzaffarabad bus service talks were stalled over the travel document issues. Pakistan insisted on UN documents and India proposed to carry passport as travel documents. The second round of talks on December 7-8, 2004, in New Delhi, was again derailed because of the same reason. This time, Pakistan also demanded that the bus

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75 Indrani Bagchi, ‘Central Promises Valley a Better Future – The Manmohan Mantra: Heal, Hope and Harmony’, *The Times of India*, November 18, 2004
service be kept exclusively for the Kashmiris, whereas India wanted it to be open for all Indians.

In the year 2005 – In February 2005, Natwar Singh and Kursheed Mahaud Kasuri in Islamabad resolved the row over the documents and gave the historic bus service a nod. It was agreed that passengers can travel with the entry permits, which would basically be their identity cards for travels. Both sides displayed considerable flexibility with Pakistan discarding the ‘UN document’ stand India, the ‘Passport stance’. It clearly demonstrates the ability of the both sides to made concessions in the light of popular perceptions.

Despite the positive tone, differences still persisted. It is often said that you cannot choose your neighbours, and India has lived with this bitter truth for many years. No matter how hard we try as a nation to break away from the shackles of a bloody history and chart a new course in the region, we are always reminded of the problems on our borders. It happened once again. Militants struck at the heart of the Indo-Pakistan peace process on the eve of what was to be the boldest step between the two countries in a long time. The day before the opening of the Srinagar- Muzaffarabad bus route on April 6, 2005, the fidayeen attack on the tourist reception centre in the J&K capital sent out a clear message. The obstacles to peace still exist.

The first bus journey across the LOC since partition was an attempt to build people contact and brings Kashmiris on both sides closer than they had been in decades. The bus route represented a possibility of hope that the issue of the troubled State could at least be dealt with in a conducive atmosphere without fear and hostility. The attack on the tourist reception centre, where the 24 passengers due to board the bus were sequestered, claimed no victims other than the terrorists. But it did leave us with the persistent feeling that India and Pakistan were back to where they had started. It also raised the questions, about the peace process as a whole, about cross-border terrorism and lapses in security.

India raised the issue of terrorism, whereas Pakistan contended with a call for ending “human rights violations and troop reduction in the State”. The failure to agree on a common ‘definition of the problem’ shows the complexity of the issues and the

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78 Ibid.
challenges it poses. The inability of the two sides to reach a common definition till date remains the primary challenge.

In the year 2009 - In a new milestone in the peace process, Pakistan has moved some of its troops from on its border with India to its western border. Movements of troops seen on Pakistan’s eastern border with India would result in reduction of tension between the two neighbours. Pakistan is in the middle of a massive military offensive against the Taliban in the North West Frontier Province and is planning to extend the operation to Taliban. Pakistan has moved its troops from the east to the west and the northwest of the country to combat terrorism.79

Undoubtedly, Pakistan has achieved success also by adopting such a policy. The number of suicide bombings and attacks in Pakistan declined nearly 20 percent in 2010 as a result of Pakistani military operations, better surveillance and the death of key militants in US drone strikes. The number of attacks declined from 2,586 in 2009 to 2,013 in 2010, according to a report by the Pak Institute for Peace Studies. However, it said that attacks tripled in Karachi and Lahore, in a sign that militants are exporting the fight far from the Afghan border.80

In the year 2010 – The elections that were held after the Mumbai attack to the legislative Assemblies in some states, including J&K had seen a large voter turnout thereby reaffirming the faith of the people in a democratic polity. It is pertinent to note that general masses are identifying themselves as Indians first even though they are fighting on diverse agendas. These concepts militate against the very principle chosen to be followed in the journey as a free nation.

In the joint effort for peace, children of India ad Pakistan will try to mind the relationships and make new bonds, starting from January 2011, nearly 2,400 children from Delhi, Mumbai, Lahore and Karachi will write letters to each other across the border to learn more about their culture, cuisine and life style which shares a common history. Students from three schools in Delhi – Sanskriti, St. Paul’s and BR Mehta Vidya Bhavan and Shishuvan School and Gandhi Memorial School in Mumbai will correspond

79 “Pakistan may Lessen Troops along India Border’, IndiaToday. New Delhi, (June 16, 2009).
with their counterparts in 5 Pakistani schools over 16 months as part of a project started by Indian NGO Routes 2 Roots and The Citizens Archives of Pakistan.\footnote{Neha Pushkaran, ‘Children Go Ahead for Peace Process across the Border’, \textit{The Times of India}, New Delhi, December 18, 2010.}

In a frank conversation, a senior Indian diplomat, the point person for Af-Pak policy in the Foreign Ministry, offered a bleak long term assessment of Indian Pakistan tries saying that even if India were to “lop – off” Kashmir and hand it to its western neighbour, it would still not result in peace.\footnote{Editorial Column, ‘Even Handing over Kashmir won’t Bring Peace with Pak, MEA Official’, \textit{The Times of India}, New Delhi, December 20, 2010.}

Y. K Sinha, Joint Secretary in Ministry of External Affairs (MEA), told US Officials that, “call me a cynic, but even if India were to lop off Kashmir and hand it on a platter to Pakistan, they would still find a reason to make trouble for us”. The official’s assessment that the historical and civilization faultiness dividing India and Pakistan really run deep and could at a certain level be irreconcilable was offered in late 2009 and are part of a US embassy cable leaked by the WikiLeaks Cablegate. Displaying a fairly hard headed understanding of Pakistan’s main motives, Sinha is reported to have said the US needed to ‘recognise and resist Islamabad’s game of promising cooperation in Afghanistan in return for US pressure on India to improve ties with Pakistan, while also exaggerating India’s threat to Pakistan.” Pakistan was only leveraging the ‘threat’ from India. If Islamabad really felt to improve its relations with India, it would never have moved on entire army corps away from the east to deploy it in the west. However, LeT was a creature of ISI and armed by that wing of the Pakistani military.\footnote{Ibid.} Since ISI as the root cause of terrorism in Pakistan, therefore it would have to be seriously reformed in order to address the problem effectively.

Many a time proposals had been made from the Indian side to enter into an extradition agreement with Pakistan. However, in the year, 2002, Pakistan offered to negotiate a bilateral treaty to provide a legal framework for the extradition of the criminals from both the sides. In the year, 2004, also the Pakistan government invited Deputy Prime Minister, L K Advani to work out an extradition treaty between two nations. But, it is to bear in mind that Pakistan negotiates for the sake of talks.
By taking into consideration the current circumstances between India and Pakistan, now any assumption about the extradition treaty between India and Pakistan seems to be unfeasible, because the tension has been mounting from the both sides and it has gone to an extent of a new South Asian cold war. India has handed over to Pakistan its itinerary of evidences on Mumbai terror attacks accompanying the request for Pakistan to extradite the suspects who were involved in the recent Mumbai attacks in India, so that they could be tried under the Indian legal system. Pakistan’s response was that there is no extradition agreement between India and Pakistan, so the suspected terror mongers can’t be handed over to India, rather, they must be prosecuted in Pakistan only which was initially supported by U.K but now U.S.A. is also supporting this fact that Pakistan should not extradite suspected criminals. Pakistan always wears the veil of “no extradition treaty” whenever such demand is made. The reason is very simple, the assorted terrorist activities are being carried out on Pakistan soil and it is a well-known fact to the whole world and even Pakistan for that particular matter. If any such agreement is made between these two countries, then, there will be a legal obligation for Pakistan to hand over the criminals to India. There is always an option of denial “that attackers are not from Pakistani land” which is always played by Pakistan and in such a condition even an extradition agreement can’t do fair dealing. A blatant example of this is Ajmal Kasab, whom Pakistan is incessantly denying that he is not from Pakistan, notwithstanding the fact that India has given firm proof of him being a Pakistani Citizen and he is also asserted the same during interrogations in India.

India longs for an extradition agreement, India seeks to try any suspect in India as it doesn’t have any trust in the Pakistan government and its legal system. India is highly critical of Pakistan’s devotion in fight against terrorist groups. Therefore, it is cynical that the Pakistani legal system would trail potential convictions for the crimes committed. If

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84 The main accused of a most brazen and prolonged terror strike on November 26,2008 by Pakistani terrorists belonging to the Lashkar-e-Toiba (LET) in the financial and entertainment capital of the India, targeting mainly the CST station, Oberoi, Trident, Taj Mahal Palace and Tower Hotel, killing and injuring number of people. Fire fighting with terrorists could have been stopped successfully after three days in a joint operation involving the Maharashtra Police, Indian Army and the National Security Guard. The attack occurred on the 10th anniversary of the demolition of the Babri Mosque in Ayodhya. This was the worst attack in Mumbai since the 1993 Mumbai serial blasts that killed 257 and injured over 700 people.
the prosecution happens in Pakistan, then obviously it will not be fair and it will be akin to the notion that “thieves are prosecuting the thieves.”

Pakistan would have to fight terrorism for its own purpose or it will implode, and that India’s interest was not in Pakistan’s demise but in its stability. India views its neighbour with increasing alarm after the militants’ attacks in Mumbai and militants strikes in Lahore, which is close to the Indian border. However India is watching the developments in Pakistan with concern as these have direct impact on India as well, especially on cross-border terrorism which affects India directly.

In today’s Kashmir and other bordering State’s of India, fear and hope remain constant companions. Any progress in Indo-Pakistan relations comes with a rider: the road to peace, it seems; will be as bloody as any war. As such as the future the peace dialogue too has to negotiate the minefield of the past.

4.3.2. India and North East Region

Ever since independence, northeast India has witnessed ethnic border infiltration, which have political manifestations and aspirations. What initially began as a home-grown insurgency was sustained in the later years through support in India's neighbourhood.

India's economically underdeveloped northeast region shares its boundary with four countries and has suffered due to cross border terrorism, illegal influx of Bangladeshis, and cross-border terrorism backed by the ISI. While India faces a constant threat from terrorism sponsored by its Western neighbour, the country's northeast too faces an increasing threat of cross-border terrorism, also encouraged and abetted by state agencies of Pakistan.

4.3.3. India and Bangladesh

As India shares its longest border with Bangladesh which is highly porous, the issue of border management has been a very important one. India has been concerned with the presence and activities of IIGs in Bangladesh. It considers their activities a major security threat to both India and Bangladesh. The ineffective border management has also resulted into a large scale cross border illegal movement from Bangladesh. To instill

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greater confidence in Bangladesh about India, the Indian side expressed very clearly that they would like to see a stable, prosperous and secure Bangladesh. India would even be happy to cooperate with Bangladesh in its economic development. Both sides noted that the relations between India and Bangladesh are multifaceted and rich in its content and scope. They recognized that further strengthening of these relations will not only be in the larger interests of the two “friendly neighbouring countries,” but also will make an important contribution to the peace, progress and prosperity of all their peoples.

India has been trying for a while to get its neighbours to close down the camps and flush out the militants from their sanctuaries. In December 2003, under considerable pressure from India, the Royal Bhutan Army launched military operations against camps in southern Bhutan along the India- Bhutan border. Some 30 camps belonging to the ULFA, NDFB and the KLO and others were closed down and about 600 insurgents were killed. But regimes in Bangladesh remain defiant. 87

In the Sixth home secretary level talks between India and Bangladesh at New Delhi in 2005, both sides managed to maintain the cordial atmosphere during the talks while pursing their “national interests.” But problems arose over the contentious issues. Differences between India and Bangladesh on security and illegal migration issues reportedly delayed the signing of the joint statement. According to internal security agencies and BSF, Bangladesh has roughly 190-200 camps of North East insurgent and extremist outfits. 88 Many a times, the BSF handed over to Bangladesh Rifles a detailed list of these camps. But it’s a charge that Dhaka has consistently denied.

Nevertheless, at the meeting, India raised the issue of camps of northeastern Indian militants in Bangladesh, to which the Bangladeshi delegation offered that Indian officials could visit their country and see for themselves if there was any such camp. But Bangladesh expressed reservations when India wanted the offer to be included in the minutes of the meeting. 89

Indian side also brought up the issue of an extradition treaty with Bangladesh to enable New Delhi to get custody of key militants from the North-East region who are

88 Ibid.
89 Ibid.
believed to be operating training camps for insurgents in that country. Regarding extradition treaty and agreement on Mutual Legal Assistance in Criminal Matters, Bangladesh agreed to expedite its response to the proposal. Dhaka, however, did not agree to Delhi’s request for a “high-level” meeting to discuss and set up a mechanism to deal with illegal migration from Bangladesh.

However, there were some positive developments also related to security issues. Both sides agreed to provide consular access to the insurgents/ criminals arrested by either side and to share information about activities of insurgents. Both sides also agreed that all possible measures will be taken to prevent smuggling of arms and explosives. They stated that their Governments did not encourage any type of smuggling and are resolute in their determination to effectively curb smuggling.

The delay in signing of joint statement itself had confirmed that the issues involved between Bangladesh and India are too complex to be sorted out quickly. As both sides struggled to come to a point which is acceptable to both sides, it has clear that there was a desire to avoid acrimony though it was agreed that a proper solution of the long-standing problems would take time.

Even after making all attempts to plug the loopholes in the preventive mechanism, an attack could not be stopped in Assam, when Mr. P. Chidambaram made his maiden trip as the Home Minister. In 2008 alone over a thousand persons were killed in terrorist-related violence in the northeastern states. The bulk of these deaths occurred in two states - Assam and Manipur. Assam reported 372 fatalities while the death toll in Manipur was just shy of 500, second only to Kashmir, which recorded 539 deaths. While the country has been preoccupied with Kashmir and escalating terrorist violence elsewhere, separatist related violence in the northeast has been on the rise. The total number of deaths in this region has increased from 640 in 2006 to 1,057 in 2008.90

Although success of varying degrees has been achieved by the government vis-à-vis various rebel groups from the region since 2003, groups like ULFA, aim to wage a relentless war void of any clear objective and with support from elements in the Bangladeshi establishment and Pakistan’s Inter Services Intelligence. The ISI and the

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Directorate General of Field Intelligence (DGFI) of Bangladesh are agencies which reportedly facilitate the ULFA’s presence and operations.\(^{91}\)

However, groups in Manipur too show no signs of any compromise. Manipur, with the second highest number of terrorist related deaths after Kashmir, has remained below the national radar. All 59 police stations in the state have reported terrorist activities, and 32 of them have been placed in the high violence category. The number of terrorists killed in Northeast has increased from 317 in 2006 to 501 in 2007 and to 612 in 2008. But the civilian death toll too has risen from 231 in 2006 to 405 in 2008. Since 1994, an estimated 16,271 persons have been killed in this volatile region.\(^{92}\)

The problem of illegal migration from Bangladesh to Assam and other parts of the northeast is not only a threat to the identity of the people of the region but also a threat to the nation. The infiltration from Bangladesh is also paving way for sneaking in of ISI operatives to the country. Expediting the fencing work particularly along Indo-Bangladesh border (over 4,000 km), issuing of multi-purpose I-cards and putting an end to political interference are imperative to check illegal migration.

Bangladesh is being used to plan and execute terror attacks against India. Increasing use of its territory by religious extremists, pan-Islamist outfits, and insurgents operating in India's northeast, remains the most serious threat not only to the internal security of the country, but also to the regional security environment. A number of transnational Islamist terrorist groups, including the Al-Qaeda, have established a presence in Bangladesh in alliance with various indigenous militant fundamentalist organisations. Prominent among these is the Harkat-ul-Jehadi-e-Islami, Bangladesh (HuJI- BD), which was established with direct aid from Osama bin Laden in 1992. The HuJI- BD has very close links with the ISI. Indian insurgent groups like ULFA are working in close unison with HuJI- BD and according to US based intelligence think-tank Stratfor have outsourced terror operations to the latter.


A). Renewed Peace Efforts

India Cross border terrorism, infiltration, smuggling of fake currency and activities of Northeast militants will be high on the agenda both for India and Bangladesh. The Indian delegation led by Home Secretary G K Pillai, seeking cooperation from Bangladesh. The two sides were discussing sensitive issues relating to the border, smuggling of narcotics, fake currency and chalk out strategy how to deal with the problems

Illegal immigration is another issue that has been nagging the bilateral relations. India will ask the Bangladesh side, led by its Home Secretary Abdus Sobhan Sikder, to take steps for handing over of jailed militant like ULFA general secretary Anup Chetia. New Delhi is believed to be happy over the “detention” of two top ULFA leaders -- Sashadhar Choudhury and Chitraban Hazarika -- in Dhaka and subsequent "handing over" of them to BSF along Indo-Bangla border in Tripura. However, India is hopeful about Sheik Haseena’s government that Dhaka would adhere to its demand of dismantling the terror infrastructure and handover the Insurgents group’s members.

4.3.4. India and Nepal

India and Nepal also resolved not to allow use of their territories for activities directed against each other and agreed to strengthen cooperation to control terrorist’s activities across the border. This was decided at the fourth India-Nepal joint working group meeting on border management when the two sides also agreed to share intelligence to deal with terrorists and undesirable elements across the border.

The decision assumes significance in the context of apprehensions in New Delhi about the activities of anti-India elements in Nepal, which were suspected to be behind the hijacking of the Indian Airlines aircraft from Kathmandu. While agreeing to hold regular meetings of the Interpol units to expedite disposal of pending cases on both sides, the meeting also decided to commence expert-level discussions on a legal framework for cooperation in criminal and civil matters and to review extradition arrangements. The two sides also agreed to expedite the procedural aspects of improving infrastructural facilities at the border check posts.

94 Ibid
95 Editorial column, ‘India- Nepal Agree to Curb Terrorism,’ Times of West Bengal, October 13, 2009.
4.3.5. **India and Myanmar**

India and Myanmar have also agreed to strengthen cooperation for tackling the activities of insurgents, arms smugglers, drug traffickers and other hostile elements along the border with Myanmar assuring that arms smugglers would be severely punished if caught on its soil. At the 11th Home Secretary-level talks between the two countries at Yangon capital of Myanmar, the two sides also reviewed the status of various infrastructural projects in Myanmar, particularly in the road and power sectors, over which the two countries had agreed to cooperate. They also discussed issues relating to security, border trade, border management and proposed infrastructure projects in Myanmar.

The Indian delegation was led by Union Home Secretary V K Duggal while the Myanmar side was headed by Deputy Minister of Home Affairs, Brig-Gen Phone Swe. It was agreed that, when completed, these infrastructure projects would help in the economic development of border areas and promote greater movement and interaction among people across the border. The Myanmar side requested sympathetic consideration for their fishermen who cross the maritime boundary inadvertently. The Union Home Secretary suggested setting up of a working group, which can evolve a mechanism so that innocent fishermen from both sides who drift into the territorial waters of the other side, are not put to hardship.

On India’s request, the Myanmar side also agreed to look into the release of five Indian nationals who were arrested by the Myanmar’s Army. Both sides agreed to further strengthen cooperation for curbing drug trafficking and cross border terrorism, which is certainly a step forward the international peace and harmony with cooperation.

4.3.6. **India and China**

The border dispute of India and China triggered a brief and bloody war in 1962 that proved to be a defining moment in modern Indo-Chinese relations, and the basis for decades of mutual suspicion and mistrust that have yet to be fully shed. India claims for China’s illegal occupation of 38,000sq km of its north-western territory, while Beijing...
claims a 90,000 sq km chunk of north-east India.\(^{98}\) Perceptions are that China is taking a harder line on its claim have led New Delhi to beef up its military presence along the frontier with thousands of extra combat troops, armour and expanded front-line airbases.

In December 1988, Indian Prime Minister Rajiv Gandhi visited China. The Prime Ministers of the two countries agreed to settle the boundary questions through the guiding principle of "Mutual Understanding and Mutual Adjustment". Agreement also reached that while seeking for the mutually acceptable solution to the boundary questions; the two countries should develop their relations in other fields and make efforts to create the atmosphere and conditions conducive to the settlement of the boundary questions. The two sides agreed to establish a Joint Working Group (JWG) on the boundary questions at the Vice-Foreign Ministerial level.\(^{99}\)

An Agreement on the Maintenance of Peace and Tranquility along the Line of Actual Control in the India-China Border Areas was signed on 7 September 1993. After more than thirty years of border tension and stalemate, high-level bilateral talks were held in New Delhi starting in February 1994 to foster "confidence-building measures (CSBMs)" between the defence forces of India and China, and a new period of better relations began. In November 1995, the two sides dismantled the guard posts in close proximity to each other along the borderline in Wangdong area, making the situation in the border areas more stable. During President Jiang Zemin's visit to India at the end of November 1996, the Governments of China and India signed the Agreement on Confidence Building Measures in the Military Field along the LAC in the China-India border areas, which is an important step for the building of mutual trust between the two countries. These Agreements provide an institutional framework for the maintenance of peace and tranquility in the border areas.\(^{100}\)

Though lot had been done during the Sino-Indian official border talks, with number of border related CSBMs put in place, the border issue remains mired in various bilateral and domestic compulsions and contradictions on both sides. Border ‘encounters’ between India and China are not rare. They arise from the very real disagreements that

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\(^{100}\) Ibid.
exist between the two sides in demarcating the LAC on the ground. Such incidents have usually been handled, not in full media glare, but by the two sides discreetly withdrawing to their earlier positions.

The two sides withdrew sentries along the eastern section that were considered to be too close to each other. During early 1990s, India unilaterally withdrew about 35,000 troops from its eastern sector. On the other hand, China maintains a force between 180,000 and 300,000 soldiers and has directly ruled Tibet from 1950 to 1976, and indirectly thereafter.\footnote{Supra note 92.} Tibet today is connected to other military regions through four-lane highways and strategic roads. And Beijing’s capability to airlift troops from its other neighbouring military regions has advanced very far from its comparative inability to use air force in 1962.

However, during the Indian Prime Minister’s visit to China in June 2003 India and China signed a \textbf{Memorandum on Expanding Border Trade}, which adds Nathula as another pass on the India-China border for conducting border trade. The Indian side has agreed to designate Changgu of Sikkim state as the venue for border trade market, while the Chinese side has agreed to designate region of the Tibet as an autonomous region, as the venue for border trade market.

During Chinese Premier Wen Jiabao's visit to India in April 2005, the two sides signed an agreement on political settlement of the boundary issue, setting guidelines and principles. In the agreement, China and India affirmed their readiness to seek a fair, reasonable and mutually acceptable solution to the boundary issue through equal and friendly negotiations. India after 1962 adopted a policy not to develop the border areas. The idea was that if India developed the border areas, the Chinese can easily use these facilities in the event of a war. This policy had changed by 2008. To redress the situation arising out of poor road connectivity which has hampered the operational capability of the Border Guarding Forces deployed along the India-China border, the Government has decided to undertake phase-wise construction of 27 road links totaling 608 Km in the border areas along the India-China border in the States of Jammu & Kashmir, Himachal Pradesh, Uttarakhand, Sikkim and Arunachal Pradesh at an estimated cost of Rs.912.00 crores.\footnote{Ibid}
In order to overcome the problem of Cross border infiltration, both sides carry out patrolling activity in the India-China border areas. Transgressions of the LAC are taken up through diplomatic channels and at Border Personnel Meetings/Flag Meetings. India and China seek a fair, reasonable and mutually acceptable settlement of the boundary question through peaceful consultations.

However, in the end of the year 2010, Chinese Premier Wen Jiabao’s visit in India was remarkable and certainly helped in stabilizing India-China relations and ensuring that they remain on an even keel, but the returns are certainly disappointing when compared to Wen’s last trip to India in 2005. That trip had been genuinely forward looking as a roadmap on settling the border issue, which included respecting settled areas, had been developed. Since then, there has been considerable backsliding on the Chinese side noticed. For instance, China’s an increasingly assertive claim for Arunanchal Pradesh. Not only did Wen’s current visit not yield any fresh initiatives on the border issue, the Chinese chose not to resolve even the minor issue of the stapling of the visas of J&K residents, while Beijing maintains a stony silence on India’s bid for a permanent seat on the UN Security Council.103

Even the Chinese Government indicated that it would play no role in pressuring Pakistan to crack down on terrorist groups operating on its soil, reiterating its position that cross border terrorism and Kashmir were issues for India and Pakistan to resolve. China’s official policy is that Kashmir is an issue for India and Pakistan to resolve and it would maintain a position of neutrality over the dispute of Kashmir as China believed that it had no role to play.104

Simultaneously, China is also providing tacit support to Pakistan in its jihadi strategy with an aim to pin down half a million Indian troops in Kashmir. Beijing has provided direct protection to these terrorist groups at the UN Security Council's 1267 committee, blocking efforts against Jamaat-ud-Dawa (the Lashkar-e-Tayiba front).105

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China is trying to promote insurgency in India by helping sectarian forces -- including Islamic terrorists and Maoists -- carry out their nefarious activities against India.\textsuperscript{106}

Undoubtedly, Chinese Government has put aside diplomatic tact which is clearly inferred from an interview of China’s defense minister Liang Guanglie, published in state backed newspaper that Country’s military will prepare itself for ‘military conflict’ in every strategic directions in the next five years. The military will speed up modernization and development of equipment. He further remarked that, “We may be living in the peaceful times but we can never forget war, never send the horses south or put the bayonets and guns away”.\textsuperscript{107} China’s pace and scale of military modernization and construction of military related infrastructure has caused alarm among neighbours like India, South Korea and Japan.

4.4. INDIA AND US POLICIES TO CURB BORDER TERRORISM

There was optimum in India after September 11, 2001 attack on twin towers at America that India will also be benefited by United States commitment to uproot international terrorism. Since Pakistan and Afghanistan have been the epicenter of terrorism, it was hoped that terrorism might get eliminated in Kashmir and other affected states of India. It was hoped that the United States fight against terrorism would fracture and gradually eliminate terrorism from the region. However, United States policy to use Pakistan as frontline state to fight terrorism in Afghanistan belied India’s hope. Instead Pakistan feels benefited economically, politically, military, diplomatically and strategically.

However, the British Prime Minister, the US Secretary of State and all member states of the Security Council have no doubts about the linkage between the terrorist attack and the terrorist elements in Pakistan. In a remarkable effort in the year 2010, India and the US (US ambassador to India Timothy J Roemer signed the agreement along with Home Secretary G K Pillai) signed a \textbf{Counter Terrorism Initiative} that includes steps to check financing of terror activities, joint probe in cases of bomb blasts besides cooperation in cyber and border security. In this agreement, they agreed that both the

\textsuperscript{107} Saibal Das Gupta, ‘China’s Readying for Military Conflict from all Directions: says Minister’, \textit{The Times of India}, December 31, 2010.
countries will work closely in matters like intelligence sharing and probe into bomb blasts.\textsuperscript{108}

The agreement seeks to further enhance the cooperation between two countries in counter terrorism as an important element of their bilateral strategic partnership. The initiative provides for strengthening capabilities to effectively combat terrorism; promotion of exchanges regarding modernisation of techniques; sharing of best practices on issues of mutual interest; development of investigative skills and promotion of cooperation in forensic science laboratories. Besides, it seeks to establish procedures to provide mutual investigative assistance; enhancing capabilities to act against money laundering, counterfeit currency and financing of terrorism; exchanging best practices on mass transit and rail security; increasing exchanges between Coast Guards and Navy on maritime security. Exchanging experience and expertise on port and border security; enhancing liaison and training between specialists Counter Terrorism Units including National Security Guard with their American counter parts are part of the agreement.

The US envoy described it as a historic day for the US and India as the pact would bring the two countries closer together on issues of intelligence sharing, border security, mega policing efforts and "to fight together on a global basis against a common enemy, against terrorism". Terrorism has brutally attacked the US on September 11; terrorism has attacked the people of India, particularly on 26/11 in Mumbai, where six Americans were killed. Thus, this effort symbolizes Prime Minister Singh's and President Obama's efforts to create this indispensable partnership for the 21 century. It is an exciting day, an unprecedented day and a very proud day for the people of US," US ambassador said.\textsuperscript{109}

Nevertheless, the US may emerge as a key partner in counter terror efforts post Mumbai terror attack, but it has a very dim view of the capabilities of Indian security forces. It also felt that just a couple of years ago that India was reluctant to have an effective anti-terror partnership because of the suspicions about American policies towards Pakistan, its independent foreign policy stance and sensitivities over Muslim

\textsuperscript{108} Editorial column, ‘India and US Sign Counter Terrorism Initiative’, India Today (July 23, 2010).
\textsuperscript{109} Ibid.
sentiments. “India’s Police and security forces are overworked and hampered by bad police practices including the widespread use of torture in interrogations, rampant corruption, poor training, and a general inability to conduct solid forensic investigations,” the US embassy observed in a cable it sent on February 23, 2007, after a not satisfactory meeting of an Indo-US counter terrorism joint working group. The memo further said, ‘India’s security forces also regularly cut coroners to avoid working through India’s lagging justice system, which has approx. 13 judges per million people. Thus Indian police officials often do not respond to the request for information about attacks or our offers of support because they are coming up poor practices, rather than rejecting our help outright.’

Eventually, in the aftermath of the Mumabi terror attacks on November 26, 2008, top diplomats and officials did some tough talks with US on Pakistan, with the former foreign secretary, Shivshankar Menon, conveying in clear terms New Delhi’s disagreement with Washington’s assessment that the Pakistan army was not involved in the dastardly strike.

According to the US cables, Indian firms were also aiding Syria in its chemical and biological weapon programme. In March 2008, Washington shared with New Delhi information indicating that an Indian company, whose name has been blacked out by the WilkiLeaks, “had offered French – origin, MTCR – controlled graphite blocks to Iran’s ward commercial company” which had been involved on behalf of Shahid Hemmat Industrial group, Iran’s primary liquid propellant ballistic missile developer. The cable points out that the Indian government has a general obligation as a Chemical Weapons Convention State Party to never, under any circumstances, assist any more in the development of chemical weapons.

111 Ibid
112 The communication disclosed in the cable refers to the US unease over the arrest of a computer expert, Mukesh Saini, who was working with India’s National Counter Terrorism Centre (NCTC), and was arrested on charges of spying for Americans, available in ‘US Scathing About India’s Security Forces: WikiLeaks’, Sunday Times, December 19, 2010, p.1.
However, there are certain set of appreciations by US on India’s concern for Afghanistan. The Indian Government was pressing forward with a host of development related investments in Afghanistan despite a sense of deep concern surrounding potential attacks upon its staff by militants groups and blockades of transit agreements by Pakistan. India’s assistance programme for small community based projects, to its deployment of “low cost” engineers for infrastructure development projects and training courses for Afghans in Indian institutions. Since 2002, India contributed over USD 1.2 billion in reconstruction assistance, putting it away the top ranks of Afghan donors. However, Indian officials expressed growing concern with the security situation in Afghanistan, US diplomats wrote, that “they have been increasingly critical of what they perceive as the Pakistani Government’s inability or unwillingness to act in the border tribal belt.

In the context of abovementioned efforts of both India and US, they are looking forward to maintain good relations with each other as both the nations are the ultimate victims of terrorism. To have a decisive victory against Osama bin Laden and his supporters, India and the US have to come together in a big way and work both at the policy level as well as on the ground. Unless this is appreciated and implemented, the efforts of democratic regimes against Islamic fundamentalist forces and terrorists will be lopsided and misplaced.

4.5 INDIA’S RENEWED ANTI-TERRORISM POLICIES

Regarding India’s renewed anti terrorism policies, the reference of substantial agencies is vital like the National Investigation Agency (NIA), a federal body constituted to probe and prevent terrorist attacks, becomes operational. Along with this there are large-scale changes are done to the Multi-Agency Centre (MAC) in the Intelligence Bureau (IB), which is meant to collate intelligence inputs, assess them and disseminate its reports to security forces, among a slew of efforts to improve national security. The NIA will only investigate terror related offences. The BSF’s additional director general A.P. Singh, a 1974- batch IPS officer, is tipped for the job.

Infact, the revamp of the MAC, will make it work along the lines of the US Office of the Director of National Intelligence (DNI). The centre will now function round-the-clock as a central hotline for intelligence. It will be duty-bound to share inputs with all
the intelligence agencies, States and Union Territories (UTs). In turn, all intelligence agencies, states and UTs will be obliged to share inputs with MAC on a real-time basis.\(^\text{115}\)

However, subsidiaries of MAC have already been set up in a number of state capitals, but now every capital will have one. Since Mac was not able to achieve its objective therefore it is recommended by Mr. Chidambram (Home Minister) that a legal colour should be given to MAC. His admission confirmed allegations that infighting among various intelligence agencies had put paid to MAC's efficiency - particularly in the lead up to the November 26 Mumbai attack. Intelligence inputs indicating the possibility of the attack had been available, but the centre failed to collate and assess it to prevent the tragedy.\(^\text{116}\)

Infact, Mr. Chidambaram said his daily meetings with the national security adviser and intelligence chiefs had helped him assess the gaps in the security infrastructure. He now wants to replicate the same system at the state level. Chidambaram asked all chief ministers to set up round-the-clock control rooms under a senior superintendent of police-level officer to share intelligence inputs on terrorism on a real-time basis with the MAC. He also asked the CMs to meet state-level intelligence and security chiefs every day.

The Home Ministry will also bring a note before the Cabinet on establishing a coastal command and setting up National Security Guard (NSG) hubs in major cities around the country. These hubs will be established in four cities to begin with, and later spread to more cities to facilitate quicker deployment of NSG commandos in case of a terrorist attack.\(^\text{117}\) There are certain possible changes in the protection system for VIPs. While leading corporate houses like Tata, Oberoi and Infosys have approached the home ministry for CISF cover in the wake of the Mumbai attack, there was also a demand that elite forces like the NSG should be freed from such duties. "Among other measures, the IB has been sanctioned to fill up executive cadre vacancies on an emergent basis. Ten officers of the SP/DIG/IG level have been appointed to the IB against vacancies. Work is

\(^{115}\) Aman Sharma, “Anti–Terror Law and Investigative Agencies are Active”, India Today, (January 1, 2009).
\(^{116}\) Ibid.
\(^{117}\) Id.
in progress to set up 20 counter-insurgency schools. There is also the procurement of around 20,000 bullet proof jackets for paramilitary troops on an emergent basis.\textsuperscript{118}

### 4.6 CONCLUSION

However, indeed, one of the greatest challenges is the role of major powers, from within and outside the region, in India’s neighbourhood. Neither confrontation nor the collusion between major powers, whether between the US and China, is in India’s own interest.

However, India's most critical engagement was with Pakistan and it was vital to reach out for dialogue to reduce tensions, resolve outstanding issues and foster friendship. "There have been periods of crises, but also moments of hope. The sense of cynicism about dialogue with Pakistan is understandable especially when those responsible for Mumbai 26/11 attacks roam freely. India needs to intensify its engagement with Pakistan, notwithstanding its fragile polity and uncertain interest in peace at this stage, because keeping away from it is not a wise choice."

Nevertheless, India is always pressing for concrete action by neighbouring countries especially Pakistan to end cross border terrorism in the backdrop of renewed infiltration bids and terror attacks. The dialogue process of India with its neighbours has contributed so meaningfully to the improvement of relations over last four years. India would always appreciate to carry the process forward. However, India is looking forward for a concrete action by Pakistan in ending cross border terrorism and Infiltration. India believes terrorism is a "common concern" for both the countries and that it is in the interest of Pakistan itself to clamp down on the scourge as it has lost former Prime Minister Benazir Bhutto to terrorism. The cross-Line of Control initiatives particularly has witnessed a lot of forward movement and a further push is likely to be given during the upcoming talks. Pakistan too wants the peaceful resolution of all contentious issues with India, including Kashmir, so that it can "entirely focus" on the western border with Afghanistan to eliminate terrorism. According to one of the remarkable statement made by the Prime minister of Pakistan Mr. Yousuf Raza Gilani during a meeting with a visiting delegation of US Senators in the year 2010,"Pakistan wants to have good neighbourly relations with India and seeks the peaceful resolution of all the contentious issues."

\textsuperscript{118} Editorial column, 'Tatas, Oberois, Reliance seek CISF cover.' \textit{The Times of India}, Jan 1, 2009.
issues between the two countries, particularly Kashmir and water disputes, to be able to entirely focus its attention on its western border for rooting out terrorism.\footnoteref{119}

Therefore India always makes it clear that the atmosphere of peace is essential for the dialogue process to succeed. However, it is also clear that terror incidents in India will not stop the peace and dialogue process with any of its neighbour. Ultimately, with the help of these talks, agreements, negotiations and composite dialogues we can achieve the target of eliminating the terrorism from its roots once for all. The need of time is the collaborative actions by all the nations. Countries must own up to their responsibilities in defeating terrorism. Therefore, the international community is to take "decisive and united" action to combat terrorism, which poses a grave threat to the stability of the world as well.

\footnotetext[119]{Editorial column, ‘Pak Wants Resolution of All Issues, Kashmir with India: PM’, India Today, (July 9, 2010).}