A careful examination of this resolution would indicate the possible purposes for which a state may use terrorism as a tactic. In the light of the parameters provided by the above resolution it is possible to hold that there are instances in which state terrorism was used. It would include, *inter alia*, the armed attack on Libyan Arab Jamahiriya in 1986.[30] On April 14, 1986, the United States of America bombarded Libyan installations including the Libyan leaders house, during which the daughter of Colonel Gaddafi was killed. The U.S. had asserted that it had "irreputable evidence" that Libya had aided terrorist acts.[31]

These instances raise profound procedural and substantive legal questions such as : how to settle a dispute of this nature especially when it is claimed that a state has evidence about other state's involvement? What is the meaning of self-defence in the context of combating terrorism? What are the remedies available before an armed attack? etc.

The united Nations General Assembly, however, condemned the military attack perpetrated against the Libyan Arab Jamahiriya on April 15, 1986 stating that the attack constituted a violation of the Charter of the United Nations and international law.[32] It also called upon the Government of United States to refrain from the threat or use of force in the settlement of disputes and differences with the Libyan Arab Jamahiriya.[33] Further it affirmed the right of the Libyan Arab Jamahiriya to receive appropriate compensation for the material and human losses inflicted upon it.[34] There is a deep concern and anxiety on the part of several states that state terrorism in international relations exists to the deteriment of international peace and security.[35] It is felt by them that such instances of state terrorism should be identified in order to formulate a comprehensive understanding of international terrorism.[36]

In this connection it is worthwhile to mention that certain norms and criteria might be formulated in order to combat international

30. For the facts of the case see John F. Murphy, "The Future of Multilateralism and Efforts to combat International Terrorism" *Columbia Journal of Transnational Law* Vol 25, No.1 1986 pp. 86-88.
31. *Ibid.*
32. GA Resolution 41/38 of November 20, 1986
33. *Ibid.*
34. *Ibid.*
35. See the Sixth Committee debate during forty-second session: UN Doc. A/C. 6/42 SR. 29, A/C. 6/42 SR. 30, A/C. 6/42 SR. 60, A/C. 6/42 SR. 34, A/C. 6/42 SR. 32, A/C. 6/42 SR. 33, A/C. 6/42 SR. 28.
36. *Ibid.*

terrorism by the so called victim States, so that the policy of state terrorism may be formulated on the basis of Manila Declaration on the Peaceful Settlement of International Disputes[37] and the Declaration on the Enhancement of the effectiveness of the Principle of Refraining from the Threat or use of force in International Relations.[38]

It may be observed that in the absence of universally acceptable definition of terrorism, the recent trend is to specify several international crimes as terroristic acts and extraditable offences. Yet with all these frantic efforts at international level the world is still very far away from a general and universally accepted Convention on international terrorism. The difficulties arise from the emotive nature of the concept itself which has led to fundamental disagreement on definition and the scope of the acts to be included, and in particular whether and to what extent the concept should apply to regionally and internationally recognized national liberation movements. It has been very aptly observed that "...Terrorism is a historically misleading and politically loaded term which invited conceptual and ideological dissonance".[39] Another author has denounced the term "terrorism" itself.[40]

Terrorism and National Liberation Movements

One of the major stumbling blocks to having an effective convention on terrorism is the insistence of some countries, particularly in the West, to use the term to indiscriminately embrace peoples fighting for their inalienable right to self-determination and independence against colonial and racist domination and *apartheid*. This has been articulated very strongly in a recent article by Abraham D. Sofar in which he states:[41]

> "Civilized nations have tried to control international terrorism by condemning it, by treating it as piracy, by treating terrorism under the laws of affected States, by creating international norms establishing as criminal, certain acts wherever committed, and by operating through extradition and other devices in aiding nations attacked by terrorism. An appraisal of these efforts leads to a painful conclusion: the law applicable to

37. For details see *UN monthly Chronicle* 1987 No. 2.
38. For details see *UN monthly Chronicle* 1987 No. 2.
39. Thomas M. Franck and L. Bert Lockwood Jr. "Preliminary Thoughts Towards an International Convention on Terrorism" *American Journal of International Law* Vol. 68 (1970) p. 69.
40. John F. Murphy - *supra* n.
41. Abraham D. Sofar, "Terrorism and the Law" *Foreign Affairs* (N.Y.) Summer 1986 p. 902.

international terrorism is not merely flawed, it is perverse. The rules and declarations seemingly designed to curb terrorism have regularly included provisions that demonstrate the absence of international agreement on the properiety of terrorist activity. On some issues the law leaves political activity unregulated. On other issues the law is ambivalent, providing a basis for conflicting arguments. At its worst the law has in important ways served to legitimize international terror, and to protect terrorists from punishment as criminals. These deficiences are not the product of negligence or mistake. They are intentional."

There is no doubt that in his worst case scenario, the author is referring to the exclusion of national liberation movements. Although such a view is completely incongruous with the existing and emerging law, it is, however, essential to trace the genesis of the legality of the national liberation movements and their inalienable right to self-determination etc., so that law governing the national liberation movements would be placed in proper perspective.

A. Right of Self-determination

In the history of national awakening the issue of people's inalienable right to decide for themselves has been of fundamental significance. Although the term self-determination gained the legal connotation only recently it had been understood as a matter of right throughout history by people wanting to liberate themselves. For instance, this right was defined in the Declaration of Independence during American Revolution as follows:[42]

> "All men are created equal. Governments are instituted among men, deriving their just powers from the consent of the governed, it is the *Right of the People* (Emphasis added) to abolish it or alter it".

Nor did the English and French revolutions leave any doubt on the right of the people to effect revolutionary transformation of their life. The Right of self-determination was further reinforced and consolidated in the beginning of the present century by the October Revolution of 1917 in Soviet Russia. In fact this right of self-determination was enshrined in its constitution as well as other

42. G. Starushenko, "International Law and National Liberation" *International Affairs* (Moscow) February 1983, p. 81.

Decrees issued by the new Soviet State, particularly in the context of nationalities and their rights.

The Proclamation on this right by the European and American revolutions was especially important for the oppressed peoples in the colonies (the present day Third World) for it is this principle that later became the legal ground for the total abolition of colonialism. However, the principle does not mean secession but implies the possibility of various nations and nationalities uniting voluntarily into a big state on a federal or other basis.

Further it enables not only the granting of national independence but also creates for its fullest realization and enjoyment of their political, economic, cultural and social dimensions.

It is, however, only with the founding of the United Nations Organisation that this principle obtained a universal recognition. In fact the Preamble of the UN Charter begins : "We the *Peoples* of United Nations *Determined*" (emphasis added) and goes on to state, "to develop friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples.[43] Further the Charter seeks to achieve international economic and social cooperation on the basis of this principle.[44]

Close on heels, the Universal Declaration on Human Rights while recognising the legitimacy of liberation indirectly warned the international community "Whereas it is essential, if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression that human rights should be protected by law.[45] The international Covenants on Human Rights[46] in their respective article 1 states, "All people have the right of self determination" and further mandate : "The States parties to the Present Covenant shall promote the realization of the right of self-determination, and shall respect that right in conformity with the provisions of the Charter of the United Nations".[47]

The Asian, African and Carribean peoples struggle for national liberation from colonial yoke, led the United Nations General Assembly to adopt the Declaration on the Granting of Independence to Colonial

43. Article 1 para 2 of the UN Charter.
44. See Article 55 of United Nations Charter.
45. See the Preamble of the Universal Declaration on Human Rights. For the text see Ian Brownlie, *Documents on Human Rights*, (1971).
46. International Covenant on Civil and Political Rights 1976 and the International Covenant on Economic, Social and Cultural rights 1976. Ian Brownlie, *ibid*.
47. See para 3 of Article 1 of these conventions.

Countries and Peoples,"[48] which states "All peoples have the right to self-determination".[49] It is considered that the principle of self-determination is a part of the obligations stemming from the United Nations Charter and is an authoritative interpretation of the Charter.[50] Subsequently its validity was confirmed by a number of intruments of historical and legal importance.[51] Finally the judicial recognition came through the Advisory Opinion of the International Court of Justice relating to the *Western Sahara* case which confirmed the validity of the principle of self-determination.[52]

The right to self-determination also seeks to clarify and strengthen the fundamental principles of international law such as state sovereignty, sovereign equality, non-intervention, non-use of force etc. However, the right to self-determination has in the view of many has become *jus cogens* principle.[53]

B. National Liberation Movements : Subjects of International Law

People(s) playing a decisive role in the struggle to realise their right of self-determination at some stage come to enjoy a political status *vis-a-vis* other peoples and states. In the course of such protracted struggles they emerge as independent, more organized and tangible participants in international relations. International law, in due course takes note of such developments and seeks to streamline their rights and obligations.

The national liberation movements possess certain elements that would give rise to a pre-state status for these movements. The elements of such a pre-state formation are political entity (the struggling nation/people), a national front (representative body) an armed wing, in order to wage the liberation war. Sometimes on the basis of these there may even be a government-in-exile or provisional government.[54]

48. GA Resolution 1514 (XV) of December 14, 1960.
49. *Ibid.*
50. Ian Brownlie, *Principles of Public International Law* (3rd edition) Oxford University Press (1979) p. 595 also Humphrey Waldock 106, *Hague Requiel* 1962 (11), at p.33 *Annual Report of the Secretary-General* 1961 p. 2.
51. For instance, Communique of the Bandung Conference, 24 April 1955, Declaration of the Belgrade Conference of the Non-Aligned Countries (since then all summits of Heads of State and Governments of Non-Aligned Movement); The Charter of the Organisation of African Unity; The Pacific Charter of 8 September 1954; Declaration on the Principles of International Law concerning Friendly Relations (1970); Banjul Charter of Human Rights, etc.
52. *Advisory Opinion on Western Sahara*, 1975 *I.C.J. Reports* 12, 33.
53. See Ian Brownlie *supra.*
54. G.Tunkin (ed) *Text Book on International Law* (Progress Publishers) 1986.

It is, therefore, inevitable that such struggling nations or peoples with these fundamental pre-state attributes enter into legal relations with subjects of international law, such as the metropolitan states, other states and international organisations.[55] Thus, the basic right to self-determination due to protracted struggle culminates in immediate legal rights such as : to enter into relation with states and international organisations; to send representatives to engage in negotiations with states and participate in the work of the international organisations and conferences; to participate in the creation of international legal norms and to implement operating norms independently; to apply any form of compulsion against the metropolitan country and receive international legal protection in course of its struggles as well as necessary assistance from states, international organisations and other struggling nations and peoples.

Recognition by the United Nations General Assembly of the national liberation movements is very significant because such recognition would irreversibly put the seal of international legal personality. The General Assembly has at present recognised the following as the national liberation movements: Palestinian Liberation Organisation (PLO)[56] symbolising the struggle of the Arab People of Palestine for their homeland and against Zionism;[57] South West African People's Organisation (SWAPO)[58] against South African colonialism and racism; Pan Africanist Congress (PAC) and African National Congress (ANC)[59] fighting for freedom from settler colonialism and against Apartheid; and POLISARIO representing the Saharan Arab Democratic Republic (SADR).[60]

C. National Liberation Movements and the Right to Wage War and Receive Material Support

The right that the National Liberation Movements are entitled to wage liberation wars has been confirmed by the international community on several occasions. The Cairo Conference of Non-Aligned States recognised liberation wars as legitimate.[61] It stated,

55. *Ibid* Chris Okeke, *"Controversial Subjects of International Law"* (1974).
56. GA Resolution 3236 (XXIX).
57. GA Resolution 3379 (XXV) describes zionism as a form of racism which is a crime under international law.
58. SC Resolution 269/1967.
59. GA Resolution 3151 (XXVIII).
60. GA Resolution 2229 (XXI); 2353-II (XXII), 2425 (XXIII) and 2591 (XXIV).

"The process of liberation is irresistable and irreversible. Colonised peoples may legitimately resort to arms to secure the full exercise of their right to self-determination and independence if the colonial powers persist in opposing their natural aspirations.[62] Conforming to such desire of the non-aligned countries the General Assembly urged all states "to provide material and moral assistance to the national liberation movements in colonial territories.[63] The *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*[64] which was adopted by concensus in 1970, it is provided :

> "Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principles of their right to self-determination and freedom and independence. In their action against and resistance to such forcible action in persuit of their right to self-determination, such people are entitled to seek and to receive support in accordance with the purposes and principles of the Charter of the United Nations."

It is clear that if every action undertaken by liberation movements is to be condemned as terrorism, the above Declaration would be negatory. It was in realization of this self-evident fact that the UN Definition of Aggression adopted in 1974 specially provides in Article 7 :[65]

> "Nothing in this definition .... could in any way prejudice the right to self-determination and independence, as derived from the Charter, of peoples forcibly deprived of that right.... particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support in conformity with the Charter..."

The Afro-Asian countries, and all those who symapthize with the liberation struggle, have ensured that this concern has been reflected in virtually all the Conventions that have been adopted on this topic.

61. Declaration of the Second Conference of Heads of States or Government of Non-aligned Countries Cairo, October 5-10, 1964, Two Decades of Non-Alignment, Documents of the Gatherings of the Non-Aligned Countries 1961-1982, published by Ministry of External Affairs, Government of India, New Delhi, pp. 15-30.
62. *Ibid*, p. 18.
63. GA Resolution 2189 (XXI) of December, 13, 1966.
64. GA Resolution 2625 (XXV) of October 24, 1970.
65. GA Resolution 3314 (XXIX) of December 14, 1974.

A typical example is the express formulation in the *International Convention Against the Taking of Hostages*[66] with respect to the status of national liberation movements struggling against colonial and alien domination and racist regime. Article 12 of the Convention provides that the Convention shall not apply to an act of hostage taking committed in the act of armed conflict "in which people are fighting against colonial domination and alien occupation and against racist regime in the exercise of their right of self-determination who have already been given due recognition as combatants in the *Additional Protocol I to the 1949 Geneva Conventions*".[67]

It is true that there is no parallel provision in either the *Hague Convention for Suppression of Unlawful Seizure of Aircraft of 1970 or the Montreal Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation* of 1971 or the *Tokyo Convention on Offences and other Acts Committed on Board Aircrafts of 1963*. But it can be argued that any such act in so far as they can be brought within the ambit of Article 1(4) of Protocol I would be covered by it.

It should also be pointed out that the 1973 *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents* does not contain a specific article on national liberation movements but it was adopted along with a resolution which recognizes that nothing in the Convention could "....in any way prejudice the exercise of the legitimate right to self-determination and independence.... by people struggling against colonization, alien domination, foreign occupation, racial discrimination and apartheid".[68] In addition, paragraph 6 of the resolution declared that "....the present resolution, whose provisions are related to the amended Convention, shall always be published together with it". In 1976, however, the General Assembly unequivocally recognised the legitimacy of armed struggle by the people's fighting for self-determination as follows :[69]

> "Reaffirms the ligitimacy of the people's struggle for independence, territorial integrity, national unity and liberation from colonial and foreign domination and alien subjugation by all available means including armed struggle".

66. *op. cit.*
67. United Nations, *Juridical Yearbook* pp. et. seq.
68. GA Resolution 3166 (XXVIII) 5 Feb., 1974 Sec. 1312 M 41 (1974).
69. GA Resolution 31/34 of 30 November 1976.

D. Applicability of Humanitarian Law

Many writers and government representatives have blamed the Afro-Asian countries for their insistence on the protection of freedom fighters from condemnation for their activities as condoning terrorism.[70] The assertion of the rights of freedom fighters became the law since the adoption of Protocols I and II, Additional to the Geneva Conventions of 1949.[71] In fact the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts 1977 was of historical importance because it was for the first time that in course of this conference, efforts were taken to streamline the wars of national liberation that were the focal point of the world during 1970s. Several liberation movements were invited to follow the work of the conference but without voting rights.[72] The Third World states who had the first opportunity in history as equals to reformulate the traditional law of armed conflicts insisted and rightly so, that the wars of national liberations be treated as international armed conflicts and no longer as internal or civil strifes.[73] The Third World had a point in it, because firstly many of them attained their independence through struggles and many peoples were still fighting against colonialism, racism, alien domination, *apartheid*, Zionism etc.

Article 1(4) of Protocol I states the criteria for international armed conflict as follows:

> "The situation referred to in the preceding paragraph i.e., international armed conflicts including armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and co-operation among states in accordance with the Charter of the United Nations."

70. For instance see Antonio Cassese, "Wars of National Liberation and Humanitarian Law".
71. For the text of 1977 Protocol I and II Additional to Geneva Convention 1949, see International Legal Materials Vol. 16, 1977 p. 1391 and p. 1442.
72. For the list of such liberation movements see official records of the Diplomatic Conference on the reaffirmation and development of International Humanitarian Law Applicable in Armed Conflicts, Geneva 1974-77 Vol. I p. 7.
73. These were the expressions of GA Resolution 2597 (XXIV) of 16 December 1969 and 3103 (XXVIII) of 12 December 1973.

One of the major achievements of the Conference, besides upgrading the wars of liberation as international conflicts, was to make a clear distinction between guerrillas and terrorists. This was necessitated by the fact that guerrila warfare was, on many occasions, the only way for the people fighting wars of liberation.[74] At the same time the Protocol I has not minced words about condemning terrorist acts during the international armed conflicts. It is provided that if a member of an armed force (that includes both states and liberation movements) kills, injures or captures anybody while in civilian disguise, he is guilty of perfidy.[75] Moreover all acts of terrorism are prohibited by virtue of Article 51(2) which states,

> "The civilian population as such, as well as individual civilians shall not be the object of attack. Acts or threats of violence the primary purpose of which is to *spread terror among the civilian population* (emphasis added) are prohibited."

It is sufficiently clear that whoever commits an act the intention of which is to sow terror among innocent people cannot escape the liabilities of a terrorist or a war criminal thus inviting the established procedure of *extradite* or *prosecute*. The Protocol also prohibits various forms of terrorism such as murder, torture, the taking of hostages, summary executions and inhuman teatment making the Additional Protocol I as the most balanced system of law wherein the legitimacy of the national liberation movements and the illegitimacy of terrorism have been properly distinguished. Perhaps it is due to this that the Protocol I & II were adopted by consensus.[76]

E. Political Offence in the Context of International Terrorism and National Liberation Movement

One of the basic principles of the law of extradition is that the political offenders cannot be extradited or prosecuted. This is one of the first exceptions that has enjoyed the force of law for nearly one and a half centuries. It means that there are certain offences that while committed in the course of a mass uprising or civil strife should not be counted as pure crime for the purposes of extradition.[77]

74. See Hans-Peter Gasser, "An Appeal for Ratification by the United States" *American Journal of International Law* Vol. 81, No.4 October 1987 p. 912-925.
75. Article 37.
76. Hans Peter Gasser, op cit p. 915.
77. See generally, Ivan Shearer, Law of Extradition, also *Extradition of Fugitive Offenders. The Need to Review the 1961 Articles containing the Principles concerning Extradition of Fugitive Offenders.* Doc. No. AALCC/XXVII.

However, the use of terrorism for political ends has brought in its wake a rethinking on this question. Over a period of time certain offences were removed from the political offence exception and treated as crimes. For instance all the conventions and arrangements that dealt with extradition have prescribed certain instances such as murder of innocent civilians, attempt to or murder of a Head of a State and his family, hijacking, kidnapping internationally protected persons, hostage taking, stealing nuclear material, arson, loot, offences relating to fire arms etc. as crimes and not to be treated as political offences.[78]

However, the current thinking is only to narrow down the scope of political offence even in the wake of increased terrorist activities, but not to remove the exception itself. The continued validity of the political offence exception is crucial even today in the context of people fighting against colonialism, racism, zionism etc. Besides this the institution of asylum also underscores that there could be instances where the offences are not purely criminal but political. Any effort seeking to combat terrorism should take note of this.

Unilateral Refutation of National Liberation Movements

It would seem that the efforts to distinguish international terrorism from national liberation movements suffer not because international law is silent on this point, but precisely because of the unprecedented unilateralism adopted by some states in treating a genuine and legitimate liberation struggle as terrorism. This trend has been exemplified in a classical manner by the repeated attack on PLO by the USA holding that PLO is nothing but a terrorist organisation. This would raise serious questions as to under what provisions of international law that a state can allege any other nation or people as terrorists.

The U.S. Anti-Terrorism Act, 1987

The U.S. Anti-Terrorism Act, 1987[79] unequivocally refutes the fact that the PLO is a national liberation movement. On the

78. European Convention on Extradition 1957, European Convention of Suppression of Terrorism 1977, SAARC Regional Convention on Suppression of Terrorism 1987, Commonwealth Scheme for the Rendition of Fugitive Offenders as Renewed in 1986 and Indo-Canadian Extradition Treaty 1987.
79. 22. USC. 5201, Title X sections 1001-1005. For the text of the Act see *International Legal Materials* Vol. XXVII No.3 May 1988 pp 756/7.

contrary the Act brands the PLO as a terrorist organisation.[80] Based upon this legislation the U.S. has taken a series of steps to undermine the legal position of PLO. For instance, it had first sought to evict the PLO's Permanent Mission to the United Nations on the basis of the Terrorism Act.[81] However, the U.S. has not succeeded so far due to the negative ruling given by the U.S. District Court in this regard.[82] Secondly, the U.S. has denied to grant visa for the Chairman of the PLO thus preventing him from visiting the United Nations General Assembly, arguing that the PLO Chairman "knew and condoned" terrorism.[83]

The United States has taken these drastic steps in spite of the fact that the PLO enjoys certain rights and privileges by virtue of its being a permanent observer to the United Nations.[84] The U.S. decision to refute its obligations to submit the matter for arbitration has been found invalid by the International Court of Justice in its Advisory Opinion in this regard.[85] Moreover, the U.S. reliance on its domestic legislature to refute international legal obligations under its Headquarters Agreement has also been held invalid.[86]

The Palestinian Liberation Organisation has been universally recognised as the sole legitimate representative of the Palestinian people in their struggle to exercise their inalienable right to self-determination.[87] Further, it has already been declared as a state[88] and several states have recognised the newly proclaimed Palestinian State.[89] It would seem that by virtue of the declaration of statehood and its consequent recognition by other states the PLO has acquired new legal rights and privileges.

80. Section 1005(b) states that "therefore the congress determines that the PLO and its affiliates are a terrorist organisation and a threat to the interests of the United States, its allies, and to international law."
81. See the complaint lodged by the United States before United States District Court for the Southern District of New York seeking to evict the PLO Observer Mission *ILM op. cit.* pp.790-798.
82. See *The Hindu* (Madras) 31 August 1988.
83. See *The Indian Post* (Bombay) Nov. 24, 1988.
84. GA Resolution 3237 (XXIX) of 22 November 1974 endorsed the status of a permanent observer for PLO regarding the rights and privileges of PLO as a permanent observer see the GA Res. 42/210 B, and A/Res 42/229.
85. ICJ. Applicability of the obligation to arbitrate under section 21 of the United Nations Headquarters Agreement 26 June 1947. Advisory opinion of 26 April 1988 p. 34.
86. *Ibid.*
87. See GA Resolution 3236 (XXIX).
88. *The Times of India* (New Delhi) 16 November 1988.
89. Several states have recognised the new State of Palestine, see *The Indian Express* (New Delhi) November 16, 1988.

It might, however, be pointed out that though the U.S. Anti-Terrorism Act is not valid under the contemporary rules of international law relating to the national liberation movement, it is essential to examine such legislations much more closely in the context of attempts to define terrorism and differentiate it from the peoples struggle for liberation.

Analytical Summary

In this preliminary study it is sought to focuss upon the broad contours of international law relating to international terrorism and the national liberation movements. It has been demonstrated that international law has treated these two issues at altogether different levels in view of the fact that they possess different objective attributes. Accordingly, there have come into existence two distinct legal regimes with adequate rules to deal with them.

It is significant, however, to note that the international community has been making conscious efforts to distinguish international terrorism from peoples struggle for liberation on almost all occasions of law making to combat international terrorism. This trend was visible particularly since 1970s. For instance, certain activities have been identified as terrorist acts accepted as such by all states including national liberation movements. Whoever commits such offences would be liable to either be *extradited or prosecuted*. On the other hand the right of self-determination of peoples struggling against international crimes such as colonialism, apartheid, racism etc., has been accepted as a principle of *jus cogens*. Moreover, any use of force or mercenaries or other methods against national liberation movements are treated as international crimes. Thus, it would seem that international law is rapidly growing with a view to distinguishing these two problems. The juridical upshot of these events is that the efforts to combat, control and eliminate international terrorism has not questioned in any way the legal basis of right to self-determination.

The definitional aspect of terrorism as stated earlier, is beset with conceptual problems. The legal framework that has emerged so far deals only with the individual and group terrorism and does not seek to address the question of state terrorism in international relations.

In view of the fact that there exists state terrorism, any effort to define international terrorism would be incomplete if it does not include state terrorism. The scope and definition of state terrorism

could be addressed within the same methodological parameters that have been used to tackle individual and group terrorism. Consideration could be given to consider the instances of international crimes that are contemplated in the Draft Code of Offences Against the Peace and Security of Mankind to be construed as instances of state terrorism. They would tentatively include: the offences contained in Article 2 of 1954 Draft Code of Offences as well as those that are currently being considered by the ILC, such as colonialism, annexation, alien domination, racism, and other form of discrimination by an occupying power. Such an approach would seem to be the only way to tackle the state terrorism at this juncture.

A very serious problem in comprehending the distinction between international terrorism and national liberation movements is the partisan conclusions about these two phenomena on the basis of ideological proclivities as against the universal consensus and objective rules of international law that have been arrived at on these matters. This is further compounded by the so-called counter-measures that are used to combat terrorism because, of late, it has become more of a ruse to wage war and aggression than genuinely combating terrorism. This trend has resulted in branding certain developing countries for ideological reasons as terrorist states and that they actively involve themselves in spreading international terrorism. Thereupon, unilateral, unlimited, covert and overt use of force is being sought to be institutionalised and systematised in international relations in the name of combating international terrorism In view of such serious problems, there is an urgent need to lay down certain norms and principles that could be applied while combating terrorism.

There exists provisions in the law of extradition, wherein, even at the height of terroristic activities around the world, certain acts are considered as political offences enabling the alleged fugitive the right of asylum in other States. It is in this context that the question of political offences exception *vis-a-vis* the national liberation movements should be addressed, so that it would be established that not all the acts committed by the peoples struggling for liberation are international crimes. Such a probing is necessary because as long as the underlying causes of terrorism remain the chances of commiting both terroristic acts and political offences would also remain. Hence any effort to formulate a universally acceptable convention on international terrorism must accommodate and enlarge the concept of political offence.

It might, however, be mentioned that there exists a difference regarding the sources of the legal regimes relating to both international terrorism and national liberation movements. Whilst, the legal regime to combat international terrorism has emerged mainly through conventions, the legal regime regarding the national liberation movements has come into existence mainly on the basis of custom and state practice eventually codified in Article 1(4) of 1977 Protocol I to Geneva Conventions, 1949. Further, the legal incidents or attributes of national liberation movements remain as yet fragmented and need to be placed together as a coherent body of law. It is possible to do so by a declaration of the United Nations General Assembly spelling out the legal criteria of the national liberation movements. The proposed UN Conference on this question might as well consider such a possibility.

To sum up, contemporary international law has brought into existence, with regard to national liberation movements, a set of legal criteria that could be applied to distinguish the same from international terrorism. These include, *inter alia*:

(i) The right to self-determination of peoples is a principle of *jus cogens;*

(ii) This right is the jurisprudential fountain head for the birth of the peoples struggle for liberation (otherwise called national liberation movements)

(iii). The national liberation movements have acquired the legal personality and attributes of a subject of international law;

(iv) The national liberation movements have a right of armed struggle and the right to seek assistance from the international community;

(v) The national liberation movements have acquired the legal status of combatants under the contemporary international humanitarian law;

(vi) They are recognised universally, particularly by the General Assembly and regional organisations such as OAU and League of Arab States as equal participants in international relations;

(vii) In view of the fact that they are emerging states, international law not only grants and protects their rights but also prohibits any crimes against them;

(viii) The national liberation movements possess the right of self-defence, under the U.N. Charter; and

(ix) The national liberation movements do not assert and are not entitled to unlimited means of waging the struggle and would be responsible for terrorist acts committed against innocent civilians.

IX. United Nations Decade of International Law

(i) Introduction

The General Assembly of the United Nations at its Forty-fourth Session had by its Resolution 44/23 declared the Decade of the Nineties as the United Nations Decade of International Law and it (the General Assembly) considered that the main purposes of the Decade should be :

(i) To promote acceptance of and respect for the principles of international law;

(ii) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;

(iii) To encourage the progressive development of international law and its codification; and

(iv) To encourage the teaching, study, dissemination and wider appreciation of international law.

In order to gather specific proposals for the programme for the Decade and on appropriate action to be taken, the Secretary-General of the United Nations was requested to seek the views of member States, appropriate international bodies and non- governmental organizations on the programme for the decade and on appropriate action to be taken during the decade, including the possibility of holding a third peace conference at the end of the decade, and to submit a report thereon to the 45th Session of the General Assembly. In the light of the proposals received a working group of the Sixth Committee in the course of the 45th Session of the General Assembly

was charged with the preparation of a generally agreeable programme for the United Nations Decade of International Law.

The Secretariat of the AALCC had been invited to submit views on the programme for the Decade and on appropriate action to be taken on programme for the Decade, including the possibility of holding a third international peace conference or other suitable international peace conference at the end of the Decade. The AALCC whose very *raison d'etre* is the progressive development and codification of international law must address itself to and respond to the substance of the General Assembly Resolution 44/23 of 17 November 1989 and its *raison d'etre.*

The item entitled 'United Nations Decade of International Law, was thereafter inscribed on the agenda of the twenty-ninth session of the Committee held in Beijing in March 1990 in accordance with Article 4(d) of the Statutes of the Committee. At that session the Committee considered a preliminary note submitted by the Secretary General.

The AALCC Note prepared for its Twenty-ninth Session had, *inter alia*, spelt out the role which the AALCC could play during the decinneum in respect of the four elements which the General Assembly had identified. The main points of the Note, it had been observed, could form the basis of the Secretariat's formal reply to the United Nations Secretary-General. The Committee was also requested to consider the preliminary enterprise with a view to mandating the Secretariat with the preparation of a comprehensive brief on the appropriate action to be taken during the United Nations Decade on International Law.

The 29th Session of the Committee after a preliminary exchange of views, mandated the preparation of a comprehensive study on the UN Decade of International Law. In fulfilment of that mandate the Committee's Secretariat took a few initiatives in updating its study. It was of the view that a further exchange of views both in a working group of the Sixth Committee of the General Assembly at its current session and at the forthcoming session of the AALCC could contribute useful inputs to the Secretariat's study. With a view, therefore, to invite further comments and observations at the Cairo Session the Secretariat's notes *inter alia*, furnished an overview of the views expressed at the Twenty-ninth Session of the AALCC and enumerates the initiatives which the Secretariat had undertaken in fulfilment of its mandate on the subject.

At the Twenty-Ninth Session of the Committee the Registrar of the International Court of Justice, H.E. Mr. Eduardo Valencia Ospina, expressed the view that the decision of the General Assembly to launch, with the enthusiastic support of many States, a Decade of International Law, warranted the hope that the earlier initiatives relating to and on the peaceful settlement of disputes would be broadened in scope and that there would be a concerted development of efforts in the future.

The Chairman of the Sixth Committee, H.E. Mr. Helmut Tuerk in his statement made at the second plenary meeting of the Twenty-ninth Session of the AALCC *inter alia* said "*taking into account various proposals already voiced during the debate at the Forty- fourth Session of the General Assembly this programme might comprise such topics as the elaboration of a comprehensive convention on the peaceful settlement of disputes, including those related to the environment, other legal aspects of the use of the environment, for instance, questions of state Responsibility and State Liability, and international legal rules dealing with new communication technologies.*" Emphasizing further the importance for international legal bodies, such as the Asian-African Legal Consultative Committee, to consider and put forward proposals for the United Nations Decade of International Law, it was observed that the Secretariat study contained a number of very interesting suggestions.

The Chairman of the International Law Commission (ILC), Ambassador Graefrath, speaking on the work of the Commission at its Forty-first Session, *inter alia*, said that "*ideas have been developed to supplement the long-term codification projects of the Commission by short term legal opinions on specific questions and the possibility to involve the Commission in the proposed Decade of International Law.*" It was stated that in preparing for the Decade, close cooperation should be established between the ILC and regional bodies in order to enhance the influence of international lawyers on international relations.

A view was expressed that the lack of implementation mechanism of international law had forced the developing countries to remain powerless and frustrated facing incidents in which lofty principles of international law were neglected deliberately. In this respect, it was stated that it was timely and appropriate that the Forty-fourth U.N. General Assembly declared the Decade of the Nineties as the U.N. Decade of International Law, invoking concern of mankind for the importance of respect for the international law, and bringing about