

APPENDIX—I
Charter of the United Nations
(Selected Articles)

PREAMBLE

We the Peoples of the United Nations determined

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

✓ to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of International Law can be maintained, and

to promote social progress and better standards of life in larger freedom *and for these ends,*

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organisation to be known as the United Nations.

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CHAPTER I
PURPOSES AND PRINCIPLES
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Article 1.—The purposes of the United Nations are :

1. To maintain international peace and security, and to that end; to take effective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about the peaceful means, and in conformity with the principles of justice and International Law adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

✓ 3. To achieve international co-operation in solving international problem of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion; and → 17-18

4. To be a centre for harmonising the actions of nations in the attainment of these common ends.

Article 2.—The organisation and its members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles :

1. The organisation is based on the principle of the sovereign equality of all its members.
2. All members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.
5. All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.
6. The organisation shall ensure that States which are not members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the member to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II MEMBERSHIP

Article 3.—The original members of the United Nations shall be the States which, having participated in the United Nations Conference on International Organisation at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4.—1. Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the organisation, are able and willing to carry out these obligations.

2. The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5.—A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored to by the Security Council.

Article 6.—A member of the United Nations which has persistently violated the principles contained in the present Charter may be expelled from the organisation by the General Assembly upon the recommendation of the Security Council.

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CHAPTER IV THE GENERAL ASSEMBLY

Composition

Article 9.—1. The General Assembly shall consist of all the members of the United Nations.

2. Each member shall have not more than five representatives in the General Assembly.

Functions and Powers

Article 10.—The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and except as provided in Article 12, may make recommendations to the members of the United Nations or to the Security Council or to both on such questions or matters.

Article 13.—1. The General Assembly shall initiate studies and make recommendations for the purpose of :

(a) promoting international co-operation in the political field and encouraging the progressive development of International Law and its codification.

(b) promoting international co-operation in the economic, social, cultural, educational and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

Article 14.—Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations.

Article 17.—1. The General Assembly shall consider and approve the budget of the organization.

2. The expenses of the organization shall be borne by the members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialised agencies referred to in Article 57 and shall examine the administrative budgets of such specialised agencies with a view to making recommendations to the agencies concerned.

Voting

Article 18.—1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include : recommendations with respect to the maintenance of international peace and security, the election of non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19.—A member of the United Nations which is in arrears in the payment of its financial contributions to the organisation shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a member to vote, if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

CHAPTER V THE SECURITY COUNCIL

Composition

Article 23.—1. The Security Council shall consist of fifteen members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of members of the United Nations to the maintenance of international peace and security and to the other purposes of the organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council, shall be elected for a term of two years. In the first election of the non-permanent members, after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

Functions and Powers

Article 24.—1. In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the purposes and principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25.—The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26.—In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military and Staff Committee referred to in Article 47, plans to be submitted to the members of the United Nations for the establishment of a system for the regulation of armaments.

Voting

Article 27.—1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

CHAPTER VI PACIFIC SETTLEMENT OF DISPUTES

Article 33.—1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a

solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34.—The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the disputes or situation is likely to endanger the maintenance of international peace and security.

Article 35.—1. Any member of the United Nations may bring any disputes, or any situation of the nature referred to in Article 34, to the attention of the Security Council or the General Assembly.

2. A state which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Chapter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under the Article will be subject to the provisions of Articles 11 and 12.

Article 36.—1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37.—1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38.—Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39.—The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40.—In order to prevent an aggravation of the situation the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims or positions of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measure.

Article 41.—The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic relations.

Article 42.—Should the Security Council consider that measure provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea or land forces of members of the United Nations.

Article 48.—1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49.—The members of the United Nations shall join in affording mutual assistance in carrying of the measures decided upon by the Security Council.

Article 50.—If preventive or enforcement measures against any State are taken by the Security Council, any other State whether a member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to solution of those problems.

Article 51.—Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right to self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52.—Nothing in the present Charter precludes the existence of regional arrangement or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations.

2. The members of the United Nations entering into such arrangement or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council.

4. This article in no way impairs the application of Articles 34 and 35.

Article 53.—1. The Security Council shall, where appropriate utilise such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the

authorisation of the Security Council, with the exception of measures against any enemy State, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such State, until such time as the organisation may on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a State.

2. The term enemy State used in paragraph 1 of this Article applies to any State which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54.—The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION

Article 55.—With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of peoples, the United Nations shall promote :

(a) higher standards of living full employment, and conditions of economic and social progress and development;

(b) solutions of international economic, social, health and related problems and international cultural and educational cooperation; and

(c) universal respect for, and observation of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56.—All members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92.—The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93.—1. All members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A State which is not a member of the United Nations may become a party to the Statute of International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94.—1. Each member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95.—Nothing in the present Charter shall prevent members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96.—1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorised by the General Assembly, may also request advisory opinion of the Court on legal questions arising within the scope of their activities.

CHAPTER XVIII AMENDMENTS

Article 108.—Amendments to the present Charter shall come into force for all members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional process by two thirds of the members of the United Nations, including all the permanent members of the Security Council.

Article 109.—1. A general conference of the members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of General Assembly and by a vote of any seven members of the Security Council.

APPENDIX—II

Important International Events And Topics Involving Questions Of International Law

(I) The Problem of Legal control of International Terrorism*

The problem of the legal control of International terrorism is not new¹; but it has assumed added significance because of the phenomenon increase in the acts of international terrorism in recent times.² International terrorism has, in recent times, manifested itself in various forms including (a) aircraft hijacking; (b) kidnapping of Diplomatic Personnel and other persons and attack on Diplomatic Missions; (c) Taking of Hostages; (d) Terrorism in War of National Liberation; (e) Terrorism in Armed conflicts; and (f) Nuclear Terrorism.³ It is heartening to note that the international community is seized with this difficult problem. The question of international terrorism was first placed on the agenda of the General Assembly at its twenty-seventh session. While proposing the item at that time, the Secretary-General urged the U. N. to face the international aspects of the problem. He had noted that there was the risk of a steady erosion, through indiscriminate violence, of the already tenuous structure of International law, order, and behaviour. The International Law Commission, in its report (A/8710 Rev. 1) to the same Assembly session, also noted that the over-all problem of terrorism throughout the world was of great complexity but that there could be no question as to the need to reduce the commission of terrorist acts if they could never be completely eliminated.⁴

On 18 December, 1972, the General Assembly adopted resolution 3034 (XXVII) establishing an *ad hoc* Committee on International Terrorism. The Committee comprising of 35 members including India met from 6 July to 11 August, 1973 and adopted its report to the Assembly. The General Assembly was unable to consider the item until the thirty-first session. In its thirty-first session on 19 January, 1977, the Assembly adopted a resolution⁵ entitled, *Measures to prevent International Terrorism which Endangers or Take Human Lives or Jeopardize Fundamental Freedoms, and study of the Underlying causes of those Forms of Terrorism and Acts of violence which lie in Misery, Frustration Grievance and Despair and which cause some People to sacrifice Human Lives, Including Their own, in an Attempt to Effect Radical changes.*

The resolution expressed deep concern over increasing acts of International Terrorism which endanger or take innocent human lives or jeopardize fundamental freedoms. The resolution invited the *ad hoc* Committee on International Terrorism to continue its work in accordance with the mandate entrusted to it under General Assembly Resolution 3034 (XXVII). It was also decided to include the item in the provisional agenda of thirty-second session of the Assembly.

The *ad hoc* Committee on International Terrorism, met in New York from 14 to 25 March, 1977 and decided to transmit to the General Assembly a report containing a summary of views expressed during its two-week consideration of the question. The

* See also for C.S.E. (1989) Q. 8 (a).

1. As pointed out by Oppenheim, "After the assassination of King Alexander of Yugoslavia in France on October 9, 1934, the Council of the League of Nations in pursuance of a proposal made by France, took steps to bring about an international convention for the prevention and punishment of a crime of political character described as acts of political terrorism. In the convention signed at Geneva on November 16, 1937, twenty-three States undertook to treat as criminal offences acts of terrorism—including conspiracy; incitement; and participation in such acts—and in some cases to grant extradition for such offences.....Apart from India no member of the British Commonwealth of Nations signed either conventions. The conventions have not entered into force." International Law : Vol. 1; Eighth Edn. : p. 710.
2. See Swadesh Rana, "International Terrorism : A Mode of Combat ?" India Quarterly ; Vol. XXXIV, No. 4 of 1978, p. 491.
3. M. K. Nawaz and Gurdip Singh : "Legal Control of International Terrorism : " IJIL Vol. 17 (1979), p. 66 at pp. 76-79.
4. U. N. Monthly Chronicle, Vol. XIV, No. 4 (April 1977), p. 54.
5. A/Res/31/102 of 19 January, 1977.

Committee's report to the Assembly stated that the debate has revealed that its members share the concern of the international community at the development of international terrorism. Although the need to condemn and repress acts of international terrorism falling within "the Common Law" was obvious, there was divergence of views as to what other acts should be included in the expression of "International Terrorism". Some delegations reaffirmed the view that condemnation and repression of international terrorism should take place without qualification. Committee members held the view that the General Assembly must continue its efforts with a view to combating International terrorism. They emphasized the need for international co-operation in dealing with the problem, on the one hand by studying its underlying causes and on the other hand, by putting into practice measures to combat racism.⁶

In its thirty-eighth session (1984), the General Assembly vide resolution 38/130 urged all states, unilaterally and in cooperation with other states, as well as relevant U. N. organs to contribute to the progressive elimination of the causes underlying international terrorism and called upon states to fulfil their obligations under international law to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state, or acquiescing in organized activities within their territory directed towards the commission of such acts.⁷

Reference may also be made to the 26th Assembly of the 156-members International Civil Aviation Organisation wherein Canada submitted a proposal regarding tough new international laws to punish terrorist attacks on airport terminals. On 27 September, 1986, both the Super Powers, the U. S. and the U.S.S.R.—endorsed the Canadian proposal. If approved by the I.C.A.O.'s Council and ratified by member states the changes would be first since 1971 to the three conventions on air-hijacking or air-terror. The non-aligned Summit at Harare in September 1986 asked states to refrain from organising, assisting, or instigating terrorist acts in other countries. The two-day meeting of the Foreign Ministers of South Asian Association for Regional Cooperation (SAARC) meeting at Dhaka in the second week of August 1986 condemned terrorism and called for concrete steps to fight it. But the Summit of the SAARC which concluded on 19 November, 1986 in New Delhi failed to define terrorism. Thus one of the most formidable problems facing the legal control of terrorism is the precise definition of terrorism.⁸

It has been rightly pointed out : "There are grave difference amongst states on several issues concerning the adoption of a multilateral convention on International terrorism. The definition problem is probably the most controversial. A resolution of this controversy is a pre-requisite for the adoption of a universally acceptable convention. A narrower definition of international terrorism is probably more likely to receive the approval of a large number of States.

Causes of international terrorism is yet another aspect to be scientifically explored. The identification of the causes of international terrorism may no doubt be time-consuming but it cannot be avoided. Pending identification of the causes it may be considered whether States can agree internationally on short-term measures that may be taken for controlling the incidence of acts of international terrorism.

As far as the adoption of legal measures to control terrorism is concerned, the issue of making international terrorism extraditable is of paramount importance."⁹ Further, "In some quarters, it is, felt that an International Criminal Court should be established with jurisdiction over International Crimes, and in particular over act falling within the definition of terrorism."¹⁰ But "The time is certainly not propitious for the establishment of an

6. U. N. Monthly Chronicle, Vol. XIV, No. 4 (April 1977) p. 54.

7. U. N. Chronicle, Vol. XXI (No. 2 of 1984) p. 51.

8. See also Brig N. B. Grant (Retd), "Terrorism In search of a Definition, Indian Express, Dated 25 November 1986.

9. M. K. Nawaz and Gurdip Singh : "Legal Control of International Terrorism", IJIL; Vol. 17 (1977), p. 66 at p. 81. See also Yogesh K. Tyagi, "Political Terrorism: National and International Dimensions", IJIL: Vol 27, Nos. 2 & 3 (April-Sept, 1987) p. 160 at pp. 162-180.

10. Ibid.

International Criminal Court—notwithstanding the effort of some good intentioned jurists to establish such a Court.”¹¹

According to Brian Jenkins, a terrorism expert, 1985 has proved to be the “the worst year yet” and claimed as many as 600 lives worldwide in hijackings, bombings, assassinations and sabotage. These terrorist activities involved as many as 77 countries. As pointed out by U. S. Ambassador to the U. N. Mr. Vernon Walters, “There is today no people, no government, no diplomat, no traveller who can count himself immune from the terrorists.” Though the malady of terrorism, has become universal and its dangers are present everywhere irrespective of race, religion, nationality, ideology or sex, the efforts made so far have been far from satisfactory.

Reference may also be made here to “State terrorism” which “is directed by those in power and carried out by state organs against a certain population State terror may include not only terrorist-type acts by a government against its own population but also government support of individual terrorist activity. State terrorism is also involved when a government supports acts of terrorism by supporting terrorist groups, providing them with training and financing them.”¹² As against this, “International terrorism is any act of terror violence containing an international jurisdictional element *e.g.*, the perpetrator may be from one state while the victim belongs to another state, or the terrorist act may occur in a jurisdiction foreign to both.”¹³ Though several attempts have been made, through international conventions, to enforce humane standards of behaviour, abolition of torture etc., yet several states indulge in the practice of torture and other forms of state terror.¹⁴ Terrorism in any form, whether international or state, deserves to be condemned.

On 9 December, 1985, the General Assembly of the Organization of American States adopted Inter-American Convention to Prevent and Punish Torture. According to Article 2 of the convention torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish to his physical or mental capacities, even if they do not cause physical or mental anguish. However, the concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred above. Article 11 of the convention provides that state parties shall take necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime, in accordance with their respective national laws on extradition and their international commitments on this matter.

On 4 November, 1987, the Member States (namely Bangladesh, India, Nepal, Bhutan, Maldives, Pakistan and Sri Lanka) of the South Asian Association for Regional Cooperation (SAARC) adopted SAARC Regional Convention on Suppression of Terrorism. Article 1 of the provision provides that 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 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;

11. *Ibid.*, at p. 82.

12. J. N. Saxena, “Relationship Between International Terrorism, State Terror and Human Rights in the World Order”, *IJIL* Vol 27 (1987) p. 194 at pp. 196-197.

13. *Ibid.*, at p. 196.

14. T. S. Rama Rao “State Terror as a Response to Terrorism and vice versa ; National and International Dimensions”, *IJIL*, Vol 27 (1987) p. 183 at 186.

- (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 Newyork 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 counselling the commission of such an offence or participating as an accomplice in the offences so described.

Article III of the convention provides that the provision of all extradition treaties and arrangements applicable between contracting states are hereby amended as between contracting states to the extent that they are incompatible with this convention. Article VII, however, gives very wide power and discretion to the contracting states with regard to extradition. It provides that contracting states shall not be obliged to extradite, if it appears to the requested state that by reason of the trivial nature of the case or by reason of the request for the surrender or return of a fugitive offender not being made in good faith or in the interests of justice or for any other reason it is unjust or inexpedient to surrender or return the fugitive offender. It has, therefore, been rightly remarked, "The law of extradition has obstructed international reaction against terrorism though all states agree that terrorism should be effectively suppressed." Indeed if terrorism is to be effectively curbed the law of extradition will have, to be suitably amended.

With a view to give effect to SAARC Regional Convention on Suppression of Terrorism, on 26th April, 1996 the Parliament enacted the SAARC Convention (Suppression of Terrorism), 1993. Section 3 of the Act provides that Articles I to VIII of the convention shall have the force of law in India. As regards the Hostage taking, Section 4(1) provides that whoever by force or threat of force or by any other form of intimidation, seizes or details any person and threatens to kill or injure the person with intent to cause a convention country to do or abstain from doing any act as the means of avoiding the execution of such threat, commits the offence of hostage taking under section 4(2) such hostage taking is punishable with punishment for a term which may extend to ten years, and shall also be liable to fine. As regards the question of extradition of such accused, Section 5 provides that for the purposes of the Extradition Act, in relation to a convention country an offence under sub-section (1) of Section 4 or any other offence specified in Article 1 of the convention, shall not be considered as an offence of a political character.

While on the regional level some concrete steps such as the above and adoption of the *1971 Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance* by the OAS General Assembly in the third session meeting in Washington from January 25 to February 2, 1971 and the *1977 European Convention on the Suppression of Terrorism signed at Strasbourg on January 27, 1977* have been taken, there was absence of a no worldwide convention to tackle the problem of terrorism in an effective way till recently. Since this is a matter of vital importance to everybody sincere and joint efforts should be made to tackle this problem on a worldwide scale forgetting for the time being all political, ideological or other differences.

On 18th October, 1993, India and Russian Federation signed an agreement on cooperation between the two countries in dealing with terrorism, crime, drug trafficking etc. Till an International Convention, which is universally binding, is adopted, such bilateral agreements should be entered into by most of the countries to combat terrorism. Reference may also be made here to the adoption of a resolution on terrorism by the Third Committee of the U. N. on 7th December, 1993. This resolution was moved by Turkey and

was co-sponsored by India. The resolution says that terrorism is a violation of human rights.

Reference may also be made to the **Delhi Declaration** adopted by the Eighth Summit of South Asian Association for Regional Cooperation (SAARC) held at New Delhi on 2 to 4 May, 1995. Through this Declaration the Heads of State or Government expressed serious concern on the spread of terrorism in and outside the region and reiterated their unequivocal condemnation of all acts, methods and practices of terrorism as criminal. They deplored all such acts for their impact on life, poverty, socio-economic development and political stability as well as on regional and international peace and cooperation. They once again emphasized that highest priority should be accorded to the enactment of enabling legislation at the national level to give effect to the SAARC Regional Convention on Suppression of Terrorism. They urged Member States which had not done so, to enact expeditiously enabling legislation at the national level to implement the convention and reiterated in need for a constant dialogue and interaction among the concerned agencies of Member States, including submission of periodic recommendation to the Council of Ministers. Finally they underlined that cooperation among SAARC Member States was vital if the scourge of terrorism was to be eliminated from the region.

It may be noted here that America is guilty of practicing double standards in respect of terrorism. While on the one hand, despite several solid evidence of terrorist acts by Pakistan, America is not declaring Pakistan a state sponsor of terrorism and has a soft corner for Pakistan and even renders military aid to it, on the other hand when it is itself confronted with acts of terrorism its attitude completely undergoes a change for example when in August, 1998, bombs were exploded in its embassies, it replied by attacking Sudan and Afghanistan by missiles on 21 August 1998. On being asked whether it concedes such a right to India for attacking places in Pakistan from where terrorist attacks are launched and help is rendered to Kashmiri militants, the American reply is in negative. This double standard is indirectly encouraging terrorism in the Indian subcontinent.

Recently, however, there has been some change in America's attitude, especially towards the growing terrorism in Indian sub-continent. America has expressly recognized Pakistan's hand in sponsoring state terrorism and has warned it several times. America has not only ratified the extradition treaty between America and India but has also agreed to tackle terrorism jointly. This change of attitude has come after Pakistan's intrusion in Kargil area of Kashmir.

Yet another development that has taken place recently is that India has been able to secure Russia's cooperative action to fight across border terrorism. Russia on its part is alarmed and annoyed by Pakistan's role in assisting militants in Chechnya and Dagestan war.

Reference may also be made here to the International Convention for the suppression of the Financing of Terrorism which has been passed by the General Assembly in December, 1999 to halt the flow of money to terrorist organisations.

Following a proposal by France, the U.N. General Assembly initiated work on the treaty in 1998. It was adopted by the General Assembly on December 9, 1999. The International Convention for the Suppression of the Financing of Terrorism (1999) came into force on 10th April, 2002.

One of the main reasons of the early ratification of the treaty was the terrorist attack of September 11, 2001 on twin towers of World Trade Centre which shocked the whole mankind. America regarded it as "Attack on America" with this horrible incident the International terrorism reached its zenith. Spurred by this incident a number of States ratified the above convention. So far the convention has been ratified by 26 States. It is significant to note that out of total 26 ratifications, 22 ratifications were made after September 11 attacks. The Convention has so far been signed by 132 countries.

According to the Convention it is a crime to provide or collect funds with the intention or knowledge that the money will be used to carry out a terrorist attack. Since financing is

at the heart of terrorist activity, the Convention paves the way for closer co-operation between nations, law enforcement agencies and financial authorities. The Convention mandates stepped up efforts to identify, detect and freeze or seize funds earmarked for terrorist acts and requests States to use such funds to compensate victims and their families. It also calls on financial institutions to report to their governments any unusual or suspicious transactions.

A brief reference may also be made here to the U.N. Millennium Summit held in September 2000. The Summit pledged to take concerted action against international terrorism.

Prior to the 1999 Convention referred above the Convention of the Marking of Plastic Explosives for the Purpose of Detection was signed at Montreal in March, 1991.

Reference may also be made to the Working Document submitted by India on the Draft Comprehensive Convention on International Terrorism. The Draft Convention in the preamble expresses the resolve to take effective measures to prevent acts of terrorism and to ensure that perpetrators of terrorist acts do not escape prosecution and punishment by providing for their extradition or prosecution. Article 2 of the Draft Convention provides that any person who commits an offence within the meaning of this Convention if that person, by any means unlawfully and intentionally does an act intended to cause :

- (a) death or serious bodily injury to any person ; or
- (b) serious damages to a State or Government facility, a public transportation system, communication system or infrastructure facility with the intent to cause extensive destruction of such a place, facility or system, or where such destruction results or is likely to result in major economic loss.

When such act, by its very 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.

Further, any person also commits an offence if that person attempts to commit an offence or participates as an accomplice in an offence as set above.

Article 4 provides that each State Party shall adopt such measures as may be necessary :

- (a) to establish as criminal offences under its domestic law the offences set forth in article 2 ;
- (b) to make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Further, each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Draft Convention also provides for extradition of alleged offender or if it does not extradite, it will prosecute him without exception (Article 11).

Besides submitting the above draft Convention, the Indian Parliament enacted Prevention of Terrorism Act, 2002. Article 1 of the Act provided that except in respect of entries at serial number 24 and 25, the Act shall be deemed to have come into force on the 24th day of October, 2001 and shall remain in force for a period of three years from the date of its commencement. Thus Prevention of Terrorism Act (POTA) should expire on 23rd day October, 2004. But with the Congress Coalition forming the Government at the Center, POTA may be ended even before the said period. This is because the Coalition Government is supported by parties such as Communist and DMK who want the demise of POTA as soon as possible.

Last but not the least, the U.N. Security Council on 28 September 2001 passed a resolution on terrorism. Acting under Chapter VII of the United Nations, the Security Council resolved that all States shall :

- (a) prevent and suppress the financing of terrorist acts ;

- (b) criminalize the wilful provision for collection by any means, directly or indirectly, of funds by their nationals or in the territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts ;
- (c) freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of the terrorist acts or entities owned or controlled directly or indirectly by such persons ; and if persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from such property owned or controlled directly or indirectly by such persons and associated persons and entities; and
- (d) prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, or of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such person.

The Security Council also decided to establish, in accordance with Rule 28 of its provisional of procedure, a committee of the Security Council, consisting of all the members of the Council to monitor implementation, of this resolution, with the assistance of the appropriate expertise, and called upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a time-table to be proposed by the Committee, on the steps they have taken to implement this resolution. Finally the Council decided to remain seized of this matter.

This is indeed an important step to prevent and suppress terrorism yet it cannot be denied that terrorism has assumed such a magnitude that many other stringent steps will have to be taken to curb it.

(II) Nuclear Terrorism

It has been aptly remarked, "Against the backdrop of a global environment which accepts legitimacy of nuclear weapons, countenances vast nuclear arsenals, and the use of coercive diplomacy by the powerful nations, state terrorism in several countries and state sponsored terrorism in the form of 'covert operations' the prospects of finding solutions to international terrorism seem far from bright."¹⁵ Since the menace of terrorism is constantly increasing, it is not difficult to envisage a situation wherein a terrorist organisation is in possession of nuclear arms and eventually makes their use for acts of terrorism.¹⁶ According to the panel headed by retired U. S. Rear Admiral Thomas Davies and Bernard O'keefe on the prevention of nuclear terrorism, "the possibility of nuclear terrorism is increasing."

The danger stems from a confluence of factors such as : (i) the growing incidence, sophistication and lethality of conventional forms of terrorism, often to increase stock value; (ii) the support and in some cases sponsorship, of terrorism by nations; and (iii) an increasing number of targets such as nuclear reactors used to generate power or conduct research. According to report of the panel, "Terrorists could go nuclear in a variety of ways." It added : the most serious threat involves the possible theft of a nuclear weapon which might be detonated "with the most catastrophic consequences" in a densely populated area. The next riskiest prospect was the "theft of nuclear materials and their use or threatened use in a crude home-made bomb."¹⁷ Further, nuclear terrorism may also be resorted to by disgruntled groups within the government.

15. R. G. Sawhney, "Combating World Terrorism", *The Pioneer*, dated 25 June, 1986.

16. See Louis Rene' Beres *Terrorism and Global Security—The Nuclear Threat* Boulder, Westview Press, New York, 1979.

17. *The Pioneer*, dated 27 June, 1986.

The fears of imminent nuclear terrorism are not totally unfounded. Some attempts in this direction have already been made.¹⁸ For example, three young Americans were arrested by the U. S. Federal Bureau of Investigation in October 1978 on the charge of conspiracy to steal the *USS Trepang*, an American nuclear missile submarine. The second such incident occurred in April 1985 when unusually high levels of radioactive plutonium were found in New York's water supply. Apprehensions were expressed that this appeared to be the work of terrorists because after the incident an anonymous letter containing a threat to poison reservoirs was received by the city Mayor. Besides this, during the cultural revolution in China in 1967 it was reported that the military commander of Sinkiang province threatened to seize the nuclear base of the Maoists attempted to take over the provincial government. Moreover, during the revolt of the French General against President de Gaulle in 1960, previously scheduled nuclear test had to be conducted several days ahead of plan to prevent the chances of rebel generals taking over nuclear warheads. Last but not the least, during 1974 Cyprus crisis in view of the fear of either Greece or Turkey or both these NATO parties seizing nuclear weapons to blackmail the U.S., the U. S. ordered its Sixth Fleet in the Mediterranean to be prepared to send a Marine detachment aboard helicopters to recover nuclear warheads in Greece and Turkey. Since the nuclear powers have emplaced nuclear arsenals at numerous strategic places all over the world, the chances of some of them falling in the hands of terrorists by theft or otherwise cannot be ruled out. Since the proliferation of nuclear weapons has increased instead of being checked in recent years and some more countries are either on the threshold of acquiring nuclear weapons or have already acquired, the possibility of nuclear terrorism has been constantly increasing. With the breaking up of the Soviet Union, the problem has assumed serious magnitude because the nuclear arsenals of the former Soviet Union were situated in several of its former republics.

Some steps have been proposed to meet the threat and grave situation arising out of nuclear terrorism. It has been proposed to establish an international police force to prevent thefts of nuclear materials—a sort of nuclear super interpol. It has been suggested that more stringent accounting procedures be created to plug the leak of materials from facilities. But even these may not suffice because "every country is vulnerable to nuclear terrorism whenever it might take place and the weakest national links in any safeguards system could effect all other countries. Secondly.....protection and control of inventories cannot be made perfect, and the risks can be reduced but not entirely eliminated."¹⁹ It need not be overemphasized that the problem of nuclear terrorism is grave and needs to be tackled earnestly. The accident at Soviet nuclear reactor at Chernobyl has clearly demonstrated the helplessness of experts and scientists to check effectively the accidents of nuclear reactors. The situation will indeed be very grim if the terrorists are ever able to make use of nuclear weapons as an act of terrorism or a successful attack is made against any of the powerful nuclear reactors. It is therefore, imperative to create a supra-national authority capable of monitoring and effective preventive action. This is possible only if the super-powers and other nuclear powers unite to achieve the desired effect forgetting power politics in this respect and disregarding their ideological and other differences. Hitherto all such efforts have been confined to nuclear weapons states. Since terrorism is a world-wide phenomenon, if a world-wide effective safety system is to be built the support of all countries, big or small, will have to be enlisted. It is necessary to have continuous planning and special crisis-management policies at various government and non-governmental levels to deal with the situation.²⁰ Let us hope that good sense will prevail upon those who are at the helm of affairs and an effective supra-national authority capable of monitoring and preventive action will be created well in time to save world from catastrophe.

It may be noted here that a draft Convention on Fighting Acts of Nuclear Terrorism is being prepared. In his address to the General Assembly of the U.N. on 21 September,

18. Several such attempts have been narrated in excellent article by P. K. S. Namboodiri, "Nuclear Terrorism", Times of India, dated 18-9-86, 19-9-85 and 20-9-85 and are being given below.

19. Ibid.

20. See Sankar Sen, "Nuclear Terrorism", The Hindustan Times, 4th January, 1994.

1999, Russian Foreign Minister, Igor Ivanov spoke that his country was fully aware of the threats and challenges of militant nationalism, separatism and terrorism. He, therefore, emphasized the need and urgency "to finalise the draft Convention on Fighting Acts of Nuclear Terrorism." The Russian Foreign Minister also supported the initiative of holding an anti-terrorism Conference under the auspices of the United Nations or a Special Session of the U.N. General Assembly in 2000.

International Convention for Suppression of the Financing of Terrorism, which was adopted by the General Assembly on December 9, 1999 came into force on 10th April 2002. This Convention has so far been signed by 132 countries and ratified by 26 countries.

Recent events, especially attack on twin towers of WTC in New York on 11 September 2001 have once again demonstrated that the possibility of nuclear weapons into the hands of terrorists cannot be ruled out. During America's mission of overthrowing of Taliban Government of Afghanistan and capture of Bin Laden and his Al-Qaida men, Bin Laden when pushed to the wall claimed that he possessed nuclear weapons and if necessary could use it against America. Subsequently, it was discovered that a few nuclear scientists had links with Bin Laden. This is definitely a dangerous development and a cause for great alarm. It will now be necessary for America, which is regarded by Bin Laden and his Al-Qaida men as enemy number one, and other nuclear powers to keep close watch on the activities of these nuclear scientists and the terrorists led by Osama Bin Laden.

(III) Transfer of Hongkong from Britain to China after expiry of Lease Agreement in 1997

On 20 April, 1984, the British Foreign Secretary, Sir Geoffrey Howe told the people of Hongkong that Britain would be returning them to China's control in 1997 and that there would be no British involvement in Hongkong's administration after that date. He added that Britain would be continuing to negotiate with China to seek a future arrangement for Hongkong that would assure continued autonomy for the territory.

The fate of thousands of Indians living in Hongkong hanged in balance. They had contributed in the prosperity of Hongkong but after Britain left Hongkong in 1997, they would become stateless. They still hoped that probably at the eleventh hour Britain might intervene in their favour otherwise they would have two options—(1) they might remain stateless and continue to be inhabitants of Hongkong by getting travel documents alongwith identity cards; or (2) after 1997, they may apply for special Chinese passport. In July 1993, British Foreign Secretary, Douglas Hurd held talks with Chinese leader but no headway could be made. He held talks again in first week of December, 1993 but again with no effect. While Britain wanted Hongkong to have democracy, Beijing reiterated the long-voiced threat to entirely dismantle Hongkong's Legislature and local councils elected under the new schemes once it comes to power on 1st July, 1997.

On 1st July 1997, Hongkong became part of China. Thus Britain returned the territory of Hongkong seized from China in the Opium War after 156 years of colonial rule.

Legal Aspects of the Problem.—Britain had acquired more than 90 per cent of Hongkong through lease agreements. China contended that she was not bound by such 'unequal treaties.'²¹

The British Prime Minister Mrs. Margaret Thatcher contended that the treaties under which Britain acquired Hongkong were still valid. She said that Britain had a 'moral duty' towards the people of Hongkong and that she gave more significance to this moral duty rather than the economic gains derived from the territory of Hongkong. Later on she softened her attitude and conceded the transfer of sovereignty and control of Hongkong to China after 1997.

21. For a discussion on the concept of unequal treaties see Chapter on "Treaties."

The term of the said treaties expired in 1997. Since the question of their renewal by China does not at all arise, Britain should return the territory of Hongkong to China after 1997.

Nearly ten per cent of the territory of Hongkong had been acquired by Britain through cession in perpetuity. The problem of Hongkong is also related to the problem of colonialism in general. Colonialism is on the wane and may be said to be passing through its last phase. It is necessary to mention here that the principle of *self-determination* which has become a binding principle of international law in the context of colonialism.²² Therefore, much depends on the wishes of the people of Hongkong. According to the principle of self-determination, the people of Hongkong are entitled to determine whether they shall remain with Britain or China. The negotiations held so far between Britain and China on the question of the future of Hongkong indicate that Britain will transfer the control and sovereignty of Hongkong to China after 1997, *i.e.*, at the expiry of the term of the lease agreements and thus the problem of the future of Hongkong will be solved satisfactorily. In case, however, there is any dispute, it should be solved peacefully by respecting the wishes of the people of Hongkong. Since colonialism is on the wane the count down may be said to have already begun, sooner Britain withdraws from Hongkong the better.

Britain and China agreed that for a certain period after 1997, the present system will continue in Hongkong. Giving the details of the arrangement regarding Hongkong after its transfer to China in 1997, U. K. Secretary of State, Sir Geoffrey Howe said the following in a press conference on 21 April, 1984 :

"The laws of Hongkong, including the written and common law, would be based upon the present system, existing freedom would be maintained.....Hongkong would manage its own public finances, within which taxes levied in Hongkong would, as now, be employed in Hongkong for the benefit of the people.....It would remain a participant in regional and third world economic organisations and there would be a place for outside people, from Britain and elsewhere, to go on making a contribution to life in Hongkong." Asked about what guarantee would back such arrangements, Mr. Howe said, they would be enshrined in an international agreement between Britain and China.²³ But once Hongkong comes under the sovereignty of China, it is the principle of sovereignty which will prevail over all such arrangements and then it will depend upon the Chinese government whether to allow the existing system in Hongkong to continue for a certain period or to extend there its own system. Obviously, there can be no guarantee against this position.

In September 1995 elections to Hongkong Legislative Council, anti-China Democratic Party scored overwhelming victory. The only important signal the poll results would be conveyed to the communist leaders of Beijing is that they wanted the present economic system to continue. It would be a wistful thinking to imagine that the recent election results would reverse the Sino-British Agreement on transfer of the Sovereign authority of Hongkong to Beijing in July 1977.

After Hongkong became a part of China on 1st July 1997, China declared that for fifty years both the systems *i.e.* one nation with two systems, would continue.

(IV) Legality of Air Dropping of Medicines and Essential Supplies in Jaffna (Sri Lanka) by India

N.B.—For this please see Chapter on "Intervention".

(V) Question of withdrawal of Indian Peace Keeping Forces (IPKF) from Sri Lanka

N.B.—For this also please see chapter on "Intervention".

(VI) American Intervention in Nicaragua

N.B.—For this please see chapter on "Intervention".

22. For a little detailed discussion of the principle of self-determination, see chapter on "Origin, Purposes, Principles, Membership etc., of the U. N."

23. Times of India 22 April, 1984.

- (VII) **U. S. Attack on Libya**
N.B.—For this also please see chapter on "Intervention".
- (VIII) **Accident at Soviet (now Ukranian) Nuclear Plant at Chernobyl**
N.B.—For this please see matter discussed under the heading 'Nuclear Safety' in Chapter on "Environment and Development".
- (IX) **The Afghan Issue**
N.B.—For this please see chapter on "Intervention".
- (X) **Falklands Islands Issue**
N.B.—For this also please see chapter on "Intervention".
- (XI) **Star Wars and International Law**
N.B.—For this please see chapter on "Disarmament".
- (XII) **Financial Crisis Faced by the United Nations**
N.B.—For this please see chapter on "The General Assembly of the United Nations".
- (XIII) **American Decision of closure of Observer Mission of the Palestinian Liberation Organisation (PLO).**
N.B.—For this please see Chapter on "Definition, Nature and Functions and Evolution of International Organisation".
- (XIV) **Rejection of Application for Visa to PLO Leader Yasser Arafat by the United States of America**
N.B.—For this also please see Chapter on "Definition, Nature and Functions and Evolution of International Organisation".
- (XV) **Emergence of Namibia (South West Africa) as an Independent State**
N.B.—For this please see Chapter on "The International Trustee System and the Trusteeship Council".
- (XVI) **Problem of the Independence of the Trust Territory of Pacific Islands or Micronesia**
N.B.—For this also please see chapter on "The International Trustee System and the Trusteeship Council".
- (XVII) **Global Warming Depletion of Ozone Layer etc. : Global Warming**
N.B.—For this please see Chapter on "Environment and Development."
- (XVIII) **Intermediate Range Nuclear (or INF) Treaty**
N.B.—For this please see Chapter on "Disarmament."
- (XIX) **State Liability for Acts of Multinational Enterprise or Corporation : Bhopal Gas Leak Disaster**
N.B.—For this please see Chapter on "State Responsibility."
- (XX) **American intervention in Panama**
N.B.—For this please see Chapter on "Intervention."
- (XXI) **Need for Enlargement of the Security Council**
N.B.—For this please see Chapter on "Security Council".
- (XXII) **Use of Super 301 Clause by America Against India and its Legality under International Law**

The American Congress passed Omnibus Trade and Competitiveness Act in 1988. The Act provides that if in the countries having trade relations with America, the internal trade practice is unfair, restrictive or protective as compared to America, the American Government can declare such countries as 'unfair trading partner'. According to America, in India banking, insurance, foreign equity participation, patent and intellectual copyrights are not open for American firms. That is to say, Indian trade practice in these respects is unfair, restrictive and protective. Under the said Act such countries are first declared 'Unfair trading partner.' Then investigations etc., are made and such countries are given

time so that they may hold talks with the American Government and stop objectionable practices and amend their laws.

Under Super 301 clause, on 15 June, 1989 America declared India, Japan and Brazil as 'unfair trading partners'. Subsequently, Japan and Brazil were removed from the list because according to the Government of the United States of America the progress of talks with these countries was quite satisfactory. On the other hand, India remained the only country in the list because the Indian Government termed the American action as unfair and refused to hold talks with the American Government. India's argument was that since Uruguay Round of Talks under the General Agreement on Trade and Tariff (GATT) were going to be held, these issues and problems should have been settled through multilateral talks. Though India refused to hold talks with the American Government and accept American conditions, the American Government, exercising its discretion, did not take retaliatory actions even after the expiry of the period of one year.

On 14 June, 1990 American Government announced that it would not take retaliatory action against India under Super 301 clause. The American administration, however, emphasized that Indian insurance and investment are not appropriate and that they impose burden on American commerce but it was not the right time for action because Uruguay Round of Talks were going to be held. Thus India's stand that such matters should be settled through multilateral talks was more or less vindicated.

On 26 April, 1991 once again America proposed to include India along with China and Thailand in the list under Super 301 clause. This time India was included in the list on the ground mainly of India's unfair practice regarding *Intellectual Property Rights*. Other reasons for India's inclusion in the list under Super 301 clause were India's practice regarding copyright of Video sets, copyrights of medicine, industry, patents etc. Yet another objection is that in India defence materials are not purchased through agents.

Since then it has almost become an annual ritual for America to slap Super 301 Clause against India of some or the other country.

As if it has become an annual ritual on the part of America to give a threat to India under Super 301 Clause, in 1997 once again America repeated its usual practice.

While America accuses countries like India of protectionism and unfair trade practices, America itself is guilty of such practices. In a leading international trade forum, the Geneva-based GATT, America has been accused of being overly zealous on using its unfair trade laws to block some imports and worry has been expressed about a US slide toward protectionism and for a sharp increase in "antidumping" actions and for high tariffs on a selected group of products. These views were expressed by the GATT forum in the second week of March 1992. The Forum has also criticized President George Bush's major economic initiative, North American Free Trade Agreement, as it could injure other countries even while helping the U. S., Canada and Mexico.

Now in view of the new Agreement under GATT, there is no justification whatsoever for taking such unilateral action under clause Super 301. With the establishment of World Trade Organisation (WTO) in 1995 the significance of such unilateral actions as Super 301 Clause has ended.

(XXIII) Gulf War (1991) or Iraqi Invasion and Annexation of Kuwait :

N.B.—Please see Chapter on "Intervention" for a discussion on this topic.

(XXIV) Kurd's problem and the legality of action taken by the U.S. and the United Nations :

N.B.—For this also please see Chapter on "Intervention".

(XXV) Kashmir Problem :

In accordance with the provisions of Indian Independence Act, 1947, India became an independent Dominion with effect from 15 August, 1947. The Government of India Act, 1935 provided that any Indian state could merge in the Indian Dominion by executing an instrument of accession. Referring both the above-mentioned Acts, Maharaja Hari Singh

of Jammu and Kashmir announced on 26 October, 1947 the accession of the State of Jammu and Kashmir with the Dominion of India and on the same day he executed the instrument of accession. The then Governor-General of India, Mountbatten also accepted the accession of the State of Jammu and Kashmir with the Dominion of India. According to the Instrument of Accession, dated 26 October, 1947, the accession of the State of Jammu and Kashmir with the Dominion of India was subject to certain conditions. In the first place, it provided that the Instrument of Accession would not be amended by the Indian Independence Act, 1947 or any other Act until it was consented to by the Maharaja. That is to say, it could be amended only with the consent of Maharaja. Secondly, the Legislature of Indian Dominion would not be entitled to the compulsory acquisition of land in the State of Jammu and Kashmir. If according to the Dominion, acquisition, of certain land was essential, on its request and expense the Maharaja would acquire the land, and transfer the land to Dominion. In case the land in question belonged to Maharaja, he would transfer the same to the Dominion. Thirdly the Instrument provided that despite the Instrument of Accession, Maharaja would not be bound by future Indian Constitution nor shall such Constitution adversely affect his discretionary right to enter into agreement with the Government of India.

In view of the above facts and circumstances, Article 370 was included in the Indian Constitution and in keeping with the letter and spirit of the Instrument of Accession, the State of Jammu and Kashmir was conferred a special status in the Union of India. Article 370(1) provides that notwithstanding anything in this Constitution, the power of the Parliament to make laws for the said State shall be limited to those matters in the Union list and the concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify. Article 370(3), however, clearly provides that notwithstanding anything in the foregoing provisions of this Article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify. There is a proviso to Article 370(3) which adds : Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

A perusal of the above Acts, Instrument of Accession and the provisions of the Constitution makes it clear that accession of the State of Jammu and Kashmir into the Dominion of India was complete and final. Thus the State of Jammu and Kashmir came under the sovereignty of India and it became a part of India. Despite this Pakistan attacked Kashmir in 1947. India raised this issue in the Security Council of United Nations. India hoped that the United Nations would declare Pakistan as an aggressor and that justice would be done with her. But the western countries adopted a biased attitude. Instead of declaring Pakistan as an aggressor, they converted this issue as general matter or subject of relations between India and Pakistan and established India-Pakistan U.N. Commission. Pakistan claimed that plebiscite be held in the State of Jammu and Kashmir so as to ascertain the views of the people as to whether they want to merge with India or Pakistan. This demand is totally unjustified. Plebiscite²⁴ is based on the principle of self-determination²⁵ which finds mention in Article 1 of the U.N. Charter. It is not a binding principle of international law. It has become a binding principle of international law only in the context of colonialism. It need not be over-emphasized that Kashmir's is not a colonial situation. As noted above, the accession of Jammu and Kashmir into India is complete and final and that it is irreversible. Despite this legal and factual position, under certain pressures, India agreed to hold plebiscite in Kashmir. This was the greatest

24. For Plebiscite as mode of acquiring territory and with reference to Kashmir see Chapter on "State Territory".

25. For the principle of self determination see Chapter on "Origin, Purposes, Principles, Membership etc. of U.N."

blunder committed by Jawahar Lal Nehru and his government. It was this blunder which in the course of time complicated the Kashmir issue. Nevertheless it may be noted that India cannot be blamed for not holding plebiscite in Kashmir. The resolution of the United Nations which provided for plebiscite clearly provided for withdrawal of Pakistani Armed Forces from Pak-occupied Kashmir as a condition precedent for holding plebiscite. Plebiscite could not be held because Pakistan never fulfilled this condition.

Besides keeping the territory of occupied Kashmir under its possession, Pakistan crossed the line of control in 1965, 1971 and several other times and attacked Jammu and Kashmir, India had no option but to give a fitting reply. Pakistan incited the religious feelings of Muslims in Kashmir, sent infiltrators and by misguiding Kashmir youth incited them to commit acts of terrorism after training them in Pakistani camps. This is a flagrant and illegal intervention in the internal affairs of India. For past several years Pakistan has accelerated anti-Indian activities by giving direct or indirect assistance to separatist tendencies. The kidnapping of daughter of the then Home Minister Mufti Mohd. Sayeed, the murders of the Vice-Chancellor of Kashmir University and Manager of Hindustan Machine Tools etc. were committed as a result of such activities. Consequently it became imperative for the Government of India to deal sternly with the extremists and separatists in Kashmir. The problem assumed such a serious magnitude that the armed forces of both the countries took positions face to face of each other and there was real and imminent danger of the outbreak of war between the two countries.

India has consistently held the view that both the countries should settle their problems in accordance with the letter and spirit of Simla Agreement of 2nd July, 1972. According to clause (ii) of this agreement, both the countries agreed to settle their differences and problems through peaceful bilateral talks or through any other peaceful means. Clause (iii) of the Simla Agreement provided that for stable peace and as good neighbours, both the countries shall observe and act in accordance with the principles of co-existence, respect for each other's territorial integrity and non-interference in the internal affairs of each other. But unfortunately, in violation of the above provisions and principles Pakistan has raised Kashmir issue several times in the United Nations and other international organisations. On the other hand, India has said several times, if for reducing tension in the region Pakistan takes one step, India will reciprocate by taking two steps.

To give a concrete proof of this, on 1st June, 1990 India made a unilateral declaration of the withdrawal of one division of armed forces from the Southern Punjab near India-Pak boundary. This step was hailed by America and western countries. These countries supported India's stand that both India and Pakistan should settle their disputes relating to Kashmir on the basis, and within the framework, of Simla Agreement.

On 4th October, 1991, Pakistan asked the U.N. Secretary-General to use his good offices to advance a peaceful settlement on Kashmir. In January 1992 in a letter to the General Assembly of the U.N., Libya called for a special session on terrorism and had listed Kashmir among the problems which, according to it, were causing tension in the world. Immediately after the Libyan letter, Indian Ambassador C.R. Gharekhan lodged a strong protest with the Libyan Ambassador over the inclusion of Kashmir among unresolved problem. Consequently on 24 January, 1992, Libya formally withdrew Kashmir from the list of unresolved problems.

The Kashmir Issue once again came into limelight in February 1992 because Jammu and Kashmir Liberation Front (JKLF) and other militant groups announced that they would cross the Line of Control (LOC) on 11 February, 1992. While on the one hand, on a call given by Pakistan Prime Minister, a general strike was observed on 5th February, 1992, in solidarity with the Kashmiri cause, on the other hand, the Government of Pakistan decided to prevent violation on February 11, 1992 of the Line of Control (LOC) by the Jammu and Kashmir Liberation Front. On 6th February, 1992, India urged five permanent members of the U.N. Security Council to use their good offices and ask Pakistan to "cease and desist" from heightening tension over Kashmir by allowing civilians to cross the Line of Control. Later on India clarified that her request was not for any sort of mediation. On 7th February, 1992, showing their solidarity with India, 12-Member European Community called upon Pakistan to prevent the proposed JKLF volunteers' march into Jammu and Kashmir on

11th February, 1992. On the said date JKLF activists tried to storm the Line of Control and to prevent them from crossing Pakistani troops had to fire bullets and tear gas thus killing six persons and injuring 50 persons. On 13th February, 1992 JKLF Chief Amanullah Khan called off the march. However, later on he announced a fresh plan to cross the Line of Control on March 30, 1992. On 25th March, 1992, the Government of Pakistan took Amanullah Khan into custody and once again thwarted his bid for the violation of line of control.

On 17th October, 1993, several member States joined India in calling for urgent international measures to combat increasing acts of terrorism, especially State sponsored terrorism. Without naming Pakistan, Indian delegate, E. Ahmad told the United Nations legal committee that there is evidence that terrorists in India are receiving shelter, training, money, weapon and equipment from across the border. Later on, in December, 1993, a U.S. House Committee Report indicted Inter Services Intelligence (ISI) of Pakistan of bringing under one umbrella Sikhs and Kashmiri extremists and Muslim fundamentalists to intensify terrorist activities in Punjab, Jammu and Kashmir and Tarai region of Uttar Pradesh.

The seventh round of India-Pakistan Foreign Secretary level talks began in Islamabad on 1st January, 1994, Indian Foreign Secretary, J.N. Dixit held talks with Pakistani counterpart Shaharyar Khan to resolve Kashmir Problem but no headway could be made.

Whenever Pakistan gets an opportunity to raise Kashmir issue at any international forum, it never fails to do so. Though it is against the letter and spirit of Simla Agreement yet Pakistan relishes in doing so. For example, in February, 1994, Pakistan raised the issue of violation of human rights in Kashmir before the United Nations Commission on Human Rights at Geneva. India not only refuted all charges made by Pakistan but clearly scored a diplomatic victory over Pakistan because on 9th March, 1994, Pakistan had to withdraw the resolution on Kashmir at the U.N. Human Rights Commission at Geneva following a joint appeal by a large number of member States to avoid voting on the issue and to try to resolve the dispute through bilateral talks with India. Earlier India had successfully co-sponsored a resolution in the U.N. Third Committee saying that terrorism is the violation of human rights, thus Scoring a double diplomatic victory over Pakistan.

In June 1997, some improvement was witnessed in Indo-Pak relations in the sense that Secretary-level talks were resumed. But despite several round of talks nothing tangible could be achieved because neither of the parties was prepared to bend or give up its rigid stand.

India's nuclear tests (Pokharan II) on 11 May, 1998 and in its reply Pakistan's nuclear test further increased the gravity of the problem: Subsequently military coup in Pakistan by General Musharraf has added to complication of the already difficult problem of Indo-Pak relations.

For subsequent events see also "Pakistan's Fresh Intrusion in Kargil Area of Kashmir (April-May, 1999)", and "Attack on Indian Parliament by Pakistani terrorists (13 December, 2001)" in this very Appendix.

Reference may also be made here to the thaw in relations between India and Pakistan last year i.e. 2003 which became possible at the initiatives of Indian Prime Minister Sri Atal Behari Bajpai. Relations between the two countries improved so much that after a lapse of about fourteen years Indian Cricket Team visited Pakistan and played test matches and one day matches. Samjhauta Train again started between the two countries and several private and official Pakistani delegations visited India. The new Congress Coalition Government has also promised to carry on peace talks further and 27th June, 2004 proposed by India for talks has been accepted by Pakistan.

Legal Aspects.—In respect of Kashmir Pakistan has always claimed that plebiscite be held and that India is bound to do so. Though at an early stage India had agreed to hold plebiscite in Kashmir but this was subject to the condition that Pakistani armed forces be first withdrawn from Pak-occupied Kashmir. Since Pakistan did not fulfil

this condition, plebiscite could not be held. India now claims that in view of the changed conditions, there is no justification whatsoever for holding the plebiscite. When on 26 October, 1947, Maharaja Hari Singh of Jammu and Kashmir executed the Instrument of Accession, from that very day Jammu and Kashmir became part of India, Jammu and Kashmir has had several elections since then and people have had the opportunity of exercising their franchise. America, Britain and other western countries have also been supporting India's stand since 1990 and have consistently expressed the view that plebiscite in Kashmir is no more essential and that India and Pakistan should settle their problems in accordance with Simla Agreement (1972). According to a congressional paper, prepared by the Congressional Research Service (CRS) of America, entitled, "The Kashmir dispute : historical background to the current struggle" published in September 1991, the plebiscite, as envisaged in the U.N. resolutions of 1947 and 1948, has virtually lost its relevance as a solution to Kashmir problem. Earlier in June 1991, U.S. Congress had rejected the plea of plebiscite in Jammu and Kashmir. According to the congressman Stephen Solarz, holding of plebiscite in Kashmir in order to give the people of the territory the opportunity to determine their own future "would constitute a highly unjustified and unwarranted interference in the internal affairs of India, and would have a chilling effect on Indo-US relations." He added, "If you give every minority the right to secede, democracy will cease to exist." On February 21, 1992 Congressional Panel on Asia-Pacific Chairman, Stephen J. Solarz warned Pakistan against supporting terrorist activity in Kashmir which might lead to a war between India and Pakistan.

Yet Pakistan continues to harp on the plebiscite for the solution of Kashmir problem. The basis of plebiscite is the principle of self-determination which finds mention in Article 1(2) of the U.N. Charter. According to it, one of the purposes of the U.N. is to develop friendly relations among nations based on respect for the principle of equal rights and *self-determination of peoples*, and to take other measures to strengthen universal peace. "Self-Determination" usually means two rights—(1) the right of the people to determine as to which country they would belong to ; (2) the right of the people to determine the type of government they will have. The principle of self-determination is not a binding principle of international law under all circumstances. The right of self-determination finds mention in Article 1 of the U.N. Charter. Article 1 deals with the purposes of the U.N. Purposes as such, are not binding. They can become binding being connected with other provisions of the charter, the resolutions of General Assembly and state practice. The principle of self-determination has become binding principle of international law in the context of colonialism only. According to jurists, combined effect of Articles 55 and 56 of the U.N. Charter, resolutions of the General Assembly relating to eradication of colonialism, especially Resolution relating to Granting of Independence to colonial Peoples [Gen. Ass. Res. 1514 (XV)], State practice, advisory opinions of the International Court of Justice is that in the context of colonialism, the principle of self-determination has become a binding principle of international law. Thus the principle of plebiscite can be applied as a binding principle only in the context of colonialism. It cannot be applied to established states. Indeed Kashmir's is not a colonial situation and hence principle of self-determination, and for that matter plebiscite, cannot be applied as a binding principle of international law in respect of Kashmir. Prof. Rahmatullah Khan has also aptly said, "The principle (*i.e.* the principle of self-determination) must be deemed to have application in the process of decolonisation alone. It could not be applied to established states in their territorial disputes. No such state is likely to espouse this principle and invite self-destruction. For what else would it be but self destruction if India accedes to the demands of the Nagas, the Mizos and others or if Iraq concedes the demands of the Kurdish claim, or if the U.S. allow extremist Black Panther demands for a separate Negroland."²⁶ Recently U.S. congressman Solarz has also expressed the same view. Putting a question to those supporting plebiscite in Kashmir, he said, "Would we call for a plebiscite in Quebec?"

26. Rahmatullah Khan, "The U.N. Handling of the Kashmir Problem" in *Asian States and the Development of Universal International Law* edited by R.P. Anand (1972) p. 108 at p. 118.

It has been suggested that Article 370 of the Constitution of India should be abrogated thus bringing the people of Jammu into the mainstream of India. It is pointed out that this will help the solution of the Kashmir problem. This view is now gaining ground and deserves to be given serious consideration. No less important man than former Jammu Kashmir Governor Mr. Jagmohan has also expressed the same view. In his words, "A clear and objective reappraisal of Article 370 would reveal that its overall impact has been disintegrative, that it has kept alive the two-nation theory, that its protective wall has merely helped an oligarchy to benefit at the expense of poor masses, and that it has created perpetual tension amongst the people of Jammu, Ladakh and the valley". Further, "Moreover, in the present context, when Jammu and Kashmir has become vulnerable to both external intervention and internal subversion, and Article 370 is playing no small part in enabling the hostile elements to cause internal subversion and facilitate external intervention, it is incumbent upon the Union Government to take steps to delete this Article to effectuate the duty cast upon it by Article 355. The law should also adjust itself to the changing conditions." There is much force in the view of Mr. Jagmohan for Article 355 provides, "It should be the duty of the Union to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this Constitution."

But some persons have expressed a contrary view. For example, in an article published in "The Hindustan Times" dated 3 May, 1990 Rajinder Sachar has expressed the view that legally and constitutionally it is not possible to abrogate Article 370. This view does not seem to be correct. After the accession of Jammu and Kashmir into India, Jammu and Kashmir became a part of India. Thus it came under the sovereignty of India. State sovereignty is supreme. All other conditions are subordinate to it. As Article 370(3) itself makes it clear, Article 370 was not intended to be a permanent feature of the Constitution. It was intended to be a temporary provision. That is why, President was empowered to abrogate it. Parliament is empowered to amend, repeal or abrogate any part of the Constitution except those parts which form basic structure of the Constitution. Obviously Article 370 does not constitute basic structure of the Constitution. If it is possible to end Princes and Kings, to abolish their Privy Purses by breaking solemn promises, to abrogate Fundamental Right to Property etc. there seems to be no reason at all to accept the view that it is not possible to abrogate Article 370. In fact, the Government of India never seriously tried to abrogate Article 370 to bring the people of Jammu and Kashmir in the mainstream of India. Indeed all the governments which have so far been formed in the State of Jammu and Kashmir have never paid any attention to this matter due to their vested interest. On the contrary for their short-term political objectives they have so far tried to appease some people by saying that Article 370 shall not be abrogated. As a matter of fact, abrogation of Article 370 and improvement in the situation in the State of Jammu and Kashmir can be ensured only when there is political will and determination.

It is often forgotten that the Kashmir issue arose because of the aggression committed by Pakistan. It was India who lodged the complaint in the Security Council of the U.N. Jammu and Kashmir's accession to India cannot be successfully challenged. As rightly pointed out by Rikhi Jaipal, the real issue is not whether Jammu and Kashmir is or is not a part of India. The real issue is that Pakistan has been illegally occupying occupied Kashmir. After the end of 1971 war with Pakistan, India should have insisted that the territories conquered from Pakistan would be returned to Pakistan only when it first withdraw from occupied Kashmir. Idealism ought to have no place in international relations. International relations should be maintained on the basis of realism and national interest. To a great extent, Kashmir Issue is due to lack of foresight of Indian Politicians, extreme idealism devoid of natural interest and the tendency of Indian politicians to derive political advantage out of every situation.

As regards J.K.L. F's attempts to cross line of control (LOC) in Kashmir and Pakistani action to prevent them, it may be noted that Pakistan took stern action against JKLF for certain obvious reasons. In the first place, America and western countries are

now fully convinced of Pakistan's involvement in aiding and abetting terrorism in Punjab and Kashmir. In recent past, they have warned Pakistan time and again in this respect. Secondly, Pakistan maintains that plebiscite can allow only two choices—incorporation of Kashmir into Pakistan or India. JKLF on the other hand, wants independence of Kashmir both from India and Pakistan. Thirdly, Pro-Pakistan Islamic group regards JKLF as anti-Pakistan. Finally Pakistan is under pressure from America and western countries.

On Thursday, 18th March, 2004 America has designated Pakistan as a 'major non-NATO Ally' (MNNA), on the very next day America tried to pacify India by stating that its grant of special military status to Pakistan will not have any impact on its ties with India with which it has a "good" and "close" relationship. It need not be over emphasized that it came as a great set back to India. Time and again America has shown such favours to Pakistan which rather indirectly exhorts Pakistan to adopt belligerent attitude towards India. It should serve as an eye opener to India. India should be cautious about its relations with America.

N.B.—See also in this Appendix Pakistan's Fresh Intrusion in Kargil Area of Kashmir (April-May, 1999). During the Kargil war a Pakistani military aircraft was shot down by India on August 10, 1999. Pakistan filed a case against India in the International Court of Justice. The Court decided in favour of India on 21 June 2000. This has also been discussed later on in this Appendix.

(XXVI) First Ever Summit of the Security Council of the United Nations:

N.B.—For this please see chapter on "Maintenance of International Peace and Security—Appraisal and New Trends."

(XXVII) UN's Sanctions Against Libya—Lockerbie case :

On 21st January, 1992, the United Nations Security Council passed an unanimous resolution calling on Libya to accede to the requests of the U.S. and U.K. to hand over two Libyan officials namely Abdel Basset Ali Megrahi (aged 39) and Lamen Khalifa Fhimah (aged 35) wanted in connection with the 1988 bombing of Pan American (flight 103) airliner. The U.S. and the U.K. have indicted the said two Libyan officials for the bomb attack in which the airliner blew up over Lockerbie (Scotland) killing 270 persons. According to the U.S. Ambassador Thomas Pickering, since the two Libyan officials were agents of the Libyan Government, an impartial trial for them in Libya would be an impossibility. He added, "The council was faced in this case with clear implications of Government involvement in terrorism as well as the absence of an independent judiciary in the implicated state". As regards the above resolution of the Security Council, he said, "The resolution makes clear that neither Libya nor any other state can seek to hide support for international terrorism behind traditional principles of international law and State practice." British Ambassador Sir David Hannay expressed the same view adding that "in the circumstances of this, it must be clear to all that the state which is itself implicated in the acts of terrorism cannot try its own officials." The above resolution calling on Libya to hand over U.S. or U.K. the two Libyan Officials accused of blowing up Pan American airliner over Lockerbie (Scotland) was co-sponsored by France along with the U.S. and Britain. France had earlier issued arrest warrants for four high-ranking Libyan intelligence officials, including a brother-in-law of Libyan leader Moammar Gaddafi, for the bombing of a French airliner over Niger in 1989, killing 171 people. U.N. resolution ordering the sanctions also calls on Libya to cooperate, with investigation of this case. It is a fact that Libya has been guilty of promoting terrorism as an instrument of its foreign policy. Col. Gaddafi's conduct as well as sponsorship of terrorism over the last two decade has been a constant cause of worry among the western circles. Right from the day of the Lockerbie incident, Americans were determined to find the truth and bring to book the guilty persons. This is clear from the following policy statement of Ambassador Paul Brener III :

"We are determined to do everything in our power to see that this cowardly, senseless act will not go unpunished. We are committed to the bringing of the perpetrators to justice. Working with the British and other governments, we will follow

every lead until we have answers. It may take time—there are not always quick answers in these cases—but..... by using all our resources we will succeed in locating the murderers. Then we will exert all efforts to bring them to justice."²⁷

The Americans did succeed in locating the terrorists who blew the Pan American over Lockerbie in mid-air and also Libyan Government's involvement and as per their resolve the above resolution of the U.N. Security Council was the logical culmination of their efforts. It may be recollected that on 15 April, 1986, American aircraft attacked two Libyan cities of Tripoli and Benghazi as a retaliation for Berlin Explosion for which it held Libya responsible.²⁸ Though American action then was questioned under international law yet Americans claimed that it was their deliberate and well-calculated reply to counter terrorism. As pointed out by L. Paul Berner, III, "Our 1986 airstrike on Libya's terrorist camps was the watershed event in the world's fight against terrorist supporting states. European states followed our lead against Libya by imposing political, economic, and security measures against the Gadhafi regime. European Community members expelled more than 100 Libyan 'diplomats' and restricted the movements of other Libyan 'diplomatic' and 'consular' personnel. These moves severely damaged Libya's European network dedicated to supporting international terrorism.

Gadhafi learned that his support for international terrorism would not be cost free, and he changed his behaviour which, after all, was the objective of our attack....."²⁹

Further, "The pillar of U.S. Government policy may not force these nations to cease entirely their support for terrorist groups. Indeed, both Libya and Syria continue to provide such support. But a concerted, vigorous western strategy does make them move more cautiously and become more circumspect."³⁰

On 4 January, 1989 once again America took action against Libya by shooting down two Libyan Jets (MIG 235 and F-145) because according to America Libya had built a chemical factory 16 Km. south to Tripoli. At that time also American action was questioned as violative of the rules of international law.³¹ But things have changed significantly since America's role in Gulf War (1991), the end of Soviet Union and the emergence of the United States of America as a sole Super Power have completely changed the entire international perspective. It is also clear like crystal that Libya failed to learn a lesson from earlier American action and western strategy. Moreover, in the present Lockerbie case, the United States of America has taken a wise step in not resorting to direct action. Instead of taking direct retaliatory action, America has utilized the forum of the Security Council in order to achieve the desired objectives. After the Gulf War (1991) and the end of Soviet Union, the Security Council has become more or less a captive body of the western countries led by America.

In response to Security Council resolution, Libya offered to hand over the two suspects accused to a neutral country for trial. But this was not acceptable to the U.S. and U.K. nor was it "full and effective response" of the Council resolution. On 5th March 1992, U.N. Secretary-General said that Libya had not yet agreed to hand over agents accused of the mid-air 1988 bombing of a Pan American airliner over Lockerbie (Scotland), paving the way for sanctions by western powers. Subsequently, Libya modified its stand and offered to hand over two suspects to the Arab League which might turn them over to the U.N. Secretary-General and finally to either the U.S. or U.K. for trial. In the meantime, however, on 31st March 1992, the U.N. Security Council passed a resolution imposing sanctions against Libya. The resolution had an easy passage but five members—India, China, Morocco, Zimbabwe and Cape Verde—abstained from voting. Earlier China had been warned by the U.S. not to exercise veto. It was made clear that if China exercised

27. "Terrorism" : Its Evolving Nature" current Poly No. 1 U.S. Deptt. of State Bureau of Public Affairs, Washington D.E., p.1

28. See S.K. Kapoor, International Law, Eighth Edition, 1990, pp. 805-807.

29. "Countering Terrorism in the 1980s and 1990s" Department of State Bulletin, February 1989, p. 91.

30. Ibid.

31. See also S.K. Kapoor, International Law, Eighth Edition, 1990, pp. 807-808.

veto its relations with the U.S. would be strained. The resolution asked all states to break aviation links, stop sale of all types of arms even for paramilitary forces, reduce number and level of Libyan diplomatic staff and restrict and control movement of the remaining diplomats till it hands over the two suspects and ceases all forms of terrorist action and assistance to terrorist groups. The resolution has asked Libya to promptly, by concrete action, demonstrate its renunciation of terrorism. The resolution prohibits all air links with Libya except humanitarian flights previously cleared by the sanction which would be established by the Security Council. The resolution also bans operation of Libyan Arab Airlines and asks all countries to deny entry to its personnels who may have been denied entry or expelled by other States because of their involvement in the terrorist activities. According to the resolution, these sanctions against Libya would start from 15 April, 1992 and would continue until Council determines that Libya has fulfilled all conditions.

It may be noted here that even before the resolution imposing sanctions against Libya had been passed, the Government of the U.S. (Treasury Dept.) froze American assets of 48 business, which according to American Government, are ultimately controlled by the government of Libya.

Despite these pressures Libya continued to adopt a defiant attitude. It changed its stand and refused to hand over the two suspects even to the Arab League. In Libya there were violent protests causing damages to foreign embassies especially Venezuelan embassy in Tripoli because when resolution imposing sanctions was passed Venezuelan Ambassador was the President of the Security Council. Consequently, on 3rd April, 1992, the Security Council strongly reacted and described attacks on Venezuelan Embassy as "intolerable and extremely grave events" and said that "they were prompted by the sanctions in the resolution underlines the seriousness of the situation." The statement called upon Libya to ensure security of personnel and property of Venezuela's Embassy and other diplomatic missions including the U.N., from violence and terrorism and demanded that Libya pay compensation for the damage caused. Later on, Libya announced its willingness to pay compensation to Venezuelan government for damage caused to its embassy in Tripoli.

On 10th April, 1992, the Arab League requested the Security Council to postpone imposition of sanctions against Libya due to go into effect on April 15, 1992 to give the league time to hammer out a diplomatic settlement in view of new Libyan proposal (i.e. Col. Gaddhafi's offer that two suspects are free to give themselves up to a neutral country). But this request was not accepted.

Libya made an eleventh hour bid to forestall sanctions by offering to hand over the two suspects to Malta but this offer was also rejected. On 14 April, 1992 Libya suspended communications and air, land and sea links with the outside world in a national day of mourning, 24 hours before U.N. sanctions against Libya were to take effect.

On 3rd March, 1992, Libya instituted at International Court of Justice separate proceedings against the U.K. and the U.S. Libya contended that the U.K. and the U.S., rejecting Libya's efforts "to resolve the matter within the framework of international law", including the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, are pressurising Libya into surrendering the men for trial. Libya asked the President of the World Court to "enable any order the Court may make on Libya's request for provisional measures to have its appropriate effects."³²

In case concerning Question of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)—Request for Indication of Provisional Measure [I.C.J. Reports 1992, p. 3.] On 14 April, 1992, the International Court of Justice rejected Libya's plea to bar the U.S. and U.K. from taking any action to force Libya to hand over two suspects in the Lockerbie airline bombing. Thus the world court rejected Libya's request for a temporary injunction to back the sanctions. The Court ruled this by a majority of 11 to 5 without going into the legality of Security

32. See U.N. Chronicle, Vol. XXIX, No. 2 (June, 1992), p. 21.

Council resolution and held that the Montreal convention on Hijacking does not bar extradition of suspects to the nations where they are charged. In its ruling the Court stated that "the circumstances of the case are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures". The Court also stated that Libya, the U.S. and the U.K. as U.N. members were obliged to accept and carry out the Security Council's decision. It also said that the rights claimed by Libya under the Montreal Convention "cannot now be regarded as appropriate for protection by the indication of provisional measures."³³

Libya had made an identical request to the world court for indication of provisional measures against the United States of America in *case concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie (Libya v. U.S.)* [I.C.J. Reports, 1992, p. 114, the court gave almost a similar verdict.

The U.N. sanctions against Libya came into effect from 15th April, 1992. It may be noted that India and four other members of the council who had abstained from voting the resolution imposition were not happy with the resolution and had several reservations against it. But in view of the present international situation and the dominant position being occupied by the western countries led by the U.S., none had the courage to vote against the resolution. Similarly Arab countries are not happy in this respect but they also have no option but to co-operate with the U.N. in respect of sanctions against Libya. Thus Libya stood completely isolated.

Reports appeared in the papers giving indications that Libya might hand over the two suspects provided that the U.S. and U.K. guarantee fair trial to the accused. On 18th April, 1992, the government spokesman of the U.S., Mr. Richard Boucher, said that the U.S. did not receive any offer in this respect. However, he said that the two Libyans suspected in Lockerbie bombing would receive due process under U.S. law if handed over for trial. He added, "In a trial, of course, they would be afforded all the due process guarantees provided by U.S. law and available to all defendants regardless of national origin of the nature of crime."

Sanctions imposed against Libya still continue in force. On 3rd April, 1993, it was reported³⁴ that the Seven-member Ministerial Committee of the League of Arab States was engaged in serious effort to find a peaceful solution to the ongoing crisis between Libya and certain western countries.

As noted above Col. Gaddafi of Libya has been changing his stand from time to time. On 24th August, 1993, he said the two men would be prepared to stand trial in Scotland or the U.S. if Britain and the U.S. agreed to restore diplomatic relations with Libya. On 19th September, 1993, Five Arab Foreign Ministers backed a conditional Libyan offer to surrender two men implicated in the 1988 Lockerbie airliner bombing. But Britain dismissed the Libyan offer and warned that U.N. Sanctions on Tripoli would be broadened and strengthened unless Libya complied with the extradition of two men.

It may be noted that China opposes sanctions against Libya and wants the Lockerbie bombing issue to be settled through negotiations. In the first week of January, 1994, Libyan leader, Muammar Gaddafi said that Libya had no part in the 1988 bomb attack on a U.S. airliner over Lockerbie in Scotland and therefore he was now closing its file on the matter. The Sanctions still continue in force and solution of this issue at an early date does not seem to be in sight.

On 15th December, 1998, Libya's Parliament accorded its conditional approval for the trial of two suspects in the 1988 Lockerbie bombing saying the said two men cannot be freed unless several outstanding hitches were solved. This appeared to be a major step toward a trial. Earlier Libya had accepted in August in principle a proposal by the U.S. and Britain that the two alleged Libyan intelligence agents to be tried before the Scottish

33. See U.N. Chronicle, Vol. XXIX, No. 3 (September, 1992) p.22.

34. See U.N. Chronicle, Vol. XXX, No. 3 (September, 1993) p. 47 ; See also S/225531.

Judges in the Netherlands. Thus Col. Gadhafi of Libya agreed to surrender the two accused subject to the condition that they would be tried in Netherlands under the Scottish law. Britain and U.S. accepted this proposal. In the first week of April, 1999 the two accused in 1988 Lockerbie bombing—Abdel Bassed-al Magrahi and Al-Amir Khalifa were surrendered at Tripoli to U.N. Under-Secretary for Legal Affairs consequently, the U.N. lifted sanctions against Libya. The U.S. also reduced some sanctions especially relating to food and medicines.

In August, 2003, U.N. Secretary-General Kofi Annan asked the Security Council to formally lift sanctions against Libya. But the Council has not yet lifted all the sanctions against Libya. Earlier on 20th January, 2003 America suffered a great set back when Libya was elected to chair the United Nations Human Rights Commission. For the first time since the Commission was founded in 1947, the decision went to vote after America said it could not "reward Libya's terrible conduct" and demanded a ballot. The Libyan candidate got 33 votes in a secret ballot of the 53 Country Commission with 17 states abstaining and three voting no, obviously including the U.S. This clearly shows that Libya's isolation has not only ended but it has once come in the mainstream of international politics.

Legal Aspects :—Before proceeding to discuss legal aspects of Lockerbie case and U.N. Sanction against Libya, it must be noted that Libya has attained notoriety for promoting terrorism and cannot be given any quarter on this account, Libya has promoted terrorism as an instrument of its foreign policy. For last two decades Col. Gaddafi has been accused of sponsorship of terrorism and the U.S. and U.K. have a lot of reliable evidence which has established it beyond reasonable doubt. The point for consideration, therefore, is as to how far U.S. & U.K., and for that matter the U.N. which is acting on their request, are justified in taking the above-mentioned action against Libya.

The sanctions imposed against Libya by U.N. Security Council find mention in Article 41 of the U.N. Charter. Article 41 provides that the Security Council may decide what measures not involving the use of armed forces are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communications and the severance of diplomatic relations. This is exactly what the Council has done against Libya in the Lockerbie case. First the Security Council asked Libya to hand over the two suspects to the U.S. or U.K. by 15 April 1992. Libya failed to comply with the decision of the Council, in violation of Article 25 of the Charter paving way for the sanctions. Consequently the council announced sanctions against Libya. But it may be noted that Article 41 as noted above occurs in Chapter VII of the charter entitled "Action with respect to threats to the Peace, Breaches of the Peace and Acts of Aggression". Thus sanctions can be imposed only when the decision of the council is related to the above subject i.e. international peace and security because the very first Article of Chapter VII i.e. Article 39 provides that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security. Since the council has imposed sanctions, it clearly implies that in the view of the council, blowing of airliner in mid-air amounts a threat to peace or breach of peace. The Council is justified in so determining because blowing of a Pan American over Lockerbie (Scotland) in mid-air is indeed a terrorist act of such magnitude that it constitutes a breach of peace. Once the Security Council makes such a determination and imposes sanctions there is nothing in the charter or elsewhere except of course a veto in the council itself, to prevent the council from enforcing such sanctions.

As regards the action of the U.S. in approaching the Security Council, unlike earlier times when it preferred to make a direct retaliatory action, there is nothing wrong in it. Rather it is fully justified. Otherwise also as permanent members the U.S., U.K., and also

France, owe special responsibility for the maintenance of international peace and security.

But a very pertinent question arises, as argued by Libya, that under Montreal Convention for the Suppression of Unlawful acts Against the Safety of Civil Aviation (1971), Libya cannot be compelled to hand over the two suspects and is entitled to try them and punish them according to Libyan national law. There is force in this argument because Article 5(iii) of the Montreal Convention clearly provides : "The Convention does not exclude any criminal jurisdiction exercised in accordance with national law." This may be one of the defects of the Convention but it is very much there and hence the validity of Libyan argument. However, Convention makes acts against the safety of civil aviation's as extraditable offence. That is to say, they cannot come under the category of political crimes. Consequently the International Court of Justice rejected Libya's request for temporary injunction to block the sanctions on the ground that the Montreal Convention does not bar extradition of suspects to the nations where they are charged. Obviously sponsors of the resolution, U.S., U.K. and France, were pleased with the verdict because an adverse verdict would have embarrassed them.

The next pertinent question, though purely an academic one now, arises what would have been the position had the world court accepted Libyan request and granted temporary injunction ? The U.S., U.K. and France maintained that the Court and Council are independent bodies under the Charter and that the Court has no jurisdiction over criminal cases. Their contention that the World Court and Council are independent bodies is correct. So far as matters relating to international peace and security are concerned, Charter makes the Security Council the supreme body not even subject to the decision of the Court. The function of the Court is to assist the functioning of the organisation rather than to obstruct it. Even if the Court had granted a temporary injunction, the Council was within its power to go ahead with the sanctions and to ignore the verdict of the Court.

Last but not the least, the fact remains that the Security Council has rightly been criticized of applying double standards. While the Security Council, at the instance of the U.S., U.K. and France, promptly imposed sanctions against Libya, it never took serious note of the violation of its resolutions by Israel. Further, is Pakistan not guilty of promoting and assisting terrorist activities against India in Punjab and Jammu and Kashmir? The only difference is that in the present case, resolution was sponsored by three permanent members led by the United States of America which, after the Gulf War (1991) and end of Soviet Union has emerged as the sole super power. Libya seems to have been singled out as specific example to be given a lesson to serve as an eye opener for other members of international community so that they may think several times before challenging the might of the sole super power or for that matter doing anything against its interest.

The period of U.N. sanctions against Libya is being increased from time to time. In March 1996 America told the Security Council to commence oil Embargo also against Libya. Thus sanctions against Libya continue and America wants them to continue until Libya is compelled to accept all its conditions.

Since the two Libyans persons accused in 1988 Lockerbie Bombing were surrendered in the first week of April, 1999, the U.N. lifted sanctions against Libya. The U.S. also followed suit by considerably reducing the sanctions.

Now the time has come to lift all sanctions against libya. Sooner is this done, the better.

(XXVIII) Question of Membership of Yugoslavia :

N.B.—For this please see Chapter on "Origin, Purposes, Principles, Membership etc. of the United Nations".

(XXIX) Arctic and Antarctic :

N.B.—For this please see Chapter on "State Territory".

(XXX) U.N. War Crimes Commission and Establishment of International Tribunal for Prosecution of Persons Accused of Violations of International Humanitarian Law and Ethnic cleansing in former Yugoslavia :

N.B.—For a discussion of this topic, please see Chapter on “War Crimes”.

(XXXI) Provisional Measures by International Court of Justice against Federal Republic of Yugoslavia for Prevention of Genocide :

N.B.—For this please see Chapter on “Genocide”.

(XXXII) Case Concerning *Electronic Sical S.P.A. (ELSI) [U.S. v. Italy]* Judgment of International Court of Justice dated 20th July, 1989 :

N.B.—For this case please see Chapter on “Treatment of Aliens”.

(XXXIII) Crisis in Somalia (1991-1994) :

N.B.—For this please see Chapter on “Intervention”.

(XXXIV) Vienna Declaration of Human Rights and Programme of Action for 21st century (June, 1993)

For this please see chapter on “Universal Protection of Human Rights”.

(XXXV) Establishment of U.N. High Commissioner for Human Rights

N.B.—For this please see Chapter 64 on “Universal Protection of Human Rights”

(XXXVI) National Commission on Human Rights :

N.B.—This has been discussed in greater detail in Chapter 66, Please therefore see Chapter 66 entitled “National Protection of Human Rights.”

(XXXVII) Division of Czechoslovakia into two Independent Republics :

Czechoslovakia was founded in 1918 from the ruins of the Austro-Hungarian Empire. On 20th June, 1992 Czech and Slovak leaders agreed to split Czechoslovakia into two States, ending a 74-year old federation of their two peoples. It was decided that the legislative process would begin on 30th September, 1992. Thus the former Czechoslovakia ceased to exist on 31st December, 1992. Czech and Slovak Republics became independent States. The two new States—the Czech Republic and the Slovak Republic—were admitted to the United Nations on 19th January, 1993.

As noted earlier, the breaking up of Soviet Union and decline of communism had far-reaching consequences. Division of Czechoslovakia is also one of results of this. But fortunately the division of Czechoslovakia could be achieved peacefully and could escape bloodshed and atrocities committed in the name of ‘ethnic cleansing’ as in the former Yugoslavia.

(XXXVIII) Dismemberment of Yugoslavia

The former Yugoslavia consisted of six constituent republics—(i) Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, Serbia and Montenegro now constitute the Federal Republic of Yugoslavia. Yugoslavia, formerly, a member of the U.N. has been in turmoil since June, 1991. All the six republics have become independent. Ten years after the death of Marshal Tito, the famous Yugoslav President, Yugoslavia became a thing of the past. It has been witnessing violence, crimes of ethnic cleansing etc. The Croats, Serbs and Muslims are fighting with each other. The Muslims of Bosnia - Herzegovina especially have been the target of atrocities committed by Serbs and Croats.

On 19th September, 1992, the Security Council adopted resolution (1992) recommending that the General Assembly to decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should not participate in the work of the General Assembly and should apply for membership in the U.N. Thus the Council decided that

Federal Republic of Yugoslavia could not automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the organization. The resolution in the Council was passed by 12 votes to none with 3 abstentions (China, India and Zimbabwe). On 22nd September, 1992, the General Assembly decided that the Federal Republic of Yugoslavia could not automatically continue the UN membership of the former socialist Federal Republic of Yugoslavia and that it should apply for membership and shall not participate in Assembly's work.

This is the first time that the General Assembly has explicitly decided that a Member State may not participate in its work. In 1974, the Assembly upheld a ruling of its President of the Assembly's rejection of South Africa's credentials, which had the effect of barring South African representative from participating in the work of that session. However, South Africa continued to be member and was not expelled. The result of above decisions of Council and the Assembly is that Yugoslavia ceases to be a member of the U.N. One may argue why a similar action was not taken against Russian Federations after the breaking up of Soviet Union. The answer is quite obvious. The breaking up of Soviet Union was not accompanied by armed conflict, violation of human rights including ethnic cleansing etc. As pointed out by Secretary-General, all parties including the Federal Republic of Yugoslavia cannot escape blame for the conflict, violence and atrocities that has been witnessed by the former Yugoslavia. It may be noted here that on 8th April, 1993, the International Court of Justice passed an order calling upon the Federal Republic of Yugoslavia (Serbia and Montenegro) to "immediately take all measures within its power to prevent commission of crime of genocide whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group." The Court passed this order in response to a suit initiated by Bosnia and Herzegovina on 20th March, 1993.

(XXXIX) Crisis in Former Yugoslavia, Ethnic cleansing in Bosnia-Herzegovina etc. (1991-94)

Situated in the Balkan Peninsula and bordering the Adriatic Sea, Yugoslavia was formed in 1918 as the Kingdom of Serbs, Croats and Slovenes and gained its present name in 1927. It was occupied by the Germans during World War II, after which Tito, a communist became President. He later broke with U.S.S.R. (1948). The former Socialist Federal Republic of Yugoslavia consisted of six constituent republics—Serbia, Montenegro, Slovenia, Croatia, Macedonia and Bosnia-Herzegovina. After the break up of Socialist Federal Republic of Yugoslavia, the word 'Socialist' was dropped and Serbia and Montenegro now constitute the Federal Republic of Yugoslavia. The former Yugoslavia has been in turmoil since June, 1991. During the 15th Century after the victory of the Turks, Sloves were made Muslim in large numbers. Before the war broke out in Bosnia, its population comprised of 45% Muslims, 32% Serbs and 17% Croats. They had been living and working together in the former Yugoslavia. After the breaking up of Yugoslavia, they started not only fighting with each other but intolerance hatred and barbarity reached such magnitude that the Serbs started exterminating Muslims and committed such atrocities against Muslim men and women as were nowhere witnessed after the World War II. Fearing the increasing superiority, hatred and intolerance, Muslims started dreaming of the first Islamic Republic in Bosnia. This further enraged the Serbs and they committed all sorts of atrocities and crimes including systematic rape of their women and ethnic cleansing against them. Tito died in 1980 and the policy makers who were at the helm of affairs after him made former Yugoslavia a thing of past within a short period of twelve years. Serbs and Croats have occupied more than three fourth land of Bosnia and have removed the Muslim Government of Bosnia from there. The war has left 1,34,000 persons dead or missing. The United Nations Security Council is seized with this grave problem for nearly three years but despite the strengthening of the council after end of cold war and its successful and even an activist roles elsewhere, it has failed and failed miserably to prevent a violence and ethnic cleansing much less to solve the problem. More or less it has so far been a helpless spectator of the unprecedented situation in Bosnia. As pointed out by Douglas Hurd, Secretary of State for Foreign and Commonwealth Affairs of the UK,

the conflict had a strong international dimension. The patchwork of nationalities and minorities throughout Central and Eastern Europe meant that full-scale war might not be confined easily to a single territory. He, therefore, said that use of force for change of borders were unacceptable ; the rights of all who lived in Yugoslavia including minorities must be respected ; and there was a need to take into account of all legitimate concerns and aspirations.³⁵ With the efforts of European community and others cease-fire agreements of 17 and 22 September, 1991 were made but were immediately broken.

On 25th September, 1991, the Security Council urged all parties to the conflict in Yugoslavia to abide strictly by the cease fire agreements of 17 and 22 September, 1991. The Council appealed urgently to all parties to settle their disputes peacefully through negotiation at the conference on Yugoslavia, to be sponsored by European Community. The council met at the request of Austria, Canada and Hungary to discuss the "deteriorating situation" in Yugoslavia. In unanimously adopting council resolution 713 (1991) at a ministerial level meeting, the Council, under Chapter VII of the UN Charter, decided that all States should, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to that country until the Security Council decided otherwise. It supported the collective efforts of the European community and its members with the support of conference of security and cooperation in Europe, to bring about peace and dialogue in Yugoslavia.³⁶

Negotiations between the parties resulted in the Geneva Agreement of 23 November, 1991 signed by the Presidents of Serbia and Croatia, and the Secretary of State for National Defence of Yugoslavia. In addition to calling for a cease-fire, the Agreement provided for the immediate lifting by Croatia of its blockade of all Yugoslavia National Army (YNA) barracks and installations and the immediate withdrawal from Croatia of those blockaded personnel and their equipment. It also aimed to facilitate the delivery of humanitarian assistance to persons affected by the conflict. It was estimated that there were more than 6,00,000 persons displaced by the conflict.

On 8th January, 1992, the Security Council endorsed the immediate dispatch to Yugoslavia of a group of upto 50 military liaison officers to help maintain a cease-fire. It also urged that all parties in Yugoslavia to honour their commitments aimed at ending the hostilities that began in that country in June, 1991. In unanimously adopting resolution 727 (1992), the Council welcomed the signing of an Implementing Accord at Sarjevo on 2nd January, 1992 concerning modalities for carrying out the unconditional cease-fire agreed to by parties on 23rd November, 1991. Prior to the Council's action, the Secretary-General's Personal Envoy to Yugoslav, Cyrus Vance, had completed his fifth mission to that war-torn country. Mr. Vance was appointed to his post on 8th October, 1991.³⁷

On 21st February, 1992, the Security Council established a United Nations Protection Force (UNPROFOR) to create the conditions of peace and security required for the negotiations of an overall settlement of the Yugoslav crisis. With its members totaling more than 14,000, the Force will be the second largest peace-keeping operation in UN history, next to the UN Transitional Authority in Cambodia (UNTAC). Resolution 743 (1992) was adopted unanimously. It provided that UNPROFOR would be established for an initial period of 12 months.³⁸

In the meantime the situation in the former Yugoslavia continued to deteriorate. The situation worsened particularly in Bosnia and Herzegovina. According to the report of Secretary-General (S/23836) dated 24th April, 1992, the situation in Bosnia and Herzegovina had worsened markedly since March. Secretary-General concurred with Mr. Vance's conclusion that "no party to the conflict is blameless" and that all sides had to bear some of the responsibility for the outbreak of the conflict and its continuation. The

35. UN Chronicle, Vol. XXVIII, No. 4 (December, 1991) pp. 35-36.

36. Ibid, at p. 35.

37. UN Chronicle, Vol. XXIX, No. 1 (March, 1992) p. 72.

38. UN Chronicle, Vol. XXIV, No. 1 (June 1992) No. 2 p. 15.

current situation was characterised by "massive mistrust" among the republic's communities. "All the parties tend to blame each other. Mutual recriminations abound the cycle of violence is escalating." Moreover, the parties held conflicting and contradictory views on almost all aspects of the conflict.³⁹

Between 1st April and the end of June, 1992, the Security Council adopted seven resolutions concerning the deteriorating situation in the region, with the focus shifting from the Northern Croatia and its Slovenia, to centrally situated Bosnia and Herzegovina and its capital city of Sarajevo. Thus the Council passed as many as 13 resolutions by end of June, 1992 since the recent Yugoslav crisis was first acted on by the UN in September, 1991. On 30th May, 1992, the Security Council, acting under Chapter VII of the U.N. Charter, imposed wide ranging sanctions against Yugoslavia.

By mid-June of 1992, there were disturbing reports of desperate conditions requiring humanitarian assistance and "ethnic cleansing" operations in villages and towns, creating new waves refugees. Moreover, food shortages and fear of widening conflict were forcing families to leave their homes. On 22nd June, 1992, Foreign Minister of Bosnia and Herzegovina reported that at least 50,000 persons had been killed in his newly independent country as a result of brutal aggression of Serbs and Montenegrans. Yugoslavia, however, maintained that in no way it was instigating the conflict. By mid-July UN High Commissioner of Refugees reported that there were more than 2.25 million refugees and displaced people in the war-torn region-the largest refugee crisis in Europe since the second world war.⁴⁰ Responding to the imposition of sanctions, Yugoslavia, on 5th June, 1992 informed the UN that it had no territorial claims on Bosnia and Herzegovina or any other country and that it had publically urged the Serbian leadership in Bosnia and Herzegovina to institute an immediate cease fire.⁴¹

Despite these efforts, Yugoslavia crisis further intensified. Between 1st July and 30th September, 1992, the Security Council met 10 times to consider the deteriorating situation in former Yugoslavia. It adopted six resolutions, bringing the total number of texts adopted to 19 since the Council first acted on the situation in September, 1991.⁴² The first exceptional session of the 53-member Commission on Human Rights, which met on 13th and 14th August, 1992, in Geneva on human rights situation in former Yugoslavia, condemned "ethnic cleansing" and human rights violations, especially in the Bosnia and Herzegovina.⁴³

On 25th August, 1992, the General Assembly urged the Security Council to consider urgently taking further measures, under Chapter VII of UN Charter, to restore unity and territorial integrity of Bosnia and Herzegovina. The Assembly condemned the violation of sovereignty, territorial integrity and political independence of Bosnia and Herzegovina, as well as the massive violation of human rights and international humanitarian law, in particular the abhorrent practice of "ethnic cleansing" and demanded that practice be ended immediately and that further steps be taken to stop the forcible displacement of population from and within the country.⁴⁴

Several attempts such as London Conference (1992), dismemberment of Yugoslavia (1992), lightening of the embargo against Federal Republic of Yugoslavia (1992), creation of War Crimes Investigative Body (1992), Macedonian operation by UN Protection Force (UNPROFOR), Peace talks (1993), creation of International Tribunal (1993) International Peace Plan or Geneva Peace Plan (1993) Involvement of NATO (1994) have been made. Finally Peace Agreement of September 1995 ended the violence to a great extent.

39. UN Chronicle, Vol. XXIX, No. 3 (September, 1992), pp. 6-7.

40. *Ibid.* at pp. 5-6

41. *Ibid.* at p. 9.

42. UN Chronicle, Vol. XXIX, No. 4, (December, 1992) p. 19.

43. *Ibid.* at p. 22.

44. *Ibid.* at p. 23.

Peace Agreement of September, 1995.—Finally the U.S. shuttle diplomacy succeeded in inducing the warring factions of Bosnia to reach an agreement on 9th September, 1995. It was decided to divide Bosnia internally into two entities—(i) Serbs, and (ii) Muslims and Croats. According to the Agreement Muslims and Croats will have control over 49 per cent of the territory whereas Bosnian Serbs will have control over 51 per cent of the territory. The Agreement permits the Bosnian Serbs to form their own "Republic of Serbsika". The US brokered agreement also provides for a group presidency, Parliament and a Constitutional Court in which Bosnian Muslims and Croats would share power with the newly elected Serb Republic.

In June, 1998 the Security Council of the U.N. extended for one year the period of Peace Mission under NATO.

Legal Aspects.—The situation of former Yugoslavia is essentially that of a civil war. The patchwork of ethnic communities worked so long as there was strong leadership such as that of Marshal Tito. Tito died in 1980. Within twelve years of his death his successor made his Yugoslavia a thing of past. It cannot be denied that there might have been grudges, rivalries etc. among the ethnic communities—Serbs, Croats and Muslims—but they remained under control under the strong leadership of Tito. On account of the divisive policies pursued by his successors, grudges, rivalries, jealousies and even intolerance of each other started smouldering and by June 1991 they erupted as a volcano engulfing whole of Yugoslavia. Ordinarily even UN cannot intervene in a civil war so long it remains localised and does not pose a threat to international peace and security. The former Yugoslavia consisted of six republics—Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. Serbia and Montenegro now constitute the Federal Republic of Yugoslavia. After breaking up of former Yugoslavia these republics started fighting each other for territorial gains and other matters. What was still more serious was that different ethnic communities had been nurturing so much ill-will, hatred and intolerance for each other that they not only started fighting each other but went to the extent of committing heinous crime of ethnic cleansing. The forces and the people of these republics indiscriminately violated international humanitarian laws. They are guilty of war crimes and genocide. The fighting among the republics escalated and there was every likelihood of the war spreading beyond the borders of former Yugoslavia. Moreover, since these republics had declared themselves independent war among them ceased to be a matter of their domestic jurisdiction. That is why, and rightly too, right from September, 1991 when Security Council was first seized with the matter, the council has been taking action under Chapter VII of the Charter of the U.N. Article 2(7) of the U.N. Charter expressly provides that the principle of non-intervention by U.N. "shall not prejudice application of enforcement measures under Chapter VII." Thus the action taken by the Security Council is fully justified.

The main question however in the crisis of former Yugoslavia is not that of legality of the action taken. Indeed the main question is how far the action taken by the Security Council has been effective? In fact, the U.N. has been a mere helpless spectator of the greatest humanitarian tragedy in Europe after the Second World War. It has been aptly remarked, "The western world has so far acted like a sheep in wolf's clothing. It is difficult to believe that the combined political will of the U.S., its European allies, the Russians and other members of the UN cannot compel a cessation of the attempted obliteration of a small people in Europe."⁴⁵ Indeed Bosnia is a global shame. After successful operation in Gulf War (1991) against Iraq it was thought that with the end of cold war, Security Council would become very effective for the maintenance of international peace and security. But such an assumption seems to have been unrealistic, short-lived and transitory. So far the Security Council, European Union and NATO combined have failed to do anything effective to prevent atrocities, sexual harassment, ethnic cleansing etc. against the Muslim population of Bosnia and Herzegovina. After utter failure of the U.N. in Somalia, this is the second dismal failure of the U.N. in recent years may of the whole International

45. See, Editorial Entitled, "The Bosnian tragedy", The Hindustan Times, 25th January, 1994.

community including the U.S., the sole-super-power and self-styled International Policeman.

The U.N. operation against Iraq was successful not simply because of the might of the U.S. and its allied powers but also because the action was backed unanimously by all the permanent members of the Security Council. In case of crisis of former Yugoslavia, though the action is apparently supported by all permanent members, the perception and objective of each of them is different. There are differences between U.S. and European Union; between the U.S. and France between the U.S. and China; and above all between the U.S. and Russia. But all seem to be unanimous in partition of Bosnia-Herzegovina among Serb, Muslims and Croats, creating a Union of three ethnic states. But the unanimity stops at this. While the European Union wants to establish a loose Union of three states, the U.S. wants a strong constitutional Union. There are also differences between the U.S. and Russia about the involvement of NATO. While Russia does not want greater involvement of NATO, especially air strikes on Serbs, U.S. wants, greater involvement of NATO and strong action against Bosnian Serbs. Russia does not consider it to be good that "the distinctive identities of the U.N. and the NATO are threatening to disappear in the civil war-ravaged Bosnia." Despite the end of cold war, Russia still regards it to be a creature of cold war. There are cogent reasons for this. While as many as 12 neighbour states of Russia are signatories to NATO's Partnership for Peace Framework document, these countries including Ukraine, are opposed to Moscow joining NATO and seek NATO's protection against Russia. Thus NATO has become a military organization of Europe minus Russia. Naturally therefore Russia has been objecting to NATO air strikes against Bosnian Serbs for whom Moscow has a soft corner. Russia has apprehension that with the involvement of NATO, Russia is being driven out of decision-making process. All these factors not only account for failure of mission in Bosnia-Herzegovina but may usher in cold war once again in the relation between the U.S. and the west. However, for the time being Russian President Boris Yeltsin and President Bill Clinton agreed to hold an international summit meeting on the Bosnia crisis sometime in May, 1994.

Reference may also be made to the creation of Investigative commission for war crimes and ethnic cleansing and the establishment of International Tribunal to prosecute and punish persons of former Yugoslavia who are guilty of violation of international humanitarian law, war crimes and ethnic cleansing. This action of the Security Council is indeed praiseworthy but mere creation or establishment is not sufficient. The need of the time is prompt action. The trial of persons responsible for violation of international humanitarian laws, war crimes and ethnic cleansing must begin immediately and the persons found guilty must be given suitable punishment so that it may serve as a deterrent and an eye opener for others. It is heartening to note that the International Tribunal for war crimes in the former Yugoslavia has already started its work. The Tribunal was inaugurated on 17th November, 1993. The 11 member Tribunal held its first session from 17th to 30th November, 1993. The first extraditions of suspected war criminals from former Yugoslavia were made on 12th February, 1995.

Bosnian crisis has exposed the weaknesses of the international institutions, especially the U.N. They are worth only as much as their member states want as them to be. They can work effectively only when there is will and determination to make them work. As noted above, they worked successfully during the Gulf war (1991) because of the will and determination of member states of the UN, especially, the permanent members of the Security Council. In case of Bosnia, member states especially the western countries and the U.S. lack that will and determination and seem to abandon Bosnians to their destiny because the war in Bosnia-Herzegovina does not at all threaten the strategic interest of either the U.S. or Europe. Though all republics of the former Yugoslavia must bear the initial and subsequent blame for the crisis, the west is also responsible for escalation of violence and the unprecedented suffering of the people of Bosnia and Herzegovina. If the west had responded when Serbian troops declared war on Bosnia and Herzegovina after

Muslims and Croats voted to secede from Yugoslavia, the present crisis and the greatest humanitarian tragedy of Europe since the Second World War might have been avoided. Even now the further sufferings of the Bosnian Muslims can be halted and a dying nation can be saved from complete annihilation if the U.S. and the west, with will and determination, unitedly and whole heartedly work effectively as they did during the Gulf war. This is the least they can do now to salvage their own image as well as for the cause of humanity and peace which they often proclaim from the house tops.

(XL) Russia-Chechnya Conflict and Dagestan War

N.B.—For this please see Chapter On “Intervention”

(XLI) Convention on Safety of U.N. Personnel 1994.

N.B.—For this please see Chapter on “Definition, Functions and Evolution of International Organisation”

(XLII) War Crime Trial of former Yugoslavian President Slobodan Milosevic.

N.B.—For this please see Chapter on “War Crimes”.

(XLIII) International year of the Family, 1994

1994 was proclaimed as the International year of the Family by the General Assembly on 8 December, 1989.⁴⁶ But it was formally launched on 7 December, 1993 with a special ceremony at UN Head Quarters in New York. Described as the smallest democracy at the heart of our ever-changing society, family is the oldest and most basic unit of human organization, the most crucial link between generations; the primary transmitter of culture, the sustainer of heritage and the major provide of food, shelter and love. It is for the first time that the world led by the United Nations, paid a consolidated tribute to this most essential, enduring and endangered of human institutions through its celebration of the International year of the Family, one of the main reasons for the observance of the International year of the Family is that families assume diverse forms and functions from one country to another and within each national society. Indeed, while individuals and family groups struggle to retain their proud traditions and heritage, for many people the most pronounced feature of their lives is change. Worldwide, the family is undergoing constant transformation due to social change, economic problems and pressures of modernization and development.⁴⁷

Among the important international instruments which refer to the family are :

- (i) Universal Declaration of Human Rights, 1948.
- (ii) International Covenant on Economic, Social and Cultural Rights, 1966.
- (iii) International Covenant in Civil and Political Rights, 1966.
- (iv) Convention on the Elimination of All Forms of Discrimination Against Women, 1979.
- (v) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981; and
- (vi) Convention on the Rights of the Child, 1989.

The International year of the Family aims to build upon this foundation and to improve the world's institutional capability to tackle serious family related problems.⁴⁸ As stated by the Secretary-General of the U.N., “life in larger freedom, so basic to the vision of the United Nations, cannot be achieved unless first lived in the experience of families.”

(XLIV) Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (*Libya v. U.K.* [I.C.J. Reports 1992, p. 3]

N.B.—For this please see “U.N.’s” Sanctions Against Libya—Lockerbie case” discussed earlier in Appendix II.

46. See resolution 44/82.

47. U.N. Chronicle, Vol. XXXI, No. 1 (March 1994) p. 43.

48. Ibid. at p. 45.

(XLV) Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide [*Bosnia and Herzegovina v. Yugoslavia Serbia and Montenegro*], I.C.J. Report 1993, p. 3 and also further requests for the indication of Provisional measures [I.C.J. Reports 1993, p. 325]

N.B.—For this please see Chapter on "Genocide"

(XLVI) Nigeria Suspended from Commonwealth.

On 11th November, 1995, the Commonwealth of Nations suspended Nigeria from membership for having ignored 51-nation commonwealth's pleas for commuting the death sentences of human rights activist Ken Saro-wiwa and eight other dissidents. This is for the first time that the commonwealth has suspended any member for flouting the principles of human rights. The unprecedented decision to suspend Nigeria from Commonwealth was taken during an emergency meeting headed by New Zealand Prime Minister Jim Bolger.

Mr. Saro-Wiwa aged 54 years, was convicted in the death of four men during a May 1994 political rally. Mr. Saro-Wiwa, however, maintained that he was implicated because of his opposition to the military regime of Gen. Sani Abacha and to the oil industry that earned 80 per cent of Nigeria's export income. A member of the Ogoni tribe, Saro-Wiwa campaigned on behalf of the 500,000 Ogonis who live in oil rich South Nigeria and claim that pollution by oil industry is destroying their land and water. Saro-Wiwa and the other eight men (all Ogonis) were convicted by a tribunal in the Southern Nigerian oil city of Port Harcourt on 31st October, 1995. The death sentences were upheld by the ruling military council. They were hanged only hours after the Commonwealth leaders meeting in New Zealand made a collective plea to Nigeria's military regime to commute their death sentences. The executions were condemned all around the world. Nelson Mandela and British Prime Minister described the executions as "judicial murder"

Before taking a decision to suspend Nigeria from the membership of commonwealth, the emergency meeting of the Commonwealth under the Chairmanship of New Zealand Prime Minister Jim Bolger, approved strong new procedures to punish member nations that flout Commonwealth principles of democracy and human rights. The U.S. also took it very seriously and made endeavours and put pressure on the General Assembly to pass a resolution condemning human rights abuses and calling for a voluntary arms embargo against Nigeria.

The suspension of Nigeria from the membership of Commonwealth of Nations may become the harbinger of new law in respect of sanctions against nations on the ground of violation of flagrant violation of human rights. The said action has been welcomed all around the world and not a single voice has been raised against. It may be said to have already entered the conscience of the international community. It may be the starting point and solid link for the development of a new rule of customary international law.

(XLVII) World Summit For Social Development (6-12 March, 1995)

The World Summit for Social Development was held from 6th to 12 March, 1995 at Copenhagen (Denmark). It was mandated by the General Assembly in December, 1992⁴⁹. It was organized mainly by the United Nations Department for Policy Coordination and Sustainable Development. This summit has also been referred as 'Poverty Summit'. Even before its start it has been criticized for making weak and vague efforts to solve grave and important problems.

It took three years to make preparations for the summit. The final shape to the draft Declaration and Programme of Action for adoption in the World Summit for Social Development (1995) was given in the first substantive session of the Preparatory Committee which was held from 31st January to 11th February, 1994. It was resolved to mention in the Declaration the social condition in world and the reasons which necessitated the convening of the Summit. In addition to this, it was also decided to mention in the Declaration aims and common challenges. The three main issues before the

49. See resolution 47/92.

Summit were ; (1) Social Integration; (ii) To reduce poverty; and to approve International Instruments on increase in employment.

According to Ambassador Juan Somaria of Chile, the Chairman of pre-Summit Preparatory Committee and Main Committee, the end of cold war has offered an opportunity to the International community to examine social problems outside the structure of theoretical restrictions. In his view, development is the new name of peace. One of the objectives of the World Summit would be search 'people friendly markets' for the attainment of economic development in the context of social justice. Delivering the inaugural address on 6th March, 1995, Secretary-General of the UN appealed to the 13000 delegates of the conference to develop a 'social contract'. He said that one fourth of the World population was living in poverty and the number of such persons is even greater to whom even basic health services are not available. It may be noted that the developed countries did not agree for fixing period of time for arranging additional resources for social programmes. This could not, therefore, be included in the Declaration.

As many as 117 heads of states and governments attended the Summit. The Summit culminated in one of the largest gatherings of world leaders ever held. A total of 187 States participated alongwith some 2,000 non-governmental organizations the Summit was presided by Danish Prime Minister Poul Nyrup Rasmussen.

In the closing moments of the Summit *i.e.* in the early hours of 13th March, 1995, the World Summit for Social Development adopted by consensus Copenhagen Declaration and Programme of Action for the creation of more just and humane societies. The Summit ended with a hope but it could not answer the vital question as to how the finance or resources for the social development eradication of poverty and reduction of unemployed will be arranged. In this connection two proposals deserve special mention. The first was from the host state (Denmark) and Austria to write off foreign debts. But as compared to total debts given by developed countries, the debts advanced by these two countries are proportionally so small that it can only be called a symbolic gesture. The second proposal was from America to donate 100 million dollars for the education of girls. Though praiseworthy, it will hardly help substantive attainment of objectives.

187 countries present at the Summit adopted Copenhagen Declaration. Through the Declaration the Summit acknowledged that social and economic development cannot be secured in a sustainable way without the full participation of women and that equality and equity between women and men is a priority for the international community and as such must be at the centre of economic and social development. It was also acknowledged that people are at the centre of our concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with the environment. On the eve of the fifteenth anniversary of the U.N. the delegates assembled at the Summit expressed determination to capture the unique possibilities offered by the end of cold war to promote social development and social justice.

It was demanded that the developed states should spend 0.7 per cent of gross production in giving aid to developing countries and should exempt poor countries from repayment of debts. It was also stated Developmental aid and 20 per cent of domestic budget should be spent in basic social programmes. The Declaration stated that in order to evaluate successes and achievements a special session of the General Assembly should be called in the year 2000, and in the fiftieth anniversary the General Assembly should declare Poverty Eradication Decade.

Commitments.—The ten specific commitments contained in the Declaration are :

1. Creation of an economic, political, social, cultural and legal environment to enable people to achieve social development.
2. Eradication of poverty in the world as an ethical, social, political and economic imperative of mankind.
3. Promotion of the goal of full employment as a basic priority of economic and social policies.

4. Promotion of social integration by fostering societies that are stable safe, and just, and based in the protection of human rights, and on non-discrimination, tolerance, respect for diversity and solidarity.
5. Promotion of full respect for human dignity and achievement of equality and equity between women and men.
6. Promotion and attainment of the goals of universal and equitable access to quality education and health care.
7. Acceleration of the economic, social and human resource development of Africa and the least developed countries.
8. Structural adjustment programmes to include social development goals.
9. Significant increase in and/or more efficient utilization of the resources allocated to social development.
10. Improved and strengthened framework for international, regional and sub-regional co-operation for social development.⁵⁰

Besides being non-binding the above-commitments are also vague. The World Summit for Social Development can only be reckoned as a good beginning, so far as solid achievements are concerned, the developing countries were greatly disappointed. There are 120 crore unemployed persons in the world. There is no mention of solid means to provide employment to these persons. It was conceded in the conference that social tensions are often not confined to national limits and invariably affect other countries. It is really disappointing to note that no solid means or remedies have been mentioned to solve social problems and to reduce social tensions.

Programme of Action.

The World Summit for Social Development also adopted a five-Chapter Programme of Action for achieving social development, eradicating poverty, fostering social integration and reducing unemployment. It is pointed out in the 'Introduction' that all the recommended actions are linked, either in the requirements of their design, including the participation of all concerned, or in their consequences for the various facts of the human condition. It stresses that social integration or the capacity of the people to live together with full respect for the dignity of each individual, the common good, pluralism and diversity, non-violence and solidarity as well as their ability to participate in social, cultural, economic and political life, encompasses all aspects of social development and all policies. Specific actions have been elaborated in the five Chapters which are as follows :—

1. Chapter 1 is entitled "An Enabling Environment for Social Development and includes (A) a favourable national and international economic environment; and (B) a favourable national and international political and legal environment.
2. Chapter 2 deals with "Eradication of Poverty" and covers actions such as :
 - (A) Formulation of integrated strategies, (B) Improved access to productive resources and infrastructure; (C) Meeting the basic needs of all, and (D) Enhanced social protection and reduced vulnerability. It was decided to formulate, preferably by 1996, national eradication plans to address the structural causes of poverty and include affordable time bound goals and targets.
3. Chapter 3 addresses the programme of action relating to "Expansion of Productive Employment and Reduction of Unemployment" and includes actions such as : (A) Centrality of employment in policy formulation; (B) Education, Training and Labour Policies; (C) Enhanced quality of work and employment; (D) Enhanced employment opportunities for groups with specific needs ; and (E) a broader recognition and understanding of work and employment.

4. Chapter 4 deals with "Social Integration" and covers actions such as (A) Responsive government and full participation in society; (B) Non-discrimination, tolerance and mutual respect for and value of diversity; (C) Equality and social justice; (D) Responses to special social needs. (E) Responses to specific needs of refugees, displaced persons and asylum seekers, documented and undocumented migrants. (F) Violence, crime, the problem of illicit drugs and substance abuse; and (G) Social integration and family responsibilities.
5. Chapter 5 is entitled "Implementation and Follow" and includes ; (A) National strategies, evaluation and reviews; (B) Involvement of Civil society; (C) Mobilization of financial resources; and (D) the role of the United Nations.

Follow up to the Summit was the priority subject before the Commission for Social Development at its thirty-fourth session held at Newyork from 10th to 20th April, 1995. As suggested by the Programme of Action, the mandate, agenda and composition of the commission be reviewed by the Economic and Social Council, which is to oversee U.N. system wide coordination in the implementation of the Summit outcome.⁵¹

It may be noted that the year 1996 has been declared as the International year for the Eradication of Poverty. During this year, the General Assëmbly will review the progress in the implementation of the Summit pledges on eradication of poverty. In the year 2000 the General Assembly will convene a special session to examine the overall implementation of the Copenhagen Declaration and Programme of Action.

It cannot be denied that the world leaders assembled at Copenhagen (Denmark) to solve the problems of social development did not succeed in achieving some solid or permanent solutions. However they exchanged freely their views and held discussions on social problems, unemployment, poverty etc. Obviously it led to awakening of the international community in respect of these problems. It must be reckoned a positive achievement in itself. By all means it can be said to be a good beginning because glaring social problems were presented and discussed. It enkindled hope that in future the world community will not only seriously and promptly consider these problem but will endeavour to solve them with their common commitment.

(XLVIII) Legality of the Use by a State of Nuclear Weapons in Armed conflict—Request for advisory opinion by WHO—Decision dated July 8, 1996.

N.B.—For this case please see chapters on "International Court of Justice" and "Laws of Aerial Warfare".

(XLIX) Legality of the Threat or Use of Nuclear Weapons—Request for advisory opinion by the General Assembly—Advisory opinion dated July 8, 1996.

N.B.—For this case also see chapters on "International Court of Justice" and "Laws of Aerial Warfare".

(L) International Tribunal of the Law of the Sea and Sea-Bed Disputes Chamber—

N.B.—A separate chapter has been devoted to this topic in Part IV of the book Please also see chapter on the "Law of the Sea".

(LI) Comprehensive Test Ban Treaty (CTBT)

N.B.—For this please see chapter on "Disarmament".

(LII) New American Plan to resolve Financial Crisis of the U.N.—

N.B.—This has been discussed in chapter on "General Assembly".

(LIII) Eastward Expansion of NATO.—

North Atlantic Treaty Organisation (NATO) was established on April 4, 1949 for the defence of Western Europe and North America. Initially the Western Nations had established this organisation to arrest the influence of communism. On the other hand, the

51. U.N. Chronicle, Vol. XXXII, No. 2 (June 1995) at p. 57.

Eastern European Nations had established Warsaw Treaty in 1955 for their collective security. On June, 1990 President Gorbachov of Russia had proposed the abrogation of NATO and Warsaw Treaty and the establishment of 35-member European Council. Though NATO remained intact, the changing factors and circumstances led to the abrogation of Warsaw Treaty. One by one several Eastern European nations left this organisation by withdrawing their membership. Eventually only six Eastern European nations remained its members. The remaining members (Soviet Union, Poland, Czechoslovakia, Hungary, Romania and Bulgaria) signed an agreement in February 1991 for the dissolution of Warsaw Treaty. On July 1, 1991 at midnight, at 12.00 A.M., State Parties to the Warsaw Treaty signed a Protocol to end the Treaty. Thus the Warsaw Treaty was formally dissolved and this also ended 36 year East-West conflict.

The end of cold war, dissolution of Soviet Union and the victory of America and its allies in the Gulf War brought about a vast change in the attitude of America. After emerging as the most powerful nation and the sole great power, America wants the entire world to act according to its wishes and with this aim in view it has become usual for America to give threats to other states. This attitude on the part of America has brought about some bitterness in its relations with countries of European community. On February 10, 1992, American Vice-President Don Quale threatened that if the European community did not settle the GATT talks satisfactorily, America would leave the NATO. As a reaction to this threat, the General-Secretary of the NATO expressed the view that it would be detrimental for the NATO. Without NATO, North America and Europe would be separated and Europe might tend revert back towards changing treaties as in the past. The said threat had its solitary effect. Subsequently, not only GATT talks were resolved satisfactorily but NATO also retained intact its utility.

After the dissolution of the Soviet Union, several former Soviet Republic expressed desire to become members of NATO. Later on these Republics became the members of NATO. Subsequently even Russia became a member of NATO under partnership for Peace Plan. However, Russia has been apprehensive of NATO's expansion policy. It has been foremost in Russia's mind that if Hungary, Bulgaria and Slovak Republic become members of NATO, the expansion of NATO will reach its frontiers or borders. Russia is still not prepared to bear this although her compulsions do not allow to take confrontation with the U.S. or its allies. In the 53rd Conference on European Security and Cooperation (ESCE), Russian President Yeltsin sounded a warning to the eastward expansion of NATO by saying that it would lead to tensions of cold war. It was the genuine fear of Russia that by expansion of NATO upto its borders, NATO will become the supreme military power of west in the same way as Group of Seven countries has become the Supreme Financial body. It may be noted here on account of clear Russian support to Bosnian, Serbs, American, European Union and U.N.'s had not been successful and effective in solving the Bosnian problem. It was also a cause of tensions and conflict between Russia and America.

Thus besides Bosnian problem eastward expansion of NATO has been a cause of tension and conflict between Russia and America. It was, therefore, feared that cold war might start again leading to the increased tensions between East and West on account of these tensions and differences, the Security Council had to postpone its Summit scheduled to be held in January 1995. On the one hand, there were doubts and apprehensions of Russia in regard to eastward expanding of NATO, on the other hand, Russia's handling of Chechnya crisis and eventual war seemed to justify the idea of making Hungary, Poland etc., members of NATO because Chechnya incident made it clear that if occasion arises Russia will not hesitate to establish hegemony on its neighbours.

The Prime Minister and Foreign Affairs Minister of Russia have from time to time expressed apprehensions about NATO's eastward expansion. They have declared it several times that if NATO continued to enroll Eastern European states as its members, its relations with Russia would be strained. Despite these declarations it cannot be admitted that Russia has its own problems and difficulties which compel it to adopt a reconciliatory attitude. It was probably due to this reason that Russia accepted to become

member of NATO under the plan of Partnership for Peace. Subsequently, on May 31, 1995, Foreign Affairs Minister of Russia held talks with 16 representatives of NATO in Netherlands and ratified Russia's membership to NATO under Partnership for Peace Plan. This plan includes military and political cooperation. Obviously, this has not ended Russia's anxieties and apprehensions. This is evident from the statement of Russian Defence Minister of January 7, 1996 that Russia will keep its options open to give a fitting reply to NATO's activities across its boundaries.

In June 1997, European Union leaders concluded a new treaty preparing the European Union for expansion into its former communist neighbours. On July 9, 1997, NATO took a historic decision to admit. Poland, Hungary and the Czech Republic who finally signed protocols of accession in December 1997. Though same NATO partners including France, wanted, Romania and Slovenia also to be included, it was finally decided to admit only the said three countries namely, Poland, Hungary and Czech Republic. Thus despite Russia's fears and apprehension NATO has reached Russia's borders. Russia's anxiety is evident from the declaration of Russian President Boris Yeltsin on 9th October 1997 that his country will seriously consider forming an eastern military bloc if NATO leaders failed to turn their alliance into an apolitical or at least a peace keeping one. Is this veiled threat not reminiscent of the cold war period ?

On 2nd April, 2004, the membership of NATO swelled to 26, its biggest expansion in the Pact's 53 year history. The seven new countries who joined NATO were : Romania, Bulgaria, Slovakia, Lithuania, Slovenia, Latvia and Estonia who joined the other 19 allies. Thus NATO reached literally at the borders of Russian. But allaying the fears of Russia, U.S. Secretary of State, Colin Powell said Russia had nothing to fear from NATO's expansion upto its borders while demanding Moscow to do more to comply with its own military obligations in Europe.

(LIV) Union of Russia and Belarus.—

On April 2, 1997, Russian President Boris Yeltsin and President of the Republic of Belarus signed a treaty of unification of Russian Federation and Republic of Belarus. Just stopping short of full unification the Treaty created a single legal entity with common citizenship, open internal borders, joint economic infrastructure and, eventually, a single currency and integrated security zone. Can it be reckoned as the beginning of reversal of the break-up of Soviet Union? It is rather too early to reckon it as the reversal of the break up of Soviet Union because things have gone too far beyond the control of Russia. Besides domestic problems and mutual distrust between Russia and former Soviet Republics, Russia's economic problems do not allow Russia to embark upon such an ambitious plan. But if the U.S. continues to embarrass and humiliate Russia as it has been doing in recent past and pursues policy of eastward expansion of NATO to its extreme so as to push Russia to the wall. Russia may be compelled to think on the plan of reversal of break up of Soviet Union.

On 22 December, 1999 the upper house of Russian Parliament ratified the treaty of Union of Russia and Belarus. The treaty meets Russia's fundamental interests in economic, military and political terms. The treaty provides for harmonisation of legislation and the creation of joint institutions, including a joint currency.

(LV) India's signing of the 1987 UN Convention Against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment.—

On October 16, 1997, India signed the U.N. Convention Against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment. India's signing of this convention is significant from the point of view that India has signed all the main conventions on human rights. On behalf of India, Sri Kamlesh Sharma, India's representative to the U.N., signed this convention in U.N. Headquarters. Under the Convention it is the obligation of each state party to the Convention to make punishable under its laws all the acts against human rights specified in the Convention and to send its reports to the committee established by the Convention. Besides India, 71 countries have signed this Convention.

(LVI) Treaty to Ban Anti-Personnel Land Mines (1997)—

The Treaty to ban Anti-Personnel Land Mines was signed on December 3, 1997 by as many as 125 countries at Ottawa (Canada). It is a great achievement because every year thousands of people are killed or wounded by land mines all over the world. Every year nearly 200 million dollars are spent in removing these land mines. It has been calculated that at present there are 100 million land mines buried in 60 countries all over the world. Indeed it is a great human problem because wherever there is war or armed conflict, most of the persons who die are the victims of land mines. According to the experts, the one of the most heavily mined countries of the world is Cambodia. The Treaty provides for destroying of stockpiles of mines within four years and to remove the scattered land mines within a period of 10 years.

Canada was the first country to sign the treaty. Thereafter, 124 countries more signed the treaty. The countries who did not sign the treaty include America, Russia, China, Turkey, Iran, Iraq, Libya, India, Pakistan, Egypt, Israel, South Korea, North Korea and Vietnam. India has not signed the treaty from the point of view of her security. Moreover, one of the reasons for India not signing the treaty was that China and Pakistan also did not sign the treaty. Though India agreed with the objectives of the Treaty yet because of the reasons of security from its neighbouring countries India could not sign the treaty.

According to experts, land mines kill or injure about 25,000 people each year. Though agreeing with the objects of the Treaty, President Clinton of the United States of America refused to sign the treaty. President Clinton claimed that he was the first world leader at the United Nations to call for a total ban on production and deployment of land mines. He claimed that the United States had destroyed 1.5 million U.S. mines since he became President in 1993. and besides this, America was about to destroy another 1.5 million mines. Though strongly supporting the objectives of the treaty, like Canadian Prime Minister Jean Chretien, President Clinton expressed his inability to sign the treaty because he wanted to keep land mines on the Korean peninsula and retain there that the mines were aimed at blowing up tanks, not people.

It is unfortunate that three permanent members of the U.N., namely, America, Russia and China have not signed the treaty. Though as many as 125 countries have signed the treaty, the Treaty cannot become universal unless the said three permanent members and some other countries including India, Iran, Iraq, Pakistan, Egypt etc. also sign the treaty. The objectives of the Treaty are so high, laudable and humanitarian, that it would not be wishful thinking to hope that in a near future world public opinion and domestic pressure will compel the said countries also to sign the treaty.

It is a matter of concern that while India has come for a lot of criticism for not signing the treaty, Pakistan has escaped such censure. The spokesman of the International campaign to Ban Landmines (ICBL) has remarked that ICBL had no confirmed reports about Pakistan's current mine-laying activities. As regards India, it has been pointed out that 129 civilians had been killed from landmines in Jammu and Kashmir in the year 2000.

The Treaty to ban landmines has rightly been hailed as "a historic victory for the weak and vulnerable of the world. By signing this Treaty 125 countries have recognized that the tide of history has changed. U.N. Secretary-General, Kofi Annan has said that it is an alliance that has shamed the world and enlightened it. It has, for once, made, the international community a living, thriving reality, he added.

(LVII) Kyoto Environmental Summit on Global Warming (December, 1997)—

It has been made clear earlier under the chapter on "Development and Environment" that nitrous oxide, methan Chloriflora Carbons' carbon di-oxide and other industrial gases used in industries are causing green house effect which is warming the earth. These green house are adversely affecting the climate. In the Earth Summit of 1992 a convention on climate change or green house emissions was concluded and it was decided that a review conference would be convened after a period of five years. Therefore, a conference on climatic change was held at Kyoto (Japan) on December 1, 1997 to review the progress

made in five year's and to chalk out plans and fix strategies and objectives for the future. More than 150 countries participated in the Conference.

After untiring efforts of eleven days, the Conference succeeded in taking certain solid decisions. At the end of the conference it was decided that the emissions of green-house gases from the 1990 level would be reduced by 8%, 7% and 6% by European Union, America and Japan, respectively. Similarly, targets of 21 other industrial countries were fixed for reducing emissions of green-house gases. These targets are to be achieved in between 2008 and 2012.

The developing countries expressed the view that their economic conditions do not permit them to accept such commitments. Therefore, the developing countries (including China and India) were for the time-being exempted from such commitments. One of the main reasons for this is that per capita emission of these gases in these countries is far less than in industrial countries. For example, per capita emission of these gases in America is 5,228 million tons as compared to per capita emission of only 803 million tons in India.

During the conference, in the beginning America was not prepared to accept the target of more than 5% reduction of green house gases. But due to the pressure of European and other countries America had to accept the target of 7%. Doubts were however, expressed as to whether the American Senate would ratify the treaty. The targets and objectives of the Kyoto Environmental Summit can be achieved only when the countries participating and signing the Treaty ratify it at an early date and strictly enforce the same in their respective countries. It would not be an exaggeration to say that survival of the planet earth depends on the success of Kyoto Environmental Summit. If emission of green house gases is not reduced considerably within the period fixed in the Kyoto Summit, global warming may increase to an extent wherein the existence of the planet will be jeopardised, level of the seas will increase and vegetation on earth will be destroyed. If desired steps are not taken within time, the planet earth will have to face the same catastrophe as the planet Mars has had to face earlier. It is, therefore, imperative that nations of the world should keep in mind not only of their own self interests but also the interests of the planet earth as a whole because environment of the whole planet is one and indivisible. As regards America, the least that can be said is that if it cannot take the initiative, it can at least follow the example set by European Union.

On the contrary, however, America decided to abandon Kyoto Treaty in 2001 and President Bush of U.S. announced in February 2002 an alternative plan to the Kyoto climate change treaty. He proposed a voluntary cut of emissions. Under this voluntary plan America would lower emissions from an estimated 183 metric tons per million dollar of gross domestic product in 2002 to 151 metric tons per million dollars of GDP in 2012. In order to induce business and consumers to go along with the plan, Bush Administration offered \$ 4-6 billion over five years in tax credits for renewable energy sources."

Earlier, while abandoning the Kyoto Treaty, President Bush said, "I will not commit our nation to an unsound international treaty that will throw millions of our citizens out of work. Yet we recognise our responsibilities.

According to Canada, Bush plan was not an adequate solution to the global warming. India has also made it clear that India would not be pushed into accepting new obligations envisaged under Bush's alternative to the Kyoto Protocol and insisted that any action taken by it would be "voluntary". Britain and Germany also do not agree with the latest American plan and have their own reservations.

(LVIII) Russia-China Border Pact (November, 1997)—

On November 10, 1997, Russia and China signed a historic frontier demarcation agreement thereby ending centuries old dispute along the 4,280 kms. long eastern frontiers which runs from Mongolia to the Tumen river near the Sea of Japan. This also includes the territory over which the two nations fought in 1969. The agreement was signed by Russian President Boris Yeltsin and his Chinese counterpart Jiang Zemin in Beijing. Besides this agreement, three documents on economic and technical cooperation, including a framework agreement to build a 3,000 kms. long gas pipeline from

Siberia to north. China were also signed. The two Presidents emphasized that their strategic cooperative partnership is marked by "good neighbourliness, cooperation based on equality, joint development, non-alignment non-confrontation and not being directed against a third country". They agreed that such strategic cooperative partnership would also be conducive to regional and global peace and stability.

It may be noted here that China wants 'strategic partnership' with Russia and does not at all intend to revive their formal alliance of the 1950s which had given way to rivalry for the allegiance of the Socialist world. It was probably due to suspicion of Moscow that in 1970s China developed relationship with America. But things have now changed and it appears that both China and Russia are seeking counterbalances to America's power. Russia is already apprehensive of NATO's eastward expansion and other actions of America. China also is interested in some sort of counterbalances to America's powers. It is this perception of their security and national interests that seems to have brought the two nations closer. Moreover, Russia is beset with economic problems and is keen to enhance its annual trade. China is also interested in increasing its annual trade. That is why the agreements entered into between Russia and China contemplate the increase of annual trade to \$20 billion by 2000 as against \$7 billion at present. Three documents on economic and technical cooperation include a framework agreement to build a 3,000 kms. long gas pipeline from Siberia to northern China. Thus both the countries seem to have come closer to each other because of their security perceptions and trade interest. But both the countries are still suspicious of each other and therefore these agreements stop short of the formal alliance of the 1950s, although after its unification with Belarus Russia would have liked to revive the alliance of 1950s. But China's suspicions and hesitancy seem to have stood in the way. Last but not the least, despite successful pact relating to the 4,280 kms. long eastern frontiers, two countries have not been successful in concluding pact about the entire border. The 50 kms. long western border is still under negotiations. However, the changed political and economic scenario, their security perceptions and their common suspicions and apprehensions about America's intentions may bring the two nations still closer to each other in near future.

The friendship between China and Russia was further cemented in December, 1999 during two day visit of Russian President Boris Yeltsin to China. According to the Russia's envoy to China accompanying Russian President entire 4300 Km. long frontier between the two countries has been demarcated to the meter. Both the countries managed to resolve their centuries old border dispute during Mr. Yeltsin's visit to China. Besides this, agreements were also signed on joint economic use of islands and the border rivers and defence cooperation. A joint statement issued after talks between President Boris Yeltsin of Russia and Chinese President Ziang Zemin warned, obviously referring to the U.S., against attempts to undermining national sovereignty and appeals to human rights or humanitarian concerns.

(LIX) Buenos Aires Conference on Environment (April, 1999)

In Buenos Aires Conference held in April, 1999 America and other developed countries proposed that India and other G-77 nations agree to a voluntary reduction of Green House Gases (GHG) emissions. It may be noted here that at Kyoto Environmental Summit Conference (referred to above) India and other developing countries had been exempted in this respect because their consumption of these gases is far less than that of America and developed countries. India, therefore, strongly opposed the above proposal for voluntary reduction of emission of these gases and made it clear that it would be possible only when emission of these gases in developing countries including India is equivalent to that of developed countries. The present level of emission in the U.S. is particularly high, about 30 per cent more than in India and it is estimated to rise further in the next decade. It is thus estimated that the U.S. would have to ultimately achieve reduction of about 35 per cent by 2010.

The Indian Environment Minister, who attended the Conference pointed out that Kyoto Protocol was abstract in respect of the work programme and time schedule. During his multilateral and bilateral talks he emphasized that principles, guidelines and modalities to be formulated for any of the mechanism introduced by the Kyoto Protocol, must not

contain seeds for undermining developing economies. He therefore insisted that the introduction of entitlement would be acceptable only if it was equitable the principle which was agreed under the U.N. Convention for climate change.

(LX) Legality of Pokharan-II or Second Nuclear Explosions made by India (11 May, 1998)

For a considerable period of time the security environment on India's borders was causing concern while on the one hand, Pakistan was waging an undeclared war by sending trained militants to India, on the other hand China was adding to the gravity of the problem by supplying new weapons and nuclear missile technology to Pakistan. Time and again India tried to attract the attention of the International Community towards this grave situation in the Indian sub-continent. Despite clinching evidence of Pakistan's hand in training and aiding and sending militants to India, America deliberately ignored this and continued to show soft corner towards Pakistan. This attitude of America further increased after Bill Clinton became America's President. It was an open secret that Pakistan was pursuing a nuclear weapons programme. Despite knowledge of this to America, China was continuing to help Pakistan. Instead of dissuading China from aiding and assisting Pakistan in its said programme, America's relations with China further improved by Bill Clinton's visit to China. India could not afford to ignore all this for a long time. It also became clear that mere lodging of protests would be of no avail. It therefore became obvious that India must take some solid steps and to exercise its nuclear option to fortify its defence.

On 11 May, 1998, India exercised its nuclear option by conducting three nuclear tests at Pokharan in Rajasthan. They may be referred at Pokharan II because the site was nearly the same as that of Pokharan I. On the same day at 6 P.M., India's Prime Minister Atal Behari Vajpayee, announced of India's conducting of the said nuclear tests. America and western countries strongly criticized India for this. But without bothering for the said criticism and reactions, India went ahead and completed her programme by conducting two more nuclear tests on 13 May, 1998. India then announced that she was prepared to hold talks for signing of CTBT.

America and Japan immediately announced trade sanctions against India. Similarly other countries announced various sanctions against India. In reply to India's nuclear tests, Pakistan also conducted five nuclear tests on 28 May, 1998. Thereafter, Pakistan conducted one more nuclear test on 30 May, 1998. After India's exercise of its nuclear option, it was almost certain that Pakistan would not lag behind. America therefore, put a lot of pressure on Pakistan for not conducting nuclear tests as per its announcement. But ignoring all this Pakistan went ahead with its nuclear programme. Consequently the Security Council of the U.N. in its meeting on 30 May, 1998 condemned Pakistan's action and asked it to announce that it would never repeat it in future.

Prior to this after conducting five nuclear tests India had declared that it will not conduct any nuclear test in future as the same was no more required. In 17 May, 1998 Scientific Adviser to India's Minister of Defence, Dr. A.P.J. Abdul Kalam said that India's nuclear programme was complete and there was no need for further tests. Like France, India computerized the results of nuclear tests and as such no more tests will be required in future.

America and some western countries have been pursuing one sided nuclear programme while they have huge stockpiles of nuclear weapons, they want to prohibit acquisition and production of such weapons by others. They are not prepared to destroy their existing nuclear weapons and want to continue, rather perpetuate their monopoly of such weapons. Even Russia and China are with them in this respect. They therefore, insist that other countries should sign CTBT and ratify so that their monopoly may perpetuate. On its part, America has not yet ratified the CTBT.

Legal Position.—The legal position of Pokharan-II is almost the same as it was in respect of Pokharan-I of 1974 which has already been discussed in Chapter on "Laws of Aerial Warfare". As regards legal position of Pakharan-II, it can be discussed under two heads of International Law—(i) Customary Rules; and (ii) Conventional Rules.

So far as customary Rules of International Law are concerned, every sovereign country is free to conduct nuclear tests within its territory provided that in consequence of it radio activity may not increase in neighbouring countries. No neighbouring country claimed that it was adversely affected by increase of the level of radio-activity. Thus the impact of the nuclear tests was well-contained within the Indian territory. Thus India did not violate any rule of customary law of international law.

As regards Conventional Law, the following treaties deserve mention :

- (i) Partial Nuclear Test Ban Treaty, 1963.
- (ii) Treaty on Non-Proliferation of Nuclear Weapons, 1968.
- (iii) Comprehensive Test Ban Treaty (1995)

India is not party to the above-mentioned last two treaties. The question of their violation therefore, does not at all arise. As regards the first treaty, though India is a party to this treaty, it does not prohibit underground nuclear tests since India's nuclear tests were underground, India has not violated any rule of Conventional Law.

Thus India's nuclear tests conducted in May, 1998 have not violated any rule of international law. So far as the question of disarmament is concerned, India has always advocated and supported total disarmament. Total disarmament is possible only when the nuclear powers agree to destroy the existing stockpiles of nuclear weapons. In fact the main cause of annoyance of America and other nuclear powers is that despite their opposition India conducted nuclear tests and emerged as a nuclear power. They regard it as a challenge to their monopoly of nuclear weapons. Now when India has emerged as a nuclear power, they are not prepared to recognise it. Thus they have maintained a partial and biased attitude in this respect. On her part, India has made it clear that she is prepared to sign the CTBT provided that some basic changes are made in it and it is made more equitable.

It deserves mention here that while America has been pressurizing India and other countries to sign and ratify the CTBT, America itself has not yet ratified the treaty nor the CTBT has come into force because the prescribed number of countries have not ratified it. These prescribed number of countries which number 44 were required to ratify treaty by September, 1999.

(LXI) American Missile Attack on certain places of Sudan and Afghanistan in reaction against explosions in its embassies (21 August, 1998)

On 21 August, 1998 American cruise Missiles attacked alleged terrorist camps in Afghanistan and a site of chemical factory in Sudan killing 27 persons and injuring 50 persons. According to American President Bill Clinton these attacks were made because there was apprehension of terrorist attacks. These attacks were in fact made in retaliation against bomb explosion 13 day before on its East African American embassies.

Legal Aspects.—Even if this allegation of America is accepted that the attacked places or persons were related or responsible for explosion in its embassies, a legal question arises as to how far such actions are justified. No rule of international law confers upon America the right or power to suddenly attack any sovereign nation. The basis or ground for armed attack that there was apprehension of terrorist attack is not permissible or justified under international law. The said American action is clearly violative of Article 2 (4) of the U.N. Charter.

Sudan lodged the protest in the Security Council of the U.N. America told the Security Council on 22 August, 1998 that its missile strikes on suspected terrorist bases were carried out in self defence in accordance with Article 51 of the U.N. Charter. But this explanation is neither satisfactory nor justified because Sudan and Afghanistan cannot be said to have made an armed attack against America. Therefore, the very first conditions of the application of Article 51 is not satisfied. On being asked whether India can claim a similar right and attack the places in Pakistan where Kashmiri militants are trained, aided and from where they are sent to India to commit terrorist acts, the American spokesman replied in negative and added that America's case is special and different because America is an 'indispensable' country. No student or expert of international law can accept

this argument or logic. The question therefore remains as to from where America has acquiesced thus extraordinary power. America can acquire such a power only from the Security Council. But in this matter, the Security Council neither permitted nor conferred such a power on America. As regards Sudan's protest in the Security Council no action could be taken because other members of the Council such as China and Russia chose to remain silent. It is not only unfortunate but also accounts for lack of faith of members of the U.N. in Security Council, especially when a matter involves a permanent member of the U.N.

However, it should not mean that the terrorists who were responsible for bomb explosions do not deserve condemnation. Indeed, persons responsible for such terrorist acts must not only be condemned but should also be given severe punishment so that it may be an eye opener for others. But such an action can be taken only in accordance with international law including the provisions of the Charter of the U.N. The matter ought to be investigated by an impartial international agency. If the investigation proves the hands of Sudan and Afghanistan, the action can be taken against them, not by the U.S. unilaterally but by the United Nation. As in case of Libya, U.N. sanctions can be imposed against Sudan and Afghanistan. A glaring example of this is that U.N. sanctions have been imposed against Taliban Government of Afghanistan for its refusal to hand over the wanted terrorist Chief Osama Bin Laden. But the way America unilaterally attacked Sudan and Afghanistan is totally illegal and unjustified and reminds us of the Jungle Raj that prevailed before the start of the First World War. American action is clearly violative of International Law including the provisions of the Charter of the U.N.

(LXII) The Millennium Assembly of the General Assembly

N.B.—For this please see the Chapter on "The General assembly".

(LXIII) Review of International Law During the Second Millennium.

N.B.—For this please see Chapter 1 entitled "Introduction".

(LXIV) Challenges Before International Law during Third Millennium.

N.B.—For this also please see Chapter 1 entitled "Introduction".

(LXV) Fisheries Jurisdiction Case (Spain v. Canada) [4 December, 1998].

N.B.—For this please see the Chapter on "International Court of Justice".

(LXVI) Case Concerning the Vienna Convention on Consular Relations (Germany v. U.S.) (ICJ Reports 1999) [Decided on 3 March, 1999].

N.B.—For this also see Chapter on "International Court of Justice".

(LXVII) Case Concerning the Legality of the Use of Force (Yugoslavia v. United States of America) [ICJ Reports (1999) Decided on 2 June, 1999].

N.B.—For this also see Chapter on "International Court of Justice" and Chapter on "Intervention".

(LXVIII) Comprehensive Test Ban Treaty Review Conference.

N.B.—For this please see Chapter on "Disarmament".

(LXIX) The M/v "Saiga" Case (Saint Vincent and the Grenadines v. Guinea)—[Decided by the International Tribunal for the law of the Sea on 4 December, 1997].

N.B.—This has been discussed in detail in Chapter on "The Law of the Sea".

(LXX) The M/v "Saiga" Case No.2 (Saint Vincent and the Grenadines v. Guinea)—[Decided by the International Tribunal for the Law of the Sea on 11 March, 1998].

N.B.—For this also see Chapter on "The Law of the Sea".

(LXXI) Pakistan's Fresh Intrusion in Kargil Area of Kashmir (April-May, 1999)⁵²

Pakistan once again made fresh intrusion in Kargil area of Kashmir. This intrusion took a serious turn in April-May, 1999. This time Pakistan not only sent armed extremists or militants across the Line of Control (LOC) on the Indian side but Pakistan regular army also provided them strong support from behind. Thus mercenaries, extremists and Pakistan armed forces in large number intruded into Kargil and Drass areas of Kashmir. Kargil area is spread over 150 Kms. on the one side of it is Drass on the other side is Batalik. Pakistan's intrusion was spread over nearly 100 Kms. There were certain reasons for Pakistan to have chosen this area for intrusion. This is the only area on the Line of Control (LOC) over where Pakistan is in a better position whereas in other places India is in a better position. The main aim of Pakistan intrusion was to obstruct Srinagar-Leh Road because it is very important for Indian Army for carrying food and other supplies. During the winter season Indian Army vacates high altitude posts. Taking advantage of this situation Pakistan made the fresh intrusion. But by violating the Line of Control Pakistan displeased not only India but also America and other European countries. Pakistan could not even secure the support of its old friend, China for this misadventure.

On the other hand, India was compelled to take retaliatory action. The intrusion was so strong and forceful that India had to deploy aircraft for repulsing the attack probably Pakistan plans suffered from a major error that they failed to visualise that India could use aircraft.

In the beginning Pakistan denied direct or indirect involvement in attack on Kargil. But when the situation started worsening for it, it started giving several arguments. Pakistan even argued that the Line of Control (LOC) was not logical and ought to be changed. As usual, Pakistan tried to internationalise the conflict. Pakistan appealed to the U.N. to send a special envoy to solve the Indo-Pak conflict on L.O.C. But India strongly opposed this proposal and made it clear that the L.O.C. is internationally recognized and it is futile to hold talks or attempt settlement in this respect. Consequently the U.N. did not take any interest in the Pakistani proposal.

In the first week of June, 1999 after the fierce battle in the Batalik area the dead bodies of three Pakistani soldiers were found in the Indian territory. Thereafter such incidents continued to recur. Many Pakistani soldiers were apprehended and the dead bodies of several other Pakistani soldiers were found. This clearly established Pakistani Army's direct involvement in attack in Kargil. In the second week of June, 1999, Brigadier Rashid Qureshi of Pakistan Army expressly admitted the presence of Pakistani Army personnel in Kargil and Drass areas. According to some Pakistani sources, the then Pakistan's Prime Minister Nawaz Sharif not only had the knowledge of Pakistan's intrusion in Kargil but it also had his consent and approval. Therefore, the allegation of Indian Prime Minister that Pakistan had betrayed India was correct. While the Prime Minister of both the countries were signing the Lahore Declaration, Pakistan's Prime Minister knew that Pakistani army was intruding in Kargil.

As noted above, India had been compelled to retaliate for her defence. It deserves mention here that America, European countries and other prominent countries of the world understood and appreciated India's stand-point. In American House of Representatives several resolutions were presented condemning Pakistani's action and supporting India's stand-point and asking America to ensure that Pakistani's army, its militants etc., must withdraw to their side of LOC. In the first week of July 1999, an American Panel of International Relations rejected the idea plebiscite to solve Kashmir Problem. In the first week of July, 1999 the Pakistan's Prime Minister Nawaz Sharif went to America and met American President Bill Clinton to secure American support for his country but met with a failure. American President Bill Clinton, on the other hand, insisted that Pakistan must withdraw its army to its side of the LOC. Pakistan's Prime Minister thereupon assured the American President that Pakistan would respect LOC.

52. For background and other details see "Kashmir Problem" discussed earlier in Appendix II.

In the meantime, internal situation worsened so much in Pakistan that even when Pakistan Prime Minister issued an appeal to the militants to return to their side by LOC, extremist or a militant groups such as Laskari Taiba rejected the appeal. But being compelled by international pressure, the Pakistan Army slowly and gradually started the process of withdrawal. On 25 July, 1999 America once again asked Pakistan to immediately withdraw its armed forces from the remaining areas of Kargil. Meanwhile, the internal situation in Pakistan had further worsened. There were clear indications that his Government was losing control over the mercenaries and militants supported by it. What was even more serious was that the Pakistan's Prime Minister had lost control over the army. This was confirmed when on 12 October, 1999 Pakistan Army Chief, General Pervez Musharraf deposed Pakistan's Prime Minister Nawaz Sharif and established military rule in Pakistan.

As regards the legal position Pakistan's violation of LOC is a flagrant violation of the rules of International Law. Attempts to change the internationally recognized LOC by use of force is clearly violative of rules of International Law including the provisions of the U.N. Charter. On the other hand, India resorted to military action only to defend herself. That is why, America, European nations and other prominent countries of the world condemned Pakistan's illegal intrusion in Kargil and supported India's action and stand-point. From India's point of view, it is for the first time since the beginning of Kashmir Problem that India's stand-point was appreciated by America and European countries. America and European countries also clearly realized and expressly admitted that the idea of plebiscite was not just and adequate for the solution of Kashmir problem. Thus Kashmir problem can be solved only by bilateral talks between India and Pakistan. It may also be noted at the end that whenever Pakistan is confronted with serious internal problems, it deliberately starts some mischief at its borders with India and tries to divert its people's attention from internal problems to Indo-Pak conflicts.

(LXXII) U.N. Sanctions Against Taliban Government of Afghanistan (1999) and Subsequent Overthrow of Taliban Government (2001)

On 6th October, 1999 the United States of America submitted a draft resolution in the Security Council of U.N. asking Taliban Government of Afghanistan to surrender Osama Bin Laden for trial and on failure to do so the United Nations will impose Air embargo and financial sanctions against it. According to America Osama Bin Laden is responsible for bomb explosions in American embassies in Kenya and Tanzania. As a result of these explosions 225 persons were killed and more than 4000 persons were injured. On 15 October, 1999 the Security Council of the U.N. passed a resolution asking Taliban Government to surrender Osama Bin Laden to the U.S. or some other country which promises to hold trial against him for terrorist acts by 14 November, 1999 and on failure to do so U.N. sanctions against it will start. This resolution was unanimously passed in Security Council.

The Taliban Government of Afghanistan rejected the above-mentioned demand of the U.N. on the ground that it is an Islamic issue and can only be solved by Ulemas (scholars) of Afghanistan, Saudi Arabian and one more Islamic country. The leader of Taliban movement of Afghanistan made it clear that despite international sanctions, they will not surrender Osama Bin Laden.

In the meantime, the Credentials Committee of General Assembly of the U.N. postponed the decision on claims of rival Governments of Afghanistan for U.N. Seat. Thus until this matter is finally decided Taliban's opponent former Government of Afghanistan will continue to represent Afghanistan in the U.N. Thus born in Saudi-Arabia and exiled from there the millionaire and terrorist Osama Bin Laden whose presence in Afghanistan has become dangerous and very costly but probably he is so valuable a person for Afghanistan that it is not easy to surrender him.

It may be noted here that apart from Pakistan, Saudi Arabia and United Arab Emirates (UAE) are the two only countries who have recognised Taliban Government of Afghanistan. America has come to know through some sources that directly or indirectly Osama Bin Laden has been receiving military and financial assistance from Pakistan. America has alleged that Bin Laden is conducting and organizing camps in Afghanistan for

making and training persons as terrorists, America therefore, demands that Osama Bin Laden be surrendered and the said terrorist activities be ended. In this matter America has the support of Russia also because according to Russia Osama Bin Laden is also involved in revolts of Islamic people in Chechnya and Dagestan. Osama Bin Laden has declared Jihad (holy war) against America and India. On Kashmir Problem, change in American attitude and its supportive attitude toward India is probably due to the fact, *inter alia*, that Pakistan is rendering military and financial assistance to Bin Laden who is staunch enemy of America and is involved in terrorist activities.

On installation of military government in Pakistan America desires from the new government that Pakistan should apply pressure on Taliban Government of Afghanistan and compel it to surrender Osama Bin Laden for judicial process against him.

Taliban Government of Afghanistan, on the other hand is seeking ways, means and excuses so as to not to surrender Osama Bin Laden. In the first week of November, 1999 a spokesman of the Taliban Government suggested that organisation of Islamic countries should send a group to ensure whether Osama Bin Laden is involved in terrorist activities as alleged by America.

In the second week of November, 1999 however the Taliban Army threatened to take retaliatory action if U.N. sanctions are imposed against it but it did not clarify what type of action it proposed to take. With a view to antagonise American people against American administration, Taliban religious leader Amir-Ul-Mominin Mullah Mohammed Umar Mujaheed warned that if America succeeds in getting U.N. sanction imposed against Taliban Government, American people will suffer from divine scourge. But such warnings had no effect on America.

America has taken steps to obstruct the escape routes of Bin Laden to Iraq, Chechnya, Dagestan etc. It may also be noted here that in the first week of November, 1999 the defence Minister of Saudi-Arabia said that it would be better for Taliban Government of Afghanistan to surrender Osama Bin Laden. He hastened to add that though he cannot speak for other country yet it is his personal opinion that the presence of Bin Laden in Afghanistan is not in the interest of Afghanistan. There is much force in the above opinion because similarly on the initiative of America U.N. sanctions were imposed against Libya in 1992 and ultimately being compelled Libya had to surrender in 1999 the two persons who were accused of 1988 Lockerbie Bombing.

Since Taliban Government of Afghanistan failed to surrender Osama Bin Laden by 14 November, 1999 the last date set for compliance of the Security Council resolution U.N. Sanctions came into force against Taliban Government of Afghanistan. So far as legal position is concerned Taliban Government is bound to comply with the resolution of the Security Council. By not complying with the resolution of the Security Council, Taliban Government is guilty of violation of International Law including the Charter of the U.N. According to Article 25 of the U.N. Charter, resolutions of the Security Council are binding on member states of the U.N. Under Article 25, the members of the U.N. have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter. If a member state fails to comply with the decision of the Security Council, the council can take collective action against such a state under Chapter VII of the U.N. Charter. It will make no difference that the Taliban Government has not yet been recognized by the U.N. There is a distinction between the recognition of a state and recognition of a government. Since Afghanistan as a sovereign state is a member of the U.N., Afghanistan will be bound by Security Council decisions. Taliban Government claims, and rightly too, that it is the *de facto* Government of Afghanistan and is entitled to represent Afghanistan, it will be bound to comply with the decision of the Security Council.

On 13 December, 1999 Ambassador Michael Sheehan, U.S. Coordinator for counter terrorism warned Taliban representative Abdul Hakeem Mujahid in New York that the U.S. would hold the Taliban responsible for any attacks carried by Saudi millionaire terrorist Osama Bin Laden's network. Later on Taliban rulers of Afghanistan tried to assure America that Osama Bin Laden plans no attack on America. America not only shrugged of such assurances but said that it has credible evidence that Bin Laden's group may be planning more attack on America over the next few weeks. On 19th January, 2000 a

Taliban controlled newspaper of Kabul reported in Kabul that Osama Bin Laden would end his hostilities towards the U.S. if America withdraw its soldiers from Saudi Arabia—the site of two of Islam's holiest places. On the other hand the Taliban Government has said that Bin Laden being its guest Afghan tradition forbids handing over a guest to his enemies. Moreover, the U.S. has not yet given evidence of Bin Laden's involvement in terrorism. But the U.S. is not influenced by such excuses and is bent on its resolve to secure the surrender of Bin Laden for judicial process against him for his terrorist activities.

It need not be over-emphasized that terrorism is against the rules of International Law. It constitutes violation of human rights. Therefore, terrorism must not only be condemned but those involved in terrorist acts must be dealt severely with. In case of America's conduct throughout is in accordance with international law for instead of taking unilateral action it has followed the proper procedure by moving the U.N. and getting a resolution passed by the Security Council. Reference may also be made to the International Convention for the Suppression of the Financing of Terrorism which has been passed by the General Assembly of the U.N. in December, 1999 to halt the flow of money to terrorist organisations. The Convention provides for governments to freeze such funds and to extradite those found indulging in such activities. Presently the Taliban Government probably may not be feeling much punch due to U.N. sanctions but in the course they will have the desired effect and the Taliban will then, like Libya, be compelled to comply with the decision of the Security Council of the U.N. Moreover, public opinion in itself serves as a great sanction. It may take considerable period of time for public opinion to gather momentum and to assert itself. But when it does assert itself there is nothing which it cannot achieve. End of Apartheid in South Africa is its glaring example. There is no denying the fact that public opinion is against terrorism and it constitutes violation of human rights. It is condemned by most of the members of International Community.

The defiance of Taliban Government and Osama Bin Laden reached its climax when on 11 September, 2001 Bin Laden's Al-Qaida men attacked twin towers of World Trade Centre in New York and a Pentagon Building outside the Washington. As expected America reacted strongly and regarded it as an act of war against America. After enlisting support of its allies and pressurising General Musharaff to back war against terror, America retaliated by attacking military and guerilla bases in Afghanistan on 7th October, 2001. However, it took American forces two months to overthrow the Taliban Government of Afghanistan. Taliban's last bastion crumbled when on 7th December 2001 with the militia surrendering its last bastion of Kandhar the new interim Government headed by Hamid Karzai was inaugurated on 25th December 2001. Thus America was successful in overthrowing the Taliban Government of Afghanistan but it has so far failed to capture Osama Bin Laden. It is reported that Osama Bin Laden has been hiding somewhere in Pakistan so is the case with a large number of his Al-Qaida men who enjoy the overt or covert support of the ISI wing of Pakistan Army.

(LXXIII) Hijacking of an Indian Airlines Plane (1C814) in December, 1999.

N.B.—This has been discussed in Chapter on "Air Law (including Aircraft Hijacking)".

(LXXIV) Charter for European Security signed in November, 1999 by the members of Organisation for Security and Cooperation in Europe (OSCE).

N.B.—For this please see Chapter on "Regionalism".

(LXXV) Return of Macao to China after 443 years of Portuguese Rule (20th December, 1999).

Macao returned to Chinese sovereignty at the stroke of midnight of 20th December, 1999. Portuguese President Gorge Sampaio and Chinese President Jiang Zamin attended the final ceremony of transfer of Macao from Portuguese rule to China. Thus the Portuguese Empire which began in India in 1510 when the Portuguese captured Goa ended

at midnight of 19th and 20th December, 1999. In fact, Portugal had surrendered sovereignty over Macao 33 years ago in December, 1966. After 1966, Macao was essentially a Chinese territory under Sino-Portuguese administration. Macao's return to China at that stage would have been economically ruinous. It was therefore allowed to remain under joint administration of both the countries. It was only after 1974 the Portuguese described Macao as "Chinese territory under Portuguese administration". In 1979, diplomatic relations between Portugal and China were normalised and then Macao became Chinese territory "under temporary Portuguese administration". Sino Portuguese joint declaration on the question of Macao was signed on 13th April, 1987 in Beijing. According to the declaration, China would resume exercise of sovereignty over Macao on December 20, 1999. Thus on 20th December, 1999 Macao became a Special Administrative Region of China. The second half of 20th century has witnessed the wave, rather end, of colonialism all over the world. The return of Macao to China on 20th December, 1999 marks one of the last reminiscents of Western Colonialism in Asia.

(LXXVI) Case of Shooting Down of a Pakistani Military Combat Aircraft on August 10, 1999 by India in its Airspace during Kargil war decided in favour of India on 21 June, 2000.

During Kargil war, India shot down a Pakistani military aircraft in its airspace on August 10, 1999. On 21 September, 1999 Pakistan filed a case against India in the International Court of Justice in respect of a dispute relating to the destruction, on 10 August 1999, of a Pakistani aircraft. Pakistan had filed the case to claim a compensation of \$ 60 million. In its application, Pakistan founded the jurisdiction of the court on Article 36, paragraphs 1 and 2, of the Statute and the declarations whereby the two parties have recognized the compulsory jurisdiction of the court. India by its letter of 2 November 1999, notified the court that she wished to indicate its preliminary objections to the assumption of jurisdiction by the court on the basis of Pakistan's Application. Those objections, set out in a note appended to the letter were as follows :

(i) That Pakistan's Application did not refer to any treaty or convention in force between India and Pakistan which confers jurisdiction upon the court under Article 36(1);

(ii) That Pakistan's Application fails to take into consideration the reservation to the Declaration of India of 15 September 1974 filed under Article 36(2) of its statute. In particular, Pakistan being a Common Wealth Country, is not entitled to invoke the jurisdiction of the court as sub-paragraph 2 of paragraph 1 of that Declaration excludes all disputes involving India from the jurisdiction of the court in respect of any State which is or has been a Member of the Common Wealth of Nations.

(iii) The Government of India also submits that sub-paragraph 7 of paragraph 1 of its declaration of 15 September 1974 bars Pakistan from invoking the jurisdiction of the court against India concerning any dispute arising from the interpretation or application of a multilateral treaty, unless at the same time all the parties to such a treaty are also joined as parties to the case before the Court. The reference to the U.N. Charter, which is a multilateral treaty, in the Application of Pakistan as a basis for its claim would clearly fall within the ambit of this reservation. India further asserts that it has not provided any consent or concluded any special agreement with Pakistan which waives this requirement."

As regards the reservation regarding Commonwealth membership Pakistan contended that it was "obsolete".

Pakistan also relied upon Article 1 of the Simla Accord, paragraph (ii) of which provides *inter alia* that

"the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon them.

The World Court made it clear that the court regards this provision as an obligation, generally, on the two States to settle their differences by peaceful means, to be mutually agreed by them. But the said provision in no way modifies the specific rules governing recourse to any such means including judicial settlement. Thus the court cannot interpret the obligation as precluding India from relying, in the present case, on the Commonwealth

reservation contained in its declaration. Indeed the court cannot therefore accept the argument in the present case based on estoppel.

It follows from the foregoing that the Commonwealth reservation contained in sub-paragraph (2) of the, first paragraph of India's declaration of 18 September 1974 may validly be invoked in the present case. Since Pakistan is a member of the Commonwealth of Nations, the court held that it has no jurisdiction to entertain the application under Article 36, paragraph 2 of the statute. Hence it is unnecessary for the court to consider India's objection based on the reservation concerning multilateral treaties contained in sub-paragraph (7) of the first paragraph of its declaration.

As regards Pakistan's contention regarding paragraph 1 of Article 36, and Pakistan's reliance on Article 1 of the Simla Accord which provides that "the Government of India and the Government of Pakistan has agreed....."

(i) That the principle and purposes of the Charter of the United Nations shall govern the relations between the two countries", the International Court of justice held that this provision represents an obligation entered into by the two States to respect the principles and purposes of the charter in their mutual relations. It does not as such entail any obligation on India and Pakistan to submit their disputes to the court. Thus the Court held that it has no jurisdiction to entertain the application on the basis of Article 36, paragraph 1 of the statute.

Finally the International Court of Justice⁵³ held by fourteen votes to two that "it has no jurisdiction to entertain the application filed by the Islamic Republic of Pakistan on 21 September 1999.

(LXXVII) Pakistan Suspended from Commonwealth of Nations.

After General Pervez Musharraf took over the reins of the Government of Pakistan by a military coup of 1999, Pakistan was suspended from the membership of the Commonwealth of Nations. Despite his promises to restore democracy, Pakistan still remains a military dictatorship. On 2nd March, 2002 leaders of the 54 nation Commonwealth of Nation considered this matter and noted some progress but refused to readmit Pakistan. Earlier during the two day deliberations of the Commonwealth Ministerial Action Group (CMAG) the group expressed the view that there was no justification for delaying parliament elections in Pakistan and called upon the regime to announce the dates for elections to provincial and national assemblies. On March 20, 2001 the Commonwealth warned of "stronger measures" against the military regime in Pakistan if it failed to make more "definite progress" for restoration of democracy through fair and free elections to provincial and national assemblies in October, 2001.

But as expected General Musharraf took no positive steps to hold elections as per dates announced. Recently *i.e.* in May 2002 Gen. Musharraf held referendum, not to restore parliamentary democracy in Pakistan but to continue as President for five more years. The referendum was a sham and his victory was foregone conclusion. The way referendum has been held is nothing but the mockery of democracy. The main reason why the pressure of Commonwealth of Nation is not working is that some of the members of the Commonwealth especially Britain is directly or indirectly helping Gen. Musharraf. Moreover, America which has for a long time been patronising Pakistan including Gen. Musharraf, despite its worst ever experience of attack on twin towers of World Trade Centre (WTC) by Bin Laden and his Al-Qaida men who have had overt and covert support of Pakistan especially ISI wing of Pakistan Army.

With the recent thaw in Indo-Pak relations including Indian Prime Minister's visit to Pakistan in January, 2004, Pakistan has requested India to help it regain the membership of Commonwealth of Nations.

(LXXVIII) Terrorists Attack on America's World Trade Centre (11 September 2001) America's War Against Terrorism.

In an unprecedented attack on America, the terrorists struck at the heart and might

53. For the judgement of the court see : case concerning the Aerial Incident of 10 August 1999 (*Pakistan v. India*), KJ Rep. (2000).

of America on Tuesday, 11th September 2001 when several large planes hijacked simultaneously from airports were crashed into the symbols of American establishment and enterprise—the 110 storey towers of World Trade Centre in New York and the Pentagon building outside Washington. America regarded it a war on itself and declared a full scale war against terrorism. American Secretary of State, Colin Powell said, after the carnage in which about 10,000 people were believed to have been killed, "The American people made a judgement : we are at war, and they want a comprehensive response. They want us to act as if we are at war and we're going to do that."

American intelligence officials said that there were strong indications that persons linked to Bin Laden could be responsible for Tuesday's attack on the World Trade Centre and the Pentagon. Tuesday, 11th September 2001 was probably the blackest day of American history because it was a great blow on the prestige and might of America. It stunned and shocked not only American people but the entire mankind. Besides the staggering carnage in the attack, it was equally stunning as the monumental intelligence failure of the mightiest country of the world that prides itself on being ahead of the game. Osama Bin Laden expressed his happiness at the attack but denied his involvement in the attack.

Unlike earlier times when faced with terrorist attacks on its embassies, this time America did not act in haste. It took stock of the whole situation, including the chances of long drawn battle in the difficult hilly terrains of Afghanistan. As a first step, America pressurised Pakistan to allow a multinational armed force based on its territory for an attack on Afghanistan. Thus America forced General Musharraf of Pakistan to take a complete U-turn in respect of his policy towards Taliban Government in general and terrorists in particular. Then America consulted its allies and sought their help and cooperation in its war against terrorism. America was successful in enlisting the help and support of a large number of countries including Great Britain, France and Russia. It was only after taking world leaders into confidence and enlisting their support American forces launched its strikes on military guerilla bases in Afghanistan on 7th October, 2001 and on the very first day Kandhar radar system was smashed, American and its allied forces launched a two pronged attack on Afghanistan. First, American and allied forces launched direct attacks on main cities and strongholds of Taliban Government. Secondly they helped Northern Alliance forces which had all along been fighting the Taliban forces. One after the other cities and strongholds of Taliban Government started falling in the hands of the Northern Alliance forces. Mulla Omar the Prime Minister of Taliban Government fled away and went underground. Before launching armed attack America had asked Mulla Omar to surrender Bin Laden but he had persistently refused to do so.

It took America nearly two months to overthrow the Taliban Government of Afghanistan. Under the auspices of the United Nations, a conference was called in Bonn (Germany) to form a new interim Government of Afghanistan. On 5th December, 2001, envoys of Northern Alliance, former king Mohammad Zaheer Shah and two smaller exile groups signed the U.N. mediated accord after nine days of talks. Hamid Karzai, a moderate Muslim whose fighters were part of the Bush to oust the Taliban from their last stronghold in Kandhar, was chosen to head the interim administration to replace Taliban rule after the Northern Alliance won control of most of the country.

Taliban's last bastion crumbled when on 7th December, 2001 with the militia surrendering its only remaining bastion of Kandhar. The capitulation of Kandhar came two weeks before a new government headed by Hamid Karzai was set to begin work. The new interim Government of Afghanistan headed by Hamid Karzai was inaugurated on Saturday, 22nd December 2001. On 24th December, 2001; the cabinet of Afghanistan met for the first time to restore peace in a country shattered by decades of war and newly freed by terrorists.

It may be noted here that while Gen. Musharraf was pressurised by America to allow Pakistan bases for American attack on Afghanistan and to back anti-terror drive, and America paid Pakistan \$ 350 millions for such backing, General Musharraf continued to have soft corner for Taliban and terrorists. Though Pakistan's involvement with Taliban

and terrorists was clearly established yet it seemed America had no other option. Under the circumstances with which America was faced it was necessary and expedient to enlist help and support of General Musharraf. It was to ensure to political survival of President Musharraf that America even allowed secret airlift of Pakistani army personnel from Afghanistan at the height of U.S. led military operations. But this American policy has its inherent dangers. Even at the height of U.S. led military operations in Afghanistan, Bin Laden's Al-Qaida men were seeking refuge in Pakistan. Even Osama Bin Laden is reported to be hiding some where in Pakistan with the overt and covert support of ISI of Pakistan Army. That is why even American forces are making hot pursuit in Pakistan for Bin Laden and his Al-Qaida men.

America had started its military campaign against Afghanistan with three main aims—(i) capture of Bin Laden; (ii) overthrow of Taliban Government of Afghanistan; and (iii) war against terrorism in general. More than six months have passed since America launched its military operations yet it has achieved only partial success. The only tangible success it has achieved is the overthrow of Taliban Government which was harbouring and supporting Bin Laden and other terrorists. It has failed to capture Bin Laden so as to bring him to book. This dream of America can succeed only when ISI of Pakistan stops sheltering, supporting and using terrorists. As regards war against terrorism in general, it has just begun and is far from over. In its war against terrorism in general, America has warned military action against Iran, Iraq and North Korea.

After having tasted, the fruits of its partisan policy towards Pakistan in the form of attack on twin towers of WTC on 11th September, 2001, realization was dawned or if it was already aware, it acknowledged for the first time on 29th October 2001 that Pakistan was directly involved for terrorist activities in Jammu and Kashmir. America also acknowledge that Pakistan's intelligence agency ISI has even used "Al-Qaida camp in Afghanistan to train covert operation for use in war of terror against India."

As noted above, Pakistan was forced to allow its bases for U.S. led military operations against Afghanistan, but towards India it continued, its old policy of using ISI to strike terror in India. The climax of such terrorist attacks was reached when five suicide terrorists (fidayeen) attacked Parliament, the seat and heart of Indian democracy, on 13th December, 2001. The Prime Minister of India took it very seriously and vowed to wage do or die battle against terror and to "blunt every attack". Though due to the alertness of the security staff at Parliament, all the 5 fiyadeens were killed, the fact remained that the terrorist can strike any place at any time. If America, the mightiest country of the world, could be targeted by the terrorists as it was on 11th September, 2001 no other country in the world can be said to be safe. It is also now well established that Pakistan has become the centre of Islamic fundamentalists and a place where terrorists are not only trained but are sheltered, supported and protected and also enjoy government patronisation. India has been asking U.S. and other countries for a long time to declare Pakistan as a terrorist State but America and Western countries have been following a partisan and double policy in respect of Pakistan. After having itself tasted the fruits of its partisan policy and being under pressure of world public opinion, the U.S. made it clear that it was not satisfied with Pakistan's actions so far to root out terrorism. Evidently unhappy with Pakistan's insistence on describing the violence in Kashmir as a freedom struggle, President Bush asked President Musharraf to "make a clear statement to the world that he intends to crack down on terror. The U.S. even asked Pakistan not to redefine terrorism. Nevertheless, America continued to believe or at least publicly expressed such a belief that" President Musharraf has been moving forward, and intends to continue to move forward against militants.

India reacted strongly against attack on Parliament and recalled its envoy. Subsequently India gave Pakistan a list of 20 hard core terrorists and requested to extradite them. As expected, Pakistan refused to hand over the said 20 wanted terrorists to India on some or the other excuse. The situation between the two countries became so grim that both the countries deployed their armed forces on border facing each other. Despite this and all the restraint exercised by India cross-border terrorism has not ceased. Even on the date of writing this note i.e. on 14th May 2002 terrorists attacked a

bus and army camp in Jammu and killed 31 including army men. Three fiyadeens were also killed in the encounter. India's patience has reached its highest limit. India has therefore made it clear that the only option left to her a limited military action to destroy terrorist camps in Pak-occupied territory of Kashmir. Thus despite America's so called war against terrorism and Gen. Musharraf's support in it, Pakistan continues to back terrorists and pursue a policy of terrorism.

Though more than eight months have passed since attack on WTC on 11th September 2001, America has not yet been able to capture Bin Laden and Mulla Omar and other Al Qaida men. This is despite the fact that Taliban Government in Afghanistan has been overthrown and America has the so called help and support of Pakistan Government. The answer is quite obvious. Pakistan is not supporting Americas' war against terrorism honestly and whole heartedly. ISI wing of Pakistan army is still supporting, sheltering and protecting terrorists. If situation like this continues, can terrorist attacks similar to that of 11th September 2001 on WTC be ruled out in future? It is for America to see of such questions. As regards India, she has been fighting terrorism for a long time, and she will have to fight it out on her own way. She cannot and must not rely on America or other Western nations for whom terrorism in India and terrorism elsewhere has different meaning and implications.

Legal Aspects

At the instance of the United States of America, the Security Council of the U.N. passed a resolution on 15th October, 1999 asking Taliban Government of Afghanistan to surrender Osama Bin Laden by 11th November to the U.S. or some other country which promises to hold trial against him for terrorists acts and on failure to do so U.N. sanctions against it will start. Since Taliban Government of Afghanistan failed to surrender Osama Bin Laden by 14th November 1999, the last date for compliance of the Security Council resolution U.N. sanctions against Taliban Government came into force. Security Council resolution being binding by virtue of Article 25 of the Charter of U.N., Taliban Government not only violated U.N. Charter but also defied International Community (U.N. having as many as 189 members).

It need not be over emphasized that terrorism is contrary to the rules of International law. It constitutes violation of human rights.

Moreover, after terrorist's act on America on 11th September, 2001 America became entitled to exercise the right of self defence. After the attack of 11th September, 2001, America announced that it was clearly war against America. Thereafter when America retaliated by attacking Taliban Government of Afghanistan it exercised the right of self defence which is available to every member of the U.N. under Article 51 of the Charter. Attack on twin towers of WTC and Pentagon building was nothing less than an armed attack. Unlike earlier times, this time America's action fulfilled all conditions laid down in Article 51 of the Charter. America not only reported the matter to Security Council and kept in touch with the council and its members throughout it had the support of the U.N. even after the overthrow of the Taliban Government, it was under the auspices of the U.N. that a conference was convened to form the new interim Government of Afghanistan. The new interim government of Afghanistan headed by Hamid Karzai has the blessings of the U.N.

Thus American action to retaliate against Taliban Government leading to its overthrow was throughout legally justified. Even its war against terrorism in general has the support of the U.N. Nevertheless the fact remains that America has been able to achieve only a partial success though more than seven months have passed since it launched its armed response against Taliban Government of Afghanistan. America has so far failed to capture Osama Bin Laden and its war against terrorism in general has just begun. What is really alarming is that Al-Qaida men are reported to have sought refuge in Pakistan and Pakistan occupied Kashmir and are reported to be regrouping themselves. Explosion in Karachi by suicide bombers near the Hotel in which Newzealand cricketers were staying and killing 14 French nationals and recently attack of suicide bombers on a bus and army camp killing 30 people including army men and injuring 48 others are proof of

increasing terrorist activities in Pakistan. Let (Lakshar-i-Toiba) based at Pakistan occupied Kashmir has taken the responsibility for the fiyadeen attack in which three fiyadeens were also killed. Ironically Gen. Musharraf being the acknowledged partner of Americas war against terrorism, terrorism is prospering in Pakistan and being patronised by Pakistani army of which Gen. Musharraf is the chief.

(LXXIX) Pakistani Terrorists Attack on Indian Parliament (13 December 2001).—Attack on twin towers of World Trade Centre in Newyork on 11th September, 2001 shocked the whole world. At the initiative of America the whole International Community decided to co-operate to fight against international terrorism. America and its allied countries were successful in overthrowing the Taliban Government of Afghanistan and replaced it with a Government under Hamid Karzai. Even though Pakistan was pressurized by America to join America in its fight against Taliban Government of Afghanistan, in the heart of its heart Pakistan was still with Al Qaida. The terrorist camps of Afghanistan had full support and assistance of Pakistan. Al Qaida had the full support of ISI of Pakistani Army. That is why, during the war members of Al Qaida fled to Pakistan to hide themselves there because for them Pakistan was the safest place in the world.

Thus after the defeat of Taliban Government Osama Bin Laden alongwith other members of Al Qaida was successful in hiding in Pakistan. This was confirmed by American Intelligence which also reported that thousands of Pakistani soldiers were fighting with Taliban Government. It was reported by American Papers that in order to save President Musharraf from this embarrassing situation American Planes were taking the said Pakistani soldiers to Pakistan. Further it became clear that Osama Bin Laden was alive and was reassembling the members of Al Qaida. In short, after the overthrow of Taliban Government in Afghanistan, Pakistan became the greatest centre of terrorists. This increased the danger to the whole world in general and to India in particular. While the terrorist activities in Afghanistan were greatly diminished, Pakistan not only continued terrorist activities across Indian border but increased it.

It is rather ironical that despite, proofs of Pakistan's involvement in terrorist activities and even after the bitter experience of 11th September, 2001, America is not only maintaining friendly relations with Pakistan but considers Pakistan as a dependable ally, much less declaration of Pakistan as a terrorist country. On the other hand, even in the absence of such proofs, America has declared Iraq, Iran, North Korea etc. as terrorist countries and has threatened them several times. This double standard and policy may prove fatal for America in particular and fight against terrorism in general.

As regards India, even after the overthrow of Taliban Government in Afghanistan, India could get no respite from terrorism across border. Even though under the pressure of America Pakistan promised to co-operate in fight against terrorism yet against India in the excuse of 'Jehad' it rather increased its acts of terrorism. India continued to tell this to America and other countries but they did not pay any heed to it. Pakistani terrorist activities reached its climax on 13 December, 2001, when a suicide squad of five Pakistani terrorists made an armed attack on Indian Parliament. Thanks to the alertness of the security staff of the Parliament, any big incident could not take place. The security staff killed all the five members of suicide squad. In the process twelve persons including five terrorists were killed. The target of the terrorists was to kill or make hostage the Prime Minister, Leader of the opposition and other important political leaders.

India took this incident seriously and regarded it as an attack on the country (as America did in case of attack on WTC) and decided to give a befitting reply and if necessary to have a full-fledged war. On 18th December, 2001, Home Minister and Deputy Prime Minister, Sri L.K. Advani told the Parliament that the terrorists who attacked Parliament belonged to Laksari-i-Toyba and Jais-i-Mohammad and had the backing of I.S.I. branch of Pakistani Army. Surprisingly Britain asked India not to react strongly. This shows the double standard of Britain. American reaction was a little different probably because it had the bitter experience of 11th September, 2001 and that it had already had the evidence of Pakistani involvement in terrorist activities. In October, 2001 America

even admitted that ISI of Pakistani Army was using Al Qaida camps of Afghanistan in Kashmir against India. On January, 2002, American President said that he did not agree with this defence or excuse of President Musharraf that the violence being perpetrated in Kashmir was not terrorism but independence movement. He condemned Pakistani involvement in terrorist activities and warned President Musharraf not to redefine terrorism. He asked the Pakistani President to tell the whole world that he would take strict action against terrorism. The other countries also made similar statements asking Pakistan to clarify its position.

So far as India was concerned, India took the attack on Parliament on 13th December, 2001, very seriously. All the limits of India's patience and restraint had been crossed. In Parliament all the political parties stood behind Government for whatever action it deemed fit. With a view to meet every possible situation, India started sending its armed forces to borders. India also banned Pakistani air-flights over her air-space. Moreover, India sent a list of 20 terrorists and criminals demanding their extradition to India. India recalled her ambassador to Pakistan and asked its counterpart to return to Pakistan.

America and other European countries told Pakistan in clear words to stop terrorism across India's borders. Under the pressure of these countries Pakistani President promised to check cross-border terrorism. It need not be overemphasized that there is always a wide difference in his acts and statements. Thus even though he made the said promise yet on the other hand turning towards India he started talking of Jihad and other things just opposite to the said promise. For nearly six months America and other European countries had been pressurizing Pakistan to fulfil its promises. But it had no desired effects. Thus despite said promises Pakistan took no solid or concrete steps to stop terrorism.

After the bitter experience of attack on Indian Parliament on 13th December, 2001, India had started assembling its troops on border and for more than a year the troops of both the countries remained standing alert in front of each other. Thus even a small mistake could trigger war between the two countries. The situation was really very dangerous and explosive. Pakistani President threatened that if there was a war Pakistan would use nuclear weapons. On the other hand, India retaliated by saying that she would not make the first use of nuclear weapon but if faced with a nuclear attack India would give a very strong and decisive reply. The situation became so explosive that the whole world was worried about it.

Indian Prime Minister Sri Atal Behari Bajpai, however, brought about a thaw in relations between the two countries when at the occasion of SAARC Conference held at Islamabad in Pakistan, India Prime Minister not only attended the Conference but also made certain peace initiatives. Several delegations of both the countries exchanged visits and created good will. As a part of peace process, Indian Cricket Team visited Pakistan and played several matches over there. The people of Pakistan also showed a lot of good will.

With the change of Government at the Centre, the peace process slowed down and was delayed a little. However, the new Congress Coalition Government has also promised to carry on further the peace process.

India and Pakistan have agreed to meet and start talks on 27th June, 2004. Meanwhile there has been provocation from the side of Pakistan. Pakistan had recently tested Ghowri Missile twice. India has warned that such provocative acts might affect the peace talks.

Legal Aspects.—The attack of five Pakistani terrorists on Indian Parliament on 13th December, 2001 was clearly an armed attack on India if we take the analogy of attack on WTC on 11th September, 2001. This is clearly the violation of Article 2 (4) of the United Nations Charter. It is now clear like crystal that the persons who attacked Indian Parliament belonged to Laksar-I-Toyba and Jais-I-Mohammad and they had the support of ISI of Pakistani Army. Therefore, Pakistan is guilty of intervention against the sovereignty and political independence of India. Since like attack on twin towers of WTC of America on

APPENDIX-II

11th September, 2001, the attack of 13th December, 2001, was an armed attack against India and gave India the right of self-defence as per Article 51 of the charter of the United Nations. America asked India to exercise restraint yet America also agreed that India had the right of self-defence. It need not be over-emphasized that this right of self-defence permitted India to go across the borders and take necessary action against the Terrorist groups over there. But India exercised exceptional restraint.

Moreover, International Law also provides for the right of reprisal. India could retaliate so that the country (Pakistan) who violated International law could be compelled not to violate or could solve the problem. The right of reprisal can be exercised when the other country is guilty of wrongful act or illegal act. Undoubtedly Pakistan was guilty of illegal act and hence India could exercise the right of reprisal. It is true that the charter of the U.N. has affected the traditional right of reprisal. But Pakistan was guilty of attack against the sovereignty and political independence of India by making an armed attack against Indian Parliament. India's right of reprisal could therefore be in accordance with the charter of the U.N. because the U.N. charter under Article 51 permits the right of self-defence.

(LXXX) Godhra carnage and Aftermath : whether it constitutes a matter within the domestic jurisdiction of India?

On 27th February, 2002 Sabarmati Express arrived at Godhra (Gujarat) at 7.43 a.m. Some Kar Sevaks alighted from the train for a cup of tea. It is said that they refused to pay and there was some altercation with the tea vendors. A few minutes after a crowd arrived and started throwing stones on Kar Sevaks. The crowd was, however, dispersed by two constables. Sabarmati Express left Godhra Station at 7.50 a.m. but before the train could travel less than a km. from the Station, someone pulled the chain and stopped the train. An armed mob started throwing stones and torched bogie No. S-6. Glass window panes were broken, petrol bombs and other inflammable substances were hurled at bogie. All the inmates of the bogies nearly 57 Kar Sevaks were torched and burned alive in the most brutal way. None of the inmates of the bogie was allowed to come out of the bogie. This was probably the most brutal and barbaric incident in India since independence. It could not have happened due to sheer instant provocation for non-payment of few cups of tea. It appeared to be pre-meditated and pre-planned. If for a moment we assume that it was due to instant provocation, the tragedy was completely out of proportion of the provocations of any kind and showed the brutality, criminality and barbarism of those who committed Godhra carnage. To the best of knowledge of the author no Muslim Organisation has so far come openly to condemn Godhra carnage when they condemn violence that took place subsequently, they generally avoid mentioning Godhra carnage. After the Godhra incident, even Parliament did not pass immediately a resolution condemning this brutal and barbaric act. The opposition was more interested in taking political mileage out of the violent incidents that took place subsequent to Godhra. It blocked the functioning of the Parliament and demanded the scalp of Narendra Modi, demanding his resignation.

What happened after Godhra carnage in Gujarat was rather worse. Violence erupted in most of the parts of State and remains unabated even now though more than two and a half months passed. The violence that erupted after Godhra had so far taken more than 500 lives, most of the people belonging to minority community. Lakhs of people belonging to minority community had to flee from homes, many of whom are still living in refugee camps.

Several eminent persons and reputed organisations including National Human Rights Commission who visited Gujarat have reported that the Police in Gujarat has either acted in a partisan way or not acted at all to curb the violence. Even army had to be deployed to curb the violence. They have even observed that what happened after Godhra simultaneously throughout the State was pre-planned. All the steps taken failed to achieve the desired result for a long time. It can now be said without a shade of doubt that police and administration in Gujarat failed and failed miserably in their duty. They particularly failed to protect the minority community. The political parties instead of making unanimous effort to bring peace as a first step in Gujarat had been all out to political

advantages of the debacle of Gujarat Government. The situation became further complicated due to the adamant attitude of BJP that it would not remove Narendra Modi from the Chief Ministership of Gujarat. BJP had even given a clean chit to Narendra Modi. If police and administration failed to perform their duties and even adopted a partisan attitude as it was reported towards the entire crisis, the Gujarat Government could not but share its blame and responsibility. Thus the Gujarat Government including Chief Minister cannot be exonerated of their part of the blame.

Later however, it seems that the Central Government acted in the right direction by appointing K.P.S. Gill, the former Director General of Punjab Police who had been responsible for rooting out terrorism in Punjab. His very first step to demand for some battalions of Punjab Commandos or Central Reserve Police Force showed that he had no trust in Gujarat Police. Thus there seemed a silverlining or a light outside the tunnel. The efforts of Mr. K.P.S. Gill bore fruits and normalcy was restored in Gujarat.

A pertinent question arises as to whether Godhra carnage and aftermath are matters within the domestic jurisdiction of India. This question has arisen because some foreign countries including Germany, Holland, U.K, European Union and Switzerland have voiced their concern for continuing violence in Gujarat especially against Muslim Community. The British High Commission in New Delhi reported to the British Foreign office in London on 14th April, 2002 that the continuing violence in Gujarat was aimed at removing Muslim influence from parts of the State. The report was prepared by British diplomats who toured the affected areas. The report placed the death toll at 2,000. The most damaging part of the report was that the post Godhra violence was pre-planned. The report went to add that if Godhra tragedy had not happened another flash point would have been created to justify pre-meditated violence as reaction. This part of the report was not only exaggerated but seemed to be unbelievable. It was based on assumptions. It is well established fact that Godhra carnage was caused by minority community (Muslim). The British assumption could have some basis if it could be established that Godhra carnage was pre-planned by BJP, Bajrang Dal etc. It is totally false and baseless. It must not be forgotten that it were the Britishers who first created the divide between Hindus and Muslims. They seem to be pursuing the same policy even now. It cannot be admitted or accepted that the brutal and barbaric Godhra carnage in which 57 people, mostly Karsevaks returning from Ayodhya, were torched, burned alive could not and did not have any reaction. Indeed the failure of the Gujarat Government to take stern action in time and deal strictly with those who took law into their own hands. One of the probable reasons why reaction of Godhra carnage continued for long time was that no minority or other organisation not even Parliament immediately condemned Godhra carnage. From the beginning the opposition started blaming only those who reacted to Godhra carnage and always avoided condemning Godhra carnage. The political morale in the country have gone so low that even in people's misery and suffering, they go in playing their game of vote banks. When the political situation in the country is such, the foreign countries enjoy fishing into the troubled waters.

On 26th March, 2002, European Union delivered its remarks to the Indian Government expressing concern for the continuing violence in Gujarat-India, on the other hand, instead of explaining the situation with facts and figures and efforts to bring normalcy, India reacted by accusing some of the European Union (EU) Countries of interfering in her internal affairs.

The Bush Administration also on 16th March, 2002 regretted the communal violence in the State of Gujarat and urged a peaceful resolution of issues. Thus America also expressed concern though in an indirect and mildest possible censure over the events in Gujarat. On 23rd April, 2002, the European Union rejected the Indian Government's position that the Gujarat violence is an "internal affair" of India. Germany, Holland, U.K. and E.U. have expressed some common points of concern namely (i) Muslims were made specific targets; (ii) Police was instructed to look the other way or was partisan; and (iii) the relief provided was late and inadequate. U.K. and E.U. went a several steps ahead and alleged that Godhra was only the pretext for pre-planned violence. As pointed out earlier

this is an extreme position and is based on sheer assumptions and cannot be accepted. Contrary to this one can also assume that if Godhra had not happened, subsequent violence might not have occurred at all. Such type of wild allegations based on assumption do amount to interference in internal affairs of India. Such type of allegations can be validly made only after detailed investigations and consideration of all aspects of the problem. Foreign embassies did not make any such detailed investigation nor were they in position to do so.

We may not accept or believe such wild or extreme allegations but the fact remains that in Gujarat violation of human rights has taken place in a very large scale. A pertinent question therefore arises whether other nations, especially the members of the United Nations, can voice their concern in respect of violation of human rights, especially of the magnitude as it took place in Gujarat. To begin with it must be made clear that human rights is no more a matter "essentially within the domestic jurisdictions of a State". It is a matter of international concern. This conclusion can be easily drawn on the basis of following facts and reasons.

The Charter of the United Nations contains a number of provisions concerning human rights. They are contained in the preamble, Article 1(3), Article 13(b), Article 55, Article 56, Article 62(b), Article 68 and Article 76(c). The provisions of U.N. concerning human rights are woven in the Charter like a golden thread. Articles 55 and 56 are of special significance "with a view to creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people," Article 55 charges the U.N. to promote **"Universal respect for and observance of human rights and fundamental freedoms for all with no distinction as to race, sex, language or religion."** This provision is further strengthened by Article 56 under which **"All members pledge themselves to take joint and several action in cooperation with the organisation for the achievement of the purposes set forth in Article 55."** Since Article 56 uses the word "pledge", it creates an obligation upon the members of the U.N. including India to take joint and several action in cooperation with the organisation to ensure respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Reference may also be made to the U.N. Commission on Human Rights which was established by the Economic and Social Council in February 1946. Any individual or group of individuals of a member of the U.N. can send petition or complain to the U.N. Commission on Human Rights through the Secretary General of the U.N. alleging violation of human rights. The Commission sends a copy of the petition or complaint to the country for its comments. After the receipt of the comments, the Commission considers the matter and makes its recommendations.

Besides this, India has signed the two covenants on Human Rights namely, International Covenant on Economic, Social and Cultural Rights (1966) and International Covenant on Civil and Political (1966). When a country becomes a party to an International treaty, it becomes bound by the obligations accepted under the provisions of the treaty. Under the International covenant on Civil and Political Rights for example, an eighteen member Human Rights Committee has been established. If one State Party finds that some other State party is not implementing the provisions of the covenant, it may by written communication bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State Party shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter including reference of domestic procedure and remedies taken, pending or available in the matter. If this matter is adjusted to the satisfaction of both the State Parties, the matter ends here. But if the matter is not adjusted to the satisfaction of both the State Parties concerned within six months after the receipt by the receiving State of the initial communication other State may refer the matter to the Human Rights Committee, by notice given to the committee and to the State. This procedure, however, is based on the principle of reciprocity. That is to say, the State which alleges non-

implementation or violation of the State and the receiving State must make a declaration recognizing the competence of the committee in this respect. If the matter is not settled to the satisfaction of both the State Parties, the next course provided by the covenant is that of conciliation procedure. The Human Rights Committee sends to the General Assembly of the U.N. through the Economic report of its activities.

In addition to the other International Treaties on Human Rights, India has also become party to other International Treaties on Human Rights such as International Convention on the Elimination of All Forms of Racial Discrimination, convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Prevention and Punishment of the Crime of Genocide, Convention on the Rights of Child and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment. These conventions obligate the State Parties including India to fulfil the obligations undertaken under the convention including obligation to submit periodic reports stating the measures they have taken to give effect to the provisions of the convention.

In view of the above developments in respect of human rights, it is too late in the day to argue that violation of human rights including Godhra and aftermath are matters within the domestic jurisdiction. As rightly pointed out by Attorney General of India, Soli Sorabjee, on 13th May 2002 while speaking at a seminar on "Human Rights in Governance", India cannot brush aside concern voiced by foreign countries on the Gujarat situation. He added that it was just not enough for the government to criticize superficially or express resentment over the critical reports of foreign countries. He further added that if their reports were false or exaggerated, the Government of India should respond with facts and figures.

Thus the Government of India's stand that Godhra situation is a matter within the domestic jurisdiction of India is not justified. The government should respond with facts and figures and should explain the action it has taken so far and the efforts that are being made to bring the situation under control and to restore normalcy. To conclude briefly Godhra carnage and aftermath are not matters within the domestic jurisdiction of India. Foreign countries are entitled to voice their concern over continuing violence and violation of human rights in Gujarat. Thus global concern on Gujarat situation is legitimate. But when foreign nations made wild allegations based on assumptions the Government of India should strongly reject their allegation and should respond with facts and figures and explain what has been done and is being done to curb the violence and to restore normalcy.

(LXXXI) American Invasion of Iraq (20th March, 2003).—After overthrowing Taliban Government of Afghanistan, America directed its attention towards Iraq. While in respect of attack on Afghanistan, America had the support of the Security Council but in Iraq the position was quite different. America wanted to attack Iraq immediately but other members of the U.N. Security Council especially France, Russia and China did not agree with the view of America. But America was determined to go ahead and threatened that if the Council did not pass resolution in its favour, America alone would go ahead and attack Iraq. But France, Russia, China and other members of the Security Council were of the view that for any such armed action, Security Council resolution was essential. In the beginning Britain also wanted that America should not act in haste but later on like a reliable and dependable partner, it decided to go ahead alongwith America.

America alleged that Iraq had relations with Al Qaida and that it possessed in large quantities weapons of mass destruction (WMD). Therefore, it was necessary to act against Iraq immediately and to destroy such weapons. America asked UN Security Council to fix last day before which Iraq would have to destroy all WMD and would have to comply with all resolutions of the U.N. including those relating to disarmament.

Yet another objectionable thing was that America wanted to 'oust' or remove Saddam Hussain. Many countries opposed the said "out Saddam Hussain" plan. But America declared that if Saddam wants Iraq not to be attacked, he would have to quit his post and to go out of Iraq. Neither Saddam Hussain nor the people of Iraq were prepared

for this. In order to ascertain the views of the people of Iraq, a referendum was held in Iraq wherein the people voted 100 per cent in favour of Saddam Hussain. On the other hand, the American Senate by a majority of 77 against 23 authorised President Bush of America to wage war against Iraq.

With a view to build pressure against France, Russia and China, America presented a draft resolution in the Security Council which would threaten Iraq with military action. On the other hand, without being pressurized, France and Russia submitted their own resolutions. These draft resolutions removed most of the strict language used by America because countries feared that on the excuse of strict language Americans might not get an excuse to take military action against Iraq. On 27th October, 2002, America threatened the U.N. that if it did not pass resolution against Iraq, America along with its allied countries would act against Iraq so as to disarm it. The new American resolution asked Iraq to comply with the directions of U.N. Weapon-Inspectors otherwise it would have to face serious consequences. This resolution was passed unanimously in the Security Council. Thereafter U.N. Weapons Inspector reached Iraq on 17th November, 2002. The U.N. Inspectors said that it was the last opportunity for Iraq to disclose relevant information. It may, however, be noted that despite constant American pressure U.N. Inspectors could not find any evidence of WMD much less there being in large quantities. Thereafter America did not let the U.N. Inspector to finish their work and demanded that the Inspectors should complete their work by 27th January, 2003.

In the meantime America was preparing for war and went on harping that if the U.N. did not permit attack against Iraq it along with allied nations would go ahead and attack Iraq. The countries of European community were not in favour of such an action. In their view, for any such action permission of or approval of the U.N. would be necessary. U.N. Secretary-General Kofi Annan also said that there was no need for America to attack Iraq. Ultimately America did not allow the U.N. Inspectors to complete their work and attacked Iraq on 20th March, 2003. This action was condemned by several countries including Russia and China. Iraq requested for an emergency meeting of the Security Council. The representative severely criticized American action but American representative along with its group walked out of the meeting in protest. On 30th March, 2003, American Army Captured an Iraqi General and killed one colonel. On 3rd April, 2003 American army captured the bridge on river Tigris. Subsequently, American Secretary of State for Foreign Affairs sought permission of Turkey to send American troops across its border. On 4th April, 2003 American troops captured airport of Baghdad. Thereafter, American got victory over Iraq. On 23rd July, 2003 American troops killed the sons of Saddam Hussain.

After about constant efforts of six months on 13th December, 2003, American army captured and arrested Saddam Hussain, about 100 miles distance from his home city Tikrit. After victory over Iraq it was a great achievement for American army.

But despite the arrest of Saddam Hussain there was no improvement in law and order situation in Iraq. Rather it was worsening day by day. American army is being attacked time and again and in such attacks a number of American soldiers have died. The incidents of theft and looting have increased in an unprecedented scale. Even after the capture and arrest of Saddam Hussain protests are being organised against American and allied troops. While on the one hand some Iraqi people have expressed satisfaction over the arrest of Saddam Hussain, on the other hand, people in large number have opposed such arrest.

There is widespread dissatisfaction in Iraq against American army. Attacks are being made targetting American troops. With a view to control such disaffection America increased the number of its troops in Iraq. But even this has failed to bring about improvement in law and order situation in Iraq. The situation has become so bad that the U.N. office and its staff are not safe in Iraq. Even they have been attacked several times. Being compelled in view of the deteriorating situation the U.N. Secretary-General withdrew the U.N. staff, for a temporary period, from Baghdad.

What is still worse for the U.S. image is that it has been accused of violation of human rights in a large scale in Iraq. The reports of violation of human rights have not only

been confirmed but even admitted by U.S. army men who have been found guilty of torturing, humiliating and degrading treatment with Iraqi prisoners. On 19th May, 2004 U.S. Army spc-Jeremy C scirtis pleaded guilty to three counts of abuse in the first court-martial stemming from mistreatment of Iraqi prisoners at the Abu Gharib prison on 21st May, 2004. U.S. media reported that Iraqi prisoners were forced to retrieve their food from the toilet ridden like animals and sexually assaulted. On the same day the U.S. asked the U.N. Security Council to extend the exemption granted to its troops serving abroad from prosecution by the International Criminal Court amid stiff opposition from human rights groups in view of the abuse of Iraqi prisoners in Abu Gharib prison. On 25th May, 2004 the U.S. and Britain presented the Security Council a draft resolution on Iraq which calls for transfer of sovereignty to Iraqis, provides for control of interim government over the country's oil resources and provides for the creation of an American led multi-national force with initial mandate for one year. The draft empowers the multi-national force to "take all necessary measures" to maintain peace and security. But Germany and three permanent members namely Russia, China and France demanded major changes in the draft resolution. The aim of the changes sought was to increase the sovereignty of Iraqi Government.

Legal Aspects.—It is quite clear that if any member of the U.N. attacks another member State without the authorisation of the U.N. Security Council except on the ground of self-defence, it will be violative of International Law including the charter of the U.N. Thus American invasion of Iraq was clearly violative of International Law including the law of the U.N. One of the excuses for the U.S. to attack Iraq could be the presence of weapons of mass destruction (WMD) in Iraq. Even after victory of Iraq and a lapse of nearly one year and five months, no evidence of WMD has been found in Iraq. There was therefore, no justification, legal or otherwise, for America to attack Iraq.

America's attack of Afghanistan could be justified because it has the support of the U.N. Security Council including all the permanent members. But in case of Iraq there was no such support. On the other hand, several permanent members opposed America's unilateral action in Iraq. It was thus a pure and simple invasion clearly violative of Article 2(4) of the charter of the U.N.

Moreover, "oust Saddam Hussain", campaign was clearly violative of International Law including the law of the U.N. The United Nations Organisation is based on sovereign equality of all its members. The people of sovereign States have full right to choose their own political system, their own political leader etc. No country, not even America, has right to depose the head of State of another country. Under Article 2(7), even the U.N. cannot intervene in matters which are essentially within the domestic jurisdiction of any member State. The only exception in respect of the U.N. is the ground of maintenance of International Peace and Security. But for such an action the U.N. Security Council must first decide under Article 39 that maintenance of peace and security is threatened or likely to be threatened. But in case of Iraq neither the Security Council has taken any such decision nor has it permitted the U.N. to take military action in Iraq. Thus America's invasion of Iraq is clearly violative of International law including the law of the charter of the U.N.

America's attack on Iraq is clearly violative of Article 2(4) of the charter of the United Nations. After the decline of Soviet Union, America became the only Super Power. America is taking undue advantage of this situation. America considers and acts as an International Policeman, but present International Law including the charter of the U.N. does not recognise it. The nations of world must condemn America's invasion of Iraq in strong words. Moreover, the responsibility of re-construction of Iraq and the restoration of law and order must be only that of America.

Last but not the least, America is guilty of violation of human rights in Iraq. Its mistreatment of Iraqi prisoners has aroused wrath and anger of the whole world. America declares itself the champion of human rights but in practice it is the greatest violator of human rights. The glaring example of this is the flagrant violation of human rights of Iraqi

prisoners of war. The mis-treatment and violation of human rights of Iraqi prisoners of war is not only confirmed but the officials of American army have admitted it.

(LXXXII) Twelfth SAARC Summit (January, 2004).—The 12th SAARC Summit concluded at Islamabad (Pakistan) on 6th January, 2004. The Summit concluded after signing of a historic agreement on free trade, an Additional Protocol on Terrorism and a Social Charter. At the concluding session the summit adopted the 'Islamabad Declaration' which affirmed the commitment of member nations to fight terrorism and promote regional trade. It was decided that the next summit will be in Dhaka in January, 2005.

The South Asia Free Trade Area (SAFTA) agreement provides for the creation of a free trade area in the region by 2015.

The Additional Protocol on Terrorism was signed by the Foreign Ministers in the presence of their heads of State and Government. The protocol deals with tackling of terrorism.

The Social Charter contains the pledge of seven nations—Indian, Pakistan, Bangladesh, Maldives, Sri Lanka, Nepal and Bhutan to create a 'just and equitable' partnership in the region and to work towards the creation of a South Asian Economic Union.

It may be noted that SAARC Summit (2004) was attended by Indian Prime Minister Sri Atal Behari Bajpai and Indian Foreign Minister Yaswant Singh. The attending of the Summit by Indian Prime Minister at Islamabad (Pakistan) also marked the first major step which brought about thaw in Indo-Pak relations. This was followed by other steps which have significantly improved relations between India and Pakistan. Though no major or minor dispute has so far been settled between the two countries yet the thaw in their relations is being regarded as significant after the attack on Indian Parliament. The relations between the two countries had deteriorated so much so that the armies of the two countries faced each other for quite a long time. The credit for bringing about a thaw in relations between the two countries goes to Indian Prime Minister. The Indian peace initiatives have been appreciated all over the world.

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