**Issues Affecting International Human Rights and Governance**

The Law of international crimes groomed along with the intensification of international interaction and interdependence among the States. Until the end of nineteenth century, law of crimes was considered as the domain of domestic law. It is the duty of the state to ensure that, whether it is its own nationals or foreigners to comply with the laws of the land. The administration of justice is the prerogative of a State.

The conduct of nationals or agents of the State cause injury to a foreigner or a foreign State the respective State is responsible to indemnify the injured in accordance with international standards. A coherent body of jurisprudence evolved through international arbitrations, awards of International Tribunals, judgments of the Permanent Court of International Justice, international Court of justice and celebrated decision of nation Courts on the subject.\(^1\) The law of state responsibility for international delinquency not based on personal liability. The customary international law maintained its distinct character of regulating the conduct of states until recently.\(^2\) The principle of criminal responsibility is unknown to customary international law. Until recently the customary law of international state responsibility, protected rules and their agents from personal liability for international crimes. Accordingly, international

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1- The hague Convention on Pacific Settlement of Disputes, 1899 not only codified the law of international **Arbitration**, but also laid also foundation for the Permanent Court of Arbitration in 1907.

2- For the first time in the history of international law, the Charter of Nuremberg and Tokyo war Crimes **Tribunals** fixed personal liability. The current trend is that individuals are accountable for violations of international law.
delinquencies of rulers or their agents attributed to the state, and the state concerned is responsible for the resulting injury to another state and is liable to provide redressal to the affected state in accordance with the principles of international law of state responsibility. In short, the breach of international obligations results in international delinquency and the liability is civil in nature. The international tribunals and courts resolved international disputes on treatment of foreign nationals, religious and linguistic minorities, illegal appropriation of properties of foreigners etc. based on international law of state responsibility. The responsibility fixed on regimes and remedies, be it restitution integrem or compensation or an apology in the name of the state. The traditional approach of international law failed to prevent despotic rulers from committing grave violations of human rights or plunders in their own countries. The traditional international law treated such instances as internal affairs of the state and beyond the domain of international law.

This century witnessed great leap forward in international law through multilateral treaties laying down international standards of conduct in almost all facets of life. The conduct of states internally and externally comes under the scanner of international law. The claim of internal affairs of a state is not available for issues affecting international human rights and

3- Traditional international law provided protective gear for despots and corrupt foreign rulers for perpetration of systematic violations of human rights and humanitarian laws, siphoning of national wealth as well as developmental aid for personal use, systematic undermining of democratic institution etc. were kept under the carpet claiming as internal affairs of the state. Such rulers claimed absolute immunity from prosecutions in his country as well as in foreign countries.
governance. The doctrine of absolute foreign sovereign immunity metamorphosed to restrictive foreign state immunity. Conduct of foreign sovereigns often came under the jurisdiction of foreign Courts. The principles of democracy and rule of law based good governance is fast becoming subject matter of international law.

**Individuals in International Law**

In the past, international law considered states and like entities only as the subjects of international law. By according universal jurisdiction on pirates, international law attempted to deal with individuals. Since, piracy, including mutiny by crew, had been a common concern of international community, which was badly affecting international trade and commerce, and it had been felt, piracy as an international crime and the

4- Basic human rights and humanitarian laws are considered as jus cogens in international law and no derogation is permissible under any kind of pretext. The responsible individuals may face prosecutions even in foreign courts.

5- The European Convention on Human Rights and Fundamental Freedoms, and Additional Protocols

6- Inter-American Convention on Human Rights.


8- The foreign state immunity is restricted based on the classification as actus jure imperii and actus jure gestionis. Immunity would be extended to sovereign functions and non-sovereign, including commercial activities of a state could not claim immunity from judicial proceedings. In tune with the principle of restrictive immunity, majority of the countries accord immunity for foreign state only for strict sovereign function. The UN Convention on Foreign State Immunity extends immunity exclusively for actus jure imperii.
suppression of piracy as a duty of all nation state, in order to protect the freedom of high seas. Primary reason was that pirates fly their own flags or without flages, commit the offense on the high seas, issue relating to nationality of pirates, victims and consequential jurisdictional issues made it difficult to proceed against them. Further, high seas remained free for all and no one took the responsibility to protect it. By declaring piracy as delicti jure gentium, international community took the challenge and put up a united front to fight the evil. The unified efforts of international community paid dividends in preserving the freedom of the seas. The United Nations Convention on Law of the Sea, 1982 treats piracy as crime against humanity and accorded universal jurisdiction against pirates.

The menace of hijacking and insecurity in aerial navigation attracted the international attention and several treaties came into existence to address the menace. In 1970 the crime of hijacking or attacks on civilian aircrafts by terrorist and ransom takers reached its zenith and by the international determination, hijacking received treatment identical to piracy on the high seas. Until recently, there was no international criminal judicial machinery to deal with crimes with international character. Investigations revealed that majority of hijackings or attacks on civilian aircrafts took place with the blessings of states for political reasons. It has been found after the incident; some of the hijackers received, or still receive patronage

9- Customary international law treats piracy as a crime against humankind and accords universal jurisdiction.
11- In 1970, more than 90 planes were hijacked around the world U.S. Military Dictionary, Oxford Press (2001)
from States. Such States extend political and financial supports to such groups.

Taking into account of the situation, international community must accord universal jurisdiction against terrorists and hijackers and States promoting terrorism should be held accountable. Here the State means and includes the ruler of the State. Hostage taking trade on human being, practicing of apartheid, attacking internationally protected persons, drug trafficking etc. are a few of crimes with international crimes. The strategy of nations to contain through multilateral treaties and with the mechanism of joint crime prevention failed to provide expected results.

The Charter of Nuremberg and Tokyo Military Tribunals laid solid foundation to deal with individuals who committed grave breaches of international law. The modern international law pierces the secret veil of abstract concept of state and fixing individual responsibility for grave breaches of international law, irrespective of his status. For centuries, the customary law remained as the most important source of international law, which is being rapidly replaced by treaty law.

**Universal jurisdiction and International Crimes: Recent trends**

The customary, conventional and recent state practice demonstrate

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12- Indian Airlines Flight 814 was hijacked on 24.12.1999 on its way from Katmandu to Delhi, and taken to Kandahar Airport in Afghanistan. The hijackers demanded in return for the passengers and crew, Government of India must release three important terrorists, Maulana Masood Azhar, Mushtaq Ahmad Zargar and Ahmed Omar Saeed Sheik. All are belong to the notorious terrorist group, Jaish-e-Mohammed. The hijackers as well as the terrorist release by India are living comfortably in Pakistan. In the past, as well it has been reported that hijackers of Indian aircrafts receive heroic treatment in Pakistan.
that international law accords universal jurisdiction for serious crimes of international character, that includes, genocide, war crimes, torture, apartheid, trade in human beings, aggression, terrorism, hostage taking, attacks on internationally protected persons, trade in drugs and narcotic substances etc.\textsuperscript{13} The analogy of universal jurisdiction in the case of piracy applies in perilous crimes of international character. The European Court started asserting jurisdiction over individuals accused of international crimes in their home state. That is a trendsetter indeed in international law.

The despotic rulers are no more safe in foreign territories, if they perpetrated systematic violation of human rights. The guiding light for assuming jurisdiction by the domestic Courts was multilateral treaties on human rights and humanitarian laws. The national Courts refused to accept the argument of absolute immunity for foreign rulers. The approach of the national Courts in dealing with former dictators and tyrant rulers attracted criticism from some quarters with intellectual articulation of customary international law principles, such as the doctrine of absolute immunity for foreign rulers, system of governance is the internal affaire of concerned states and international interference is a sort of political interference on weaker countries etc. However, the modern trend is that all human beings born equal and have the right to democratic governance based on rule of law and respect for human rights. Even though the European Courts applied their domestic law, including the European Convention on Human Rights,

which is the Universal Declaration in action.\textsuperscript{14} Today, the Universal Declaration of Human Rights is considered as the bedrock of all democratic constitutions. Therefore, the recent trend set by the European Courts in fixing personal guilt on former foreign rulers would be a revelation for the serving and potential dictators.\textsuperscript{15}

The former Chilean dictator, General Augusto Pinochet was arrested in London and detained by the British Court based on the request of Spanish Court. This kind of arrest of a former ruler of a foreign state was an unexpected event and became a trendsetter. It may be remembered that Pinochet was a former ruler of Chile and a friend of British establishment. Further, until his arrest and detention in London, it was though that former ruler and lifetime senator of Chile would liberally enjoy immunity from prosecution for crimes committed in his soil as a ruler. Nevertheless, the British and Spanish Courts refused to accord immunity and rejected the argument that he received pardon from the government of Chile from future prosecutions. All his intelligent insulations from future prosecutions failed to make any impact on the European Courts. The Spanish, British and Belgian Courts based their fiats on the principle of universal jurisdiction over international criminals. In another case in 2001, the Belgian Court convicted two Rwandan nuns for their role in Rwandan genocide and crime against humanity. German Courts without further discussion on

\textsuperscript{14} The European Convention on Human Rights is law of the land in members of the European Union. The treaty contains almost all fundamental rights provided in the Universal Declaration on Human Rights.

\textsuperscript{15} Both epics provide elaborate rules on the conduct of battles. The Geneva Conventions only adds a few thing to suit the modern day warfare.
jurisdictional aspects prosecuted several Serbs and Bosnians for their roles in genocide and grave violation of human rights, during the civil war in Yugoslavia. Following the suit, Court in Senegal asserted jurisdiction over the former dictator of Chad, Hissence Habre. The Senegalese Prosecutors also asserted the principle of universal jurisdiction for grave violations of human rights and persecutions. The argument was accepted by Senegalese Courts as well. The historical and the first case of assertion of universal jurisdiction might be before the Courts in Israel, in the case of Adolf Eichmann, In 2003, a Belgian Court ruled that Mr. Ariel Sharon, the former Prime Minister of Israel could be prosecuted for massacres of Palestinians in refugee camps.

It is believed that several former rulers and high-ranking officials of despotic regimes are scared to travel overseas, in particular to Europe. Even Henry Kissinger was sued before the U.S. Courts under the principle by the relatives of the victims of Vietnam war. These developments send right signal to despots that they are not going to enjoy impunity for their grave violations of human man rights in their countries. The hitherto enjoyed impunity is no more and have to identify 'no go' Zones to protect themselves from prosecutions, The Human rights and a rule of law based good governance already became a part of international law. The present trend of national Courts in Europe and several other countries would make tangible contribution for the advancement of human rights and rule of law.

**War Crimes: Genesis and development**

In India, customary laws of war existed for thousand of years. The great epics like Ramayana and Mahabharata are living testimonies on the subject. It was the sacred duty of all combatants adhere to the customs of
sovereign. The First Worlds War was fought in these lines and strictly speaking then, the international law not prohibited aggressive wars. First attempt in this direction was under the auspicious of the League of Nations, Briand-Kellogg Treaty 1929, was the first multilateral treaty prohibiting aggressive wars, 'The High Contracting Parties solemnly declare, in the name of their respective peoples, that they condemn recourse to war for solution of international disputes, and renounce it as an instrument of national policy in their relations with one power'\textsuperscript{17}.

The past proved that for calling for accountability for violations of customs of war or humanitarian laws, there should be a victorious power at the end of the war. If the victorious power conducted a war with deliberate negation of customs of war, relevant humanitarian laws, then who would be able to question it.\textsuperscript{18} As in the case of world war trials the use of unclear weapon against Japan or massive bombardments in cities by allied forces never asked for accountability. In Nuremberg and Tokyo Trials, the Tribunals relied on Kellogg-Braid Treaty, 1929 as the basis, which outlawed war as an instrument of settling international disputes. International jurists generally viewed the total reliance on relatively a new Treaty assumed the character of victors justice.

The trials and punishments rendered against defeated leaders may be questionable, but the Charter of the Tribunal laid a solid foundation for

\textsuperscript{17} Pact of Paris Treaty, 1928, Article. 1

\textsuperscript{18} The use of nuclear weapon against Japanese cities, Vietnam War and use of chemical weapons, aggressive war against Iraq and destruction of the Country, treatment of prisoners in Guadanamo Bay etc. Never came up for judicial scrutiny.
war and any derogation attracted terrible social stigma. Further, violations of the customs of war are considered as a grave sin for the next life. The Greek, Roman and Islamic civilizations had their own customs of war. Majority of historical battles were fought between different civilizations and terrible pain and sufferings were inflicted on civilian population. Great Universities, Libraries, places of worship etc. were destroyed in these wars. There were no universally accepted rules to govern the conduct of wars.

Religions based morality governed the conduct of combatants in battlefields. Customs of war adhered by one regional force might not be acceptable to the opposite group. In effect, the laws of war remained relatively effective in wars within the same civilization settings. If the battle is between different civilizations, adherence to laws of war remained ineffective. The rules of survival and plunder and destruction of the enemy remained the driving force in almost all intera- civilizational wars. Therefore, the foundation of laws of war remained compassion, morality and religious believes of the warring groups. In the name of violations of customs of war, the victorious powers used to take revenge on the vanquished. Even today, only the vanquished suffers the wreath for violations of laws of war.  

Until the establishment of League of Nations (1919-46), declaration of war and peace were sovereign prerogative, in the history, several wars were fought in the name of enforcing an international obligation or as a measure to get redressal for the wounded pride of a

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16- Recently, the mock trial of Dictator Sandam Hussein and his companions by the puppet government in Iraq. Similarly, USA was never called for accountability for committing war crimes, such as civilian installations, and non-military targets. As it claimed, mass killing of civilians out of sheer negligence still get the sanctity as 'collateral damages'.

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future war crime trials. The Charters of Nuremberg and Tokyo Military
Tribunals reaffirmed the principle of prohibition of aggressive wars. In
1949, the United Nations General Assembly reaffirmed the Charter of
Nuremberg and Tokyo Military Tribunals and thus made it an
internationally recognized instrument. The principles enshrined in the
Charter is binding all member States and now waging or preparing for an
aggressive war is an international crime.

The UN Charter not only prohibits aggressive wars, but also prohibits
threat of use of force, or use of force. Further, it declares that 'All members
shall refrain in their international relations from the threat or use of force
against the territorial integrity or political independence of any state, or in
any other manner inconsistent with the purposes of the United Nations'.
Further, the UN Charter mandates that 'all members shall settle their
international disputes by peaceful means in such a manner that international
peace, security and justice are not endangered. The only exception for use
of force is the inherent right of individual or collective self-defence in case
of any armed attack occurs against a Member of the United Nations.' As a
means of collective security, the UN Security Council could order for
military enforcement under Chapter VII of the UN Charter. The issue of
defining the term 'aggression' continued to plague the UN for several
years. In 1974, UN General Assembly defined the term aggression as wide

19- The UN Charter Article.2
20- Preamble of the UN Charter
21- Article.51
22- The term aggression could be interpreted in different ways depending on the
economic and political policies of state. Even the Statue of international Criminal
Court, 2002 deferred the issue of defining aggression for future. All as an
international crime agree it, but the controversy continues with the interpretation
UN Tribunals on War Crimes and Crimes against Humanity

The United Nations was not able to control the outbreak of wars. After the Outbreak in Several occasions interfered and prevented the armed conflicts from spreading further. Normally, the Security Council adopts a declaration calling on the parties to halt the hostilities and declare cease-fire. Accordingly, the Warring parties declare Cease-fire and the territories under actual control at the time of cease-fire will remain in the hands of the occupier. In majority of the situations, the ceasefire ended up in permanent occupation of territories by the advanced forces.23

That is the story with Kashmir, Arab territories under the occupation of Israel after the seven days of war. Recently, after the Eritrean and Ethiopian Conflict, the demarcation of International border between these two countries remains to be solved. The UN has witnessed several wars within 60 years of its existence. Nevertheless, if failed to declare any particular State as an aggressor or slapping criminal liability on the aggressor. For the failure, reasons may be several, predominantly, the cold war dead lock in the UN Security Council by the end of cold war, the security council became operational. Further, the security council must reflect the current realities of the world and it is high time for expand the Security Council. The experience should guide the process of UN reforms, including the Security Council.

23- The Pakistan occupied Kashmir, oldest UN Observer Mission still continues in Kashmir, Arab territories under Israeli occupation, and Cyprus issue continued for several years are a few examples.
International Criminal Tribunal for former Yugoslavia:

It is true that the UN was unable to act swiftly in order to prevent the genocide and other war crimes from happening in Yugoslavia. Nevertheless, the U.N. was able to bring majority of the perpetrators of crimes against humanity and war crimes before justice. The UN Security Council on 25.5.1993 adopted a resolution establishing International Criminal Tribunal for former Yugoslavia to try the perpetrators of war crimes, crimes against humanity and Genocide. So far, the court has given down 16 life sentences and Varying terms of imprisonments. Among the Serbs, the Tribunal is an American and European brainchild to take revenge on defeated Serbs. The local judicial system also not functioned as impartial institutions. The administrative machinery has been completely infected with ethnic hatred. In the Muslim and Croat Federation, alleged Muslim and Croat war criminals received heroic welcome during criminal proceedings for war crimes and genocide against Serbs. Similarly, in the Republik of Serbska, territory with majority of Serb population, Courts found extremely difficult to prosecute Serb war criminals.

The local judiciary proved to be incapable to deal with war crime cases. Even the initiation of a few war criminal proceedings in local courts were due to heavy pressure from the UN Mission and International NGOs.

24- The judiciary in the former Yugoslavia was comparatively efficient, based on inquisitorial system. In principle applied Socialist jurisprudence,. Judges, Prosecutors and lawyers were professionally trained and well informed. However, internal conflicts and resultant collapse of the Federation caused severe strain on the judiciary. Several competent judges and prosecutors resigned the jobs or moved to places were they are ethnically safe. Post conflict judiciary in Bosnia-Herzegovina was not different from any other nation emerged from a long destructive civil war.
The respective governments in the Federations as well as in the Republika Serbska remained very passive in dealing with grave violations of human rights. In reality, all sides, Serbs Croats and Muslims actively involved in ethnic cleansing, genocide and war crimes.

The current administers in one way or other involved in the conflict. Some of them were known war criminals. That made it important to have the International Tribunal for former Yugoslavia, an effective tool. During the conflict, Bosnian Forces received support from several Muslim countries, including Pakistan. Hundreds of foreign mercenaries actively involved in the conflict and invariably committed war crimes, but the ICTY failed to take cognizance. Further, the data on sentencing of war criminals, different ethnic groups also show that the judges are not absolute neutrals. Media and political apparatus of the West demonized Serbs as the only perpetrators of these heinous crimes and other two groups as mere victims. The Mujahideen groups from Middle East, Chechnya, Pakistan, Afghanistan, Sudan etc. actively participated in the conflict on the side of Bosnian Muslim forces and committed serious crimes against Serbs and Croats. Even after the conflict, several foreigners married local girls and settled down in Bosnia.25 According to Western intelligent sources, among them some are members of international terrorist groups. In the Wake of the terrorist attack on the World Trade Centre, USA, American forces swiftly

25- The several individuals from Middle East after the war settled down in Bosnia and propagating radical Islam. Bosnian Muslims were very liberal. The opportunity had to attend several criminal proceeding against these new settlers. Even they refused to recognize the Court, Which applied Secular law. In some of the village, photography became a taboo and prohibited.
arrested some of the important figures and transferred to Guantanamo Bay. The operation was carried out without notice to the local administration. The Bosnian Government strongly protested the incident. Further, the abduction and transit passage through some of the European countries, with or without consent in violation of the European Convention of Human Rights attracted serious criticism from the European Union. The European Union ordered an enquiry to establish the truth; The Kosovo issue is still active in the agenda of the UN Security Council. The predominant ethnic Albanians wish to break away from Serbia. Serbs consider Kosovo as a sacred piece of land connected with their culture and heritage. Their most sacred orthodox churches are in Kosovo. Historical battle in Kosovo by Serbs against Ottoman Turks and Serb defeat and sacrifices at the battlefield is still a sacred historical event for Serbs. The Western powers initially encouraged the terrorist attacks on Serbian forces by the Albanians.

The Serbian forces tried to maintain territorial integrity of the country, perhaps the use of force exceeded the limit. If so perpetrators of such crimes must make accountable. Similarly, ethnic Albanians violence against armed forces as well as Serb civilians also impartially called for criminal accountability. The international psychology of appeasement of one group against another in order to achieve political mileage necessarily end up in wrong solutions. The claims of self-determination or independence from colonialism already became irrelevant in the activities.

26- The Council of Europe constituted an enquiry commission to look into the matter. The European Convention on Human rights and Fundamental Freedoms provides variety of Safeguards for individuals in case of arrest and detention. Abduction, torture, Solitary confinement, force full transfer etc. directly contravenes the Convention.
of the UN. As a quick solution, if Western powers start encouraging independence for Kosovo on the basis of population in the part of the territory, that would set another bad precedent in Balkans. Democracy means tolerance and cohabitation with minority community, which is Serbs in Kosovo. In Sierra Leon, Liberia, East Timor also the UN played a catalytic role in organizing criminal trials by the domestic Courts against the perpetrators of grave violations of human rights and humanitarian laws during the internal conflicts.

India, the most populous democratic country in the world, which has several regions with varying proportions of populations of different religions, race and culture living under one administration. The beauty of a matured democracy demands cohabitation of all with equal rights and opportunities. If international community fail to appreciate the basic principle of UN Charter, which mandates that the UN should strive to maintain territorial integrity and political independence of the member states. The current approach of UN Security Council often goes against the fundamental principles the United Nations. In all violent breaks down of nation states, majority of the peoples suffer. The partition of India based on religion, demonstrated that a sustainable solution is with people of the country and international community take prudent approach to find viable solutions in emotionally charged situations.

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27- Not a single country could claim homogeneity in population. If international community gives assent to such demands, it would be a Pandora Box in the near future. The fundamental duty of the UN to protect the territorial integrity of member states should remain the primary concern.

28- In thses countries, United Nations provide technical and material support through its agencies, in particular through the office of the High Commissioner for Human Rights.

29- The basic principles of United Nations.
International Criminal Tribunal for Rwanda

Rwanda is the smallest country in Africa with just 7 million population. Among the population 90% were Hutus and remaining mainly Tutsis dominated during the Belgian colonial days in every occupation. After the independence, Tutsi started gradually losing the past privileges in the administration. The Hutus with their brutal majority started gaining upper hand in all occupations, that has furiated, Tutsis and a good number of Tutsi population migrated to neighboring countries.

There they established a resistance force against the Hutu dominated democratically elected government. In this background, there had been a series of negotiations between the government of Rwanda and resistance forces of Tutsis. On 6.4.1994, a small jet carrying Rwandan President Habyalimana and Burundian President Cyprien Ntaryamira on their return from Tanzania shot down in Kigali airport by ground fire. The news of killing of Hutu president spread like wild fire and the Hutu militias stated executing the preplanned strategy of eliminating Tutsis. From 6.4.1994 to 6.12.1994, Hutu militia brutally killed more than 8,00,000 Tutsis and moderate Hutus. The UN again failed to act in time of need. A few Belgian Peacekeepers lost their lives. The UN felt impossible to sustain the mission and withdrew the remaining peacekeeping forces. The genocide continued until December 1994 without any hindrance. The news of continuing genocide flashed in media and UN started acting. Nevertheless, that was too late as like in several other occasions in the past. The UN Security Council passed resolution to send more forces, but before the blue helmets deployed, the genocide died out due to pressure from the Tutsi resistance forces from neighboring countries.
The UN Security Council passed a resolution for the establishment of a UN Criminal Tribunal to bring the perpetrators of genocide and crimes against humanity to justice. The trial is in progress, several leaders of Hutus, including formers ministers and other officials are under detention, and slow the judicial process continues at Kigali, Tanzania, the seat of the Court.

The UN backed Tribunal for Cambodia

Cambodia or Kampuchea is a small East Asian nation with a long cherished history Khmers are proud of their Indian heritage. It remained as French Protectorate until 1954. After attaining independence, it became a multiparty democratic country under a Constitutional Monarch. Cambodia maintained a non-aligned policy. Due to its non-aligned policy and territorial proximity with Vietnam made Cambodia vulnerable. Allegedly, the Vietnamese forces used Cambodian territory as a launching pad for attacks against American forces. These factors infuriated the United States. American U2 bombers heavily bombarded the countryside and caused large number of civilian causalities.

Meanwhile, the General Loan No 1 managed a military Coup detach with the blessings of the United Stated. At that time, prince Norodom Sihanok was on official tour in Europe and took shelter in France. Later accepted the invitation of the Chinese government and lived for several years as state guest. The prince with his supporters started resistance movement against the Lon No 1 regime. The

30- Un Security Council adopted Resolution No. : 855 on 8.11.1994
Cambodian Communists were also fighting against Lon No. 1 regime. The Prince's support for the Communists gave the movement credibility and the resistance movement became a popular movement of Khmers. On 17/04/1975, Phnompenh, the capital of Cambodia fell to communist Moreover, communists took power under the leadership of Pol Pot and declared as the government of Democratic Kampuchea.

As a first step, Democratic Kampuchea forced all peoples, in particular the urban population, to march for days and weeks without food and water to mosquito infested remote regions to cultivate rice. China was looking for Khmer rice as primary commodity from Cambodias to feed teeming millions of Chinese. The poor Cambodia without proper food and water toiled in paddy fields to feed Chinese! The Khmer's starvation saved huge quantities of rice to export to China and in return received outdated weapons. The Khmer Rouge regime was recognized as the legitimate government of Cambodia. The khmer Rouge's Democratic Kampuchea received political support and financial backing from the People's Republic of China and international support from the USA, Western Powers and the United Nations. To receive weapons to fight against their historical enemy, Vietnam, Since, the USA and allies were spending all available resources and energy to prosecute the Vietnam War. The only voice on happening in Cambodia was from the Soviet block of countries. Therefore, the UN and

33- Pol Pot, the Prim Minister, Ieng Saray. Vice-Premier and Foreign Minister Hunim, Minister of Information, Son Sen, Defence Minister, Nuon Chea, Koy Thoun, Minister of Domestic and Foreign Trade, Vorn Vet, Minister for Railways, Industry and Fisheries, Khieu Thirith, Minister Welfare, Yun Yat, Minister of Culture, Education an propaganda etc. of the Government of Democratic Kampuchea
Western powers also failed to make any move to restrain the genocidal regime in Cambodia. The Khmer Rouge became bold by receiving political support and weapons from China and carried out incursions in Vietnamese territories. The Vietnamese government was forced to take military action against the regime. The Vietnamese assault was so severe; Khmer Rouge was forced to retreat to the jungles of western Cambodia.

Within this short span of Khmer Rouge rule, out of total population of 7 million, about 1.7 million people died, by the systematic killing of the regime as counter revolutionaries or due to forced labor without proper food, water, shelter and health care. At the fall of regime by the intervention of Vietnamese forces, the genocide was stopped. The UN continued to recognize the Khmer Rouge regime for a very long period. The perpetrators of crimes against humanity received all privileges of UN membership, participated in the Paris Peace initiatives. The Peoples Republic of China actively promoted the genocidal regime until the end. The United States and Western powers slept over the issue of Genocide and violation of every principal of human rights, pretending as not known. The UN and Western powers refuse to recognize relatively moderate communist government in Cambodia. The Vietnam backed government had been isolated as pariah regime and subjected to severe material and political deprivation. Again, the Cambodians were destined to suffer from international isolation for many years. A considerable number of Khmers migrated to western countries. The genocide of Khmer Rouge regime perpetrated against intelligentsia and resultant brain drain made Cambodia poor in every respect. The Paris Peace

34- David P. Chandler, Brother Number One, A political biography of pol pot, Monument Books, West view press (1992) pp.119-45
 Agreement, 1992 finally brought peace and stability to Cambodia. The Khmer Rouge withdrew from the agreement just days before the UN sponsored elections and continued the insurgency until the death of Pol Pot in 1998. The contribution of the United Nations' Transitional Authority in Cambodia played an effective role in bringing democracy and stability in Cambodia. Now Cambodia is a vibrant member in ASEAN and slowly making progress in all walks of life.

Contrary to the UN position on establishment of an International Tribunal, the Cambodia government expressed willingness to prosecute leaders of Khmer Rouge regime. The negotiations continued for several years between the government of Cambodia and the UN. At the end, it was agreed to establish a mixed Tribunal with local as well as international judges. Under the orders of the Tribunal, some of the most important Khmer Rouge leaders are under detention. It is expected that the Tribunal will deliver judgments from 2008. The Tribunal has to deal with very old suspects who are even incapable of understanding the gravity of the charges.

**Terrorism: An international crime**

Today, terrorism is a major concern of all nation states. There are attempts to put up a united front by the international community to deal with the sophisticated terrorist movements. The cold war era provided fertile ground to flourish terrorism in the name of political ideologies.

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35- It is suspected that Pol Pot was poisoned to death to facilitate a negotiated surrender by the KR leadership. Just after the death, the hardcore KR leaders started coming in term with the government Ieng Sary, the one who left the KR and joined mainstream with several privileges.

36- Ieng Sary, Noun Chea, Khieu Samphan and Kaing Guek Eva (Duch), the former Director of Tuol Sleng Interrogation Centre.
Parties to the cold war in one-way or other extended aid and support for terrorist groups. Since a terrorist means 'a person who uses violence and intimidation in an attempt to achieve political aims'  

37 Now, the international politics made a U-turn, the yesterday's enemies are today's inevitable allies.  

38 A common struggle, all for economic development through international trade and commerce. For economic development, peace and tranquility is sine quo non. Prosperity is impossible without peace and security. Remedy before the international community is to declare all kinds of terrorist activities as international crime and come up with a multilateral treaty mandating member states to restrain from aiding or supporting acts, which would further the goals of terrorists.

Terrorists well organized and sufficiently funded. In addition to that, there is no dearth of manpower even to die as suicide bombers in the name of God. It is not beyond the truth that some of the states provided funds and political support to some of the terrorist organizations. These terrorist organizations operate transnational and the situation has reached to the level that not a single state could insulate from the menace. Currently, some of the real sponsors of such groups face extremely difficult times, than others.  

39 whether it is in or against Afghanistan, Kashmir, Sri Lanka, Chechnya, Russia, Latin, Iraq, United States of America, Europe or Middle

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38- Mujahideen card was played in Afghanistan to oust the USSR, moral and financial support had been extended to these groups to fight against Soviet backed regime. Indisputably, that leads to Talibanization in Afghanistan and neighboring Tribal areas in Pakistan. The wrong policies of US and Western powers encouraged terrorist groups to extend their operation to other parts of the world as well.  
39- American invasion on Iraq was dictated by economic reasons and terrorism, possession of weapons of mass destruction was proved as false propaganda.
East for a variety of reasons! Obviously, the past supports were based on the ideology of destabilizing countries, which were not wedded to their political ideology or economic consideration. Now, the terrorist groups organized in such a way that they could operate transnationally with a well-insulated network and capable of sowing the seeds of destruction at any corner of the world. Therefore, now everybody agrees that terrorism is the number one enemy of humanity.

In order to contain the problem, are required urgent unified efforts on the part of international community. It should be a multifaceted approach under the auspicious of UN and other specialized agencies. Today, only powerful countries are able to assert pressure on international terrorist groups. The weaker nations, nations in political crises often become safe heaven for such groups to operate with impunity. It is an admitted fact that Taliban is regrouping in Afghanistan, the process of Talibanization is progress in Pakistan, in particular in autonomous tribal areas, and Somalia is a safe heaven for jihad groups.

Terrorism and the UN

The term terrorism failed to attract much attention from the UN and the Western powers until the disastrous terrorist attack on the World Trade Center in the United States of America. The unfortunate event became the wakeup call to take concrete steps to deal with the perennial problem. Until the most horrible attack in the USA, the UN was not asked to take concrete steps to contain the menace suffered by several countries. In late 1990s, the

40- 11.09.2001
UN passed a couple of Resolutions declared terrorism in any form or manifestation is a crime against humanity.\textsuperscript{42}

There were no visible follow-up actions on the part of UN on these resolutions. the UN became effective after the major terrorist strikes at US and Western targets. Currently, the UN Security Council is on the top of the agenda. But Security Council Resolution 1535, created a 15 member Counter Terrorism Committee (UNCTC). Subsequent, Resolution 1624 of 2005, created office of the Executive Directorate for the Counter Terrorism Committee. The Executive Director coordinates the work of the Counter Terrorism Committee. The multifaceted UN strategy includes, criminalization of all manifestation of terrorism in any form or shape, incitement to commit terrorism is a crime and member countries should penalize such activities in their territories, steps to deny safe heavens in member countries, impose financial embargo for such activities trace the money trails of terrorists net work, to counter terrorism. The UN General Assembly requested the Secretary General a report on the topic. The Secretary General submitted a report entitled Uniting against Terrorism: Recommendations for a Global Counter Terrorism Strategy. On 2.5.2006 the UN General Assembly adopted the UN Global Counter Terrorism Strategy with annexed plan of action. The UN Global Counter Terrorism Strategy contains:

1. Measures to address the conditions conducive to the spread of terrorism.
2. Measures to prevent and combat terrorism.

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\textsuperscript{42} Guandanamo Lessons attracted the attention of the member states and the UN Strategy made it integral part of provide to adequate protection of human rights while dealing with terrorism.
3- Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard, and

4- Measures to ensure respect for human rights for all the rule of law as the fundamental basis of the fight against terrorism. 43

However, it may take to evaluate the efficacy of the current strategy of the UN in this regard. Many pertinent issues may crop up in due course. Majority of the countries are incapable to give a sustained fight to terrorist organizations. The treatment of detainees in Guantanamo Bay by American forces shocked international conscience. The dismal show of American judiciary in taking effective steps to safeguard the basis rights of detainees came under the scanner of human rights activists and jurists. The UN Global Counter Terrorism strategy contains guidelines to ensure human rights standards while dealing with terrorism.

**International Criminal Court and Terrorism:**

The long-standing demand of international community for the establishment of an International Criminal Tribunal in the line of International Court of Justice has become a reality, by the adoption of the Rome Statute of International Criminal Tribunal. 44 The statute is a determined effort on the part of international community the most serious crimes of concern to the international community as a whole must not go

43- The Rome Statutes of International Crime Court came into effect on 1.7.2002 after 60 days after 60th ratification. As on 17.10.2007, 105 countries ratified the Statute.

44- Definition for the crime of aggression was not accepted and the statute defers the task of defining the crime for future.
unpunished and their effective prosecution must be ensured by taking measures at national level and by enhanced international cooperation. The International Criminal Court is complementary to national criminal jurisdictions. If a State is able and willing to prosecute the offenders, the International Criminal Court will no have jurisdiction over the offenders. The International Criminal Court is limited to the most serious crimes with international character. According to the statute, the Court shall have jurisdiction over the following international crime:

1- The Crime of genocide  
2- Crimes against humanity  
3- War Crimes, and  
4- The crime of aggression.\textsuperscript{45}

The Statute further defines each crime with detailed description to avoid confusion on the understanding of the definitions. To avoid complications in defining the above terminologies, the Statute defines each crime as wide as possible, based on experience of the international community after the World War II. The Statute makes substantial improvements in defining war crimes, genocide crimes against humanity and the crime of aggression.\textsuperscript{46} accordingly, majority of the terrorist activities clearly come under the jurisdiction of the International criminal Court. Further, the past experience proved that in dealing with terrorism,

\textsuperscript{45} The Statute contains procedural as well a substantives provisions. Nuremberg and Tokyo Trials the Tribunal had to confront with many valuable arguments, such, as superior orders, exposts facto law etc. All these aspects were taken care on in the Statute

\textsuperscript{46} Genocide, crimes against humanity and war crimes are defined elaborately with considerable improvements in Articles: 6,7 and 8 respectively.
majority of the countries failed to act firmly due to variety of reasons, including local politico-religious reasons, incapacity of the law enforcement agencies, terrorism as understood by religious connotations, State sponsored or assisted terrorist activities etc. In these situations generally member states willfully avoid to deal with the crime. In that situation, the International Criminal Court of Justice could play an effective role in dealing with the offender. Further the Statute accords right to initiate proceedings suo motu, if the Prosecutor came to know that an offence under Article 5 of the Statute occurred and where the States concerned failed to act or unable to prosecute the offender, the prosecutor could order for preliminary investigation. In addition to that, the Prosecutor could initiate criminal proceedings based on complaint by a member state against another. However, the right or duty to prosecute international crimes fortified by general limitations inbuilt in the Statute of the Court. Further, the Court would be a permanent tool for the UN Security Council to deal with international crimes. The UN Security Council will have the right to refer situation to the Court if it comes under the scope of Article 5 of the Statute to the International Criminal Court.

The Statute of the International Criminal Court entered into force on 1.7.2002 The Court opened filed offices in Chad, the Democratic Republic of Congo, Uganda and the Central African Republic, respectively. Further, the Court initiated proceedings against a few individuals for was crimes and

47- Serious cases of terrorism would come under any of the three crimes.
48- Article 14
49- Part I and Part II of the Statute of the Court.
50- So far, 105 states ratified the Statute-29 Countries from Africa 13 from Asia, 16 from Eastern Europe 22 from Latin America and Caribbean and 25 from the Western Europe.
crimes against humanity in Darfur, Sudan and so far issued three warrants for arrests.\textsuperscript{51} The pressure is building up on the President of Sudan to handover the individuals, against whom the arrest warrants are pending. The Court is expected to hold the first trial by 2008.

As in the case of several important international treaties, here also the acclaimed democracies of the word, countries like India and the United States of America ignored to become a party to the Statute.\textsuperscript{52} It appears that these countries fear that their men in uniform may be called for accountability with respect to their actions or inactions in the field. Nevertheless, the truth is that the International Criminal Courts gets jurisdiction only in the State concerned and not willing to proceed against such offenders. In both India and USA, their laws and judiciary are capable of bringing the offenders for accountability. Therefore, the concern of such countries seems to be misplaced.

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\textsuperscript{51} The International Criminal Court seized Genocide in Darfur and issued two arrest warrants. The Human Rights Group requested the UN Secretary General take up the issue with the President of Sudan to hand over the Suspects.

\textsuperscript{52} Some of the important countries such as USA, China, India, Russia etc. so far not ratified the Statue.