

REGIONAL CO-OPERATION AND LEGAL ISSUES

Paper Presented by

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Terrorism has become a critical security challenge in South and South East Asia and has acquired over a period of time the ability to alter the geo political and geo strategic realities in the region. There is enough evidence to support the view that the theatre has definitely shifted from the Middle East to South and South East Asia. The international community is now greatly concerned with the movement of international terrorism towards this new geographical location and therefore it is incumbent upon us to examine these changing positions and analyse its regional implications.

The countries in this region are culturally and religiously pluralistic and various factors have held together the societies of this region - economic prosperity, cultural and religious tolerance and in some cases authoritarian governing establishments. In the 1990s, however, with the financial crisis and its resultant economic disparity within sections of these societies latent conflicts received an impetus. In Indonesia, for example, during this period economic insecurity lead to ethnic discord and it lead to a campaign which was directed against the ethnic Chinese and later widened to include Christians and all foreigners. Similarly, ethnic and social groups who viewed themselves as marginalised sections in their own countries were inspired by the phenomenon of violence as a means to achieve their goals. Thus

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Terrorist activity turned from being a means to attain a goal to becoming the goal itself – the argument being that it was to draw national and international attention to whatever cause they were espousing.

Several other factors accelerated the growth of terrorism in the region -

- a) The terrorist groups have found this region very conducive to establish a narco-terrorist link and thereby fund their organisation. The easy availability of narcotics in the Golden Triangle and the existing criminal organizations with their vast network for movement of narcotics around the world provided them with ideal growth conditions. Besides, places like Bangkok where the fake passport and identity papers industry flourished, human trafficking created financial base for the terrorist organizations.

- b) The financial and banking institutions in some of the countries in this region are not strict enough to control the financial activities of the terrorist organizations and have been effectively used by them to generate, invest and move funds.

- c) Proliferation of small arms in the region has been a serious regional concern. The key suppliers to terrorist organisations as well as to criminal organisations are Pakistan, China and North Korea. The sale of arms to the LTTE (operating in Sri Lanka) by North Korea was moved via Thailand and the seizure by Thai officials of GPS systems , satellite phones and other military equipment pointed to the existence of an arms procurement cell of the LTTE in Thailand. The Pakistan-Afghanistan region has been identified as the region with a huge cache of loose

- d) weaponry moving in every direction. India has been greatly affected by the movements of arms in this area as well as by the arms black market in Bangladesh.
- e) The borders of several countries in this region are porous and has lead to great difficulty in curbing and controlling the movement of illegal arms and terrorists.
- f) Political instability has lead to the failure of control over organisations with violent and criminal intentions and they have found such states suit them ideally for setting up training camps, providing them with safe havens and also as sources for recruiting cadres for the organizations. Corruption in some of the states has encouraged the terrorist organisations to flourish with impunity.
- g) The primary reason for the sudden spurt of terrorist violence can also be attributed to the fact that organizing and carrying out terrorist acts became far easier with instantaneous world-wide communication, efficient global transportation, and relatively cheap but highly destructive weapons. The terrorists, therefore, now have many advantages not available to them in the past. They can now strike targets using sophisticated gadgets and the miniaturization and other high-tech applications that have been developed to revolutionarize conventional warfare have revolutionized terrorism too. As terrorist threats increase, the means of carrying them out have multiplied as well. This in turn complicates the efforts to deal with the myriad problems posed by terrorism.

The most disturbing factor in recent times has been the growth of the influence of al Qaeda in the region; since the late 1980s the organisation has effectively penetrated the region setting up its own cells as well as working in concert with other organisations already existing within the states to establish terrorist chains. In the 1980s, camps had been set up in Afghanistan and Pakistan to train Islamist and guerrilla groups against the Soviet occupation. With the defeat of the Soviet Army in Afghanistan these groups for the first time understood the power they carried against a mighty state. They, therefore, became the ideal recruits for the al Qaeda and it is estimated that the al Qaeda indoctrinated, trained and armed 70,000 to 120,000 Muslim fighters to carry out their activities in the region.

In 1988, the International Islamic Relief Organisation (IIRO) – a Saudi based charity, set up a branch in Manila and it was suspected to be the regional hub of al Qaeda in South East Asia. Similarly, the Moro Islamic Liberation Front (MILF) and the Abu Sayyaf Group (ASG) in the Philippines, Lashkar Jundullah in Indonesia, Kumpulan Mujahiddin Malaysia (KMM) in Malaysia, Jemmah Salafiya in Thailand, have all been suspected of receiving logistic support from the al Qaeda directly or indirectly. In December 2001, 15 members of the Jemmah Islamia who were planning to bomb commercial, military and political targets including the US Embassy in Singapore were arrested. Later it was established by the authorities that connection existed between the Jemmah islamiya and other Islamic groups in Malaysia, Indonesia and the Philippines who had possible links with al Qaeda. With the arrest of Al Ghazi in the Philippines, further evidence emerged about the connection Jemmah Islamiya and the MILF (Moro Islamic Liberation Front). Indonesia has numerous islands (17,508 of which 6000 are inhabited) and it is extremely difficult for the government in Jakarta to have constant control and vigilance over them. This has created an ideal haven for the terrorist organisations to establish bases and to move around freely.

The Strait of Malacca is extremely important in this region from the strategic and security perspective. Linking the Pacific and Indian Ocean, the strait serves the major economies of this region viz India, China, Japan, South Korea and more than 50,000 vessels pass through it carrying in them a quarter of the world's traded goods. The importance of the strait in geo strategic sphere cannot be underplayed and the terrorist organizations have been well aware of this and have utilised its location to the greatest extent for traffic of arms and weapons. The nexus between the terrorist organisations and the pirates operating in these regions has not been established conclusively although most believe that even if it has not been high, the possibilities of it emerging as a major cause for serious concern are not unfounded.

There is evidence of training camps set up by terrorist organizations on the Bangladesh – Myanmar border also. The global role of the LTTE (Tamil Tigers – Sri Lanka) in obtaining funds from the Tamil Diaspora , its range of legal and illegal activities to generate funds which range from alleged narcotic and human trafficking, and extortion to legitimate commercial enterprises in real estate, investments and banking globally have all been documented. This has been a great cause of concern not only for Sri Lanka and for neighbouring India but also for other countries in the region. It is, therefore, apparent that the activities of various terrorist organisations in the region is high and raises grave security concerns. There are of course serious economic and social fall outs also. Unaccountable movement of funds has serious economic impact on the countries and the operation of the organisations in the banking and investment sectors is extremely worrying

There has been a concerted and combined effort by the major countries in this region (barring some) to formulate a regional response to terrorism. There have been joint military exercises by several countries but these have been mostly bilateral. As the purpose of this paper is not to examine in detail the regional military responses, suffice to point out that Chapter 13: "Regional Cooperation and Legal Issues" by Geeta Madhavan first appeared in *Terrorism in South and Southeast Asia in the Coming Decade* edited by Daljit Singh (2009), pp. 181-195. Reproduced here with the kind permission of the publisher, Institute of Southeast Asian Studies, Singapore <<http://bookshop.iseas.edu.sg>>

there have been sincere efforts by some of the countries in the region to provide support to each other. However, this paper concerns itself with underling the fact that besides military response to counter terrorism, it is imperative to have all encompassing efficient responses to the seriousness of the threat that lie within the field of law.

At the outset it is essential to understand that not all states consider it necessary to combat terrorism within a legal framework. Understandably so, for the first response of a state to a terrorist incident is to search, identify and find the perpetrators of the violent act. The reaction to the horror of the incident and the need to respond immediately to apprehend the perpetrators thereby restoring the faith of its nationals upon the power of the state and its ability to ensure peace and security for them, often leads to the state overstressing its counter attack procedures. The approach is often counterproductive – it is politically questionable and leads to a spate of actions that puts the state in a position defending itself for violation of the rights of its nationals. It is also inefficient over a period of time as it does not produce the required results and sometimes lends itself to a spate of national and international criticisms. Terrorism threatens the core values of civilized societies and it is incumbent upon the state not to act in any manner that infringes on the very same values .In these circumstances it is obvious that long term strategy in combating terrorism is the development of legal mechanisms.

At the outset it is important to change the public mindset regarding legal frameworks to deal with terrorism. Any law that seeks to combat terrorism should not be turned into a political issue and therefore it is the duty of the state to expressly state the need for the law and the reason for its enactment. Combating terrorism within the state by legal means should be a resolute step adopted by the state while assuring its citizens that the enactment of the law is solely for dealing with perpetrators of those acts from which it seeks to protect them. Such

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an assurance can only be possible if the state is able to enact the law not as an immediate response to an act of violence but as a part of its pragmatic legislative process that is subject to debate. The state has to clearly outline how resolute it is to deal with terrorism within its territory and show no sign of weakness. In the South and South East Asian region criticism has often been about the soft approach in law to combating terrorism. Where in regional responses much rhetoric has been employed in combating terrorism, very little has been achieved in any regional instrument that shows considerable resoluteness in doing so.

Under the international framework there are twelve international Conventions that deal with various facets of terrorism.

They are as follows:

1. 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft

(Aircraft Convention)- This Convention also known as the Tokyo Convention applies to acts affecting in-flight safety, it authorizes the aircraft commander to impose reasonable measures, including restraint, on any person he or she has reason to believe has committed or is about to commit such an act, where necessary to protect the safety of the aircraft; and requires contracting States to take custody of offenders and to return control of the aircraft to the lawful commander.

2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure) Convention-

This Convention also known as the Hague Convention makes it an offence for any person on board an aircraft in flight to unlawfully, by force or threat thereof, or any other form of intimidation seize or exercise control of that aircraft or to attempt to do so. It requires parties to the convention to make hijackings punishable by severe penalties

and requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution

3. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Civil Aviation Convention) – This Convention also known as the Montreal Convention makes it an offence for any person unlawfully and intentionally to perform an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of the aircraft; or to place an explosive device on an aircraft or to attempt such acts; or to be an accomplice of a person who performs or attempts to perform such acts. It requires parties to the Convention to make offences punishable by severe penalties and requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution.

4. 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Diplomatic Agents Convention) – This Convention defines an "internationally protected person" as a Head of State, Minister for Foreign Affairs, representative or official of a State or international organization who is entitled to special protection in a foreign State, and his/her family; and requires parties to criminalize and make punishable by appropriate penalties which take into account their grave nature the intentional murder, kidnapping or other attack upon the person or liberty of an internationally protected person, a violent attack upon the official premises, the private accommodations, or the means of transport of such person; a threat or attempt to commit such an attack; and an act constituting participation as an accomplice.

5. 1979 International Convention against the Taking of Hostages (Hostages Convention) This Convention provides that any person who seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical

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person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostage

6. 1980 Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention) -This Convention also known as the Vienna Convention criminalizes the unlawful possession, use, transfer or theft of nuclear material and threats to use nuclear material to cause death, serious injury or substantial property damage.

Amendments to the Convention on the Physical Protection of Nuclear Material make it legally binding for Parties to protect nuclear facilities and material in peaceful domestic use, storage as well as transport; and provide for expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences or sabotage, and prevent and combat related offences.

7. 1988 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 (Extends and supplements the Montreal Convention on Air Safety) (Airport Protocol) extends the provisions of the Montreal Convention (see No. 3 above) to encompass terrorist acts at airports serving international civil aviation.

8. 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Maritime Convention) This Convention establishes a legal regime applicable to acts against international maritime navigation that is similar to the regimes established for international aviation; and makes it an offence for a person unlawfully and intentionally to seize or exercise control over a ship by force, threat, or intimidation or to perform an act of violence against a person on board a ship if that act is likely to endanger

the safe navigation of the ship or to place a destructive device or substance aboard a ship and other acts against the safety of ships.

2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation - criminalizes the use of a ship as a device to further an act of terrorism; criminalizes the transport on board a ship various materials knowing that they are intended to be used to cause, or in a threat to cause, death or serious injury or damage to further an act of terrorism; criminalizes the transporting on board a ship of persons who have committed an act of terrorism; and introduces procedures for governing the boarding of a ship believed to have committed an offence under the Convention.

9. 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Fixed Platform Protocol) – This Convention establishes a legal regime applicable to acts against fixed platforms on the continental shelf that is similar to the regimes established against international aviation.

10. 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection (Plastic Explosives Convention) – This Convention also known as the Montreal Convention was designed to control and limit the use of unmarked and undetectable plastic explosives (negotiated in the aftermath of the 1988 Pan Am flight 103 bombing); generally speaking, each party must, take necessary and effective measures to prohibit and prevent the manufacture of unmarked plastic explosives; prevent the movement of unmarked plastic explosives into or out of its territory; exercise strict and effective control over possession and transfer of unmarked explosives made or imported prior to the entry into force of the Convention. Parties must ensure that all stocks of unmarked explosives not held by the military or police are destroyed, consumed, marked, or rendered permanently ineffective within three years and take necessary measures to ensure that unmarked plastic explosives

held by the military or police are destroyed, consumed, marked or rendered permanently ineffective within fifteen years. They must ensure the destruction, as soon as possible, of any unmarked explosives manufactured after the date of entry into force of the Convention for that State.

11. 1997 International Convention for the Suppression of Terrorist Bombings

(Terrorist Bombing Convention) – This Convention creates a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place.

12. 1999 International Convention for the Suppression of the Financing of Terrorism

(Terrorist Financing Convention) – This Convention requires parties to take steps to prevent and counteract the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals and provides for the identification, freezing and seizure of funds allocated for terrorist activities. It is important to note that Bank secrecy is no longer adequate justification for refusing to cooperate.

13. 2005 International Convention for the Suppression of Acts of Nuclear Terrorism

(Nuclear Terrorism Convention) – This Convention covers a broad range of acts and possible targets, including nuclear power plants and nuclear reactors; and threats and attempts to commit such crimes or to participate in them, as an accomplice. It stipulates that offenders shall be either extradited or prosecuted; and encourages States to cooperate in preventing terrorist attacks by sharing information and assisting each other in connection with criminal investigations and extradition proceedings; and deals with both crisis situations.

This Convention came into force on July 2007 after the ratification by Bangladesh, the 22nd state to do so.

All the International Conventions have been responses by the international community to various acts of violence committed by the terrorists. These International Conventions on terrorism have set out obligations of states in respect to defining international **terrorist offences**, prosecuting individuals suspected of such offences, extraditing such persons upon request and providing mutual legal assistance upon request.

Regional Conventions – Unlike International Conventions that do not have operational dimension, the European Conventions have been integrated into domestic legislation.

These are international treaties agreed under the auspices of particular regional organizations, and generally the Conventions are only open to be ratified by members states of those regional organizations. However some of those organizations permit other countries to ratify the conventions concerned.

The principal regional conventions region are as follows:

Council of Europe

European Convention on the Suppression of Terrorism (Strasbourg, January 1977) and Protocol (Strasbourg, May 2003) - The Convention declares that for the purposes of extradition a number of offences commonly associated with terrorism are not to be regarded as political offences. These include hijacking and other interference with civil aviation, offences against diplomats, kidnapping, offences involving the use of bombs and firearms, and other serious offences involving acts of violence.

Council of Europe Convention on the Prevention of Terrorism (Warsaw, May 2005)

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw, May 2005)

European Union

The EU Framework Decision on Terrorism

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Commonwealth of Independent States

Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism (Minsk, June 1999)

North and South America

Organisation of American States Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance (Washington, D.C. February 1971)

Inter-American Convention Against Terrorism (Bridgetown, June 2002)

Africa

African Union Convention on the Prevention and Combating of Terrorism (Algiers July 1999)
and

The Protocol to that Convention, Addis Ababa July 2004)

South Asia

SAARC Regional Convention on Suppression of Terrorism (Kathmandu, November 1987)

The Additional Protocol to the Convention, Islamabad, January 2004

The ASEAN Convention on Counter Terrorism, Cebu, Philippines, 13 January 2007

League of Arab States

Arab Convention on the Suppression of Terrorism (Cairo, April 1998)

Organization of the Islamic Conference

Convention of the Organization of the Islamic Conference on Combating International Terrorism (Ouagadougou, July 1999)

International Criminal Court

During the negotiations on the Rome Statute leading to the establishment of the International Criminal Court many states supported adding a specific offence of "terrorism" to the list of crimes over which the court would have jurisdiction. This proposal was not adopted. However, the Statute provides for a review conference to be held seven years after the entry into force of the Statute. This review will consider (among other things) an extension of the court's jurisdiction to include terrorism.

Despite the exclusion from the Court's jurisdiction of a specifically defined international crime of terrorism, certain acts carried out by terrorists may fall within the Court's jurisdiction because those acts fulfil the criteria of other offences which fall within the Court's purview. Thus acts of terrorism carried out by parties to an armed conflict constitute "war crimes" as prohibited by various articles in the Geneva Conventions, and will fall within the Court's jurisdiction where they constitute grave breaches of the Conventions. Furthermore some terrorist acts will constitute a "crime against humanity" which is an international crime which also falls within the ICC's jurisdiction. Article 7 of the ICC Statute defines a "crime against humanity" as various acts, including murder, extermination, and persecution of various groups, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Having perused the International and Regional Conventions it is important to discuss the efforts made by states to adopt domestic laws to implement the Conventions and the application and enforcement of the laws. It is important for a state to ensure that collective negative consciousness to terrorism is part of public opinion. This can be done by ensuring that the state does not lapse into oft repeated rhetoric after an incident of terrorist violence, rather that the state acts in a manner that shows the state as capable of using its legal system to stymie the terrorist violence.

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Customary international law and existing international conventions by themselves are inadequate to deal with the multiple facets that have developed in the recent decades in terrorism. In the early 1960s and 70s states grappled with terrorism that was largely driven by leftist ideologies and as Europe was driven in the post World war era by capital market policies, these groups found their relevance in stances that were against the governments. In Germany, France, Belgium, and Japan various groups resorted to violence to espouse their cause. The Red Brigade, The Baader Meinhoff Group, The Red Army and several others justified their violent activities and the States enacted laws to curb these groups. The restructuring of the border after World Wars I and II also gave rise to groups that fought for their proclaimed homeland and the IRA and the Basque separatist movement emerged as strong forces. The right to self determination and the international communities' recognition of civil and political rights by a convention gave rise to other groups that were supported by their own people and sometimes by other states as well. It was in this period that the line between a terrorist and freedom fighter blurred to the extent that it led to the development under international law of the controversial concept of political offence exception. The prosecute or extradite axiom also gained international recognition in this period.

The Middle East became epicentre of terrorist activity in the 1960s with the emergence of various groups that espoused the Palestinian cause for a homeland. They all operated under the aegis of the Palestinian Liberation Organisation and their causes were supported by several Muslim states that were sympathetic to their cause. With funds and supply of arms and logistic support from several quarters these organisations became the main actors of terrorism during that period. Innumerable hijackings and hostage taking incidents spurred the international community to sign several international conventions (that have been mentioned earlier) with the intention of not only recognising these activities as terrorist activities but also of making states responsible to curb, contain and cease all such activities

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within their territorial jurisdiction. Stringent laws were enacted to deal with hijackers and it became incumbent upon the states to apprehend the perpetrators and bring them to trial under their own laws or to extradite them to the countries requiring them to stand trial. This also led to development of the act of rendition (chiefly employed by Israel at that time and in recent times effectively used by the USA) and severe criticism by the international community for the action of rendition.

The concept of pre-emptive action underwent a change with Israel broadening the scope of striking measures in the territory of another state - the strike on Iraq's nuclear facility in 1981. Since the 9/11 attacks there has been a greater urge to broaden the scope of Article 51 of the UN Charter dealing with pre-emptive strikes.

In the regional context of South Asian and South East Asian nations regional co-operation are subject to the peculiar diversity of the region. The region has democratic states, monarchies, authoritarian regimes where civil and political rights are largely ignored and some states that are constantly struggling to achieve some form of democratic resolution to their governance problems. There are ethnic strife, religio-ethnic strife, and struggle against authoritarian regimes that are harshly dealt with in gross violation of human rights as well as strife for self-determination of certain groups. All these causes have at least one virulent group that relies on violence and terrorism to showcase the cause. Some of the groups justify the violence as a tool to achieve their means by drawing attention – national and international to their cause while others use violent actions as the goal itself of their existence with hardly any hope of achieving their often imaginative ends. The creation of separate Tamil nation in Sri Lanka or the romance of creating a larger Gorkha land within the territorial jurisdiction of an existing state or states are examples of these. Thus they bring into conflict the concept of territorial sovereignty with right to self-determination. However, it must be remembered that the territorial sovereignty of state is integral to statehood and all

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activities that threaten its existence invests in the state the responsibility to enact laws that deal with terrorism. The state enforcement machinery supported by such laws also becomes responsible to maintain the safety and security of its citizens. The state then becomes largely responsible to seek the groups, identify their physical existence and act against them. Regional co operation in such situations then becomes a key factor.

Bi-lateral and multi lateral and regional agreements that place upon member states the responsibility of seeking, searching and finding terrorist organisations that act against the interests of one state within their territorial jurisdiction become responsible to the other state to act in accordance with the agreements. The terrorist organisations of recent times have access to huge financial pools and the movement of funds have to be scrutinised with great care. Regional agreements to stop the flow of funds are imperative. In the South Asian and South East Asian region it is distressing to note that this task becomes almost insurmountable due to factors like improper border controls, lack of stringent application of banking and investment laws and corruption. Movement of large cache of arms in the region have also been relatively easy not only because of the porous borders and incompetence and lack of vigilance but also because of the maritime route available to transport arms. The Indian Ocean region with its large international maritime traffic is almost impossible to monitor .It has been used effectively by the LTTE and other organisations acting on behalf of al Qaeda to transport arms and ammunition. Proliferation of arms is also peculiar to the region where the aftermath of the Soviet withdrawal from Afghanistan has left the region unaccounted weaponry that has fallen into the hands of various terrorist groups. Sincere regional co operation is the key to dealing with these issues.

In this region the problems of continuous hostilities and economic disparities of immense proportions have fuelled regional discontent and the result has been states indulging in low intensity warfare in which the use of terror has played an important role. Bodies dealing with

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regional co operation like the SAARC and the ASEAN have to move beyond the issuance of statements of co operation in combating terrorism. Counter terrorism efforts have to be radically altered to suit the peculiar needs of the region. Territorial sovereignty and territorial jurisdiction have to be upheld to the extent that no state should allow any action within its jurisdiction that is prejudicial to the territorial sovereignty of another state. This in turn would mean that no state once it is aware of the existence within its territory of any group that is acting in a manner prejudicial to it neighbouring state should allow the group to exist on its soil. On the other hand, strict action should be taken against it under its domestic laws.

The laws regarding extradition are in shambles in this region. Most states do not have water tight extradition agreements and often it is a diplomatic arrangement or goodwill that leads to extradition of a perpetrator of an act of terrorism. Evidence against terrorists is often not available to the nation requesting extradition, in the absence of strict laws the terrorist is often charged under immigration laws or for violation of visa rules. Apprehending terrorists also becomes a difficult issue when the states allow their legal and enforcement machinery to adopt methods that are not favourable for bringing to trial the apprehended terrorist in the requesting state. Thus criminal procedures in different states act as hindrance for trial in another state. For example confessions obtained under duress have different positions in different criminal procedures. This shows how important it is for regional agreements to deal with terrorism differently and in only in cases relating to terrorism common criminal procedural laws would go a long way in bringing the offenders to trial and securing convictions.

Co ordinate approach by states enhances the capacity of the states to counter terrorism as no state can individually fight terrorism which is an exceedingly complex phenomenon. The

transnational nature of terrorism underlines the fact that no state alone can provide its citizens security from terrorism. Also in cases where an organisation has been perceived as potential threat but has not committed any acts yet, regional co operation will ensure that preventive measures have been taken regarding the organisation and it has been kept under constant vigil. An integrated regional approach will thus enable states to pursue counter terrorism policies with greater sincerity. Knowledge of the region and the networking capabilities of the states within the region will ensure that co operation between the states is possible.

The bulwark of regional co operation has to be scrupulous respect for the rule of law and the states within the region have to ensure by co ordinated efforts that national accountability does not drive a wedge between states or into any regional co operation movement. States have to act with extreme caution when drawing up national laws to ensure that there is no violation of those international conventions to which they are parties or to principles of international laws. Regional instruments that pay due respect to these principles and also incorporate legal standards peculiar to the region are, therefore, most useful in combating terrorism in the region. As it is the duty of every state to act to counter terrorism it has also to act in every manner to prevent all acts of terrorism. In keeping with this duty states in the region that have so far been ambivalent in their commitment to counter terrorism measures should take on a more active role in the region and take immediate steps to rectify the lacunae. Proportionate penalties for acts of terrorism should be enacted without infringement of human rights and criminal procedures should be rectified to suit the special nature of the acts of terrorism.

Regional co operation should therefore , give special attention to extradition procedures, laws regarding movement of money, laws referring to freezing of assets of organisations funding terrorism , stricter immigration laws to prevent movement suspected terrorist, and laws dealing with the possession and movement of arms and ammunition. States should also expressly co operate in ensuring that no safe havens are allowed to be established within their territorial jurisdiction which not only endanger their peace and stability but also which may be detriment to the peace and stability of all neighbouring nations and the international community.

As much as states have lately co operated in sharing information, sharing intelligence and in providing military support, it is essential also to share judicial information. Programmes should be conducted within the region which are designed for judicial co operation which will ensure that the laws in the region are not in variance with each other to the extent that they defeat the regional purpose.

Another approach would be to rely on deterrence. This particular approach is evident in the approach of the United States and the actions taken by Israel. The essential element in such an approach is the promise of swift retaliation. There are however several problems in adopting this approach. First, it is not always possible to correctly identify the proper target for retaliation. Secondly, the act of retaliation kills, maims, or terrorizes innocent people as well and this then becomes an act of state terrorism. Thirdly, terrorists who are willing to give up their own lives for their cause are not deterred by the thought of death through retaliation or any other means. Finally, terrorists sometimes hope to bring about such retaliation, particularly if they believe that they will then be perceived as innocent victims of state

terrorism. Therefore, swift retaliation may act as a *cause celebre* rather than a deterrent to terrorism.

There are great economic disparities in the South Asian and South East Asian region and taking that into account, it is obvious that all the counter terrorism measures envisaged will create huge economic burden on such states that cannot afford them. While it is important to have regional co operation in the military and legal context, the economic fallout of these changes cannot be ignored. Unlike the European states that have signed conventions for regional co operation and have the capacity to absorb the additional costs it will place upon them, the states of this region have been deterred by the financial factor. It is therefore, the responsibility of those states that have the capacity to provide additional financial assistance to do so to other states. This need not be a unilateral commitment to one particular state but should be the creation of regional financial resources that are made available by some states to such other states that can pursue effective anti terrorism measure despite the financial constraints. This however, is not to be understood as a banking method created for the states to buy arms to deal militarily with their nationals whom they suspect of terrorism or which may be used against their citizens in violation of human rights; rather as funds provided for strengthening the legal machinery and for judicial purposes or recruitment of personnel for enhancing and strengthening intelligence gathering, target hardening, providing greater security at vulnerable areas etc.

Regional conventions do not solve all problems. They have to be infused into the internal order of a state and have to be practical as the responsibility of the state is primary to any co operation. Collective safety and protection of state institutions have to be juxtaposed with human rights and individual freedoms without one impinging on the other. Here lies the

delicate balancing which can be done with the commitment of the political will to combat terrorism. The resolute stance of the international community against terrorism is unquestionable – it for the regional institutions and the states to drive forward the resolve and seeking ways to end a war by developing better techniques for fighting it.