Terrorism and International Law

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The term "terrorism" is widely used in everyday parlance with varying political and criminal connotations[1], however, as a concept it continues to remain elusive and has not been defined under international law because of lack of international consensus on the issue.[2] Terrorism is derived from the Latin word "terror", which means a state of intense fear and submission to it. It may also involve imagined or future dangers. Broadly speaking, any act intended to create terror in the minds of general public or a group of individuals, and aimed at of killing, or wounding or endangering the lives of human beings and destroying public property may be termed as a terrorist act and a manifestation of terrorism.

Where terrorism involves two or more states, i.e., where the perpetrator and the victim are citizens of different states, or where the act executed in another state, with political ends, it becomes an act of international terrorism and creates international responsibilities and duties for the delinquent state under international law. A state may indulge in such acts of terrorism directed against another state directly or indirectly in the form of aiding and abetting, or providing logistical support to the rebels in another state, or through sending armed bands or mercenaries to another country to overthrow the government of that country or to gain certain other political goals. This support to terrorist acts may be given during time of peace or armed conflict.

The government may be indirectly involved in terrorism by allowing private individuals or groups within its jurisdiction to support terrorist acts.[3] Thus, the state's involvement may be in different degrees and in varied ways; the range and intensity

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of the act may differ from case to case. However, international law does not make a distinction between the acts done directly or indirectly, the responsibility of a state to prevent any such act is absolute. Under international law, a state is obliges to control the acts of private parties, directed against another state from its own territory.

In the *Alabama Arbitration case*[4], the US brought out a claim against Great Britain for the alleged violation of its neutrality by failing to prevent the construction and fitting of private ships which were used by their buyers to attack the US maritime trade during the American civil war and inflicted considerable damage to the American shipping. Before the arbitrators, Great Britain contended that, under English Law, as it stood then, it had not been possible to prevent the sailing or vessels constructed under private contracts. While rejecting this contention and awarding damages to the US, the arbitrators stated, "It is plain that to satisfy the exigency of due diligence, and to escape liability, a neutral government must take care…that its municipal law shall prohibit acts contravening neutrality". This rule is equally applicable to terrorism.

Lack of a single definition on terrorism has resulted in a thematic consideration and codification of criminal acts deemed to be terrorist acts by the international community.[5] This is clearly exemplified by the various subject-specific conventions relating to hijacking, hostage-taking, bombings, financing of terrorist operations and others. Such thematic approach is still the preferred route in concluding counter-terrorism treaties among State,[6] with various organs of international organizations taking an active part in reinforcing those rules that are common to all these treaties.[7]

Thematic Approach

The first ever international attempt to control terrorism started with the League of Nations which unanimously adopted a resolution in December 1934, instituting a Committee of Experts to draft an international convention to curb any scheme or offence in pursuance of political terrorism.

Later, in November 1937, two conventions[8] were adopted: the Convention for the Prevention and Punishment of Terrorism,[9] and the Convention for the Creation of an International Criminal Court. The first convention received only one ratification, that of India in January 1941.[10] However, both the conventions did not come into force for want of ratifications.

After the coming into force of the United Nations, no specific convention on the terrorism as such has been adopted, nor does the Charter contain any specific provision on it, though now conventions as specific international criminal acts, which are the manifestations of terrorism have been adopted, viz., on hijacking, attacks on diplomatic missions, or taking hostages and crimes against internationally protected persons, On hijacking, besides the General Assembly resolutions 2251 (XXIV) and 2645 (XXV) and the Security Council resolution 286(1970),[11] the International Civil Aviation Organization (ICAO) adopted three conventions: the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft at Tokyo;[12] the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft[13] and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.[14] In 1973, the UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents was adopted.[15] In 1979 an International Convention against the Taking of Hostages was adopted.[16] In 1980 Convention on the Physical Protection of Nuclear Material,[17] in 1988 the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against Safety of Civil Aviation;[18] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,[19] International Convention for the Suppression of Terrorist Bombing;[20] International Convention for the Suppression of the Financing of Terrorism;[21] International Convention for the Suppression of Acts of Nuclear Terrorism, 2005[22] . However, these conventions, though in operation, are applicable only among the parties and limited in scope. Further, these conventions, particularly on hijacking, suffer from certain lacunas by failing to provide the minimum punishment and the duration to try the offenders by a state under the national laws; they also do not have any provision of sanction against a state failing to fulfill its obligations under them. Moreover, to be effective, these conventions require ratification by all the nations.

To curb the menace of international terrorism in general, the UN General Assembly, in September 1972, recommended to the Sixth Committee (Legal Committee) to study the problem and suggest, "Measures to prevent international terrorism which

endangers or takes innocent lives or jeopardizes fundamental freedoms."[23] But due to difference in the views of various state representatives, Sixth Committee was unable to arrive at any conclusionon its recommendation. Nonetheless, the General Assembly adopted a resolution in December 1972, establishing an Ad-hoc Committee on International Terrorism consisting of thirty-five members.[24] On the recommend-ations of the Ad-hoc Committee, the General Assembly on December 17, 1979 adopted a resolution which condemned all acts of terrorism and urged all states, unilaterally and in cooperation with other states as well as with relevant UN organs to contribute to progressive elimination of the causes underlying terrorism. The resolution also called upon states to fulfill their obligations under the 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.[25] In 1984, yet another resolution was adopted by the General Assembly reiterating the contents of the 1979 resolution.[26] Apart from this, no further action has been taken in to this direction. However, under customary international law states are required to refrain from such acts. This obligation arises from their twin duty to refrain from the use of force against another state and non-intervention.

After the attack on the US by the Al-Qaida on September 11, 2001, the world has moved in a more determined manner to curb the menace of international terrorism. The UN Security Council adopted a unanimous Resolution (1373 of 2001) subsequently.[27] The US waged war against Taliban and took steps to catch Bin Laden, the mastermind of the attacks on the USThe US has since provided Pakistan with military aid, worth billions of dollars, to wage war against the Taliban. Once the supporter of the Taliban, Pakistan is also tasting the brunt of Taliban inside its own territory. It has lost its former Prime Minister Benazir Bhutto, in a terrorist attack, and it is subjected to terrorist attacks almost everyday. However, ironically, it has not learnt any lesson from it and has been sponsoring terrorism against India for several years.

Customary Rules of International Law on Terrorism

As against conventional law, rules of customary international law are binding on all nations

irrespective of their consent. The terrorists acts directed against another states amount to intervention which is clearly prohibited under international law expect on humanitarian grounds. Intervention as defined by Oppenheim as "dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual condition of things,"[28] In the nineteenth century, it was often associated with armed intervention, on humanitarian or other grounds by powerful European states in the affairs of their weaker neighbours. However, there is a general prohibition of intervention under Article 2(7) of the Charter of the United Nations. The use of force against the territorial integrity and political independence is similarly prohibited by Article 2(4). Both these principles are part of the customary international law, which have been codified and amplified in various resolutions of the General Assembly. They clearly bring within their ambit such acts . The General Assembly Resolution 2131(XX) of 1965[29] declares that:

> 1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any state…..
>
> 2. ……Also no state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State….

This resolution was incorporated almost ad verbatim into the section on the principle of non-intervention in the 1970 General Assembly Resolution 2625(XXV) on Principles of Friendly Relations and Cooperation Among States.[30] The 1970 Resolution further proclaimed:

Every state has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State as a means of solving international disputes, including territorial disputes, and problems concerning frontiers of States.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty 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, when the acts referred to in the present paragraph involve a threat or use of force.

Although one state's interference in another state's affairs may not amount to use of force, which is prohibited under Article 2(4) of the UN Charter and under the customary international law since Kellog Briand Pact, 1928 and the Nuremberg Charter for the trial of the war criminals, it may nonetheless be contrary to international law when it is directed to create conditions of insurgency by providing logistical support to rebel groups. In that sense, the 1965 and 1970 resolutions overlap with Article 2(4). Certain assistance to rebels in a civil war is within the ambit of both the principles, i.e., against the use of force and non-intervention. The General Assembly Resolution on the definition of Aggression of 1974 considers the "sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity" as an act of aggression or an actual attack, regardless of a declaration of war.

These resolutions, incorporating the rules prescribing various acts directed against another nation (which can include terrorist acts), nevertheless are not binding as such. However, even though they are "soft laws", with sufficient evidence of *opinio juries* they can be considered as instant rules of customary international law.[31] These rules have got ample judicial recognition where they have been considered as customary rules of international law binding on nation. In the *Nicaragua case*[32] the International Court of Justice (ICJ) held that funding, arming of the contras, or otherwise supporting, aiding and directing military and paramilitary activities against the legitimate Government of Nicaragua by the United States, although not an unlawful use of force, was illegal intervention.

The court observed that, "in view of the generally accepted formulations, the principles (of non-intervention) forbids all states or groups of states to intervene directly or indirectly in internal or external affairs of other States."[33] Further it stated, "intervention is wrongful when it uses methods of coercion…….. The element of coercion, which defines, and indeed forms the very essence of prohibited intervention, is particularly obvious in the case of an intervention witch uses force either in the direct form of military action, or in the indirect from of support for subversive or terrorist

armed activities within another State. General Assembly resolution 2625 (XXV) equates assistance of this kind with the use of force by the assisting State when the acts committed in another State involve a threat or use of force. These forms of action are therefore wrongful in the light of both the principles of non-use of force, and that of non-intervention."[34] To act against this rule, a State must establish "a practice illustrative of belief in a kind of general right for States to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another States, whose cause appeared particularly worthy by reason of the political and moral values with which it was identified." The Court failed to find such a general right that has modified the customary law principle of non-intervention.[35]

Earlier in the *Corfu Channel case*, the court had come out very clearly against the right of intervention by station that, the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serous abuses…. for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.[36]

In the *Nicaragua case*, the Court observed that adoption of the General Assembly Resolution 2625 (XXV) "affords an indication of their *opinio juris* as to customary international law on the question."[37] However, there have been in recent years a number of instances of foreign intervention for the benefit of forces opposed to the government of another state. This is permitted, in a limited way, when these forces are fighting the wars of independence in pursuance their right of self-determination.

Self-determination and Terrorism

The principle of equal rights and self-determination finds its mention in the UN Charter (Articles 1, 55 and 56). In furtherance of these Charter provisions , the General Assembly in its resolution 1514 (XV) of December 14, 1960, "Declaration on the Granting of Independence to Colonial Territories and Peoples", expressed the conviction that "all peoples have the right to self-determination" and "subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights." This resolution was latter supplemented by the 1970 Programme of Action for the Full Implementation of the Declaration[38]

and the 1970 General Assembly resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States. This endorsement of the right of self-determination initially targeted the non-self-governing territories who were then either colonies or trust or mandate territories. But the 1972 General Assembly resolution 2908 (XXVII) gave it a new direction by including "freedom movements" against foreign subjugation. The resolution urged all states and the specialized agencies and other organs of the United Nations to provide "moral and material assistance to all peoples struggling for their freedom and independence in the Colonial Territories".[39] This provided the legal ground for the recognition of liberation movements by giving them logistical support in their struggle. In the practice of the United Nations, this resolution was put into effect in the cases of Guinea Bissau in 1973 and in the recognition of the Palestine Liberation Organization (PLO) in 1974.

The resolution 1514, however, proposes the application of the right of self-determination within the existing colonial boundaries. The *Frontier Land case*[40] between Burkino Faso and Mali confirms that the principle of self-determination now forms part of the customary international law and it is subject to the principle of *uti possodetis* in accordance with para 6 of the resolution, which states, "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the Purposes and Principles of the Charter of the United Nations". The Court observed: "The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved."[41]

Further, the principle, as enshrined in resolution 1514, has not been extended beyond the then existing colonies under the minority White regimes. The post-colonies states are reluctant to allow their minorities to exercise the right to self-determination, as it is disruptive of national integrity and international security. Thus, the Biafrans (in Nigeria), the Kurds (in Iran, Iraq and Turkey), the Somalis (in Kenya) and the Tamilians (in Sre Lanka) have been denied this right so far. However, the General Assembly has, in certain cases, accepted this right of peoples specifically, such as of Palestine and South Africa.[42] The principle has also not been adhered in the cases of Western Sahara, East Timor and Gibraltar.

Thus, as per the UN practices, the principle has a limited application, confined only to the foreign colonial subjugation and has not been extended to the independence movements within the post-colonial states. Hence, any support given by a foreign power to the freedom movements would be considered a blatant violation of the state's obligations under the Charter (non-use of force and non-intervention for which it has international responsibility). However, while the state may shy away for from giving the right of self-determination, it is nonetheless bound by the humanitarian law which is so very applicable to the rebel groups as well.

Terrorism and Humanitarian Law

The case of wars of national liberation is of particular concern to the United Nations, and understandably so, as it concerns two issues which kept the UN preoccupied in the past, viz., the situation in the Middle East (where the PLO was fighting the liberation war) and the decolonization process. The liberation movements invariably involved the use of force by both the parties involved in the conflict. In general, the groups fighting for liberation movements quite often indulge in guerilla tactics and inflict loss of life and property on the civilian population, which in turn call for repressive measures by the state forces. The four Geneva Conventions of 1949 to regulate the state conduct during armed conflicts do not have any specific provision, except Article 3 which is common to all the Conventions. However, in 1968, the General Assembly adopted a number of resolutions on the protection of human rights during the armed conflicts and the Tehran Conference suggested the need for additional humanitarian Conventions or for the possible revision of the existing Convention to ensure the better protection of civilians, prisoners of war and combatants in all armed conflicts. The General Assembly Resolution 2444 (XXIII) of 19 December 1968 entitled "Respect for Human Rights in Armed Conflicts" set the pace for the adoption of two Additional Protocols of the four Geneva Conventions in 1977: Protocol I is applicable in international armed conflicts and the Protocol II in non-international armed conflicts. However, Protocol I applies to liberation movements and Article 1(4) defines these as: armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the

Declaration on the Principle of International Law concerning Friendly Relations and Co- operation among States in accordance with the Charter of the United Nations.

This formula purports to bring under the international armed conflicts those cases of "wars of national liberation" which the UN General Assembly already previously regarded as such, mainly within the framework of the decolonization process. The references to "colonial domination", "alien occupation" and "racist regimes", as well as the "right of self-determination", clearly aim at limiting the scope of such acts. It was definitely not the intention of the authors that henceforth any conflict which a group of self-styled "freedom fighters" might choose to designate as a "liberation war", would fall into the category of international armed conflicts.

This provision presents another difficulty, in that one of the parties in a war of liberation, viz., the people fighting "in the exercise of its right of self-determination", cannot become a Party to the Conventions or the Protocol, though it can submit its declaration to be unilaterally bound by them to the depositary, which will become effective only if the state against whom the war in waged in a Party to the Protocol.

Protocol II, on the other hand does not apply to international armed conflicts, including wars of national liberation, nor does it apply to " situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature as not being armed conflicts"[Art. 1(2)]. It is applicable to internal armed conflicts situated between these two extremes, However, both these Protocols are in addition to the four Geneva Conventions and law, as enshrined in these Conventions are equally applicable to situations of international and internal armed conflicts. Further, Article 3 which is common to all the Conventions, is also incorporated in both the Protocols. It reads:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict should be found to apply, as minimum, the followings:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in

all circumstances be treated humanely…

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular, humiliating and degrading treatment,

(d) the passing of sentences and the carrying out of executions without previous judgment pronounces by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for…"

The Article presents a peculiar problem in that it regards the insurgent party, as one of the parties to the conflict not a Party to the Conventions or the Protocols. They may use this as an argument to deny any obligation to apply the Article. On the other hand, very often, the governments do not wish to recognize the insurgents as an official "party to the conflict", or even as a separate entity and may avoid officially acknowledging that Article 3 is applicable for fear that it would amount to recognition of the insurgents as an adverse party. To meet this situation, Article 3 stipulates that its application "shall not affect the legal status of the Parties to the conflict". But the application of this provision will certainly have the effects on the political status of the insurgents. However, a government's attempt to withhold the application of Article 3 in order to withhold the political status from the insurgents may cause a serious damage to its own image both with the population and the outside world thus will fall into the trap which the insurgents have laid.

Moreover, Article 3 contains minimum standards which no respectable government could disregard for any length of time without losing its respectability. And from that, in terms of Article 1 of the Conventions (Geneva) there is an obligation on the part of states to "respect the Conventions and to "ensure respect" for them in all circumstances". The ICJ observed in the Nicaraguan case, "Such an obligation does not derive only from the Conventions themselves, but from the general principles of humanitarian law to which the

conventions merely give specific expression".[43] Thus, a government is bound to obey these rules whether it recognizes the insurgents as a party to the conflict or not.

Furthermore, the civilian population should not be targeted in any circumstances. In General Assembly Resolution 2675(XXV) of 1970, it was stated, "civilian populations, or individual members thereof, should not be the object of reprisals." This requirement finds a mention in Article 49 of Protocol I, but in practice, it is not at all easy to apply this provision, particularly when terrorist indulge in guerilla tactics and carry out their terrorist acts with great impunity and are sheltered and shielded by the civilian population sympathetic to their cause. Moreover, it may always be difficult to ascertain whether it is a case of violation of these rules, which can be decided only by an independent body. This trend has changed after 9/11. The UN Security Council immediately unanimously adopted a Resolution no 1373 at its 4385th meeting on September 28, 2001 by condemning the terrorist attacks and declared that such acts, like any act international terrorism constitutes a threat to international peace and security and all the nations should cooperate to eliminate the terrorism.

India's Contribution to Combat Terrorism

India has played a major part in strengthening international consensus against terrorism in the United Nations, Non-Aligned Movement (NAM) [44] and South Asian Association for Regional Cooperation (SAARC). India is a party to major international conventions against terrorism and has also incorporated them in its domestic legislations. International Conventions, in which India is a party and the principles of which have also been incorporated into domestic laws are:

i) Convention on Offences and certain other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963. This Convention has been given effect in India by the Tokyo Convention Act, 1975 (20 of 1975);

ii) Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on September 16, 1973. This Convention is implemented through the Anti-Hijacking Act, 1982 (Act No. 65) of 1982);

iii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23rd

September, 1971 and the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982). This Convention is implemented through the Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982 (66 of 1982);

iv) Convention on the Prevention and Punishment. of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14th December, 1973. The Convention is implemented through the provisions of the Indian Penal Code, 1960;

v)International Convention against the taking of hostages, adopted in New York on December 7, 1979. This is given effect in India under section 364 A of the Indian Penal Code, 1960;

vi)UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. This is implemented in India by the Narcotic Drug and Psychotropic Substances (amendment) Act, 1989 which amended the Narcotic Drugs and Psychotropic Substances Act, 1985;

vii) International Conventions against the taking of hostages, adopted in New York on December 7, 1979. This is already covered, and implemented under Article 364 A of Indian Penal Code; and

viii) International Convention for the Suppression of Terrorist Bombings. The Convention was adopted by the UN General Assembly in 1997. India has signed the International Convention for the Suppression of Terrorist Bombings on September 17, 1999. Union Cabinet has already agreed to ratify the Convention on August 5, 1999.

Conclusion

It has become a political tool in the hands of nation states, which they use with great impunity. To check the menace and to protect its innocent victims, attempts have been made by the United Nations at various levels and few conventions have been drawn up pertaining to specific crimes, like hijacking or internationally protected people have been adopted. Certain regional conventions have also come-up, viz., the European Convention on the Suppressions of Terrorism 1977; OAS Convention to Prevent and Punish Acts of Terrorism,1971; OAU Convention on the Prevention and

Combating of Terrorism, 1999; Arab Convention on the Suppression of Terrorism, 1998; Convention of the Organisation of the Islamic Conference on Combating International Terrorism, 1999, South Asian Association for Regional Cooperation (SAARC) Convention on Suppression of Terrorism, 1987 and its Additional Protocol to the SAARC Convention by recognizing the importance of updating the Convention in order to meet the obligations in terms of Security Council Resolution 1373 of 2001. The SAARC Convention on Mutual Legal Assistance in Criminal Matters is one of the most significant and tangible out come of the 15th SAARC Summit, held at Colombo. These conventions, however, are limited in their scope and the subject-matter whereas terrorism is a universal phenomenon. Moreover, the convention on hijacking and other United Nations sponsored conventions have not been very effective because of the failure by many nations to rate them so far.

The UN resolutions, which reflect customary international law on many aspects of terrorism, have more or less stayed as an expression of opinion, without any binding force. The customary rules on non-intervention and non-use of force similarly remain ineffective in the absence of my enforcement machinery and the sanction for their violation. Nevertheless, whatever may be the rule or the form of its enforcement, at the international level, it is the political will of the state that matters and this alone can affectively curb this menace. The States should not only refrain from encouraging terrorist activities within their jurisdiction, targeted towards other states, but also punish the perpetrators of such acts. In this regard, the SAARC Convention on Mutual Legal Assistance in Criminal Matters would strengthen regional cooperation in the fight against cross-border crimes, in particular the fight against terrorism. ■

References

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Lama, free to visit Arunachal Pradesh and finally Dalai Lama visited 'Tawang' on 08-11-2009 after a 50years. Times of India, 8-11-09.

2. Evans, A., and Murphy, J., Legal Aspects of International Terrorism, (Lexington: Mass Heath, 1978).

3. It is well known fact that how the Pakistan Government supported and supporting terrorist groups to use their territory to wage war against India by diverting US aid to terrorist organizations.

4. (1872) Moor's Arbitration, Vol. 4, p.4057 at p.4076.

5. In Tel-Oren v Libyan Arab Republic, 726 F 2d 795 (1984), where an action for tort against an alleged terrorist attack against a bus in Israel was dismissed, Edward J noted the lack of international consensus on terrorism and stated that, besides those acts which are already prohibited by international conventions, no other terrorist action can be regarded as a crime under international.

6 .1998 UN Convention for the Suppression of Terrorist Bombings, (1998) 37 ILM 249; and 2000 UN Convention for the Suppression of the Financing of Terrorism, (2000) 39 ILM 270.

7. See, ex. G.A. Res. 49 / 60 (1994).

8. (1938) 19 LNOJ 23.

9. Article 1(2) of the Convention defined the term 'terrorism' , ….. acts of terrorism (as) criminal acts directed against a State and intended or calculated persons or the general public.

10. Conventions, which required merely three ratifications to came into force, but received only one ratification.

11. U.N. G.A Res. 2551 (XXIV), 12 Dec., 1969, Res.2645(XXV), 25 Nov., 1970; S.C Res. 286 (1970), 9 Sept. 1970

12. (1963) 2 ILM 1042. According to Art.1(1), its application extends to any act, whether a recognized offence or not , which jeopardizes the safety of an aircraft or of persons or property therein or which jeopardize(s) good order and discipline on board. The Convention does not apply to three types of public aircraft: military, customs and police. Unlike other anti-terrorist

treaties, the Tokyo Convention was not designed to address urgent problems, and was viewed as reflecting customary law; yet, it was frugally ratified by signatory States. See, McWhinney, E., Aerial Piracy and International Terrorism, (Dordrecht: Lancaster, 1987).

13. 860 UNTS 105; (1971) 10 ILM 133.The Hague Convention deals exclusively with acts of international hijacking committed by persons on board an aircraft in flight. In Public Prosecutor v SHT 74 ILR 162, the accused was charged with hijacking a British aircraft in flight from Beirut to London, forcing it to land in Amsterdam. The Dutch court applied the 1971 Dutch Penal Code, Art. 385 (a), which implemented the 1971 Montreal Convention, and which provides for the punishment of persons, 'who by force, threat thereof or intimidation seize or exercise control over an air craft, and cause it to change course'.

14. 974 UNTS 177; (1971) 10 ILM 1151. The aim of the Montreal Convention was to combat the scourge of attacks and other forms of aerial sabotage endangering the safety of civil aviation.

15. (1974) 13 ILM 41. This Convention penalizes what has been an ancient customary obligation to protect the person and property of diplomatic agents and other foreign public officials. USA v Iran (US Diplomatic and Consular Staff in Iran case), Judgment 24th May 1980 (1980) ICJ Rep.3. For details, see F. Prazetaoznick, "Prevention and Punishment of Crimes Against Internationally Protected Persons", 3 I.JI.L., (1973), p. 65; S.K. Agrawal, Aircraft Hijacking International law (1973).

16. There are also some regional conventions, viz,., the Europe Convention on the Suppression of Terrorism (came into force in Aug. 1978); the Convention to Prevent the Acts of Terror taking the form of Crimes against Persons and Related Extension of International Significance concluded by the Organisation of American States in 1971; the Convention for the Suppression of Terrorism concluded by the SAARC countries November 4, 1987.

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25. G.A Res. 34/145, Dec. 17, 1979.

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29. G.A Res. 2131(XX), Dec. 21, 1965; GAOR, 20th Sess, Supp.

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31. Bin Cheng I.J.I.L. Vol. 5, p.23 (1965).

32. Case concerning Military and Paramilitary Activities in and Against Nicarogua, I.C.J. Rep., 1986, p. 14, para 223.

33. Ibid., para, P. 206.

34. Ibid.

35. Ibid., para, p. 206.

36. I.C.J. Rep. 1949, p. 34.

37. Op. cit. 11, para, 191.

38. G.A. Res. 2621 (XXV), GAOR, 25th Sess. Supp. 16, p. 10 (1970).

39. G.A Res. 2908 (XXVII), 1972.

40. I.C.J. Rep.,1986, p.554.

41. Ibid. at p. 556.

42. G.A. Res. ES-7/2, GAOR,7th Emergency Sess., Supp., 1, p. 3 (1980); and G.A. Rwes. 33/24, GAOR, 33rd Sess., Supp. 45, p 139 (1978) respectively.

43. Op.cit. 11, Para. 220

44. India has also played a role in evolving NAM consensus against terrorism. NAM has unequivocally affirmed that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons, for whatever purposes, are unjustifiable. XIIth NAM Summit at Durban in 1998 has also re-affirmed that all Member States have an obligation to refrain from organising, assisting or participating in terrorist acts in the territories of other States. The Summit unequivocally condemned any political, diplomatic, moral or material support to terrorism. The NAM Summit also called for early adoption and implementation of a comprehensive convention against international