

CHAPTER III

DEFINITIONS AND KINDS OF TERRORISM

1. **Terrorism- National and International**

Terrorism as a phenomenon has a national or domestic dimension as well as an international dimension and the distinction has to be kept in mind both for the purposes of definition and for evolving the measures and mechanism for combating it. Though both may have overlapping elements, it is desirable to keep the two separate and distinct as they may fall within two different jurisdictions since domestic terrorism may be of purely local concern and hence a matter of maintenance of internal law and order whereas international terrorism may require active cooperation and action at international level.¹

The term 'Terrorism' means premeditated as well as politically motivated violence perpetrated against non-combatant targets by sub-nationals as, clandestine agents, usually to influence an audience. Violence is the story about basic human relationships, power and struggle, social behaviour, religion and politics. Some do it with words, some with human will, while others with the gun.

The norms for reporting terrorist incidents including the bar on the use of the word terrorist or its equivalent '*atankwadi*' – were developed with by the entire media, including the Government controlled electronic media and the national papers. The capitulation, however, did not stop here. The recent newspapers wrote about acts of the most amazing bestiality with a curious deprivation, poverty and consequent alienation that was invented to justify terrorist acts in India. The media carried an uninterrupted steam of interviews and profiles of terrorists and representatives of their violent, murderous propaganda with the same freedom as when covering a candidate for parliament addressing

¹ A. Subramanyam Raju, *Terrorism In South Asia: Views From India*, (2004) New Delhi, India Research Press, at 231.

his constituency. Paul Wilkinson,² an authority on terrorism related works, culled out five major characteristics of terrorism. They are:

1. It is premeditated and aims to create a climate of extreme fear or terror.
2. It is directed at a wider audience or target than the immediate victims of violence.
3. It inherently involves attacks on random and symbolic targets, including civilians.
4. The acts of violence committed are seen by the society in which they occur as extra-normal, in literal sense that they breach the social norms, thus causing a sense of outrage; and
5. Terrorism is used to influence political behaviour in some way - for example to force opponents into conceding some or all of the perpetrators demands, to provoke an over-reaction, to serve as a catalysis for more general conflict, or to publicize political cause.

Although the means and ends have evolved throughout the history, the central element of terrorism – free panic violence and disruption – have changed little over the time. Today tremendous disbelieves potential fits into easily transported packages (bones, nerve gas and biological agents) and the computers that are connected to internet can be attacked from any point on the globe, the need for the heightened security of critical operations has grown markedly in recent years. The boom in the use of information technology to improve performance of the security, increased competitive processes from deregulation and globalization, and concentration of operation in a smaller number of facilities to decrease costs that resulted in reduction in redundancy and resources capacity. As the world enters the 21st century, terrorism remains a vexing problem – an anachronistic fixture of human relations as paradoxically human and inhuman in the third millennium, as it was before the dawn of recorded history. While terrorist once generally used acts of terrorism as a means to publicize their causes,

² *People's Union for Civil Liberties v Union Of India*, AIR 2003 SC 2363.

the operational objectives in the most recent attacks focused on producing the maximum desolation, casualties and impacts.

In all acts of terrorism, it is mainly the psychological element that distinguishes it from other political offences, which are invariably accompanied with violence and disorder too. Fear is induced not merely by making civilians the direct target of violence but also by exposing them to a sense of insecurity. It is in this context that Supreme Court observed³:

"... it is not possible to give a precise definition of terrorism or to lay down what constitutes terrorism. But ... it may be possible to describe it as a use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential or producing on the society as a whole. ... if the object of the activity is to disturb harmony of the society or to terrorize people and the society, with a view to disturb even tempo, tranquility of the society, and a sense of fear and insecurity is created in the minds of a section of society at large, then it will, undoubtedly be held to be terrorist act. ..."

The terrorism is a term used to discuss the method as well as the theory behind the method whereby an organized group seeks to achieve its aims, chiefly through the systematic use of violence. Terrorism acts are directed against persons who as individuals, agents or representatives of authority interfere with the consummation of the objectives of such a group.

Terrorism is a method of combat in the struggle between social groups and forces rather than individuals, and it may appear in any social order. Those focus who appear on the terrorist scene, whether as protagonists or as victims, stands as representative of social groups or of the system of Government. Violence and death are not intended to produce revenue or to terrorize the persons attached but to make the society or Government take notice of the imminence of large-scale struggles. The terrorist act committed in secrecy by one person or several persons is conceived as the advance notice of what may be expected from mass action. It is usually employed where other method of propaganda are not permitted.

³ *Mohd. Iqbal M. Shaikh v. State of Maharashtra*, AIR 1998 SC 2864.

Drawing onto the Geneva Convention of 1949, Mark Selder⁴ defined terrorism as the systematic use of force of violence and intermediation against civilian population and the natural social environments that sustain them. Individuals may carry out terrorism; also groups or states under conditions of social conflict including war, may carry out terrorism. It has often been stated that terrorism is the weapon of the powerless. But even a cursory survey of the history of human conflict reveals that the most egregious terrorism has been conducted by marring states. Mark Selder calls this state terrorism.

Resort to terrorism is not the exclusive monopoly of political organisations and parties. A group of any other character seeking the relocation of power may deem it expedient to use terror and may organize for this purpose. The nature of the power contested may vary greatly; it may be the dominance of one nation state over another or the oppression of one economic stratum by another. A conflict between the supports of two substantially different system of Government may also call forth terrorists tactics. Terrorism is a method always characterized by the fact that it seeks to arouse not only the reigning government or the nation in control but the means of the people to a realization that constituted authority is no longer safely entrenched and unchallenged. To elicit a wide response in circles outside those at whom it is directly aimed, it is futile as a weapon in a social conflict. The logic of terrorism can't fully be understood without an understanding of the proper evolution of the revelry nature of the terrorist act.

Although it is based upon the practice of violence, terrorism differs essentially from what is described as mob violence. Terrorism is carried on by a narrowly limited organisation and is inspired by a sustained programme of large scale objectives of which terror is practiced. Mob violence, although it may conceivably break out in response to a terrorist act, is ordinarily planned and

⁴ Ben Saul, *Attempts to Define 'Terrorism' in International Law*, Netherlands International Law Review, 2005, at 57-83.

uncontrolled, brought into action by some immediate and not necessarily rational modulation and follows no price programme.

Mass insurrection is ideologically most akin to terrorism, but it too is not necessarily premeditated and is likely to occur without painstaking preliminary preparation. The initiation of a mass insurrection may be one of the objectives of a party, which employs terrorism as revolutionary methods; in such a case the relation being one of the means to an end. The realms of possibility in a situation where mass destruction as a means of attaining certain political aims is with the terrorists. The terrorist methods appear unnecessary, although it is not impossible that the removal of a conspicuous representative of the functioning government might prove the starting point for mass destruction (action) or at least accelerate its pace.

The mushrooming growth of terrorism is too recent. Philosophers say that the shape of terrorism is same but the changing thing is the place and time. Though the terrorist want to function, they believe in some particular *ism*, suppressed by some one, they are the voice of some particular exploited group or they are migrated from their land, but after all of these category is same they are not different from other and there is no need to search their problems. In the period of globalization they have a single name and that is a 'terrorist' and their activities are called terrorism.

Thousands of people and organisations have been involved in acts of terrorism. The urge to create a law on terrorism is hence obvious. A great number of laws and treaties exist for various (other) heinous crimes like genocide, crime against humanity, war crimes, narcotics, illegal arms trade, trafficking slave trading, counterfeiting, and piracy. Therefore many of the terrorist acts do not need to be newly codified as 'crimes' as most, if not all societies already have ample opportunity to put those offenders on trial. Yet by using legal term 'terrorist' not only emotional, but also legal doors are opened which would

otherwise have remained closed. This primarily deals with the jurisdiction⁵ international cooperation⁶ and obligations as to the non-provision of any form of protection.⁷ Labeling a crime as terrorist act enables and obliges the various actors to apply a different angle of instruments and means. It also results in increasing both the minimum and maximum penalties. It is therefore in the interest of the individual offender, the victim and the international community to know exactly when a certain act amounts to terrorism and where it does not.

Definitions generally tend to reflect the interests of those who do the defining. A successful definition sets the parameters for the public debate and can shape the agenda of the community.

2. Definition of International Terrorism⁸

Terrorism has become the most worrying feature of the contemporary life. Though violent behaviour is not new, the present day 'terrorism' in its full incarnation has obtained a different character and poses extraordinary challenges to the civilized world. The basic edifices of a modern State, like democracy, state security, rule of law, sovereignty and integrity, basic human rights etc are under the attack of terrorism. Though the phenomenon of terrorism is complex, a '*terrorist act*' is easily identifiable when it does occur. The core meaning of the term is clear even if its exact frontiers are not. That is why the anti-terrorist statutes - the earlier Terrorism and Disruptive Activities (Prevention) Act, 1987 (TADA) and now POTA do not define 'terrorism' but only 'terrorist acts'⁹.

Definition of terrorism under international law is beset with many problems. Some even question the very motives of the countries in seeking to define it in manner to suit their national and strategic interests and others charge

⁵ Personal, territorial, universal.

⁶ Schmid, *Political Terrorism: A Research Guide to Concepts, Theories and Literature* (1983), at 119-152.

⁷ Safe Haven, Refugee law.

⁸ A. Subramanyam Raju, *Terrorism in South Asia: Views From India*, (2004) New Delhi, India Research Press, at 233.

⁹ *Hitendra Vishnu Thakur v State of Maharashtra*, AIR 1994 SC 2623.

some countries with downright hypocrisy in trying to adopt a '*holier than thou*' attitude. Noam Chomsky, for instance, relates a story: St. Augustine tells the story of pirate captured by Alexander, the Great, who asked him "*how he dare molest the sea*". "*How dare you molest the whole world?*" The pirate replied, because "*I do it with my little ship only, I am called thief, doing it with a great navy, you called yourself emperor.*" Chomsky proceeded to observe: "*it captures with some accuracy the current relations between the United States and various minor actors on the state of international terrorism.*"¹⁰ After 1972 Munich Olympics Killings, Ambassador Charles W. Yost said:

*"the fact is, of course, that there is vast amount of hypocrisy about the subject of political terrorism. We all righteously condemn it –except when we ourselves or friends of ours engaged in it. Then we ignore it or gloss it or attach to it tags like 'liberation' or 'defence of world' or 'national honor' to make it seem other than what it is".*¹¹

Some of the definitions attempted by conventions and commentators may appear to be adequate for the limited purpose for which they have been made but, on analysis, they would not serve the purpose of a comprehensive and acceptable definition¹². Yonah Alexander defines terrorism as, "*the use of violence against random civilian targets in order to intimidate or to create generalized pervasive fear for the purpose of achieving political goals.*" The term 'random', 'civilian', 'political' have a very limiting connotation. Water Laquerur defines the term as "*an attempt to de stabilized democratic societies and to show that their governments are impotent.*"¹³ The obvious implication of this definition is that terrorism can be committed against democratic societies only. In 1937, Convention on Terrorism stated that terrorism consists of "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of

10 Noam Chomsky, *Pirates And The Emperors- International Terrorism In The Real World* Montreal, (1991), New York: Black Rose Book, at 1.

11 See, V. S. Mani, "International Terrorism- Is A Definition Possible?", in Verinder Grover (ed), *Encyclopedia of International Terrorism- History And Development*, vol.1, (New Delhi: Deep & Deep Publications, 2002), at 66. However, hypocrisy is an equal opportunity employer and almost all States, big or small, indulge in it.

12 A. Subramanyam Raju, *Terrorism in South Asia: Views From India*, (2004) New Delhi, India Research Press, at 233-234.

¹³ Water Laquerur, *Reflections on Terrorism*, Foreign Affairs, vol. 65, no.1, Fall 1986, at 87.

a particular person, a group of persons or the general public.” This convention confines terrorism to situations where the State per se is target.¹⁴

In the year 1983, Alex Schmid compiled no less than 109 definitions of terrorism.¹⁵

i. Schmid defined terrorism as:

Terrorism is method to combat in which random or symbolic fiction save as instrumental target of violence. These instrumental nucleus share group or class characteristics which forms the basis for their selection for victim's action. Through previous use of violence or the credible threat of violence other members of that group or class are put in a state of chronic fear (terror). This group or class, whose members sense of security is purposively undermined, is the target of terror. The purpose of this indirect method of compact is either to immobilize the target of terror in order to produce disorientation inordinate or compliance, or mobilize secondary targets of demands (e.g. a government) or targets of attention (e.g. public opinion) to changes of attitude or behaviour favoring the short or long term interests of the users of this method of combat.

ii. Lambert counters the definition as:

it does not include acts where the 'target of terror' are absent i.e. where act of violence has a more immediate and direct purpose.

A simple definition of terrorism, proffered by the U.S. Department of State, need to be mentioned, it defines terrorism as, 'premeditated, and politically motivated perpetrated against non-combatant targets by sub-national groups or clandestine state agents, usually intended to influence an audience'. Schmid's definition does not allow for a relativist concept of terrorism i.e. that '*one man's terrorist is another man's freedom fighter*'.

In short term no agreement on all-encompassing definition of terrorism would be reached. There are several reasons why it is so difficult to offer a precise objective definition¹⁶:

¹⁴ Article- 1 of Convention on Terrorism, 1937.

¹⁵ U.S. Department of State, Patterns of Global Terrorism 1988.

¹⁶ Van Krieken, *Terrorism and International Legal Order*, (The Hague 2002), at 17.

terrorism take different forms, although it is usually equated with political sub-version, it is employed at times by governments, and its used as an instruments as of syndicate crime;
the criteria for defining the crime 'terrorism' are generally subjective, since it is mainly based on political consideration;
and above all, terrorism is prompted by a wide range of motives, depending on the point in time and the prevailing political ideology.

In this respect it would be recorded that during wartime, members, of the French resistance to the German occupation war were regarded as criminals and were pursued accordingly.

Elagab gives his own definition¹⁷:

*The term terrorism is used to define criminal acts based on the use of violence or threat of injury and which are directed against a country or its inhabitants and calculated to create a state of terror in the winds of the Government officials, an individual or group of persons, or the general public at large. It could be work of an individual, but more often than not is the effect of organized groups whose philosophy is based on the theory that the end justifies the means.*¹⁸

Definition proceeded by the International Law Commission concluded in 1980s, gives various categories of what constitute terrorist acts¹⁹:

- i. Any act causing death or grievous bodily harm or loss of liberty to a Head of State, persons excusing the prerogatives of the Head of State, their Hereditary or designated successors, the spouse of each persons, or persons changed with public functions or holding public positions where the act is directed against them in their public capacity;*
- ii. Acts calculated to destroy or damage public property or property devoted to a public purpose;*
- iii. Any act likely to imperil human lives through the creation of public danger, in particular the seizures of aircraft, the taking of hostages and any form of violence directed against persons who enjoy international protection or diplomatic immunity;*
- iii. The manufacture obtaining, possessing of supplying of arms, ammunitions, explosives or harmful substances with a view to commissions of terrorist act.*

¹⁷ Omer Y. Elagag, *International Law Document Relating to Terrorism*, 1997 London / Sydney at xix.

¹⁸ *Ibid.*

¹⁹ http://untreaty.un.org/ilc/summaries/7_4.htm visited on 26.01.08.

This definition lacks important elements such as the intention to spread terror, does not cover nuclear terrorism, terrorist financing, etc.

The United Nation General Assembly in 1996 agreed upon the following definition²⁰:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for particular purposes, in no terms these acts are circumstances unjustifiable, whatever the consideration, of a political, philosophical, ideological, racial, ethnic, religious or other natural that may be invoke to justify them.

The European Commission, in September 2001 confirmed a line of thinking which would be more efficient. It stated:

*A list of offences treated as acts of terrorism where they are committed intentionally by individuals or groups against one or countries or their institutions or populations in order to threaten and seriously under mined or even destroys their political, economic or social stricture.*²¹

International instrument on terrorism have given definition of terrorism as well. All are precisely included herein below all are precisely included. They are categorized as follows:

3. UNITED NATIONS CONVENTIONS ON TERRORISM

A. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents, adopted by the General Assembly of the United Nations.²²

The Convention punishes international commission of a murder, kidnapping or other attack upon the person or liberty of internationally protected persons, from a violent attack upon the official premises the private

²⁰ Adopted at the Commission meeting of 19th of September Agreed Definition of Terrorism Needed to Promote Cooperation on its Elimination

<http://www.un.org/News/Press/docs/1996/19961004.gal3008.p2.html> visited on 26.01.08.

²¹ General Assembly Resolution 51 / 210 on measures to eliminate to International terrorism.

²² On 14th December 1973 the U.N. Treaty Series, Vol 1035, page 165.

accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty.²³

B. International Convention Against taking Hostages, adopted by the General Assembly of the United Nations. On 17th December 1979.²⁴

This Convention tends to give the meaning of a hostage taking. It describes a situation where any person who seizes or detains and threatens to kill to injure or to continue to detain another person in order to compel a third party i.e a state, an international intergovernmental organisation, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of hostage commits the offence of taking hostages.²⁵

C. International Convention for the Suppression of Terrorist Bombing, adopted by the General Assembly of the United Nations. On 15th December 1997.²⁶

The Convention on Suppression of Terrorist Bombing punishes the person who commits an offence within the meaning of this Convention. Accused unlawfully and intentionally delivers, places, discharges or denotes an explosive and other lethal device, in, into or against a place of public use, a state or government facilities, a public transportation system or an infrastructure facility with the intention to cause death and with the intend to cause extensive

²³ Article 2 Para 1 *The international commission of:*

- a. *a murder, kidnapping or other attack upon the person or liberty of internally protected persons;*
- b. *a violent attack upon the official premises the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty.*

²⁴ U.N. Treaty Series, Vol 1316, at 205.

²⁵ Article 1 of Convention Against taking Hostages, *Any person who seized or detains and threatens to kill to injure or to continue to detain another person (herein after referred to as the 'hostages') in order to compel a third party, namely, a state, an international intergovernmental organisation, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of hostage commits the offence of taking hostages (hostage / taking) within the meaning of this convention.*

²⁶ U.N. Document – A / RES / 52 / 164.

destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss²⁷.

D. Draft International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations.

On 2nd October 1998.²⁸

Any person commits an offence within the meaning of this convention, if that person unlawfully and intentionally posses radioactive material or make or posses a device with the intention to cause death or serious bodily injury or with the intention to cause substantial damage to property or the environment. The intention is to cause death serious bodily injury or to cause substantial damage to property or environment or to compel a natural or legal person, an international organisation; or state to do or refrain from doing an act. Any person also commits offence, if he threatens, under a circumstance, which indicates the credibility of the threat, to commit the said offence amounts an offence under this Convention.²⁹

²⁷ Article 2 of Convention for the Suppression of Terrorist Bombing, *Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or denotes an explosive and other lethal device, in, into or against a place of public use, a state or government facilities, a public transportation system or an infrastructure facility: with the intention to cause death or serious bodily injury; or with the intend to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.*

²⁸ www.nti.org/e_research/official_docs/inventory/pdfs/nucterr.pdf visited on 26.01.08.

²⁹ Article 2 of Convention for the Suppression of Acts of Nuclear Terrorism,

1. *Any person commits an offence within the meaning of this convention, if that person unlawfully and intentionally:*
 - a. *Posses radioactive material or make or posses a device:*
 - (i) *with the intent to cause death or serious bodily injury or (ii) with the intent to cause substantial damage to property or the environment:*
 - b. *Use in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:*
 - (i) *with the intend to cause death serious bodily injury or*
 - (ii) *with intent to cause substantial damage to property or environment or*
 - (iii) *with intent to compel a natural or legal person, an international organisation; or state to do or refrain from doing an act.*
2. *Any person also commits offence if that person:*
 - a. *threatens, under circumstances which indicates the credibility of the threat, to commit an offence as set forth in sub paragraph 1 (b) of the present article; or*

E. International Convention for the Suppression of the Financing of terrorism, adopted by the General Assembly of the United Nations on 9th December 1999.³⁰

Any person according to this Convention commits an offence within the meaning of this convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they are going to be used and with the knowledge that they are to be used in full or in part in an act which constitutes an offence of terrorism as defined in the international instruments or any other act that intended to the cause death or serious bodily injury to a criminal or to any other person not taking an acting part in the hostilities, in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intermediate a population, or to compel a government or an international organisations to do to abstain from doing any act.³¹

F. Draft comprehensive Convention³²

According to the Committee report, any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes death or serious bodily injury to any person or serious damage to public or private property, including a place of public use, a State or

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- b. *Demands unlawfully and intentionally radioactive material, or device or a nuclear facility by threat under circumstances which indicates the credibility of the threat, or by use of force*

³⁰ U.N. Res . A / RES / 54 / 109.

³¹ Article 2 of Convention for the Suppression of the Financing of terrorism,

1. *Any person commits an offence whether the meaning of the convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used in full or in part in order to carry out :*

a. An act which constitutes an offence within the scope of and as defined in one the treaties tested in the annex or

b. Any other act intended the cause death or serious bodily injury to a criminal or to any other person not taking an acting part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intermediate a population, or to compel a government or an international organisation to do to abstain from doing any act.

3. *For an act to constitute an offence set forth in paragraph, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1 sub paragraph (a) or (b) .*

³² Report of the Ad-Hoc Committee established by the General Assembly resolution 51 / 210 of 17th December 1996, General Assembly resolution 51 / 210, 1996.

government facility, a public transportation system, an infrastructure facility or the environment. Damage is likely to result in a major economic loss, and to compel a Government or an international organization to do or abstain from doing any act with the aim of furthering the criminal activity or criminal purposes of the group, where such activity or purpose involves the commission of an offence under this Convention. Where this Convention and a treaty dealing with a specific of terrorist offence would be applicable in relation to the same act as States that are parties to both treaties, the provisions of the latter shall prevail³³.

4. NON- UNITED NATIONS CONVENTIONS ON TERRORISM

A. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963³⁴

This Convention is applied in respect of the offences against penal law; and to the acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board. This Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State. This Convention is not

³³ Article 1 of Draft Comprehensive Convention, *Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:*

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 2 of Draft Comprehensive Convention, Where this Convention and a treaty dealing with a specific of terrorist offence would be applicable in relation to the same act as States that are parties to both treaties, the provisions of the latter shall prevail.

³⁴ Entry into force 4 December 1969, 173 parties as per 1 may 2002.

applied to the military, customs of police services.³⁵

B. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970³⁶

According to this Convention any person who on board an aircraft in flight unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of, that aircraft, or attempts to perform any such act amounts to an offence of unlawful seizure of aircraft and makes it punishable.³⁷

C. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971³⁸

According to this Convention any person commits an offence of unlawful acts against safety of civil aviation if he unlawfully and intentionally commits an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight and places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight. He tries to destroy or damages air navigation facilities or interferes with their operation, if

³⁵ Article 2 of Convention on Offences and Certain Other Acts Committed on Board Aircraft

1. *This Convention shall apply in respect of:*
 - (a) *Offences against penal law;*
 - (b) *acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.*
2. *Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.*
3. *For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.*
4. *This Convention shall not apply to aircraft used in military, customs or police services.*

³⁶ Entry into force 14 October 1975 Parties as on May 2002

³⁷ Article 1 of Convention for the Suppression of Unlawful Seizure of Aircraft,
Any person who on board an aircraft in flight:

- (a) *Unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act.*

³⁸ Entry into force 26 October 1973 parties as on 1 per 2002.

information, which he knows to be false, thereby also as an offence endangering the safety of an aircraft in flight.³⁹

D. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980⁴⁰

This Convention on the Physical Protection of Nuclear Material in its Article 7, lays down that the intentional commission of an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property by theft or robbery of nuclear material or an embezzlement or fraudulent obtaining of nuclear material an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation or a threat to use nuclear material to cause death or serious injury to any person or substantial property damage natural or legal person amounts to an offence punishable under this Convention.⁴¹

³⁹ Article 1 of Convention on Suppression of Unlawful Acts against the Safety of Civil Aviation,

1. *Any person commits an offence if he unlawfully and intentionally:*

- (a) *performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or*
- (b) *destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or*
- (c) *places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or*
- (d) *destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or*
- (e) *Communicates information, which he knows to be false, thereby endangering the safety of an aircraft in flight.*

⁴⁰ Entry into force 6 August 1987, 75 parties 45 signatories.

⁴¹ Article 7 of Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal

The intentional commission of:

- (a) *an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;*
- (b) *a theft or robbery of nuclear material;*
- (c) *an embezzlement or fraudulent obtaining of nuclear material;*
- (d) *an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;*
- (e) *a threat: (i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or*
(ii) to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act.

E. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988⁴²

In Article 1 of the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal, any person commits an offence if he unlawfully and intentionally, uses any device, substance or weapon to commit violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport' will be punished according to this convention.⁴³

F. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988

This Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in Article 3, lays down that any person who commits an offence if that person unlawfully and intentionally seizes or exercises control over a ship by force or threat thereof or through any other form of intimidation.

Performs an act of violence against a person on board a ship if that act is likely to endanger the safety of navigation of that ship; or destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe

⁴² Entry in to force 6 August 1989, 114 parties 1 per 2002.

⁴³ Article I of the Convention, the following shall be added as new paragraph:

'Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon; Performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport'. (Deposited with the Secretary-General of the International Maritime Organization).

navigation of that ship; or places or causes to be placed on a ship, by any means what so ever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship has committed the offence under this Convention. Any one who destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or injures or kills any person, in connection with the commission or the attempted commission of any of the offence shall be punished according to this convention.⁴⁴

G. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988⁴⁵

Article 2 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf lays down that any person commits an offence if that person unlawfully and intentionally⁴⁶:

⁴⁴ Article 3 of Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, *Any person commits an offence if that person unlawfully and intentionally:*

- (a) *seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or*
- (b) *performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or*
- (c) *destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or*
- (d) *places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or*
- (e) *destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or*
- (f) *communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or*
- (g) *injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).*

⁴⁵ Entry in to force 1 March 1992, 60 parties as per 1 May 2002.

⁴⁶ Article 2 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, *Any person commits an offence if that person unlawfully and intentionally:*

- (a) *seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or*
- (b) *performs an act of violence against a person on board a fixed platform If that act is likely to endanger its safety; or*
- (c) *destroys a fixed platform or causes damage to it which is likely to endanger its safety; or*
- (d) *places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or*
- (e) *injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).*

- (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
- (b) performs an act of violence against a person on board a fixed platform If that act is likely to endanger its safety; or
- (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or
- (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d)

Person accused of the offence defined above shall be punished according to this Convention.

H. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991⁴⁷

[No definition included in that Convention]

5. REGIONAL CONVENTIONS ON TERRORISM

A. Arab Convention on the Suppression of Terrorism, signed at a meeting, Secretariat of the League of Arab States in Cairo on 22 April 1998.⁴⁸

Article 1

Each of the following terms shall be understood in the light of the definition give.

b. Terrorism

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause

⁴⁷ Entry in to force 21 June 1998, 72 parties as per 1 May 2002.

⁴⁸ www.al-bab.com/arab/docs/league/terrorism98.htm - 73k - visited on 26.01.08.

damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.

c. **Terrorist offence**

Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law. The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences:

- (a) *The Tokyo Convention on offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963;*
- (b) *The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970;*
- (c) *The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984;*
- (d) *The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973;*
- (e) *The International Convention against the Taking of Hostages, of 17 December 1979;*
- (f) *The provisions of the United Nations Convention on the Law of the Sea, of 1982, relating to piracy on the high seas.*

B. **Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1st July 1999.⁴⁹**

Article 1 of the Convention of the Organization of the Islamic Conference on Combating International Terrorism for the purposes of this Convention has defined Terrorism as:

'Terrorism' means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honor, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States.

⁴⁹ www.untreaty.org/english/terrorism.asp visited on 26.01.08.

Article 1 of the Convention of the Organization of the Islamic Conference on Combating International Terrorism for the purposes of this Convention has defined Terrorist Crime as:

*'Terrorist Crime' means any crime executed, started or participated in to realize a terrorist objective in any of the Contracting States or against its nationals, assets or interests or foreign facilities and nationals residing in its territory punishable by its internal law".*⁵⁰

C. European Convention on the Suppression of Terrorism, concluded at Strasbourg on 27 January 1977⁵¹

According to the Article 1 of the European Convention on the Suppression of Terrorism, for the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:⁵²

⁵⁰ Crimes stipulated in the following conventions are also considered terrorist crimes with the exception of those excluded by the legislations of Contracting States or those who have not ratified them:

- (a) Convention on 'Offences and Other Acts Committed on Board of Aircrafts' (Tokyo, 14.9.1963);
- (b) Convention on 'Suppression of Unlawful Seizure of Aircraft' (The Hague, 16.12.1970);
- (c) Convention on 'Suppression of Unlawful Acts Against the Safety of Civil Aviation' signed at Montreal on 23.9.1971 and its Protocol (Montreal, 10.12.1984);
- (d) Convention on the 'Prevention and Punishment of Crimes Against Persons Enjoying International Immunity, Including Diplomatic Agents' (New York, 14.12.1973);
- (e) International Convention Against the Taking of Hostages (New York, 1979);
- (f) The United Nations Law of the Sea Convention of 1988 and its related provisions on piracy at sea;
- (g) Convention on the 'Physical Protection of Nuclear Material' (Vienna, 1979);
- (h) 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 the Safety of Civil Aviation (Montreal, 1988);
- (i) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf (Rome, 1988);
- (j) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Rome, 1988);
- (k) International Convention for the Suppression of Terrorist Bombings (New York, 1997);
- (l) Convention on the Marking of Plastic Explosives for the purposes of Detection (Montreal, 1991).

⁵¹ In September 2001 the European Commission provided the following indications: There is a list of offences treated as acts of terrorism where they are committed intentionally by individuals or groups against one or more countries or their institutions or population in order to threaten them and seriously undermine or even destroy their political, economic or social structures.

⁵² For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence. an offence within the scope of the Convention of the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; an office within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; an offence involving kidnapping, the taking of a hostage or serious unlawful detention; an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

- a. an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.
- b. an offence within the scope of the Convention of the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- c. an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;
- d. a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;
- e. an offence involving kidnapping, the taking of a hostage or serious unlawful detention;
- f. an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;
- g. an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

D. OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C. on 2 February 1971⁵³

Article 2 of OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion makes the offence of kidnapping, murder, and other assaults against the life or personal integrity of those persons to whom the state has a duty to give special protection according to international law, as well as extortion in connection with those crimes, to be considered common crimes of international significance, regardless of motive.⁵⁴

⁵³ www.untreaty.org/english/terrorism.asp visited on 26.01.08.

⁵⁴ Article 2 of the OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion, *For the purposes of this convention, kidnapping, murder, and other assaults against the life or personal integrity of those persons to whom the state has the duty to give special protection according to international law, as well as extortion in connection with those crimes, shall be considered common crimes of international significance, regardless of motive.*

E. OAU Convention on the Prevention and Combating of Terrorism, adopted at Algiers on 14 July 1999⁵⁵

According to the Article 1⁵⁶ of the OAU Convention on the Prevention and Combating of Terrorism, the terrorist act would mean any violation of the criminal law of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage. When he tries to put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or create general insurrection in a State.

F. SAARC Regional Convention on Suppression of Terrorism, signed at Katmandu on 4 November 1987.⁵⁷

In Article 1 of the SAARC Regional Convention on Suppression of Terrorism, are the basic requirements of the law of extradition, the following offences, shall be regarded as offence of terrorism- 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

⁵⁵ www.untreaty.org/english/terrorism.asp visited on 26.01.08.

⁵⁶ Article 1 OAU Convention on the Prevention and Combating of Terrorism, For the purposes of this Convention: *'Terrorist act' means: any act which is a violation of the criminal law of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to: intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or create general insurrection in a State.*

⁵⁷ www.untreaty.org/english/terrorism.asp visited on 26.01.08.

persons or serious damage to property. Even an accomplice would be punished for his act.⁵⁸

G. Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999⁵⁹

This treaty has defined the word 'terrorism'⁶⁰ and also 'technological terrorism' as those acts punishable under the criminal law.

58 Article 1 of SAARC Regional Convention on Suppression of Terrorism:

Subject to the overall requirements of the law of extradition, conduct constituting any of the following offences, according to the law of the Contracting State, 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:

- (a) *An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970;*
- (b) *An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;*
- (c) *An offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed at New York on December 14, 1973;*
- (d) *An offence within the scope of any Convention to which the SAARC Member States concerned are parties and which obliges the parties to prosecute or grant extradition.*
- (e) *Murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offences relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property;*
- (f) *An attempt or conspiracy to commit an offence described in sub-paragraphs (a) to (e), aiding, abetting or counseling the commission of such an offence or participating as an accomplice in the offences so described.*

⁵⁹http://209.85.173.104/search?q=cache:GmP_kZEmyAUJ:se2.isn.ch/serviceengine/FileContent%3FserviceID%3D23%26fileid%3D4CB3E219-7142-B680-549CFA6168AF22EE%26lng%3Den+Treaty+on+Cooperation+among+States+Members+of+the+Commonwealth+of+Independent+States+in+Combating+Terrorism,+done+at+Minsk&hl=en&ct=clnk&cd=3&gl=invisited on 26.01.08.

⁶⁰ 'Terrorism' - an illegal act punishable under criminal law committed for the purpose of undermining public safety, influencing decision making by the authorities or terrorizing the population, and taking the form of:

Violence or threat of violence against natural or juridical persons;

Destroying (damaging) or threatening to destroy (damage) property and other material objects so as to endanger people's lives;

Causing substantial harm to property or the occurrence of other consequences dangerous to society;

Threatening the life of a statesman or public figure for the purpose of putting an end to his State or other public activity or in revenge for such activity;

Attacking a representative of a foreign State or an internationally protected staff member of an international organization, as well as the business premises or vehicles of internationally protected persons;

Other acts classified as terrorist under the national legislation of the Parties or under universally recognized international legal instruments aimed at combating terrorism.

6. POSITION IN UNITED STATES⁶¹

There are four of the definitions utilized within the United States: Definitions by four United States government agencies are: *Firstly* United States House of Representatives Permanent Select Committee on Intelligence⁶² (2002); *secondly* by the State Department⁶³ (1984); *thirdly* by the FBI⁶⁴ (1999); finally or *fourthly* by DOD (2000)⁶⁵. There is no single definition of terrorism given by FBI.⁶⁶ The FBI defines terrorism as⁶⁷, the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

⁶¹ Alex Schmid, *War Crimes Research Symposium: "Terrorism on Trial": Terrorism - The Definitional Problem*, 37 Case W. Res. J. Int'l L. 375, at 377.

⁶² Definition given by United States House of Representatives Permanent Select Committee on Intelligence, "Terrorism is the illegitimate, premeditated violence or threat of violence by sub national groups against persons of property with the intent to coerce a government by installing fear amongst the populace."

⁶³ Definition given by State Department, "Terrorism means premeditated, politically motivated violence perpetrated against noncombatant targets by sub national groups or clandestine agents, usually intended to influence an audience."

⁶⁴ Definition given FBI, "Terrorism is defined as the unlawful use, or threatened use, of force or violence by a group or individual . . . committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."

⁶⁵ Definition given by DOD, "Terrorism is the calculated use of violence or threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious or ideological."

⁶⁶ www.fbi.gov/publications/terror/terror2000_2001.htm - 374k - visited on 26.01.08.

⁶⁷ . The FBI defines terrorism as⁶⁷, "the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives." The FBI further describes terrorism as either domestic or international, depending on the origin, base, and objectives of the terrorist organization. Domestic terrorism involves groups or individuals who are based and operate entirely within the United States and Puerto Rico without foreign direction and whose acts are directed at elements of the U.S. Government or population. International terrorism is the unlawful use of force or violence committed by a group or individual, who has some connection to a foreign power or whose activities transcend national boundaries, against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. The FBI divides terrorist-related activity into three categories: a terrorist incident is a violent act or an act dangerous to human life, in violation of the criminal laws of the United States or of any state, to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives; a suspected terrorist incident is a potential act of terrorism in which responsibility for the act cannot be attributed at the time to a known or suspected terrorist group or individual; and a terrorism prevention is a documented instance in which a violent act by a known or suspected terrorist group or individual with the means and a proven propensity for violence is successfully interdicted through investigative activity.

7. Definition of Terrorism given in Malimath Committee Report⁶⁸

The Committee on Criminal Justice Reform appointed by the Ministry of Home Affairs under the leadership of the chairman Justice Malimath has also defined the offence terrorism.⁶⁹ While discussing terrorism, it admits that it is difficult to define "terrorism", as, during the last 40 years the forms of terrorism have undergone metamorphose. However, one of the earliest definitions in the 20th century which comes to mind, is the one given in Article 1 of the League of Nations Convention on Terrorism, 1937 which defined it as "criminal acts" directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.⁷⁰ This definition has also undergone a change, as today terrorism is seen to be more about power – as a means to political power with full control of State authority. There has been a good deal of debate on the desirability of having a comprehensive definition as new trends and dangers have been revealed. It poses a question as to whether the definition should be general or enumerative or mixed or whether it should be confined to individual and group terrorism or cover State terrorism as well and whether it should exempt the struggles for self-determination from its scope or embrace all situations alike.

Dr. Justice A.S. Anand (as he was then) delivering the judgment in *Hitender Vishnu Thakur v State of Maharashtra*⁷¹ has perceptively dealt with the definition of terrorism. He observed that:

⁶⁸ Malimath, Report of the Committee on Reforms of Criminal Justice System, Vol 1 (2003), Government of India at 213.

⁶⁹ Definition given by Malimath Committee in its Report, *It stands to reason that in order to combat an evil, its nature must be explained in an acceptable definition. It is extremely difficult to offer a precise and objective definition of terrorism, which can be universally acceptable. There are several reasons for this, namely:*

- (i) *Terrorism takes different forms: although it is usually equated with political subversion;*
- (ii) *The criteria for defining the term 'terrorism' is generally subjective since it is mainly based on political considerations and is often employed by Governments;*
- (iii) *It is used as an instrument of syndicated crime;*
- (iv) *Above all, terrorism is prompted by a wide range of motives, depending on the point in time and the prevailing political ideology*

⁷⁰ UN Secretariat Study on Terrorism, UN Doc A/C.6/418, Annexe I

⁷¹ AIR 1994 SC 2623.

Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilized society. "Terrorism" has not been defined under TADA nor is it possible to give a precise definition of "terrorism" or lay down what constitutes "terrorism". It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travel beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle.

The American definition of terrorism is far more comprehensive in as much as (i) hijacking or sabotage, (ii) seizing or detaining, (iii) threatening to kill or injure or to continue to detain another individual to compel a third person including the Government organizations to do or abstain from doing any act as conditions of release of the individual detained; and (iv) use of biological or nuclear agent, is expressly included in the definition of terrorism.

There is clearly a wide choice of definitions for terrorism. Despite this, there are elements in common among the majority of useful definitions. Common threads of the various definitions identify *terrorism* as:

- Political
- Psychological
- Coercive
- Dynamic
- Deliberate

i. Political⁷²

A terrorist act is a political act or is committed with the intention to cause a political effect. Clausewitz's statement that "war is a continuation of policy by other means" is taken as a truism by terrorists. They merely eliminate the intermediate step of armies and warfare, and apply violence directly to the political contest.

ii. Psychological⁷³

The intended results of terrorist acts cause a psychological effect ("terror"). They are aimed at a target audience other than the actual victims of the act. The intended target audience of the terrorist act may be the population as a whole, some specific portion of a society (an ethnic minority, for example), or decision-making elites in the society's political, social, or military populace.

iii. Coercive⁷⁴

Violence and destruction are used in the commission of the act to produce the desired effect. Even if casualties or destruction are not the result of a terrorist operation, the threat or potential of violence is what produces the intended effect. For example, a successful hostage taking operation may result in all hostages being freed unharmed after negotiations and bargaining. Regardless of the outcome, the terrorist bargaining chips were nothing less than the raw threat of applying violence to maim or kill some or all of the hostages. When the threat of violence is not credible, or the terrorists are unable to implement violence effectively.

⁷² Grant Wardlaw, *Political Terrorism: Theory, Tactics and Counter-Measures*, 2nd Edition (1989), Cambridge publication, at 10.

⁷³ http://www.artindiamag.com/quarter04_06/lead_assay04_amit.html visited on 26.01.08.

⁷⁴ <http://www.terrorismresearch.net/dialogues/theme1/whitty.htm> visited on 26.01.08.

iv. Dynamic⁷⁵

Terrorist groups demand change, revolution, or political movement. The radical worldview that justifies terrorism mandates drastic action to destroy or alter the status quo. Even if the goals of a movement are reactionary in nature, they require action to "turn back the clock" or restore some cherished value system that is extinct. Nobody commits violent attacks on strangers or innocents to keep things "just the way they are."

v. Deliberate⁷⁶

Terrorism is an activity planned and intended to achieve particular goals. It is a rationally employed, specifically selected tactic, and is not a random act. Since the victims of terrorist violence are often of little import, with one being as good for the terrorists' purposes as another, victim or target selection can appear random or unprovoked. But the target will contain symbolic value or be capable of eliciting emotional response according to the terrorists' goals. Remember that the actual target of terrorism is not the victim of the violence, but the psychological balance

vi. Media Exploitation⁷⁷

Terrorism's effects are not necessarily aimed at the victims of terrorist violence. Victims are usually objects to be exploited by the terrorists for their effect on a third party. In order to produce this effect, information of the attack must reach the target audience. So any terrorist organization plans for exploitation of available media to get the message to the right audiences. Victims are simply the first medium that transmits the psychological impact to the larger target audience. The next step in transmission will depend on what media is available, but it will be planned, and it will frequently be the responsibility of a specific organization within the terrorist group to do nothing else but exploit and control the news cycle.

⁷⁵ www.fbi.gov/pressrel/speeches/mueller071707.htm visited on 26.01.08.

⁷⁶ www.sspconline.org/researchpapers.asp visited on 26.01.08.

⁷⁷ www.presscouncil.nic.in/speech9.htm visited on 26.01.08.

Some organizations can rely on friendly or sympathetic news outlets, but this is not necessary. News media can be manipulated by planning around the demands of the "news cycle", and the advantage that control of the initiative gives the terrorist. Pressures to report quickly, to "scoop" competitors, allow terrorists to present claims or make statements that might be refuted or critically commented, on if time were available. Terrorists often provide names and details of individual victims to control the news media through its desire to humanize or personalize a story. For the victims of a terrorist attack, it is a certainty that the impact on the survivors (if there are any) is of minimal importance to the terrorists. What is important is the intended psychological impact that the news of their death or suffering will cause in a wider audience.

vii. Operations in Permissive Societies⁷⁸

Terrorists conduct more operations in societies where individual rights and civil legal protections prevail. While terrorists may base themselves in repressive regimes that are sympathetic to them, they usually avoid repressive governments when conducting operations wherever possible. An exception to this case is a repressive regime that does not have the means to enforce security measures. Governments with effective security forces and few guaranteed civil liberties have typically suffered much less from terrorism than liberal states with excellent security forces. Al Qaeda has shown, however, that they will conduct operations anywhere.

viii. Illegality of Methods⁷⁹

Terrorism is a criminal act. Whether the terrorist chooses to identify himself with military terminology (as discussed under insurgencies below), or with civilian imagery ("brotherhood", "committee", etc.), he is a criminal in both spheres. The violations of civil criminal laws are self-evident in activities such as murder, arson, and kidnapping regardless of the legitimacy of the government enforcing the laws. Victimizing the innocent is criminal injustice under a dictatorship or a democracy. If

⁷⁸ www.terrorism-research.com/behavior/ visited on 26.01.08.

⁷⁹ <http://merln.ndu.edu/archive/MilitaryReview/kellog.pdf>. Visited on 26.01.08.

the terrorist claims that he is justified in using such violence as a military combatant, he is a de facto war criminal under international law and the military justice systems of most nations.

ix. Preparation and Support⁸⁰

It is important to understand that actual terrorist operations are the result of extensive preparation and support operations. Media reporting and academic study have mainly focused on the terrorists' goals and actions, which is precisely what the terrorist intends. This neglects the vital but less exciting topic of preparation and support operations. Significant effort and coordination is required to finance group operations, procure or manufacture weapons, conduct target surveillance and analysis, and deliver trained terrorists to the operational area. While the time and effort expended by the terrorists may be a drop in the bucket compared to the amounts spent to defend against them, terrorist operations can still involve large amounts of money and groups of people. The need for dedicated support activities and resources on simple operations are significant, and get larger the greater the sophistication of the plan and the complexity of the target.

Information on potential targets is included as terrorist's activity in American law. Transportation or communication of false documents or identification or of weapons is expressly included as terrorist activity.

Soliciting, funding for terrorism or even soliciting the membership of terrorist organizations is amongst terrorist's activity regardless of its other legitimate activity. Terrorists Organisation is defined as an organisation, which by itself or through a group engages in terrorist's activity. U.S. Statute makes it an offence to carry weapons or explosives on board on aircraft an offence punishable by 15 years⁸¹.

⁸⁰ *Ibid.*

⁸¹ Section 104 of U. S. Statute, <http://laws.justice.gc.ca/en/notice/index.html> visited on 26.01.08.

U.S. Statute makes the act of transfer of explosive material, knowing or having reason to believe that such explosive material will be used to commit a crime of violence punishable by 10 years⁸². The U.S. Act provides for removal of aliens on an application made before the Special Court designated with the certification of the Attorney General that the aliens would pose a risk to national security. The Special Court has been permitted under section 503(B) and (C) of Title (V) to consider the classified information submitted *in camera* and *ex parte* to make the determination with regard to the release of the aliens pending hearing. The conditions for release are similar to section 20(8) of TADA Act 1987, which has been considerably diluted under POTA. The U.S. Statute makes specific provision for funding for terrorist related cases for various agencies like the FBI, Customs Services, Drug Enforcement, Department of Justice and Department of Treasury (Sections 521-527). Such provision for additional funding for creation of additional infrastructure for investigation and trial of terrorist cases does not pose an unplanned additional burden on the over burdened judiciary and other related agencies, which have to deal with the problem of terrorism. The U.S. Act makes comprehensive provision for assistance and compensation to the victims of terrorism and designates funds for the purpose.

The penalties prescribed for various terrorists' offences are similar or more stringent in the American Law compared to the Indian Act. Prior to 1990, India had had put in strong measures, in separate legislations to deal with smuggling, narcotics, foreign trade violation, foreign exchange manipulations, as also legal provisions for preventive detention and forfeiture of property to tackle such serious crimes. However, after the draconian Foreign Exchange Regulation Act, 1973 (FERA), was repealed, the Government contemplated making a law to prevent money laundering but the Prevention of Money Laundering Bill, 1998 did not materialize with FEMA and there has been much laundering of money in the last 3 years.

⁸² Section 922(o) of Title 18 makes it unlawful to transfer or possess a machinegun made after May, Explosive Materials Unlawful Acts, 18 U.S.C. § 842.
www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/63mcrm.htm, visited on 26.01.08.

The new legislation defines the offence of money laundering, in consonance with international practices, as crime, which in turn is considered to be in property or value of such property derived as a result of criminal activity relating to a schedule offence. The act has two parts and deals with sections 121 and 121A of the Indian Penal Code and several offences under the narcotics, drugs and Psychotropic Substances Act, 1985. The monetary limit was not provided for in the original 1998 Money Laundering Bill. This offence now include murder, extortion, kidnapping, robbery and dacoity, forgery of security, counterfeiting currency and bank notes, Prevention of Arms Act, Wild Life Protection Act, 1972, trafficking of women and offences under the Prevention of Corruption Act, 1988. The illegal practices in international trade are the first and foremost sources of illegal money, which is manipulated through value, quantity, and description of traded consignments⁸³.

Though there has been criticism about the strength of the Prevention of Money Laundering Act, it still falls short of similar laws in the western world, particularly the United States and the European Union. What is required is that the new law, in the present shape must be enforced with greater rigour. Clearly the prevention of money laundering is essential for safeguarding internal security. Given the close nexus between drug trafficking, organised crime and terrorism it is essential to improve the effectiveness of the law by providing sufficient resources on military and paramilitary forces and to create and to strengthen the existing cadre, or better create a new cadre of experts to deal with groups of crime which finance terrorism. An effective coordination agency with wide powers would be necessary on the lines suggested by the Vohra Committee in the Report on Criminalisation of Politics.

⁸³ Malimath, Report of the Committee on Reforms of Criminal Justice System, Vol 1 (2003), Government of India at 227- 229.

In fact, the need for a definition of terrorism can be seen at almost every phase, such phases include⁸⁴:

(a) Legislation and punishment

The laws and regulations enacted to provide security forces with an instrument for combating terrorism. A definition of terrorism is necessary when legislating laws designed to ban terrorism and assistance to terrorism, as well as when setting minimum sentences for terrorists or confiscating their financial resources and supplies. Barring an accepted definition, this legislation has no value. Legislation and punishment must distinguish terrorism from ordinary crime, even when they might actually be identical in practice. The need for a separate legislation and punishment for terrorism stems from the enormous danger that terrorism, due to its political dimension, as opposed to crime, poses to society and its values, to the government in power, and to the public at large.

(b) International cooperation

An internationally accepted definition of terrorism is required to strengthen cooperation between countries in the struggle against terrorism, and to ensure its effectiveness. This need is particularly obvious in all that concerns the formulation and ratification of international conventions against terrorism—conventions forbidding the perpetration of terrorist acts, assistance to terrorism, transfer of funds to terrorist organizations, state support for terrorist organizations, commercial ties with states sponsoring terrorism—and conventions compelling the extradition of terrorists.

(c) States sponsoring terrorism

Modern terrorism is increasingly dependent on the support of nations. States sponsoring terrorism use terrorist organizations as a means to their own ends, while these organizations depend on the assistance they receive from such countries at the eco, military, and operational levels.

⁸⁴ Boaz Ganor, *Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?* www.ict.org.il/article/define.htm visited on 29.07.07.

Some organizations are so closely dependent on the assistance of states that they become “puppets” functioning at the initiative, direction, and with the complete support of these states. It is impossible to contend effectively with terrorism without severing the close tie between the terrorist organizations and the sponsoring states. This tie, however, cannot be severed without agreeing on a broad definition of terrorism, and thus of the states that sponsor it and of the steps to be taken against them.

(d) Offensive action

The state struggling against terrorism must retain the initiative. At the same time, attempts must be made to limit, as far as possible, the operative capacity of the terrorist organization. To attain these aims, a continued offensive must be conducted against terrorist organizations. While countries on the defensive naturally enjoy the sympathy of others, countries on the offensive are usually censored and criticized by others. To ensure international support for states struggling against terrorism, and perhaps even for a joint offensive, an internationally accepted definition of terrorism is required that will distinguish freedom fighting (which enjoys a measure of legitimacy among nations) from terrorist activity.

(e) Attitudes toward the population supporting terrorism

Terrorist organizations often rely on the assistance of a sympathetic civilian population. An effective instrument in the limitation of terrorist activity is to undermine the ability of the organization to obtain support, assistance, and aid from this population. A definition of terrorism could be helpful here too by determining new rules of the game in both the local and the international sphere. Any organization contemplating the use of terrorism to attain its political aims will have to risk losing its legitimacy, even with the population that supports its aims.

(f) Public relations

A definition that separates terrorism out from other violent actions will enable the initiation of an international campaign designed to undermine the legitimacy of terrorist organizations, curtail support for

them, and galvanize a united international front against them. In order to undermine the *legitimacy* of terrorist activity (usually stemming from the tendency of various countries to identify with some of the aims of terrorist organizations), terrorist activity must be distinguished from guerrilla activity, as two forms of violent struggle reflecting different levels of illegitimacy.

9. KINDS OF TERRORISM

Terrorism may be of many kinds some of them are discussed here in below⁸⁵:

A. Terrorism International, National, and Regional⁸⁶

Depending on the sphere of application, terrorism may be national or international. National terrorism may be encompassing the whole of a nation state or may be regional, that is, restricted to a particular region. The terrorism perpetrated by the Liberation Tigers of Tamil Elam (LTTE), Gurkha National Liberation Front (GNLF) and Khalistanis are regional in character, as these are restricted to a particular region of a nation-state. The LTTE wants to form a separate Tamil state (Tamil Elam) in the northern area of Sri Lanka. The GNLF wanted to form a Gurkha State consisting of the three hilly sub-divisions of Darjeeling, Karsiang and Kalimpong of the Darjeeling district of West Bengal province of India. The Khalistanis wanted to make the Punjab province of India a separate State of Khalistan (holy place). The terrorism adopted by the Palestine Liberation Organisation (PLO) is national. Their aim is to establish a Palestine state in Palestine. The Irish Republican Army (IRA) also may be called national. They want to reunify Ireland.

When the sphere of application of any terrorism transcends the boundary of a nation-state, it is called international terrorism. According to the UN Ad hoc Committee on International Terrorism, it is a 'heinous act of barbarism committed

⁸⁵ Nazrul Islam, *Islam 9/11 and Global Terrorism A Study of Perceptions and Solutions*, (2005) Viva Books Private Limited at 9-15.

⁸⁶ *Ibid.*

in the territory of a third state by a foreigner against a person possessing a nationality other than that of the offender for the purpose of exerting pressure in a conflict not strictly internal in nature. The September 11 attacks on the WTC and Pentagon was suspected to be planned, programmed and executed by the Osama bin Laden, as protest against the US the common people of working contrary to the interests of the Middle East. The terrorist activities adopted by the Kashmiris is national from the point of view of those Kashmiris who want to form a separate state of Kashmir away from both India and Pakistan, but from the point of view of both the countries it is international terrorism.

B. Terrorism: By the state and against the state⁸⁷

Depending on who is terrorizing whom, terrorism may be classified into State-sponsored terrorism and terrorism against the State. The struggle organised against the unjust British rule by the Indian revolutionaries like Kshudiram, Binay, Badal, Dinesh and Bhagat Singh was terrorism against the State. On the other hand, the repression by Hitler, Mussolini, and Stalin were dazzling examples of State-sponsored terrorism. The planned killing of Palestinians by the Israeli armed forces is also terrorism by a State.

On 22 March 2004, near a mosque in Gaza, missiles fired from the helicopter of the Israeli State assassinated Seikh Ahmad Yassin, the religious leader. Again on 17 April 2004 another missile from an Israeli helicopter hit the car of the Abdel Aziz Rantisi, who succeeded Yassin, killing him and his two associates. In the Palestinian areas like Gaza and West Bank, Israel does not undertake any responsibility for welfare activities like healthcare or sanitation for the Palestinian people; organisations like Hamas shoulder the responsibility. Israeli army kills them using air power and fire power, backed by US leaders like Bush. On the other hand, when the members of Stern Gang or Irgun Zvai Leumi, unable to fight the British mandate authority face to face, resorted to hit-and-run

⁸⁷ *Ibid.*

tactics, they were termed by the British and American media as terrorists. With the recognition of Israeli State by America and its allies on 14 May 1948, the members of these terrorist gangs joined the armed forces, some of them to the highest post. They are now openly killing the Palestinian people by sophisticated arms. But they are no more termed terrorists by the media of the developed countries. Some countries are condemning the killing, but USA is supporting it as an act of self-defence.

This case may be further extended to include terrorism by a stronger State against weaker State, and terrorism by a group of weaker States against stronger State. The stronger State may use terrorism to overawe the weaker States, or compel them to be subservient to its own interest. The USA's attacks on Afghanistan and Iraq and threat to attack Syria are acts of terrorism by stronger State against a weaker one. On the other hand, the 11 September 2001 attacks on the WTC and Pentagon were an act of terrorism against a stronger State allegedly by a group supported by some weaker State.

The media is largely controlled, directly or indirectly, by the State. So any application of threat or application of violence against the State gets wide publicity and often condemnation. But State sponsored terrorism is not condemned so much in the media; it is even praised by the State-controlled media. To millions of Indians, the militant revolutionaries were right in waging the freedom struggle against the foreign rule, and after the attainment of independence, they are revered by the countrymen as freedom fighters. But the foreign rulers condemned them as terrorists and deported them, and even sent them to the gallows. Whatever plea the Bush administration may offer, the main cause of his launching an attack on Iraq was to teach Saddam Hussain of Iraq a lesson for not toeing the line and selling oil to them at their price. Naturally 73 per cent of the readers of a Kolkata daily opined that George Bush is the real terrorist of the world. But he is publicising his unjust and illegal action as fight against terrorism.

C. Terrorism: Secular and Religious⁸⁸

Depending on the aim of the organisation, also terrorism may be classified into different kinds. The Left-wing extremist groups (like the Naxalites, the PWG and the MCC) of India use terrorism with the aim of overpowering the class-enemies and establishing the rule of the proletariats. The people in power use counterterrorism against the extremists to keep them in reign and enjoy the benefits of ruling the land. Both al-Fatah and Hamas struggle for the liberation of Palestine.

The majority of both the organisations are Muslims. But the former uses terrorism in the name of secular nationalism, but the latter does it in the name of religion. Hence, though the former, considered a secular organisation, and the latter as religious, both are equally terrorist in their operations. Similarly terrorism by the Stern Gang and Irgun Zvai Leumi of Palestine, and Jewish Defence League of USA, who are fighting for the Zionist cause, are Jewish religious terrorist organisations. Similarly, the Christian Patriots Defence League, the Covenant, The Sword and the Arm of the Lord, the Order, Pose Comitatus and the Skinheads of the USA fight for the Christian cause and so are Christian religious terrorist organisations.

D. Terrorism: By us and against us⁸⁹

The same act of violence is termed holy war when we do it, but as terrorism when perpetrated against us. The same Afghan mujahideen were in 1985, compared by the then US President Ronald Reagan to 'America's founding fathers', as they were fighting the 'evil empire', that is the USSR. But they were termed 'bloody terrorists' and 'heroin dealers' a few years later, when, after the Soviet withdrawal, the USA stopped supply of arms and dollars to them, and they declared war against the 'Great Satan', that is the USA. The ANC under Nelson Mandela was fighting against the racist white regime for the abolition of apartheid

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

and for equal rights for the blacks in their own homeland. The ANC was termed terrorist and its leaders like Mandela were imprisoned by the apartheid regime backed by the epitome of democracy, the leaders of USA. Now ANC is the party in power in South Africa.

When Zionist organisations like the Stern Gang and Irgun Zvai Leumi were fighting the British administration, the media in the UK and USA as terrorists referred them to, but when they began to kill Palestinians on behalf of Israeli state; they were not referred to as terrorists.

The members of organisations like Hamas are freedom fighter to the Palestinian people and many Arabs, but they are terrorists for Israel and USA. On the other hand, the repression by Israeli army of the Palestinian people wanting to stay in their own country are unjust acts of terrorism to the Palestinian people, the Arabs and many more, including some Jews, but to Israel and its protector USA, this is self-defence.

The Kashmiris, who are fighting the Indian army for a separate unified Kashmir are freedom fighters to many people in Kashmir and Pakistan, but they are separatist terrorists to the Indian administration.

If the member's of Ikhwanul Muslemin want to depose the Saudi king, it is terrorism; because Saudi king sells oil to USA at the latter's terms. But if the CIA hoodlums depose Iranian Prime Minister Mosaddeq, it's not terrorism, simply because he threatened to nationalise Iranian oil, a proposal highly objectionable 'from the US point of interest.

If the members of the PLO show the slightest signal of dethroning the king of Jordan, it is terrorism. But if the CIA-backed miscreants massacre the Iraqi PM Qassem and his supporters, it is not terrorism.

If Hamas hurl a bomb on occupying Israeli army it must be terrorism, because Israel is US's ally. But if the Kurds use arms supplied by USA through

the Shah of Iran, against the regime of Saddam, it can not be terrorism, because Saddam nationalised Iraq's oil in 1972

This is why US Secretary of State George Shultz stated, 'We know the difference between terrorists and freedom fighters, and as we look around we have no trouble telling one from the other. Because those who are with them are freedom fighters, and those, against them are terrorists.

E. Terrorism: Self –Financing and Financed by Others⁹⁰

Terrorism of a particular group may be planned, programmed and financed by the group itself. It may also be planned, programmed and financed by some other person or organisation and even by some or a group of States.

The Islamic Revolution of 1979 by the Hezbollah was planned, programmed and financed by the members of the organisation. The activities of the Arms Islamic Group⁹¹ (GIA) in Algeria are also planned and executed by the members of the organisation itself. But the Mujahideen fighting against the Soviet occupation of Afghanistan were recruited; trained, armed and funded by the USA and its allies like Saudi Arabia and Pakistan through intelligence agencies like the Central Intelligence Agency⁹² (CIA) of USA, British Secret Intelligence Service often known as MI6⁹³ of the UK, and Inter Service Intelligence Agency⁹⁴ (ISI) of Pakistan. Muslims of different countries of the continents were recruited and trained and encouraged to fight the 'evil empire'. After the Soviet withdrawal from Afghanistan in 1989, these people left Afghanistan to wage jihad elsewhere.

⁹⁰ *Ibid.*

⁹¹ www.meanindia.nic.in visited on 28.08.07.

⁹² www.in.reuters.com/articles/worldnews visited on 28.08.07.

⁹³ www.mi6.co.uk/mi6.php visited on 28.08.07

⁹⁴ www.Ipcs.org/India_Pak_articles2.jsp?action visited on 28.08.07.

F. Terrorism: Bio-Terrorism⁹⁵

There are certain microorganisms that are practically used as weapons of people. Biological weapons, along with chemical and nuclear weapons the systems designated as Weapons of Mass Destruction (WMD). The fear of the unknown and unseen biological weapons may create silent terror in a populous community. Awareness, education and training are only defence modes against new and emerging diseases of bio- terrorism. Historical findings reveal that France was the first country, to use bacteria as biological weapons to thin out army and disorganize the transport of draft animals for war purpose in the late 1930s and later various states began biological warfare activities as part of offensive and defensive programmes. Various international agreements and treaties from 1899 to 1972 allowed only partial containment on the usage of biological weapons, but it have not contained the development and proliferation. The biological weapons, pathogenic microorganisms, which release certain poisonous toxins, lethal at very low concentration, are the most potential source of bio- terrorism and are a real threat to the security of public health and international peace. Some potential typical examples of biologic warfare agents are anthrax, botulism, plagues and small pox. Bio-terrorism is considered to be another easy accessible form of asymmetric warfare adopted by the terrorist forces. Industry, buildings water supplies and agriculture are more vulnerable and potential threats for crippling the economy, creating instability, terrorizing the masses psychologically, causing deaths and ill effects on living systems and can spread through different routes.⁹⁶

Tackling of threat is based on number of factors, the first and the foremost is educating the masses about the strategies and resources available to cope with any kind of eventuality. Secondly, strengthening of emergency response capabilities, identification of hospitals, notifying the affected areas and good communication system would help. Thirdly: networking of different agencies,

⁹⁵ A. Ravinder Nath, *Bio- Terrorism: A Threat to National Security Terrorism in South Asia: Views From India*, India Research Press (2004) New Delhi, at 145-154.

⁹⁶ *Ibid* at 145-154.

involving in the community safety and nation's security. Fourthly: understanding of human physiology and enhancing the funding for research on molecular biological studies. Fifthly: evolving effective management policy.⁹⁷

G. Biological, Chemical and Nuclear Threats⁹⁸

It is conceivable that a highly motivated and desperate terrorist group with technological and financial assets will attempt to improve its bargaining leverage by resorting to mass destruction violence. Such a determined group would be willing to take numerous risks in acquiring and using such weapons. Because many groups see the confrontation as an "all-or-nothing" struggle, in case of failure the terrorists are prepared to bring the government into submission by using these weapons and in the process, bring devastation and destruction to many lives including their own. Surely for these terrorists, the fear of deterrence or retaliation does not exist as it does in the case of states.

It is obvious that the prospects of success for such a group would be enhanced if it had previously demonstrated high technological capabilities and a strong willingness to incur high risks involved in similar ventures. Even if there were some skepticism about the credibility of the threat, no rational government would lightly risk an unconventional incident. The danger here is that if one sub national body succeeds in achieving its goals; then the temptation for other terrorist groups to use, or threaten to use, similar weapons may become irresistible.

In view of these considerations, the arsenal of tomorrow's terrorist might include biological, chemical, and nuclear instruments of massive death and destruction potential. These weapons are capable of producing from several thousand to several million casualties in a single incident, and of causing governmental disruption of major proportions, as well as widespread public panic.

⁹⁷ *Ibid* at 145-154.

⁹⁸ Yonah Alexander, *Terrorism in the Twenty-First Century: Threats and Responses*, 12 DePaul Bus. L.J. 59, at 80- 83.

Although no major destruction incident has occurred, the historical record of the past three decades provides evidence of terrorist groups involved with some type of unconventional operations. In 1972, members of the Order of the Rising Sun in the United States possessed 30-40 kilograms of typhoid bacteria cultures for use against water supplies in major Midwest cities. In 1980, police in Paris discovered a biological laboratory with clostridium botulinum culture belonging to the German Baader-Meinhof Gang. In 1986, typhoid (*salmonella typhi*) was used by the Rajneesh religious cult in Oregon to contaminate salad bars in restaurants, resulting in 750 cases of food poisoning.

On March 20, 1995, the first major use of chemical weapons by terrorists occurred. Members of the Japanese radical cult, Aum Shinrikyo, placed containers of the deadly chemical nerve agent (sarin) on five trains of the Tokyo subway systems. The cultists then punctured the containers and released poisonous gas into the trains and subway stations. While the attack resulted in the death of 12 persons, 5,500 others were injured.

In sum, biological and chemical weapons have many advantages for terrorists. These benefits include their low cost, and the ease and speed of their production; further, they can be developed by individuals with a limited education and facilities. Weapon development requires only a minimum amount of tools and space, and equipment can be improvised or purchased often without arousing suspicion.

Notwithstanding the assumption that in the short term future biological and chemical terrorism is feasible technologically, the specter of nuclear terrorism, such as the explosion of a nuclear bomb, the use of fissionable material as a radioactive poison, and the seizure and sabotage of nuclear facilities, is seen by many experts as plausible and by others as inevitable. At this time, however, a credible threat or hoax involving a nuclear device, the holding for political or economic blackmail a reactor or other nuclear facility or shipment of reactor fuel

or waste, or the truck-bombing of a reactor itself, may be the most likely form of nuclear terrorism.

Bin Laden's network attempted to obtain enriched uranium for the purpose of developing nuclear weapons is only the latest example of the potential threat. It is likely that changing political, economic, and social patterns in the domestic and international situations that will occur in the foreseeable future might give rise to pressures and tensions that could motivate other terrorists to seek nuclear capabilities.

H. Cyber Terrorism⁹⁹

An emerging trend of international life is the growing threat of information warfare and cyber terrorism. The U.S. Chairman of the Joint Chiefs of Staff Instruction provides several relevant unclassified definitions related to the former danger. The first definition describes "information systems" as the entire infrastructure, organization, personnel, and components that collect, process, store, transmit, display, disseminate, and act on information. The second definition states "*information warfare*" consists of "*actions taken to achieve information superiority by affecting adversary information, information-based processes, information systems, and computer-based networks while defending one's own information, information-based processes, information systems, and computer-based networks.*"¹⁰⁰

Other approaches to describe "*information warfare*" are invariably articulated in the expanding academic and professional literature on the subject. One approach classifies "*information warfare*" on the basis of three categories. The first class is "*personal information warfare*," dealing with "*attacks against an individual's electronic privacy*," including "*the disclosure of digital records and database entries wherever information is stored.*" The second class, "*corporate*

⁹⁹ See generally, *Information Warfare and Cyber Terrorism: Threats and Responses*, (Yonah Alexander & Michael S. Swetnam eds., Oceana Publications 1999) (explaining cyber terrorism).

¹⁰⁰ Yonah Alexander, *Terrorism in the Twenty-First Century: Threats and Responses*, 12 DePaul Bus. L.J. 59, at 84- 88.

information warfare," focuses on the competition or the "war" between business corporations worldwide. And the third class, "global information warfare" is a mode of "cyber warfare" waged against "industries, global economic forces, or against entire countries or states."

In short, information warfare, as reflected in the manifold definitions offered as well as the coverage of the media, consists of a broad spectrum of threats ranging from electronic jamming to psychological operations underscoring the perpetrators' deliberate exploitation of military and civilian information systems' inherent vulnerabilities and thereby adversely affecting national and global security.

Consider for example, the following cases, selected at random from thousands of reported events, as illustrations of society's vulnerability to attacks. During 1986-1989, a ring of West German hackers had stolen passwords, programs, and other data for the KGB after the ring pierced military, scientific, and industry computers in the United States, Western Europe, and Japan.

In 1997-1998, an unemployed former part-time computer science student in Canada gained illegal access to computer systems at the U.S. National Aeronautics and Space Administration (NASA), U.S. National Oceanographic and Atmospheric Administration, and several U.S. and Canadian universities. In February 1998, Ehud Tenebaum, an Israeli hacker (better known as "The Analyzer"), jointly with two young collaborators from California, mounted cyber attacks against the Pentagon's systems, a nuclear weapons research lab, and other significant targets.

Several months later in 1998, a hacker group, calling themselves Masters of Downloading/2016216 (MOD) and claiming to consist of 15 members (8 in the United States, 5 in the United Kingdom, and 2 in Russia), penetrated a highly protected computer of the U.S. Department of Defense. Intruders, suspected "cyber spooks" from the Russian Academy of Sciences (a government-supported

organization that interacts with Russia's top military laboratories), had stolen "*sensitive information*" about defense technical research matters during 1988-1999.

In spring 1999, during the Kosovo War, Serb entities attempted to overwhelm NATO computers by "*ping attacks*," which establish communication with a target computer and occupy its functions by continuing to stay linked and feeding it information.

In June 1999, tens of thousands of computer systems in several major U.S. companies (including AT&T, Boeing, and General Electric) had their files infected, damaged, or destroyed by a software virus, Explore. Zip worm. This file-destroying bug, first detected in Israel, arrived as an e-mail message and utilized MAPI commands and Microsoft Outlook on Windows systems to propagate itself. It has been estimated that damages from the Explore. Zip worm and other viruses (e.g., Melissa macro virus) topped \$ 7 billion during the first two quarters of 1999. By the end of the year, computer intrusions will have cost private industry more than \$ 20 billion.

And most recently, in February 2000, a blizzard of attacks disabled some of the most popular web sites, among them CNN, eBay, Yahoo, Amazon.com, and E Trade. These attacks, known as denial of service attacks, flooded the networks with fake messages that prevented legitimate traffic from flowing.

Of particular concern is the prevailing assessment of intelligence agencies, strategic thinkers, and scientists that not only hackers and "*crackers*" (criminal hackers) but also terrorists (individuals, groups, and state sponsors) are likely to intensify the exploitation of the new form of "*electronic warfare*" as an "*equalizer*" weapon. It is estimated, for instance, that hostile low-risk perpetrators launching a well-coordinated attack with about thirty computer experts strategically placed around the globe and with a budget of approximately 10 million dollars, could bring the United States, the only superpower, to its knees.

It is evident that the threat of electronic "*non-explosive*" terrorist assaults is growing with every passing day. Three contributing factors account for this reality. First, the "*globalization*" of the Internet users (currently numbering more than 120 million with an estimated 1 billion people by the year 2005) makes governmental efforts to control Internet attacks much more challenging than ever before.

Second, there are now approximately 30,000 hacker-oriented sites on the Internet, thus resulting in "*democratization*" of the tools to be used for disruption and destruction. With the step-by-step Internet "*cookbooks*," the utilization of works, Trojan horse, logic bombs, and other modus operandi alternatives are becoming a permanent fixture of international life.

And third, with the Cold War now behind us, terrorist organizations have broken away from their place within the formerly bipolar world, to become multidirectional, causing further complications to our technologically vulnerable societies. These new political realities, coupled with easily accessible cyber weapons, have enhanced the threats and capabilities of terrorist groups to the degree in which they could forever alter our planet's existence.

Thus, the emergence of the term cyber terrorism has been accepted as a new mode of information warfare that explicitly adopts methods utilized by terrorists by means of the Internet. Interestingly, Kodak put its first camera on the market about 100 years ago, with the slogan "*you push a button, we do the rest.*" At the close of the twentieth century, terrorism at the push of the button has already happened.

Currently, the Internet already serves as an arena for propaganda and psychological warfare. Ideological extremists such as neo-nazi groups have called for ethnic, racial, and religious violence by their sympathizers. The Hezbollah maintains on its web site a daily record of "*heroic*" battles of its fighters in

Southern Lebanon. And Afghanistan, the newest state sponsor of terrorism, publishes on-line its radical brand of Islam.

Terrorists have also used their laptops to store operation plans. Ramzi Ahmed Yousef (who is serving a life sentence for his role in perpetrating the World Trade Center bombing in New York in 1993 and for other terrorist crimes) developed on his computer the plot to blow-up some dozen American airlines over the Pacific Ocean. And terror networks, such as the under ground infrastructure of Osama bin Laden, are sustained via personal computers with satellite uplinks and encrypted messages.

Clearly, there are numerous other devastating scenarios, including altering formulas for medication at pharmaceutical plants, "crashing" telephone systems, misrouting passenger trains, changing pressure in gas pipelines to cause valve failure, disrupting operations of air traffic control, triggering oil refinery explosions and fires, scrambling the software used by emergency services, "turning off" power grids, and detonating simultaneously hundreds of computerized bombs around the world. This new medium of communication, command and control, are supplemented by unlimited paralyzing and destructive keyboard attacks on civilian.¹⁰¹

Some of the other reasons are linked to the clandestine nature of terrorism, to our relationship with those labeled that way, others to the normative framework we uphold and still others have to do with the difficulty differentiating terrorism as a coercive and communicative tactics from other forms of political violence (communal violence or banditry) and armed conflict (e.g. guerrilla ambushes, hit-and-run operations, or paramilitary vigilantism).¹⁰²

¹⁰¹ Alex Schmid, *War Crimes Research Symposium: "Terrorism on Trial": Terrorism - The Definitional Problem*, 37 Case W. Res. J. Int'l L. 375, at 394.

¹⁰² *Ibid.*

10. THEORIES OF TERRORISM¹⁰³

The analysis of major prevailing theories of terrorism is given below to provide a context to best understand the theoretical basis of terrorism. This may be of help to arrive at an understanding of the problem of tackling terrorism:

A. Anarchist Theory¹⁰⁴

Most anarchists reject terrorism for nationalist or religious purposes, but justify it in a theoretical sense, a form of criminal action that attacks the values of an organized, complacent society. Anarchism is a theory of governance that rejects any form of central or external authority, preferring instead to replace it with alternative forms of organization such as non-conformism, and plain old rugged individualism. Anarchism is often referred to as the nineteenth century roots of terrorism, the term first being introduced in 1840 by Pierre-Joseph Proudhon. Anarchism is defined as the rejection of the state, or any form of coercive government, or any form of domination and exploitation. It is the notion of free and equal access to all the world's resources to enable positive freedom as opposed to negative freedom.

As a theory, anarchism holds a unique place in history because it was the first revolutionary movement to come up with systematic ideas about the purpose of agitation. Major anarchist figures, like Karl Heinzen and Johann Most, contributed the idea that murder-suicide, constituted the highest form of revolutionary struggle, and even advocated the use of weapons of mass destruction. Some anarchist theorists have advocated the idea that *to have the most effect, the targets must be innocents in places such as crowded dance halls or shopping centers or symbols of economic affluence* such as banks and stock exchanges. Anarchism in the classical sense was largely erased from the face of

¹⁰³ The theories of terrorism have been adapted from O'Connor, T., "*The criminology of terrorism: Theories and models*", <http://faculty.ncwc.edu/toconnor/429/429lect02.htm>, last visited on 1.11.2006.

¹⁰⁴ *Ibid.*

the earth by 1917 via a number of factors like the rise of communism and fascism, both of which are opposed to anarchism, and stringent repressive legislations in democratic countries. However, *the anarchist theory of terrorism has mostly died out*, because, most anarchist have accepted organized movement as a method of protest. Modern anarchism does not support terrorism, and there is a weak theoretical link between the two.

B. Fascist Theory¹⁰⁵

Fascism supports terrorism at home and abroad. With the frequent wars and militaristic ventures that come with fascism, an effort is made to demonize the enemy as sub-humans who deserve extinction. These enemies are also made into scapegoats for all the past problems a country has had. Frustrated fascists who fail to gain control in their own countries have historically turned to terrorism. They are most likely to turn to domestic terrorism since fascists do not believe that citizen rights are bestowed merely because someone inhabits a country. Nor do they believe that all human beings are possessed of equal rights; they are particularly violent against foreign families and corporations, which have been accused of poisoning the family and property relations. Fascism is full of ironies and contradictions. On the one hand, it is anti-modern in its glorification of the land, a return to country life, and its fascination with peasant dress or costume. On the other hand, it is pro-modern in its worship of military technology, favoritism of big business, mass mobilization of people, promotion of commercialized sport, and its surprisingly liberal attitude toward the involvement of women in the movement. Science and scholarship also take on interesting twists under fascism.

C. Religious Theory¹⁰⁶

A number of criminologists have pointed out that the disciplines of theology, religion, and philosophy have an important link with terrorism. They

¹⁰⁵ *Ibid*

¹⁰⁶ *Ibid*

point to the fact that about a quarter of all terrorist groups and about half of the most dangerous ones on earth are primarily motivated by religious concerns. They believe that their cause is sacred, and that God demands their action. Religious terrorism is not about extremism, fanaticism, sects, or cults, but is instead all about a fundamentalist or militant interpretation of the basic tenets upon convincing believers or converters that a "neglected duty" exists in the fundamental, mainstream part of the religion. Most religious traditions are filled with plenty of violent images at their core, and destruction or self-destruction is a central part of the logic behind religion-based terrorism.

Terrorism as an outcome of religious fanaticism mostly arises with the emergence of a charismatic leader, who blames the state functionaries, and global trends like secularism, modernity and Westernization for their perceived neglect. The strength of fundamentalism is its ability to guarantee a radical change without specifying exactly what it will look like. However, once a semi-vague enemy has been identified, the religious movement borrows the idea of "sovereignty" from the political realm and begins to see itself as the legitimate defender of the faith and legitimate restorer of dignity to the homeland. A key theological transformation that supports terrorism would be the notion that communal violence, even though violence is despised, is still a form of worship that may help discover the true nature of God. Despite being an important cause of terrorism, it must still be maintained with all fairness that most militant religious groups only adopt terrorism as a tactic of last resort.

D. Economics rational choice as a theory of terrorism¹⁰⁷

The discipline of economics has many concepts that are relevant to an understanding of terrorism: supply and demand, costs and benefits, etc. Fully developed economic or econometric models of terrorism are quite rare, and often they involve such things as "psychic" costs and benefits. Rational choice theory, in particular, has found a place in criminology, and holds that people will engage

¹⁰⁷ *Ibid.*

in crime after weighing the costs and benefits of their actions to arrive at a rational choice about motivation after perceiving that the chances of gain outweigh any possible punishment or loss. According to this theory, terrorism is not a pathological phenomenon, and the resort to terrorism is not an aberration. The central focus of study ought to be on why some groups find terrorism useful, and in standard control theory fashion, why other groups do not find terrorism useful. Some groups may continue to work with established patterns of dissident action. Other groups may resort to terrorism because they have tried other alternatives. Factors that influence the rational choice of terrorism include place, size, time, and the climate of international opinion. A terrorist plot in a democratic society is less likely to involve senseless violence than a scheme hatched under an authoritarian regime because under the latter, terrorists realize they have nothing to lose with the expected repercussions.

E. Globalization theory of terrorism¹⁰⁸

According to this theory, globalization has created the structures and institutions, which fuel terrorist movements. Globalization is the term romantically used to describe the current economic order where all nations share a global market, and enjoy the equal opportunities to reap the fruits of free trade. However, the decades of globalization has produced one of the greatest disparities in the economic conditions of the countries of the world. Global inequality has reached extraordinary levels, and has provided muddy waters of despair where terrorist recruits can be bred rather easily. Globalization has fuelled explosive patterns of social polarization within and between nations, and this has been accepted as a cause of terrorism. Globalization theory is further tied into ideas about colonialism, imperialism, and neocolonialism.

¹⁰⁸ *Ibid.*

F. Sociological theory of terrorism¹⁰⁹

Modern sociological perspectives are primarily concerned with the social construction of fear or panic, and how institutions and processes, especially the media, primary and secondary groups, maintain that expression of fear. The sociological theory states that frustrations lead to some form of aggression, and that every aggressive act relieves that frustration to some extent. Hence, frustration can fuel terrorism. Another stand of the sociological theory is the relative deprivation hypothesis, the idea behind which is that when a person goes about choosing their values and interests, they compare what they have and don't have, as well as what they want or don't want, with real or imaginary others. Another key sociological theory is the moral disengagement hypothesis, which is based on the idea that encompasses all the ways a person neutralizes or removes any inhibitions they have about committing acts of horrific violence. Some common patterns include imagining one's self as a hero, portraying one's self as a functionary, minimizing the harm done, dehumanizing the victim, or insulating one's self in routine activities.

G. Psychological theory of terrorism¹¹⁰

Although most psychologists refuse to accept the existence of the concept of 'terrorist personality', it is mostly accepted that terrorists typically suffer from low self-esteem, are attracted to groups with charismatic leaders, and enjoy risk-taking. According to the psychological theory, most terrorists feel that they are doing nothing wrong when they kill and injure people. Although they do not appear unstable or mentally ill, terrorists seem to share a feature of the psychological condition known as antisocial personality disorder or psychopathic personality disorder, which is reflected by an absence of empathy for the suffering of others. According to both the sociological and the psychological theories, there appears to be no unique terrorist personality. Instead, there appear to be unique

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

sub cultural phenomena, which develop, support, and enhance a penchant for cold-blooded, calculated violence, which, if not satisfied within a terrorist organization might be, fulfilled elsewhere. Terrorism is a social activity. Inside terrorist brotherhoods, there exist emotional links between individuals and the strength of commitment to their ideology appears to become stronger by and facing adversity together. Socialization in the underground is quite intense, and the adversity associated with their daily existence strengthens the bond.