



**PEACE AND
COOPERATIVE SECURITY
IN SOUTH ASIA**

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Part V

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THE SAARC CONVENTION ON SUPPRESSION OF TERRORISM: A RELOOK

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Regionalism is not a new concept in International law. It had been in existence since a long time in international relations even before the inception of League of Nations.¹ The idea of regional organizations was recognized even by the Covenant of the League of Nations.² No wonder, the idea of regional arrangements was incorporated into the Charter of the United Nations³, though differences of opinion persisted among the member States over the issue.⁴ However, what constitutes a regional organization has not been defined either by the League Covenant or by the UN Charter. Attempts were made at the San Francisco Conference in 1945 to define regional organization in legal terms, but all of them failed. Finally, the world community accepted the narrower view of the Charter that the regional organizations are aimed to peacefully serve in the objective of security.⁵

Regional organization can, however, be perceived in more general terms. Broadly speaking a regional organization takes place when a group of States come together for joint interests and enter into a voluntary agreement to achieve the common interests in a particular geographical region.⁶ Though, in general, the members of the organization belong to a specific region, there is no restriction

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that the parties to the organization should be confined to neighbours.⁷ These arrangements help not only in maintaining peace and security, but in developing economic, social and cultural cooperation with an ultimate aim of achieving political unity within the region.

With the end of the process of de-colonization, the idea of development through regional cooperation gradually became a popular concept among the developing States. The newly emerged nations in Asia and Africa found that regional cooperation was an effective instrument in accelerating their socio-economic development as well for promoting their security concerns. It was further expected to function as an instrument to reduce the level of dependence on foreign capital and technology and to promote collective self-reliance through the maximum utilization of the resources of the region. With these objectives, a number of regional organizations came into existence in the late Sixties and in the Seventies. Such a progress was an inspiration for the States in Asia to look forward for similar regional set-ups basing on this premise. South Asian nations too came forward to establish a regional grouping of their own brand in the Eighties.

South Asia as a region stands distinctly due to its cultural, geographical, economic and linguistic factors. They share a common colonial history. Poverty, unemployment, population, and slow economic growth rates are the common problems of the region. Further, in spite of the rich natural resources and industrial and economic potential, South Asia has been one of the poorest regions in the world. The individual country's efforts to boost their economies, have proved to be inadequate to deal with poverty and to accelerate the pace of the socio-economic development. The trade policies of the developed states have been detrimental to their development needs. Moreover, the Cold War tactics of the former two Super Powers have had their own influences on the South Asian States. For a variety of reasons, unfortunately, most of these States were drawn into the vortex of the Cold War alignment either with the United States or the former Soviet Union. This had contributed to unnecessary conflicts and tensions between the South Asian States, and the bigger States, India and Pakistan, used most of their resources in building the military capability rather

than socio-economic development. In view of their ills and wills of social, economic, political, cultural, religious and linguistic divisions and for a variety of reasons it was thought that South Asian States cannot form a regional organization and cannot cooperate at all.⁸

But disproving all of them, (late) President Ziaur Rahman of Bangladesh initiated steps in the late 70's for formation of a regional body in South Asia. It was felt that such an organization for promoting mutual cooperation, and economic prosperity in the region was essential. It was also felt that inter-regional disputes, however intractable, could be brought under manageable control through regional and bilateral negotiations. Though there was an initial reluctance from India and Pakistan, finally the efforts of Bangladesh became fruitful. After a long period of deliberations and discussions between the member States at various levels, the South Asian Association for Regional Cooperation (SAARC) came into existence in December 1985. After its establishment, the member States soon recognized the importance and seriousness of the problem of terrorism as it affects the security and stability of the region. Accordingly, in the Bangalore summit in the year 1986, they adopted a Convention on Suppression of Terrorism, to deal with the terroristic activities in the region.

II

Terrorism is a not a new phenomenon in both domestic as well as in international sphere. It has been used as a form of violence for political ends since the dawn of civilization. The 20th century however witnessed great changes in the use and practice of terrorism. It has now become an instrument of various political movements to achieve their aims and objectives. It is now a new form of barbarism and a new method of warfare waged by many in the world indiscriminately to disrupt the peace and good order of the world community. It is even patronised by States to achieve their political motives. Today it has become part and parcel of the life of the individuals and nation States.

In earlier periods, the menace of terrorism was limited in its perspective. It was only used as a tool to attack or to stop the

barbaric governance within a State. However, due to its widespread patronization by many groups and even by States for various known and unknown reasons, especially after the Second World War, it became an enduring problem of the contemporary international community. It has now assumed a new form of barbarism and became a new kind of warfare indiscriminately waged by organized and unorganized groups against neutrals, innocent people, and actual enemies. Actually, it is not fought to win a territory or to cause destruction, but to draw the attention of the whole world to listen and to right an alleged wrong. To achieve this objective, the terrorists attack their targets in a megalomaniac fashion whatever that comes into their way. Almost all the States are affected by this growing menace either directly or indirectly.

Although there is a widespread agreement among all the States to combat terrorism internationally, no two nations can agree on who is a terrorist and what constitutes terrorism. This is because of the divergence in perception about terrorism leading to one man's terrorist being perceived by another as freedom fighter. This disagreement derives largely from the assumption that terrorism is a static or unitary phenomenon. However, it is not a true perception. Terrorism in all its forms is a part of political violence directed against mankind and causes a breach of peace and security. In view of lack of whole-hearted cohesion among the nation-States to wipe out terrorism from the international scenario, it has emerged to day as one of the most controversial subjects to define what is terrorism, the causes of it and the strategies to eradicate it. Hence, all the debates, and the various efforts (i.e. national, regional and international) made by member States have so far proved to be a futile exercise and could not provide a single definition to define it authoritatively in legal terminology.

Among the various definitions, the League of Nations definition is referred to as the oldest one in international level. According to Article 1 of the 1937 League of Nations Convention on Terrorism, terrorism can be defined 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 or the general public." The Convention included not only the commission of crime but

also attempts, conspiracy, incitement, wilful participation, and knowingly given assistance. In brief, the Convention described terrorism as the deliberate use of means capable of providing a common danger to commit an act of imperiling life, physical integrity, human health, or threatening to destroy substantial prosperity.¹⁰

With the rise in the number of crimes attributable to terrorism, the matter has been engaging the attention of the States all over the world. The United Nations too adopted various resolutions to halt terrorism. The International Law Commission also included the topic in its draft code of offences against peace and security of mankind especially highlighting the responsibility of the States with respect to transboundary nature of terrorism.¹¹ But, none of these could legally tie down the concept of terrorism. This is because on the one hand, various resolutions adopted by General Assembly made it clear that nationalistic liberation movements cannot be constructed as terroristic activities, and they should be viewed as of legitimate measures for self-defense against colonialism. On the other hand, indiscriminate acts such as killing of individuals, attacking property, causing any damage to their physical and mental well being in the garb of liberation struggle falls certainly within the ambit of terrorism. At the same time, since there are no specific criteria to define what activities form part of terrorism, the confusion is bound to be there with respect to the exactness of the definition and the activities of terrorists. The United Nations has also miserably failed to define terrorism and to draw a distinction between the activities of terrorists and national liberation movements due to the lack of political will and infighting among member states to influence international affairs. These factors have led regional organizations to adopt various conventions on terrorism limiting to their regional perspectives.

III

Terrorism is not a new phenomenon in South Asia in particular and Asia in general. It was a part of the nationalist movement of all the Asian States, in their fight against their colonial masters. As a part of nationalistic struggle, it was not considered as a menace by the various freedom movements of South Asia.

On the other hand, in India, one of the pioneers of freedom struggle, Mahatma Gandhi, condemned all types of violent activities and appealed to the people of all walks of life to desist such type of activities stubbornly. As a firm practitioner of peace and non-violence, he called upon the leaders of India in particular and South Asia in general to build their future governance on the lines of peace and tranquillity without any inclination towards terrorist activities. But shattering his dreams and ideals, states as well as non-state groups in South Asia have used terrorist methods for realising their political goals. As a result, today, South Asia is in turmoil with the wide-spread activities of terrorists.

At the time of establishment of the SAARC in Dhaka Summit in 1985 itself all the heads of the member governments recognized the seriousness of the problem and arrived at a general agreement that concerted action must be taken against all forms of terrorism. But Sri Lanka and India could not agree on the definition of terrorism. Sri Lanka was for ignoring the political and human rights aspects while making acts of terrorism extraditable. It wanted national focal points to be identified in the regional agreement on terrorism. India had a slightly different view. It took a long-term view and contended that international conventions related to terrorism should be incorporated in the SAARC convention as India was already a party to the former. Finally, India however softened its approach and expressed its consent to accommodate the feelings of other member States in taking a follow-up action as per the recommendations of the expert groups, which had suggested greater cooperation among law enforcement authorities.¹² This paved the way for the adoption of the SAARC Convention on Suppression of Terrorism.

On 4 November 1987, the SAARC nations finally adopted the regional convention on terrorism during the third summit at Khatmandu. This was based on the draft declaration approved at the second summit at Bangalore. Accordingly, the SAARC countries pledged to refrain from organizing, instigating or participating in civil strife or terrorist acts in member States which formed part of the convention. All the member states duly ratified the convention and it came into force in August 1988.¹³

The SAARC Convention on Suppression of Terrorism too however failed to precisely define terrorism. The convention listed six offences relating to terrorist activities, and further stated that these would not be regarded as political offences or inspired by political motives. They are (a) unlawful seizure of aircraft (b) unlawful acts against the safety of civil aviation, (c) prevention and punishment of crimes against internationally protected persons, including diplomatic agents, (d) any convention to which SAARC member States concerned are parties and which obliges the parties to prosecute or grant extradition, (e) murder, manslaughter, assault, hostage-taking, offences relating to fire arms, weapons and explosives and the like; and (f) any attempt or conspiracy to commit an offence described in clause (a) or in aiding, abetting or counseling the commission of such offence.¹⁴ Apart from these, the Convention permits the member States to include the offences involving violence, which shall not be regarded as political offence, in order to facilitate them to extradite such persons.¹⁵ Among the six offences listed in the Convention, the first three are only an extension of the various Conventions of the United Nations. Apart from these offences, the preamble of the convention further specifies that it is the duty of the all concerned parties to refrain from organizing, instigating, assisting acts in another State or acquiescing in organized activities within its territory directed towards commission of such acts.

The Convention further expresses the resolve of the member countries to take effective measures to ensure that perpetrators of terrorist acts did not escape prosecution and punishment by providing for their extradition or prosecution. At the same time, the Convention has provided various safeguards for ensuring that in the name of curbing terrorist activity, a member country does not seek from another country's cooperation in checking legitimate activity by political dissidents. It defines all political offences of terrorist nature and specifies those offences which for the purpose of extradition will not be regarded as a political offence.

It also lays down that a contracting State in whose territory an alleged offender is found, "shall upon receiving a request for extradition from another contracting State, take appropriate

measures, subject to its national laws, so as to ensure his presence for the purpose of extradition or prosecution.¹⁶ It also lays down that, contracting States shall not be obliged to extradite a person, if the request is made on trivial nature or if, for any other reason, the request is regarded as unreasonable or not in the interest of justice and good faith.¹⁷ To prevent terroristic activities through precautionary measures, the Convention specifies that the member States shall also extend cooperation, subject to their national laws, to supply all evidences available at their disposal which includes consultations between appropriate agencies, exchange of information, intelligence and expertise and such other information necessary to an extraditable offence committed by a person.¹⁸

In accordance with the provisions of the Convention, India has to amend its Extradition Act of 1962 and the Code of Criminal Procedure in 1973. The Code of Criminal Procedure needs an amendment since it does not provide for prosecution for offences committed outside the country, whereas in accordance with the provisions of the Convention, one State could ask another State for prosecution of an offender who had committed the offence outside the country. However, there is no possibility of extraditing a person automatically, since that would also require a bilateral extradition treaty between the contracting parties.

IV

The above brief discussion clearly shows that it is difficult to find a universally acceptable and sufficiently comprehensive definition of terrorism. It is mainly a psychological warfare. Any attempt to combat it should therefore be on the physical component. First of all, the States should identify the differences between the activities of the terrorists, and freedom fighters. As long as specific attempts are not made to expose terrorists, who claim to be 'freedom fighters', the international community will have to suffer from the acts of so called "freedom fighters". International law doesn't have the tenacity to combat terrorism effectively, since it centres round the concept of sovereign State and works mainly for the protection of their social, economic, cultural, political and legal rights. Even if few States consider it politically advantageous to aid and assist,

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the activities of terrorists, there will be no possibility of adopting an effective legal document. Further, the whole aspect of terrorism mainly centres round the extradition treaties. The experience of extradition treaties clearly shows that States mainly attempt to avoid extradition treaties and prefers informal agreements. Also, most of the States do not show any interest in extraditing terrorists, particularly if they think, such an extradition will adversely affect their security and other political interests. Besides, although extradition is normally a reciprocal arrangement, some States take more advantages from it than others.¹⁹

A few options are therefore available. One is extradite or prosecute. Secondly, entrust the task to an international organization like the United Nations, which may intervene on humanitarian grounds if a State refuses to extradite a terrorist or to strengthen the efforts of the United Nations to establish the proposed International Criminal Court. Here, too, the States should deal with the activities of the terrorists sternly and not have any inclination towards one-upmanship. With the steps, the States must have the will to cooperate with the concerned states in regulating the activities of terrorists. Apart from these aspects, the SAARC countries may also consider to draft an international convention to impose responsibility on the States to pay compensation to the victims of terrorists or the state which assists terrorists. This may be an extreme measure, but certainly it will help in eradicating the hideouts of the terrorists at the international level.

V

Although, more than a decade has passed since the member States of SAARC adopted the Convention on Suppression of Terrorism, not much success has been achieved in this regard so far. The fact is that largely due to lack of cooperation and proper understanding no meaningful effort has been taken in South Asia to encourage regionalism. The major powers of the region, India and Pakistan, are skeptical about the concept of regional cooperation. Each of them tries to establish their hegemony over the other and in the region. Hence, they aid and assist terrorists even in petty issues instead of settling them through bilateral

negotiations. Today, the sub-continent is filled with terrorists. Violence is widespread and over the years they have worked only to establish a free-terror area in South Asia. Though, various fields have been identified by the SAARC States to achieve peace and prosperity in the region, if they trade any thing uniformly and freely in the region, that is terrorism and terrorists. It is a trade in which every country in the region is absolutely free to contribute their own quota of share. Today it is the most widespread plaguing disease in the region.²⁰

SAARC has thus turned out be merely an addition of one more pompous name to the catalogue of regional groupings proliferating in the world. Many dignitaries, important political leaders and peoples and soldiers have been killed. Still the SAARC has not moved even an inch to adopt the Convention, in its fullest form. As specified earlier, this Convention, too centres round the aspect of extradition. Since none of the members believe each other, all of them could not enter into extradition treaties. Even if a request is made by one member State to an other, it is simply ignored. In this kind of vicious atmosphere, the Convention serves no purpose. It is better that they think in terms of establishing a SAARC regional Criminal Court or on the line of the European Community to establish a South Asian Commission for Human Rights to deal with offences of terrorists more sternly than under the provisions of the present Convention.

But before making any such effort, they should have a meaningful interaction to promote inter-state relations, peace, friendship and good neighbourly relations. Further efforts must be made to consider regional cooperation as a part of the decision-making of each country, rather than simply accepting it as an extension of foreign policy. If they want to establish regional cooperation, for which they have pledged themselves together in the Dhaka declaration, hard work, friendship, mutual trust and faith in each other is a must. If they can short out their problems at the earliest, the South Asia Region could be free from terrorist activities and certainly make an impact of its own on the international community.

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