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**Human Rights and Terrorism : An International
Law Perception**

V.S. Mani

**Azerbaijan in the Threshold of
Post-Soviet Changes**

P.L. Dash

Hans Christian Ostro : A Tribute

**UN Sub-Commission on Prevention of
Discrimination and Protection of Minorities
(49th Session) : A Report**

Sharad K. Soni

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Editor : K. WARIKOO

Assistant Editor : SHARAD K. SONI

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Editor's Page

The phenomenon of terrorism as a means of coercive intimidation, destruction of life and property, ethnic-religious cleansing, violation of human rights, subverting legitimate civil and political authority in a state, undermining the democratic and pluralistic society, threatening domestic and international order and as a means of proxy war by some states in others, is universally recognised as the main challenge threatening domestic and international peace and security.

The UN General Assembly and other UN bodies have time and again reiterated their "unequivocal condemnation of all acts, methods and practices of terrorism regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed, as acts of aggression aimed at the annihilation of human rights, fundamental freedoms and democracy, threatening territorial integrity and international peace and security, destabilising legitimately constituted governments, undermining pluralistic civil society" etc.

Notwithstanding these condemnations, the scourge of terrorism continues unabated and has assumed even more violent and barbaric manifestations of bomb blasts, killings, hijacking, kidnappings, beheading of innocent victims and so on. So far, the international community has managed to finalize a number of conventions covering only specific offences of hijacking, kidnapping and murder of diplomats and military personnel, hostage-taking, violent acts against air and maritime navigation facilities, development, production or stockpiling of microbiological and biological weapons etc. However, the challenges of cross-border terrorism, narco-terrorism, emergence of extremist terrorist groups engaged in ethnic-religious cleansing of various communities / groups, hostage taking and other criminal acts, often receiving support from some states need to be confronted and tackled firmly both by the UN bodies and states. The semantic muddle over the definition and interpretation of terrorism is being misused as a cover-up by some states in their support of trans-border terrorism and in pursuit of their own foreign policy strategy against other states. Any such loopholes in international law which impede the process of firm and deterrent action against terrorism and its perpetrators need to be removed forthwith.

It is against this backdrop that this issue features a special paper by Prof. V.S. Mani highlighting the loopholes in dealing with terrorism, from an international law perspective. We also offer a special tribute to Hans Christian Ostro, the Norwegian tourist who was kidnapped and later beheaded by the terrorists in Kashmir in August 1995. The terrorists, particularly those claiming to be Islamic crusaders committed to their extremist political and religious ideology, have been resorting to a common practice of beheadings and slitting of throats in Kashmir, Afghanistan, Uzbekistan, Tajikistan, Chechenya, Algeria and elsewhere.

In order to achieve positive results in the battle against terrorism, certain guiding principles need to be followed :

- a) Legislative and criminal proceedings related to different types of terrorist crimes, be set in motion by the states to ensure expeditious, trial, prosecution and punishment of terrorists.
- b) Trans-border and international terrorism be dealt with effectively by ensuring extradition and prosecution of the terrorists.
- c) Principle of non-use of the territory of one state for terrorist activity against the other be applied strictly.
- d) States should take all the necessary steps to apprehend and destroy the terrorist groups, and even follow a policy of hot pursuit when these terrorists are operating from their bases in other countries.
- e) Media should strike a balance in their coverage of terrorist activities, in order to contain rather than facilitate the spread of terrorist activities and ideologies.
- f) The society needs to galvanise its social support to the law and order machinery and create a social milieu in which such terrorist activities are not tolerated.
- g) And at the international level, the UN bodies and states should come out openly against terrorist activities without getting dictated by their own political priorities and compulsions.

K. Warikoo

HUMAN RIGHTS AND TERRORISM : AN INTERNATIONAL LAW PERCEPTION

*V.S.Mani**

India has lately been receiving brick-bats in international fora often on account of a partisan appreciation of its record of human rights. Pakistan has been seeking through the United Nations Human Rights Commission in Geneva an international censure of India for alleged violations of human rights in Jammu and Kashmir and it even demanded dispatch of an international fact-finding team to Jammu and Kashmir. India has in its turn strongly rebutted the Pakistani charge and questioned the validity and propriety of the Pakistani initiatives before the Commission. It has questioned the competence of the Commission to resort to threat or use of economic sanctions, or to send fact finding missions to Member States without their consent. In its view, terrorism is emerging as the single most dangerous threat to human rights. Censuring of governments fighting terrorism could lead to a situation in which human rights are seen the privileged preserves of the practitioners of terrorism, and this would imply legitimisation of terrorism by chastising governments fighting terrorism in order to preserve the human rights of millions of their citizens.

The Indo-Pak collision on the issue of human rights-versus-terrorism in Jammu and Kashmir, now a ritual at the UN Human Rights Commission and other world fora, highlights a dominant facet of the continuing travails of human rights implementation by the State system - an interface between State power, human rights, and terrorism as a form of violent dissent. It also lays bare the opportunistic use on the international plane, of the slogan of human rights as a cover-up for support to trans-border terrorism as part of a State's foreign policy strategy. The irony is that the international fora - such as they are constituted by the State system - do not require of

* *Professor of International Law and Director, HURITER , School of International Studies, Jawaharlal Nehru University, New Delhi.*

the accuser State any proof of genuineness of its concern for human rights *vis-a-vis* its own people, let alone the people for whom it pretends its heart to be bleeding. And finally, the rights or the wrongs of a State conduct of human rights are determined not on the merits of the case, but on the touchstone of international politics, on the basis of the number of votes either party to a contest is able to marshal in its favour.

It is against this current international setting, that the present paper endeavours to examine human rights and terrorism essentially from the looking glass of international law.

A PERSPECTIVE

State conduct in international relations can rarely be faulted for its respect for consistency and adherence to the principles of morality. These are the two virtues which States must find most convenient to profess but most inconvenient to practice. This hypocrisy is best revealed in their preaching and practice of human rights and co-operation in suppression of international terrorism. The fact of the matter is that most States have skeletons in their cupboards. They do not hesitate to accept what is good as a political slogan in pursuit of foreign policy in the short term, to the detriment of the international community interests in the long term.

Besides the common canvas of State hypocrisy which both human rights and international terrorism share as international issues, there are five principal points of interface between human rights and international terrorism. First, both are opposed to or directed against the State system. The State system is ultimately guilty of violations of human rights or failure to promote them, or of practice of terrorism using it as an instrument of State policy or allowing conditions in the society conducive for terrorism to spawn.

Second, the failure of the State system to implement human rights often leads to terrorism to raise its head, or provides a justification for it. Denial of or absence of a viable public grievance redressal mechanism and participatory democracy may encourage dissent to take the form of

terrorism.

Third, transborder involvement of third States often with ulterior motives to create or exploit conditions in a State, to raise real or fancied allegations of human rights violations and/or to encourage terrorism with a view to destabilisation of the polity in the latter seriously undermines the principle of domestic jurisdiction.

Fourth, while both the phenomena are matters essentially within the domestic jurisdiction of a State, involvement of other States, more for political rather than for any altruistic reasons, has at least at a conceptual level “internationalised”. “International concern” is, however, not tantamount to “International jurisdiction”.

Finally, while terrorism has its protagonists—depending on where it is practised and to what end—who justify it as a response to human rights violations by a State, the irony has it that grave human rights violations result from acts of terrorism as well. When terrorists, i.e. individuals or groups, seek to strike terror in a target society with or without the assistance of another State, their acts result in the most heinous and serious deprivation of human rights of innocent civilians. This linkage between human rights and terrorism has come to be highlighted only recently. The International Court held in the case concerning *United States Diplomatic and Consular Staff in Tehran* :

Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights.¹

The same sentiment is reflected in paragraph 17 of the Declaration and Plan of Action adopted by the 1993 Vienna Conference on Human Rights.

The current Indo-Pak confrontation on account of the issue of Jammu and Kashmir highlights the last aspect of the interface between human rights and terrorism. The accuser, who, in this case, does not itself have much of a record of human rights implementation in respect of

its minorities, selectively prefers to raise the question of violations of human rights of the terrorists some of whom are sponsored by itself, while clearly shutting its eyes at the gross and widespread violations by the same terrorists of the human rights of the teeming thousands of civilian population.

What strikes one most on a study of the international community's response to the twin problems of protection of human rights and combating international terrorism is the wide gap between the normative order and the performance level i.e., the implementation of the norms at international, regional and national levels.

INTERNATIONAL LAW OF HUMAN RIGHTS : EVOLUTION AND PARADOXES

Historically, what we understand today as human rights, originated from the contributions of political thinkers like Rousseau and Locke who gave the ideological fire-power to the French and the American Revolutions. The nature and purpose of the State system came to be identified with the promotion and implementation of human rights. Small wonder that Harold J. Laski commences the chapter 'Rights' in his *A Grammar of Politics* (first published in 1925) with these words: "Every State is known by the rights that it maintains". And opening the next chapter on 'Liberty and Equality' he says: "By liberty I mean the eager maintenance of that atmosphere in which men have the opportunity to be their best selves. Liberty, therefore, is a product of rights". To Laski, rights are not merely certain legal interests of the individual, but the requirements for the development of his personality, both physical and spiritual. They are necessary for his development not only as an individual, but as a member of the society. Rights in that sense are not absolute, but tempered by his regard for the rights of others, and the rights of the society. Hence the concept of duties. Rights cannot be conceived without duties.

The rise of totalitarianism and the abhorrent practice of anti-Semitism in the post-First World War Europe resulted in the death, torture and other untold indignities to countless humans. This spurred the United

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Nations General Assembly to record in the preamble to the Universal Declaration of Human Rights (UDHR) it adopted on 10 December 1948, that :

Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

As “a common standard of achievement for all peoples and all nations”, the Universal Declaration has inspired formulation of the Bill of Rights in many a modern constitution, including the Indian. It has a continuous relevance in that it provides an acceptable reference point to adjudge the performance of a country in realization of human rights.

However, human rights enumerated first with Universal Declaration and subsequently elaborated with International Covenants on Human Rights of 1966, reveal at least four sets of paradoxes :

- (1) The above international legal instruments conceive human rights with a view to limiting abuse of State power. Yet their demands for enhancement of human rights (in respect of many values such as well-being and skill) are difficult to achieve without enlargement of governmental power.
- (2) Enhancement of governmental power may tend to promote some, rather than all of the human rights, depending on the preferred goal values of the group or class of people for the time being holding the reins of government.
- (3) Human Rights represent human values that are by definition evolving in nature. Achievement or compliance of such rights can only be relative to context and time.
- (4) As already seen, rights are correlative to duties. They have to be exercised in reasonable regard for the rights of the others, and the interests of the community. The State assumes the role of an arbiter,

and protector of the interests of the community, usually indentifying itself with what it considers to be community interests.

The last paradox is quite relevant to our discussion here. On the one hand, rights are claimable against the State. But on the other, abuse of rights by individuals and groups (and these include practitioners of terrorism) permits, nay warrants, State action. i.e. legislative, executive and judicial.

In a democratic society-the above human rights instruments assume such a society - governed by a written constitution, there are constitutionally permissible ways of expressing dissent. There is no place for resort to violence or terrorism.

INTERNATIONAL LAW OF HUMAN RIGHTS : CURRENT STATUS

International law has been slow to recognise human rights as a matter of its concern. The traditional, Eurocentric, international law was, indeed, worried about the protection of the aliens (i.e. the nationals of the capital exporting countries) in the under-developed regions of the world, combating of piracy, control of slave trade (after the horse had already bolted from the stable) and, very hesitatingly, the protection of the sick and the wounded at war. Although the peace of Westphalia of 1648 had heralded the principle of religious tolerance, the matter awaited to be dealt with as a subject of minority treaties after the First World War. The Mandates System of the League of Nations was a modest beginning of the principle of self-determination and decolonisation. It was the Nazi and Fascist atrocities before and during the Second World War, that raised the question of recognition of human rights as part of international law. It received specific mention in the UN Charter (See the Preamble, Articles 1,13,55,56,62,68 and 76), led to the adoption of the UDHR in 1948 and the Genocide Convention in 1948. This, coupled with the upsurge of nationalism the world over, promoted emergence of a wide spectrum of international and regional human rights norms and institutions. The institutions encompass the UN Human Rights Commission (under ECOSOC), the UN Human Rights Committee (under the 1966

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International Covenant on Civil and Political Rights), the Racial Discrimination Committee (under the 1965 Convention on Racial Discrimination), the European human rights institutions (under the European Convention 1950), the Inter-American Human Rights Committee, the African Human Rights Commission, and so on. In 1993 the UN General Assembly established a Human Rights Commissioner. Yet, barring the European human rights institutions, others do not have any more than recommendatory powers.

The recognition of the human rights norms as part of international law came about thanks to three major developments. First, the traditional concept of absolute sovereignty gave way to a functional approach to State sovereignty. Added to this has also been a recognition of the Lockean concept of social contract as the basis of the modern democratic polity. The Indian version of it, is represented by Mahatma Gandhi's distinction between the *rajashakti* and the *janashakti* with the former constantly striving for legitimacy from the latter. In international law terms, the authority of the State corresponds to its international responsibility. The extent of State authority and the corresponding extent of its responsibility are dependent on the nature and progress of international law obtaining at a given point of time. Hence the relative concept of domestic jurisdiction of States, as evolved in international jurisprudence :

The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations.²

The International Court of Justice seems to have gone a step further and held in the *Interpretation Peace Treaties case (First Phase)* that where a treaty provides for a disputes settlement mechanism in respect of compliance of human rights by a State (reference was to the peace treaties with Bulgaria, Hungary and Rumania), “The interpretation of the terms of a treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a State.”³ The judicial journey commencing from the ruling that “Restrictions upon the

independence of States cannot be presumed,”⁴ to a pronouncement that a unilateral act of a State with an international aspect, “cannot be dependent merely only upon the will of the ... State as expressed in its municipal law”, but its validity “with regard to other States depends upon international law”,⁵ has not taken too long a time, but has been revolutionary.

Secondly, as seen already the pre-Second World War and the post-war experiences with Nazism and totalitarianism in Europe had shocked the conscience of mankind. Those experiences led the victorious powers to accept the need to try and punish the individuals guilty of crimes against peace, war crimes and crimes against humanity. Thirdly, in 1945, when nations assembled at San Francisco to frame the Charter of the United Nations, they clearly knew that exercise of State authority over the individual must be in accord with some human rights standards.

Human rights norms evolved through the United Nations, began with the Universal Declaration of Human Rights in 1948. It must be remembered, however, that it was adopted by a General Assembly dominated by countries with a Eurocentric bias. Hence the over-emphasis in the Declaration on civil and political rights as against economic and social rights, on individual rights as against group and societal rights. It also displays a cultural bias towards Eurocentrism. As the UN membership started expanding, a number of questions came to be raised : Is there a priority list of human rights? Are some rights more important than others? Are group rights less important than the rights of the individual, or is such a dichotomy sustainable? What are the operational limits, if any, of human rights? Are the human rights universal in application? Or are there any minimum rights that are universal? Are they subject to variation in correspondence with the unique economic, social and cultural factors obtaining in a society?

Some of these questions led the United Nations to adopt in 1966 two Covenants, instead of one as originally planned-the International Covenants on Economic and Social Rights, and on Civil and Political Rights. And the latter postulates certain basic rights to life, personal liberty and dignity to be non-derogable under any circumstances (Article 4).

The spread of nationalism also led to recognition of self-determination as an important group right. Its importance has been emphasized by the 1960 Declaration on Decolonisation {Res. 1514 (XV)}, the common Article 1 of the 1966 International Covenants, and the 1970 Friendly Relations Declaration {Res. 2625 (XXV)}.

The General Assembly's concern for equality of rights among the people of South Africa also led to the adoption of the 1963 Declaration and 1965 Convention on the Elimination of Racial Discrimination, and the 1973 Convention on the Suppression and Punishment of *Apartheid*.

Many of the provisions of the UDHR and the International Covenants have indeed led to their further elaboration in the form of Declarations and /or Conventions by the Assembly. They include the 1975 Declaration and the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the 1959 Declaration and the 1989 Convention on the Rights of the Child, the 1952 Convention on the Political Rights of Women, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1962 Convention on consent to Marriage, Minimum Age for Marriage and Registration of Marriages, the 1957 Convention on Nationality of Married women, and the 1967 Declaration on Territorial Asylum. The UDHR was the immediate progenitor of the European Convention on Human Rights 1950. The Latin American and the African treaties on Human Rights followed this. Yet in terms of implementation, the European mechanism appears most efficient. But then this has had everything to do with the forces that contribute to the European integration.

This formidable, yet mounting, collection of human rights norms has led the current editors of *Oppenheim* to acknowledge “four broad principles reflecting the standing of the protection of human rights in international law” :

First, human rights practices within a State are no longer necessarily a matter solely of its own internal affairs if the circumstances, by their gravity or otherwise, are such as to

make them of legitimate concern of other States. Secondly, a State's obligations to respect human rights will normally apply to its treatment of its own nationals as well as its treatment of aliens. Thirdly, many human rights obligations now apply as customary international law, although there is still controversy as to which particular obligations now have this status. Fourthly, human rights obligations may be among those owed by States *orga omnes*.⁶

One accepts the above propositions save with a clarification on the first principle, namely that while the human rights situation in one country may be a matter of legitimate concern of another State, this 'concern' cannot justify unilateral coercive action on the part of the latter in violation of other basic principles of international law. International concern is not necessarily international jurisdiction. The peremptory norms of international law such as sovereign equality, prohibition of force and non-intervention stand in the way of any act of 'humanitarian' intervention, be it by States or by the United Nations. Indeed, the United Nations is expected to function within the limits set by its Charter.

Yet human rights norms or at least the basic rights of the human person have by now come to be recognized as if giving rise to "obligations of a State towards the international community as a whole".⁷

The following points may be highlighted on a cumulative examination of the international and regional instruments on human rights. First, it is clear, as recognized by the International Court, that human rights have by now become transformed from international moral standard to international legal standard. Most post-1948 constitutions bear the indelible imprint of the Universal Declaration of Human Rights. Second, this notwithstanding, the perception of their scope and content, and their mode of implementation have varied with the divergent social, political, economic and cultural determinants of societies. Third, for the same reason there exists no generally agreed priority list of human rights. No particular category of human rights can be said to have a claim of priority in implementation. Fourth, beyond a few "non-derogable" civil and political rights, (Article 4 (2) of the 1966 Covenant on Civil and Political Rights),

there is a clear divergence of views between the western countries and the Third world as to the relative importance of civil and political rights vis-a-vis economic and social rights. Fifth, the non-derogable rights under Articles 6 (right to life), 7 (right against torture), 8 (1) and (2) (right against slavery), 11 (right against imprisonment for breach of a contractual obligation), 15 (right against *ex post facto* law), 16 (right to recognition as a person before the law), and 18 (right to freedom of thought, conscience and religion) of the 1966 Covenant on Civil and Political Rights are to be respected by States at all times. Sixth, human rights must be respected not only by the organs of a State but also by all individuals and groups in their dealings with one another. Seventh, unless States have specifically agreed to accept decisions of international agencies (as is the case with the European institutions), the international agencies in the human rights field are confined to perform (a) norm-setting, (b) recommendatory, and (c) educative roles. Finally, this in turn has highlighted the need for strengthening the human rights implementation mechanism at the national level.

INTERNATIONAL LAW RULES FOR SUPPRESSION OF INTERNATIONAL TERRORISM

International law does not encounter terrorism unless (a) it is international or transboundary in character or (b) it violates the fundamental norms of international law, such as the human rights.

Terrorism has always been the darker side of Statecraft. States have used it where they found that diplomacy and even open clash of arms failed to achieve the objectives of their foreign policy. The traditional international law which recognized the Clausewitz doctrine of war being continuation of diplomacy by other means had no qualms in conniving at international terrorism. However, the then emerging international humanitarian law of armed conflicts tended to prohibit practice of terrorism as part of war strategy.

Initial attempts at combating international terrorism in the past have been largely futile. For, terrorism as a social phenomenon has a knack of

corresponding to different social contexts, and its forms, manifestations, incidence and timing have varied over time. The contexts include the age of the reformation in Europe, the American revolution and the Latin American wars of liberation, the French revolution, the days of Metternich's Congress of Vienna, the resistance movements during the two world wars in the occupied territories, and the European dictatorships of the inter-war period. The post-Second World War contexts range from the cold war ethos, to national liberation movements. Kenya for instance may have every reason to be proud of the contribution of the Mau Mau to the liberation of that country; India has adored Vir Savarkar, Netaji Subhas Chandra Bose and his INA, and Bhagat Singh as freedom-fighters. The more recent incidents that go under the label of international terrorism encompass, hijacking of aircraft, acts against diplomatic personnel, businessmen, and important political personalities like Mrs. Indira Gandhi and Rajiv Gandhi, Aldo Moro, and the massacre of athletes of the 1972 Munich Olympics fame (which in some way or other corresponded to the massacres of Palestine villagers at Deir Yassin in 1948 and at Kafr Kassem in 1956).

The past attempts at combating international terrorism have so far followed what may be called an intrinsic character approach. They, like all attempts at grappling with any complex societal phenomenon, have been heavily influenced by the typical features of specific terrorist activities that were experienced by the initiators of the attempts. In other words, most of these attempts typify a specific response mainly corresponding to the specific features of certain manifestations of terrorism. They have endeavoured to stigmatise terrorism, without directing attention to the need for curing the deep-seated societal maladies, the permanent breeding grounds of terrorism.

Indeed, it is of interest to recall that the First World War was itself ignited by the assassination of Archduke Ferdinand of Austria-Hungary by an underground Serbian organization at Sarajevo in 1914. At the end of the war, Emperor William Kaiser of Germany took refuge in the Netherlands which turned down requests for his extradition on the ground of political nature of his crimes. The term "terrorism" was perhaps first mentioned at the international level, at the Third Conference for the Unification of Penal Law held under the auspices of the International

Association of Penal Law at Brussels in 1930. Committee V of this conference would have the conference to define “an act of terrorism”, in terms of “the deliberate use of means capable of producing a common danger” to commit “an act imperilling life, physical integrity of human health or threatening to destroy substantial property”. Such acts would include arson, explosion, flooding or submersion, ignition of asphyxiating or noxious substances, wilful disruption of the normal operation of means of transport or communication, wilful damaging of government property and public utility services, and pollution or deliberate poisoning of drinking water or staple food, causing of diseases to men, animals or plant-life and so on. An impressive list, indeed.⁸

On 9 October 1934, King Alexander I of Yugoslavia was assassinated along with the French Minister for Foreign Affairs at Marseilles. This, coupled with the fact that Italy refused extradition of certain persons accused of this assassination on ground of the offence being a “political crime”, 'instigated' France to propose to the Council of the League of Nations, the adoption of “international measures” for suppression of political crimes, including creation of an International Criminal Court. The Council set up a committee of experts to prepare a draft Convention “to assure the repression of conspiracies or crimes committed with a political or terrorist purpose”. Pursuant to the work of this committee, a diplomatic conference met at Geneva on 1 November 1937, participated by 36 countries. The conference opened for signature on 16 November 1937 two Conventions, one on Prevention and Punishment of Terrorism and the other on the creation of an International Criminal Court, with a stipulation in the latter that only States which ratified the former might ratify the latter.⁹ The Convention on Terrorism, though promptly signed by 20 States, was ratified by only one State, viz., India on 1 January 1941.¹⁰ The Convention embodied a general definition of “acts of terrorism” in Article 1(2). The definition referred to “criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, a group of persons or the general public”. Whereas Article 2 enumerated a number of such acts, first and foremost “any wilful act causing death or grievous bodily harm or loss of liberty to : (a) heads of State, persons exercising the

prerogatives of the head of the State, their hereditary or designated successors; (b) the wives or husbands of the above-mentioned persons; (c) persons charged with public functions or holding public position when the act is directed against them in their public capacity". The Convention contained provisions on conspiracy to commit such acts. What a clear imprint of the Marseilles assassinations.

The Draft Code of Offences against Peace and Security of Mankind adopted by the International Law Commission in 1954 was, on the other hand, heavily exercised by the Second World War context, and therefore had a special focus on acts of State terrorism of the types practised by the Nazis before and during the war. It spoke about acts of aggression, terrorisation of the people, genocide and so on. The Draft Code was shelved in 1958 and the Commission has since 1984 resumed work on the Code, now a "Code of Crimes" not of "offences".

The response of the international community to international terrorism has been two-fold. At the level of the basic principles of international law, it has helped to formulate norms to ban State terrorism and State participation in terrorism. At the operational level of suppression of international terrorism by individuals and groups, it has promoted stigmatisation, as offences, of certain types of terrorist acts identified in terms of the nature of such acts or their victims, and outlined a framework for exercise of jurisdiction by States. Yet while the attempts reveal a piecemeal approach in either case, ample room is still left for ambiguity to take into account the free play of international politics. Also, the international community has failed to evolve an acceptable, fair and impartial implementation mechanism.

The International Customary Law

At the level of general principles of international law, the law imposes on each State a duty to ensure that its territory is not used to the detriment of another State. In the *Corfu Channel (Merits) Case*, the International Court spoke of "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States."¹¹ The UN General Assembly's crowning achievements in norm-setting include

the 1970 Friendly Relations Declaration [Resolution 2625 (XXV)], the 1974 Declaration on Definition of Aggression, the 1987 Declaration on the Enhancement of the Effectiveness of the Principle of Non-Use of Force (Resolution 42/22), and the 1981 Declaration on the Inadmissibility of Intervention and Interference (Resolution 36/103). These resolutions, in the context of the principles of prohibition of force and non-intervention, embody rules prohibiting State participation or involvement in the transborder sponsoring of armed bands, irregular forces, mercenaries and terrorists and in fomenting internal strifes in other countries with a view to undermining the existing government or the constitutional order of those countries. Additionally, the 1984 Resolution on the Inadmissibility of the Policy of State Terrorism (Resolution 39/159), and a series of resolutions like the 1989 Resolution on Suppression of International Terrorism (Resolution 44/29), have also sought to establish a legal ban on international terrorism and stigmatise terrorist acts, direct and indirect participation in them, and support for them as crimes which States are required to recognize as such and provide in their internal law for their apprehension and punishment.¹²

In the Nicaragua case a number of facets of some of the above norm-setting resolutions, particularly the Friendly Relations Declaration 1970 and the Declaration on the Definition of Aggression 1974, came in for judicial analysis by the International Court of Justice. These specifically included the principles of the prohibition of force and non-intervention. A range of important observations on law made by the Court on diverse aspects of typical case of rebel violence in a country against the constitutional order of the State fomented actively from across the border, are highly relevant in identification of legal rules in respect of international terrorism :

1. The Court noted, *inter alia*, the following provisions in the formulation of the principle of prohibition of force embodied in the Friendly Relations Declaration :

“Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and

problems concerning frontiers of States.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty 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 its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force,”¹³

2. The Court in the same context noted the following rule in the formulation of the principle of non-intervention :

“Also, no State shall, organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State”.¹⁴

3. The Court ruled (while considering the right of self-defence of a State), that :

“It may be considered to be generally agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also 'the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to (*inter alia*) an actual armed attack conducted by regular forces, 'or its substantial involvement therein'. This description, contained in Article 3, paragraph (g), of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law. The Court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident, had it been carried out by regular armed forces”.¹⁵

4. “But the Court does not believe that the concept of “armed attack” includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support. Such assistance may be regarded as the threat or use of force [not amounting to 'armed attack'] or amount to intervention in the internal or external affairs of other States”.¹⁶
5. “It is also clear that it is the State which is the victim of an armed attack which must form and declare the view that it has been so attacked”.¹⁷
6. “The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State”.¹⁸
7. “These forms of action are therefore wrongful in the light of both the principle of non-use of force, and that of non-intervention”.¹⁹
8. The Court recognized “The duty of every State to respect the territorial sovereignty of others”.²⁰
9. In the context of an armed conflict not of an international character, the common Article 3 of the 1949 Geneva Conventions, as the Court considered, reflects the “elementary considerations of humanity”²¹ and constitutes “the minimum rules applicable to international and non-international [armed] conflict”.²²
10. In a non-international armed conflict within a State, other States are “under an obligation not to encourage persons or groups engaged in the conflict ... to act in violation of the provisions of Article 3 common to the four 1949 Geneva Conventions”.²³
11. Supply by a State of funds to the rebels in another State amounts to “undoubtedly an act of intervention in the internal affairs” of the latter, but “does not itself amount to a use of force”.²⁴
12. The Court was unable to hold that, “in customary international law, the provision of arms to the opposition in another State constitutes an armed

attack on that State”.²⁵

13. “The Court considers that in international law, if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow the government of that State, that amounts to an intervention by one State in the internal affairs of the other, whether or not the political objective of the State giving such support and assistance is equally far-reaching”.²⁶
14. In a situation of non-international armed conflict, “There can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law”²⁷. However, “An essential feature of truly humanitarian aid is that it is given “without discrimination” of any kind. In the view of the Court, if the provision of “humanitarian assistance” is to escape condemnation as an intervention in the internal affairs of [another State], not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely “to prevent and alleviate human suffering”, and “to protect life and health and to ensure respect for the human being”, it must also, and above all, be given without discrimination to all in need” not merely to the rebels and their dependants.²⁸

The Treaty Law

Besides the above resolutions and Declarations, the General Assembly also gave birth to three specific international agreements - the 1973 Convention for the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, the 1979 Convention Against Taking of Hostages, and the 1989 Convention Against Recruitment, Use, Financing and Training of Mercenaries.

The International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO) have also substantially contributed to the evolution of norms to protect civil aviation and maritime transport. The ICAO has authored five anti-terrorism Conventions, namely, the 1963 Tokyo Convention on the Crime on Board the Aircraft, the 1970 Hague Convention for the Suppression of Unlawful Seizure of

Aircraft, the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the 1988 Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports used for International Civil Aviation, and the 1991 Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection.²⁹ The IMO has mothered the 1988 Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and the 1988 Rome Protocol for Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf. These Conventions have sought to (a) define the diverse categories of terrorist acts as crimes, (b) require States Parties to incorporate them as such in their internal law, (c) distribute jurisdictional competences in terms of the principles of territoriality, nationality, universality and the protective principle, and (d) in cases of multiple or overlapping claims to jurisdiction by different States, impose a broad obligation to extradite or submit to competent authorities with a view to prosecution of the alleged offender. They also provide for an obligation to co-operate with other States to facilitate apprehension and prosecution of the crime and exchange of information and evidence in respect of them.

Anti-Terrorist Norms and the Principle of Self-Determination

However the United Nations resolutions, and, to some extent, the UN Conventions on Hostage-Taking and Specially Protected Persons betray a standard of double speak in failing adequately to distinguish between the legitimate acts committed in course of a struggle for self-determination and terrorist acts that are condemnable by their very nature and effect. There is no other explanation for these documents to contain, alongside strong condemnations of terrorist acts, an “exception” that nothing in the document shall impair the right of a people to seek and receive support in pursuit of their struggle for self-determination, or that acts committed pursuant to such a right or struggle should not be deemed terrorist acts. Either a terrorist act is condemnable or it is not. It cannot be both at the same time. If motive cannot absolve criminal liability under national criminal law, why should it be otherwise in case of international terrorism? What is more, the right of self-determination is what is laid

down in the UN Charter and the Friendly Relations Declaration. Violations of human rights and fundamental freedoms do not cease to be so if committed in the pretext of a self-determination struggle. The principle of self-determination does not permit of violation in any abandonment of human rights of innocent civilians and the territorial integrity of a State which is governed by the self-rule of its people. As noted already, the International Court has emphasized the application of the humanitarian laws of armed conflict even to non-international armed conflicts as they reflect “elementary considerations of humanity”. Parties to the conflict, and other States supporting either of them, have a duty not only to “respect” these laws themselves, but “to ensure respect” by other parties to the conflict. Third States thus have a duty not to encourage persons or groups engaged in an internal conflict of act in violation of the provisions of Article 3 of the 1949 Geneva Red Cross Conventions.³⁰ In the words of the Court, the humanitarian laws of armed conflict are “certain general and well recognized principles, namely elementary considerations of humanity, even more exacting in peace than in war”.³¹

The principle of self-determination is self-contained and stands on its own legs. It does not need terrorism to help achieve its objectives. Indeed, the principle of self-determination encompasses a broad spectrum of human rights which cannot be violated whether at the behest of the tyrannical majority or a fanatical minority. The principle of self-determination underscores a *process* of social and political self-determinism of a people and the violent defiance of the authority of a people would require a very special justification based on objective evidence, such as the total absence of public grievance institutionalized in the public authority reflecting a total absence of democracy. Contrary to the prevalent misconception even among government circles, self-determination does not automatically sanction disruption of territorial integrity of a State, and it does not permit it in any circumstances in case of a State which has a democratic government.

An outstanding example of regional treaty seeking to tackle the problem of terrorism regionally is the European Convention on the Suppression of Terrorism opened for signature on 27 January 1977.

This is a Convention representing the response of the countries of Western Europe to the recent acts of terrorism involving hijacking of aircraft and kidnapping of diplomats, massacre of athletes, and others. While the Convention underscores an assumption that extradition is “a particularly effective measure” to combat terrorism, it declares that for the purpose of extradition, none of the following offences shall be regarded as a “political offence or as an offence connected with a political offence or as an offence inspired by political motives :- (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 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 23 September 1971; (c) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; (d) an offence involving kidnapping, the taking of a hostage or serious unlawful detention; (e) an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; (f) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence”.³² But the obligation to extradite is not absolute, for Article 13 recognizes the right of parties to refuse extradition in respect of any offence mentioned in Article 1, if it considers that the offence is of political character. This notwithstanding, the European Convention has made a considerable contribution to the trend in curtailing the mischief of the “political offences” exception in extradition treaties, and also in conclusion of other regional Conventions such as the SAARC Convention on International Terrorism, Kathmandu, 1987.

Since 1970s a number of bilateral extradition treaties have come into existence seeking mutual cooperation to track down and prosecute terrorists or persons accused of terrorism. The 1993 Indo-British Treaty of Extradition is one of the latest in this field. The contribution of this treaty to suppression of terrorism is three-fold. First, it minimises the possibility of non-prosecution. Second, it requires both parties to incorporate in their municipal laws identical crimes. Finally, it is supported by a companion agreement to facilitate mutual assistance in regard to

tracking down the terrorist assets and co-operation in investigation.³³

The reason for the doublespeak both inside and outside the United Nations in the context of suppression of terrorism is, indeed, the double standard traditionally practised by the State system in regard to international terrorism. It is a way of leaving aside some scope for freedom of action by States even while indulging in high moral exhibitionism, without a prick of conscience. This is at the core of the failure to do away with “the political offences” exception in extradition or prosecution of alleged offenders.

THE IMPLEMENTATION OF THE NORMS

The international framework of implementation of the human rights and anti-terrorism norms is largely decentralised even to the extent that a workable mechanism of co-ordination of action by States, the units of the international community, is nearly non-existent. This is so for a number of reasons. The problems of human rights and terrorism sprout up at the national/local level, directed against a State, with the State bearing primary responsibility to deal with them effectively. The State responsibility arises not only from the international law norms, but also from the norms of its own internal, constitutional responsibility. It is difficult to replace or even subordinate the State's responsibility by regional or an international mechanism, for the twin reasons that the problems can be better understood and tackled at the local level than others, and that a just and efficient remedial mechanism, if unavailable within a State, is equally difficult to evolve on a regional or the international level, given the predispositions and double standards evidenced by the State system. If an internal implementation mechanism established by a State cannot be trusted, equally, if not more, untrustworthy will be an 'external', regional or international mechanism operable by or at the inspiration of external powers.

The manner in which States have sought to manipulate the international organisations for action in respect of implementation of both human rights norms and the norms of anti-terrorism clearly shows that they tend to be selective in seeking the application of these norms and

that the United Nations, endowed with a limited scope for autonomy, merely reflects this tendency imposed on it by its member States.

As already noted at the very outset, questions of violations of human rights or accusations of terrorism are raised at the United Nations chiefly to achieve political objectives, to score a point or two over the opponent State. This has been so during the cold war, this has always been so between States with unfriendly relations. The Indo-Pak duel at almost every human rights forum, nay every multilateral forum, over the situation in Kashmir is the case in point. So much of the precious time of the organization is wasted by such politically motivated debates. The reporting obligations of States to the UN Human Rights Commission or the various treaty-based committees, such as the Human Rights Committee and the Racial Discrimination Committee, are cited as evidence to prove a break-through in favour of international concern for promotion of human rights. While they are a breakthrough, one need not be overwhelmed by them. The fact of the matter is that country reports do not represent good faith fulfilment of the reporting obligations. This is not to deny the value of the debates and committee recommendations in influencing moderation in the policies and practices of the reporting State.

The treaty-based norms may in certain respects call for specific actions by States parties, and / or a regional or an international body. The level of authority and the effectiveness of the regional or international action, however, corresponds to the level of identity of goal values States Parties may have achieved in centralising action - at the regional or international level-to achieve norm implementation. Thus the European Human Rights system has been able to establish stable and authoritative centralised institutions at the regional level which can even sit in judgment over national legislative, executive or judicial actions, whereas the UN human rights bodies and other regional bodies have only been able to achieve a norm of reporting obligations by nations. Even the power of the UN Human Rights Commission to authorise independent, on-the-spot investigation is seriously contested, for good reasons too-political motives, selectivity, absence of fairplay or impartiality and so on.

In the case of the anti-terrorism treaties inspired by the ICAO and

the IMO, these organisations retain supervisory powers. In view of the (hidden) sanction of non-participation enjoyed by these functional bodies they are in a better position to seek implementation of the norms by the member States.

Be that as it may, the international community does not have any coercive enforcement machinery save the United Nations, the Security Council acting under Chapter VII of the UN Charter. However, the way in which the Council has come to be manipulated by the western bloc in general and the United States in particular since the disappearance of the Soviet Union in 1991, leaves things much to be desired. The Council, expected to function with impartiality and fairplay, and in accordance with international law and justice pursuant to Article 24 (2) of the Charter, has so far performed chiefly in accordance with the principles of political expediency. The establishment of the UN War Crimes Tribunals in Yugoslavia and Rwanda is indeed a case in point. This action is of doubtful legality, its high moral justifications notwithstanding. Can the Council, as part of its enforcement powers under chapter VII, create a subsidiary body with judicial functions? Can the tribunals exercise judicial functions, when their principal body, the Council, is not constitutionally endowed with such functions? Why should the Council respond to a situation so selectively? Was not the Vietnam war situation worthy of such a tribunal?

Similarly questionable is the Security Council's action *vis-a-vis* Libya over the *Lockerbie* case. The Lockerbie disaster took place in 1988. The United States and the United Kingdom accuse two Libyan nationals in the employment of the Libyan Government for masterminding the disaster, demand in 1991 that Libya surrender them to these governments, own up the guilt, and compensate the victims, and all this to be performed, *before* a trial according to due process of law is mounted. The US-UK joint demands get transformed into the demand of the Security Council in January 1992. Libya's right to resort to the International Court is then greatly impaired, the role of the Court is greatly curtailed and subordinated to the wilful, *mala fide*, political role of the Security Council, in pressing into service its Chapter VII powers, as if the terrorist act of 1988 has suddenly become a threat to international peace and security in 1992, and the judicial

process must be throttled for this reason. Indeed, Libya, the “rogue State”, must be taught a lesson for all time to come, because the lone super power and its comrades in arms in G-7 say so. If this is the type of enforcement of norms of human rights and suppression of terrorism forthcoming from the all-powerful Security Council, the less said the better for the future efficacy of implementation of these norms through the United Nations, the handwork of the State system.³⁴ The unique feature of this implementation system is that it is susceptible of manipulation by the very States whose hands are still unclean, who have had a record of deliberate violations of these norms. Similar questions arise if the Security Council chooses to be the self-appointed guardian of human rights and goes about with “humanitarian intervention” anywhere it fancies.

Against this scenario, the recent suggestion contained in Article 23 of the 1994 Draft Statute of the International Criminal Court produced by the International Law Commission looks rather ominous- that the Court's faculties be invoked, *inter alia*, by the Security Council by formal referrals and that the seisin of the Court shall be subordinated to that of the Council. And this provision does not clothe the Court with power to examine the *vires* of the Council's relevant decisions. All awesome powers for the Council, yes; but judicial review, No.

The International Law Commission's draft Statute is ambitious in other respects too. It confers upon the Court jurisdiction principally over treaty-related terrorist acts and also customary law-based international crimes. However, the major problem for the Court is likely to be apprehension and arrest of alleged offenders, particularly when these happen to be high functionaries of State or those protected by them. Nothing short of war will ensure their being brought to book : Will there be any difference from its 1937 predecessor? One doubts, if it will be any different.³⁵

CONCLUSION

The role of the international community in promoting of human rights and suppression of terrorism has been at best half-hearted, and at worst a masterpiece of hypocrisy. Its contribution at the normative level has

been impressive, even if piecemeal, particularly in respect of terrorism. At the level of implementation of these norms, the international community's efforts are seriously flawed by the dilemmas and hypocrisies of the State system, and of course, its powerlessness in preventing States from using its institutions as a handmaiden of international politics. Indeed, given the intrinsic features of the international community, it would be foolhardy to trust the State system and State-controlled international organizations with the sublime task of fair and impartial implementation of the human rights and anti-terrorism norms.

International law broadly provides the necessary norms and rules for promotion of human rights and suppression of international terrorism. It also provides a range of methods, institutions and opportunities for co-operation or co-ordination. But you can only bring the horse to water, you cannot make it drink. The failure to implement the norms of human rights and suppression of terrorism is the failure of the State system.

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Article 23

Action by the Security Council

1. Notwithstanding article 21, the court has jurisdiction in accordance with this Statute with respect to crimes referred to in article 20 as a consequence of the referral of a matter to the Court by the Security Council acting under Chapter VII of the Charter of the United Nations.
2. A complaint of or directly related to an act of aggression may not be brought under this Statute unless the Security Council has first determined that a State has committed the act of aggression which is the subject of the complaint.
3. No prosecution may be commenced under this Statute arising from a

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situation which is being dealt with by the Security Council as a threat to or breach of the peace or an act of aggression under Chapter VII of the Charter, unless the Security Council otherwise decides.” See *UN Doc. A/CN.4/L.491/Rev.2*, 4 July 1994.

AZERBAIJAN IN THE THRESHOLD OF POST-SOVIET CHANGES

*P.L.Dash**

Like all other republics of the collapsed Soviet Union, independent Azerbaijan was reborn from the Soviet debris. It was thus destined to pass through the vicissitudes of post-Soviet realities. Several factors had distinguished Azerbaijan from other countries of the region. First, it was a Soviet republic that was deeply involved in a prolonged war with neighbouring Armenia on the dispute over Nagorno-Karabakh. The ravages of this war were bequeathed from the Soviet era. Secondly, this was a dominant Muslim republic in the Caucasus. The ethno-religious, cultural and linguistic disposition of independent Azerbaijan had set itself more attuned to Turkey and to the Muslim world than to its immediate Soviet past. Thirdly, unlike all other states that had broken away from the Soviet Union, Azerbaijan was garnished with crimson hopes for a prosperous future. The long Caspian coastline laden with abundance of oil and natural gas, the meandering, sandy beaches along the Caspian coast that allure tourists, the navigable rivers of Kura and its tributary Araks that promise to provide the republic with plenty of fresh water, the sub-alpine meadows that give fruits and vegetables, the fertile valley of Alazano-Avtoran that constitutes the major agricultural region of the country, and many more natural attributes were supportive of these hopes. Finally, when Azerbaijan embarked on the sovereign path of nation building, it began grappling with the new challenges, despite its resource rich nature.

The shadow of a continuing war in Karabakh, a dilapidated dysfunctional, state structure, a crisis-ridden economy, and all those malaise of the Soviet era that had continued to proliferate into the post-Soviet Azeri realities were quickly juxtaposed by the call of Islamic brotherhood, democratic state structure, capitalist economic model and the promising prospect for asserting self identity as a sovereign

* *Director, Centre for Central Eurasian Studies, Bombay University, Bombay.*

independent country. All this had driven Azerbaijan to the forefront of regional and global politics. But what had singled out this Caucasian country from the rest in the region was its cultural faultline, its Islamic identity and a rapidly changing polity.

ZIGZAGS OF POLITICS

The tremendous burden of Karabakh had precipitated a very fluid political situation in which Presidents were changed very rapidly; almost every year - in 1990 Vazirov, in 1991 Mutalibov, in 1992 Elchibey and in 1993 Aliyev. The stronger one espoused the cause of Islam and Azerbaijani nationalism, the better was his prospects. Geider Aliyev, the old communist from Nakhichevan, who had swayed Azerbaijani politics for nearly three decades, was finally settled on the saddle of power in October 1993. Although he has been wading through the mud of politics ever since he returned from his political hibernation to tackle the problems of Azerbaijani politics, by the advent of 1995, he had overcome many of his obstacles. A seasoned communist autocrat, his style of functioning, as many people complain, based on excessive reliance on the state's oppressive machinery, remains ruthless. The entire political opposition including the Popular Front of Azerbaijan led by prominent Azerbaijani intellectuals, have disappeared into dormancy.

With fluctuating political fortune, the loyalty to the fledgling Commonwealth of Independent States, was rapidly shifting. Soon after the Commonwealth was formed, Azerbaijan exercised caution and avoided to join it. Under Elchibey, it "identified most closely with Turkey".¹ The return of Geider Aliyev once again marked a pro-Russian era in Azerbaijani politics. Deteriorating law and order condition in the fragmented borders with Russia, Turkey, Iran and Armenia, and most importantly, the success of Armenian military units over Azerbaijan have reinforced the challenge on Aliyev to look to Russia as the final saviour from the present situation. Here from, the mutual agreements with Russia on security and economic cooperation.

The mutual necessity aspect in post-Soviet politics continues to dominate the scene. The Russia's need to maintain its presence in the

southern republics of Caucasus and Central Asia, and the necessity of coexisting with the peoples of Islamic heritage had driven Russia to befriend countries of Islamic heritage in general and Azerbaijan in particular. Russia is in fact on the horn of a dilemma over interacting with the peoples of Islamic heritage. In 1992, there lived in the Russian Federation some 12 million citizens of Islamic heritage and nearly 800,000 in Moscow city alone. The number of Muslims in the Russian Federation was roughly equivalent to the number of Russians in the six republics of Islamic heritage. Alone in Kazakhstan, ethnic Russians, Ukrainians, Poles, Germans and other Europeans numbered around 8 million, and the rest 4 million spread across all other republics of Islamic heritage.²

While this provides a mutual balancing in relationship, the disturbances in recent years in Baku and Sumgait have so terrified the Russians and other Europeans that there has been a steady exodus of outmigrants from Azerbaijan to mainland Russia. While Russia has been concerned with the fate of ethnic Russians, particularly in the high risk areas of conflicts, which include Azerbaijan, Russia under Aliyev seems to have made considerable headway in maintaining her presence in Azerbaijan. Aliyev has succeeded in striking a balance between the pro-Turkic and pro-Russian elements.

ISLAM AND OIL POLITICS

The Islamic credentials of Azerbaijan in the northern and Transcaucasus have given it a key role to play in the oil politics of the region. As a major centre of oil exploration and export, famous from the years of Tsarist and Soviet empires, independent Azerbaijan has developed a natural ambition to take advantage of her oil reserves to better its economic and political prospects in the world. With an estimated, aggregate oil reserves of 5-7 billion tons alone in the Caspian Shelf,³ Azerbaijan's aspirations, as a major country of the Caspian oil basin, have made it to invigorate its efforts in recent time to perceive a role for it to play in the future. This perception primarily stems from the regional and Islamic identities rather than any extraneous consideration of alliance with Russia. Ongoing negotiations with Iran and Turkey to obtain new

outlets to the world oil market are evidence of Azerbaijan's efforts in this direction.

The changing post-Soviet situation in regional and international politics, the no-war-no-peace scenario prevailing in Nagorno-Karabakh, Russia's persistent endeavour to ensure its presence in the Caucasus, the disdain of the Muslim population of Azerbaijan for the Russians, increasing desire of Iran and Turkey to befriend their Muslim brethren in the independent countries across the Caucasus and Central Asia along with the growing influence of Islam are some of the valid reasons that had driven Azerbaijan to initially distance itself from Russia's zone of influence. At the same time, post-Soviet Russia had made persistent efforts to outpace the developments by keeping up her pervasive presence in Azerbaijan. As an Islamic country of the Caucasus, Azerbaijan obviously looks more for help to its Islamic southern neighbours and to the secular and democratic West than to present day Russia, which has been passing through a tough and tumultuous time of transition. In the backdrop of all these, oil has emerged as the only means of potential economic identity for Azerbaijan in as much as Islam has emerged as the means of natural ally with the Islamic world.

The Islamic factor has been more challenging in the prevailing context of Azerbaijan's locational advantage. In the immediate neighbourhood, except Russia, Georgia and Armenia, Azerbaijan has virtually all Muslim neighbours. On the eastern coastline of the Caspian Sea, there are Islamic neighbours of Central Asia including Kazakhstan, and in the southern flank, Iran is a country that borders with Nakhichevan. All other countries, compactly located in the Middle East and Persian Gulf, are Islamic countries. Turkey is on the west of Iran. Therefore, Azerbaijan's natural spiritual inclinations have clung more southward to the world of Islam than northward to Russia, with which Caucasus as a region has grown disillusioned.

The abundance of oil reserves in the region, the trade prospects of the quality crude of Chirag and Gyuneshli oil fields, and the interest of Western oil companies to be involved in oil trade have made Azerbaijan a competitive arena in oil politics. President Aliyev has been playing the

politics of oil and Islam so skillfully that he has brought for his country a massive contract worth of \$ 7.5 billion in recent times. He has been actively pursuing the prospect of future pipelines and other possible routes for supply of oil from the republic to the world market that might change the geopolitical and strategic landscape of the region lying far beyond the Caucasus.

Aliyev has even visualised a possible route of oil pipeline from mainland Azerbaijan through war-torn Karabakh, and from there, with an outlet via Armenia through Nakhichevan to the Mediterranean ports of Turkey, using Iraq's oil pipeline, which are now inactive due to UN sanctions. Although such a proposition has provided new vision to rope in Armenia with the allurements of an oil pipeline on its territory, the real danger emanates from Russia that opposes the existence of such oil routes. This is apparently because Russia does not wish her own position to be undermined by other powerful competitors in regional politics of oil trade on the plains of Caucasus. However, the Azerbaijani-Armenian-Turkish oil route is laden with portent optimism. This will be a route that will provide Azerbaijan with a corridor into Turkey and concessions on Karabakh, "Armenia will have a chance to break through the blockade and stabilize relations with both its eastern and western neighbours, Turkey receives oil transit, and Russia could gain the possibility of a military comeback for Azerbaijan and unhindered passage through the Black Sea straits, while retaining indirect control over the pipeline through its strategic ally, Armenia."⁴

Such an optimism has been further accentuated in the backdrop of the blockade of major transportation routes in the Transcaucasus. Proliferation of inter-ethnic conflicts has exposed the economic vulnerability of the region. Several principal railroads have been repeatedly interrupted. "The oil pipeline from Baku to Batumi and several natural gas pipelines linking north Caucasus or Central Asia have been closed."⁵ Many major roads have been blocked for long periods. As long as the situation remains unchanged, it would be naive to rely on these transportation links. Therefore, squeezed between the post-Soviet realities and the prevailing Caucasian chaos, Aliyev in Azerbaijan has

chosen the alternative path to trade via Turkey, while keeping open his concerns for the region as a whole to be resolved by joint efforts.

A TURKO-IRANIAN PROBLEM

The ongoing uncertainties in Azerbaijan is basically a Turko-Iranian problem. Both Iran and Turkey have been constantly engaged in active diplomacy to woo their Muslim brethren in Azerbaijan and Central Asia. Although their perceptions and objectives differ a great deal from each other, they have been busy for the same cause : how to belittle the influence of Russia and wean away these independent Muslim states to the fold of the world of Islam. Response to their efforts has been mixed, sometimes with optimism and often with negative results.

Nonetheless, the necessity to befriend post-Soviet Azerbaijan has stemmed largely from the Turko-Iranian nature of the ongoing clash between Russia and her Muslim neighbours. Although, in recent times, we have witnessed an eruption of ethnic conflict, a close scrutiny of all those hotbeds of tension such as the bloodbath in Bosnia and Sarajevo, between the Turkic minority and Christian majority in Bulgaria, the ethnic differences between the Serbs and Albanians, and the Russians and Central Asians, testifies that all those are essentially conflicts based on the Slav - Islam divide. However, nowhere this conflict has been more evidently prolonged in recent times as in the relations between the Azeris and the Armenians. As Samuel P. Huntington concluded in his "Clash of Civilisation", "religion reinforces the revival of ethnic identities"⁶. It is precisely on the basis of Islam that ethnic closeness of Azerbaijan to Turkey or Iran has been manifested *vis-a-vis* their opposition to Armenia or Russia.

However, ethnic, religious, linguistic and cultural similarities are basic ingredients of national consciousness. They, stimulate certainly a powerful sense of nationalism. The impact of this nationalism has spread into a particular "cultural area". In case of Azerbaijan, it is certainly a Turko-Iranian, Islamic cultural area from where the question of affinity with a particular nation has arisen. Turkey's cultural ethos, its secular and democratic stature as a modern democracy, its relative economic

prosperity and its Islamic ethno-religious identity have as much allured the Muslim republics of the former Soviet Union to Turkey as Turkey itself has leaned towards these republics. In post-Soviet times, one could clearly discern the roots of this rapprochement in several spheres, while observing a visible cultural fault between the Slavic and the Islamic worlds. The spheres where, both Iran and Turkey have tried to demonstrate their closeness to Azerbaijan, remain the most potent stimulators of ethno-nationalist feelings.

They encompass such areas as to revive a common Turkish cultural identity from Azerbaijan to Xinxiang, propose a viable Turkish economic model to replace the decadent economic system of socialism and encourage feelings about common linguistic, religious and ethno-national identity, although Iran has been trying to assert her separate identity from Turkey in the region. The pursuance of objectives has invariably been based on these common parameters. Despite the prevailing Sunni-Shi'ite cleavage, that has wrecked the region traditionally, a latent contradiction in the post-Soviet efforts of Iran and Turkey was noticed in the realm of new emerging polity. While Turkey has been assiduously trying to portray a secular and other independent Muslim states of the region, Iran's efforts were more on the theocratic line than on any modern parlance of democracy. Therefore, Turkey, as political and economic model for the region in general, and for Azerbaijan as a sovereign state in particular, has remained an alluring and a plausible proposition than those proffering solutions for state building only on theocratic values such as Iran or Pakistan.

Turkey's inclination to have kinship with Turkish people of the region was evident, when former Turkish Prime Minister, Demirel, had dreamt of a "gigantic Turkish world stretching from the Adriatic to the Great Wall of China".⁷ While refuting a Pan-Turkic approach of his country, Demirel had maintained that "there was nothing wrong for the Turks in Turkey to declare that the region was once the land of their forefathers, and that their culture and history had originated there".⁸ With apparent Turkish efforts, a clear picture in the linguistic front has emerged, when

except *Farsi* speaking Tajikistan, nearly all Muslim republics of the region including Azerbaijan have opted to *Latin* alphabets from the *Cyrillic*. This makes Turkey linguistically inalienable and Turkish the *lingua franca* of the region.

While Turkey holds a political model dangling before a shaky Azerbaijan, the economic imperatives of post-Soviet times, have driven Azerbaijan not to ignore the potentiality of Iran. Furthermore, while Turkey is generally viewed as a regional mentor, its membership in the NATO, its western orientations and its secular credentials have generated apprehensions about Turkey being used as a conduit of western influence in the Caucasus. Such apprehensions are based on “three main assumptions: secularism in an Islamic society, a Western style pluralistic, democratic system and a free market economy.”⁹ This has been perceived as “Turkish Model” or as the most effective Western alternative for filling up the political vacuum created by Soviet collapse in the Transcaucasia and Central Asia.

Treading a cautious path to balance its interests between Iran and Turkey, Azerbaijan has been engaged in independent bilateral diplomacy with Iran too. Baku has described Tehran as a “close friend of Azerbaijan”. The first Iran-Azerbaijan joint commission was held in Baku in 1992. The two countries have been exchanging parliamentary delegations in recent times. The first such delegation, headed by speaker Z.A.Samed-zade, had gone to Iran from 7 through 15 December 1992 and had held a series of meetings with Iranian top leaders. Increasing political and religious contacts have remained the hallmarks of recent years.¹⁰

President Aliyev has ordered the construction of Astara-Azerbaijan railway that would facilitate in the future the transportation of cargo from European republics of the former Soviet Union to the Islamic Republic of Iran. Azerbaijan has also expressed “readiness to cooperate with Iran in the field of oil exploration.”¹¹ In a gesture of bettering mutual ties with Iran, Azerbaijan has offered Tehran 5-10 per cent share in the Shahdeniz offshore oil field, although preliminary agreement for this project was signed with

“BP-Statoil” alliance and Turkish state company. The Shahdeniz oil field contains 150-200 million tons of oil and 500 billion cubic meters of natural gas in almost 10 oil and gas fields located in the southern Azeri section of the Caspian Sea.¹² Thus, caught between the overtures of Islamic Iran and secular Turkey, Azerbaijan in the midst of recovering from its Russianised past, has been engaged in balancing the endeavours of vying powers, while at the same time, trying to assert her own political identity in the community of Western, Islamic and Slavic nations.

RUSSIA’S INTEREST

Historically, Azerbaijan has remained the centre of confluence between the crescent and the cross. It is in this unsettling region that Russia’s Northern Caucasus meets with neighbouring, newly independent countries of the Transcaucasus. Much before the Soviet disintegration, the area was the scene of a prolonged and bloody conflict over Nagorno-Karabakh, an enclave politically under Azerbaijani control, but demographically dominated by Armenians. This was an area where the Armenians have been living since the Roman times and have come to confront the Azeris on the basis of their religion. Russia’s inability to contain the growing tension in Karabakh and subsequent Soviet collapse had witnessed temporary Russian withdrawal from the process of conflict resolution, although Russia had never forgotten its national interests. Russia had quickly returned to the Caucasus in the middle of 1992. Within six months of Soviet dismemberment, it had shown keen interest in its southern flank, when it made a shift in its foreign policy “from marked westward orientation to a greater focus on development in the southern and eastern neighbouring countries, and then to the claim to an internationally recognised role for Russia as a policing power in the conflict areas there”.¹³

The “Return of the Native” with its “neighbouring country syndrome” had taken place under the pressure of various factors. Most importantly, the countries of the region themselves visualized in the short run that Russia could extend a better security umbrella to their respective republics than any other power, and accordingly, they had sought military and

security help from Russia.¹⁴ Although Azerbaijan had demonstrated wavering attitude to the Commonwealth of Independent States by first joining with hesitation, and then withdrawing under pressure from within, it has played consistent since Geider Aliyev was elected President of the republic on 3 October 1993. On 8 October 1993, Boris Yeltsin had signed with three Caucasian Presidents an agreement “providing for intervention of Russian troops in efforts to reopen several principal transportation axes.”¹⁵ In fact, they had sanctioned the return of Russia into a region, where it has its permanent interest.

Russia has reappeared in the scene with its new role. There are independent countries on the territory that once had constituted, for over a century, Russia’s own. Thus, even after Soviet disintegration, Russia has its friends as well as interests that it must come forward to safeguard. Therefore, a variety of reasons had driven Russia to assert her new role on its immediate southern underbelly. The appeal of newly independent countries to extend to them a security umbrella was just one aspect of Russia’s return, the moot aspect is Russia’s own interests of which security and stability matter the most.

The tumultuous post-Soviet scenario in Transcaucasus has evinced a highly volatile situation. The ongoing uncertainties in Georgia, and the unremitting massacre of Azeris by Armenians and vice versa are reasons to worry. Furthermore, in the backdrop of continuing Serbo-Croatian conflict and Yeltsin’s vehement opposition to the likely expansion of NATO to Eastern Europe, Russia’s support to the Serbs has become clear, while NATO tends to stand with the Croats. This will certainly lead both parties to a line of confrontation in the periphery of the Transcaucasus, where Turkey remains a NATO member and Azerbaijan has joined the NATO partnership for peace programme. NATO experts had visited Baku on 2 May 1995 and had meeting with Azeri Foreign Minister, Gasan Gasanov, who had assessed the prospects of his country’s partnership with NATO on positive parlance. Close on the heels of this visit of NATO delegation of experts to Baku, Turkish Foreign Minister, Erdal Inonu, had also visited the Azerbaijani capital and had talks with President Aliyev. Both leaders had reviewed bilateral relations

and expressed hope that “Possibilities exist for developing economic ties between Azerbaijan and Turkey and the European Union, IMF, World Bank, European Bank for Reconstruction and Development, etc.”¹⁶ In the light of these developments, Russia has remained more concerned about the prospects of her own sagging influence *vis-a-vis* her economic interests. Since Azerbaijan remains a cut-short gateway to the Middle East via the Caspian route, Russia does not wish to eschew her strategic influence over the country, which is contiguous and has strategic and transport significance.

Although, by signing the October 1993 agreement with all the three Transcaucasian countries, Russia has secured a comfortable position for herself in matters of conflict resolution in the Transcaucasus and has largely succeeded in establishing good ties with the pliable regime of Geider Aliyev in Baku, it has remained clearly apprehensive of external pressure that might effectively elbow out Russia from Azerbaijan. Russia is further apprehensive of repetition of the “Great Game” that Big Powers had played in Central Asia in the last century. It fears that history might repeat itself this time and the USA and its allies might play a similar “Great Game” in Transcaucasus and Central Asia, which might jeopardize Russia’s prospects for trade and commerce with the Transcaucasus; and finally, endanger the security regime there. The prevailing situation is too fluid to inculcate optimism for reversal of Russian apprehensions in foreseeable future.

Thus, while remaining partially entangled in the quagmire of conflicts in the Caucasus, Russia has geared itself to fight a triangular battle in Azerbaijan, where Turkey and Iran figure along with Russia; and the USA apparently has been playing her game through Turkey. While Russia has been endlessly motivated by her own stability and security, others were afield for a foothold in the region to obtain commercial gains. The unremitting pace of this competition, however, is unlikely to unsettle Russia’s dominant position in the Caucasus, despite the unforeseen fluidity in political scenario. Although Aliyev’s vast experience in the communist apparatus has helped him to outwit his opponents, he has been facing uphill challenges, while Azerbaijan remains surcharged with the emerging fervour of democracy.¹⁷

ELECTIONS AND REFERENDUM

On 12 November 1995, Baku headed for elections to its national parliament. On the same day, it also scheduled a constitutional referendum to approve the first post-Soviet constitution. Amidst tumultuous politicking, electioneering passed off without major incidence. When the results were out, the *Yeni Azerbaijan* (New Azerbaijan) party, headed by president Aliyev received majority in the parliament. 3 million 556 thousand 277 voters or 86.5 per cent of the country's electorate took part in the voting.¹⁸

Electoral positions of the parties

<u>Name of the Party</u>	<u>Votes Polled</u>	
<u>Percentate</u>		
Democratic Independence Party	106,782	3%
Democratic Owners Party	142,343	4%
National Statehood Party	43,259	1.21%
National Independence Party	331,865	9.33%
Alliance for Azerbaijan	30,811	0.86%
Azerbaijan Popular Front	346,092	9.73%
Motherland Party	140,821	3.96%
New Azerbaijan	2,228,435	62.66%
Others	185,869	5.25%
Total	3,556,227	100.00%

The results of the poll revealed that three influential political parties, viz. New Azerbaijan headed by Geidar Aliyev, National Independence Party headed by Etibar Mamedov and the Azerbaijani Popular Front led by former President Abulfaz Elchibey shared 25 seats, holding respectively 19-3-3 in a proportional system of representation in Milli Mejlis. It was evident that Aliyev was firmly saddled in power, and his rule was insured by public endorsement or the constitution for which the referendum was simultaneously conducted; and nearly 90% voters approved it.

The Milli Mejlis has 125 seats. According to the electoral system 25

of these seats were to be elected through proportional representation. While the rest 100 were to be through majority votes. It is practically he, who commands majority in the proportional system of voting, rules the country, and Aliyev's party was thus voted to power, making his political hibernation in Nakhichevan a memorabilia of yesteryear. Azerbaijan was destined to be ruled by Aliyev once again.

THE SHADOW OF KARABAKH

While all other Soviet era ethnic disputes have outlived their epoch, the Karabakh conflict between Azerbaijan and Armenia continues to live and wreck Transcaucasus. As the most prolonged and bloody hostility bequeathed from Gorbachev years, Karabakh has symbolised the typical, intractable boundary dispute between two neighbouring states. With continuing influx of panic-stricken refugees from the disputed land to neighbouring countries, it revives in memory the unpredictable course a territorial dispute could take in other places. The implications of such Soviet era boundaries could be felt pervasively with bated breath over a vast geographical canvas. One could visualise eruption of such hostility between the Uzbeks and the Tajiks over Samarkand and Bukhara, Moldovans and Gagauz over the later's autonomy, Belorussians and Lithuanians over Vil'na Oblast, Georgians and Abkhazians over Abkhazian autonomy, Russians and Balts over Kaliningrad, Kyrgyz and Uzbeks over the Osh valley, Russia and Ukraine over Crimea, Russians and Kazakhs in Northern Kazakhstan and in several other places.

However, the Karabakh dispute is unique. It has intertwined a complicated ethnic tangle with border dispute and continues to exude implications of Soviet era boundaries for conflict settlement in the CIS. Most importantly, it is a clear conflict involving peoples of two different religions. In Karabakh the crescent has confronted with the cross as nowhere else in the CIS. It is this religious divide between the Azeris and the Armenians that has cast a long shadow over the dispute. The locational advantage of Karabakh being contiguous to the world of Islam has generated considerable apprehensions about the conflict not being resolved so quickly as many have expected, despite international

mediation.

The conflict has prolonged primarily because of the differing perceptions of Azerbaijan and Armenia. While Azerbaijan maintains that Nagorno-Karabakh is its inalienable territory that cannot be given away at any cost, Armenia sees the Karabakh issues not as a dispute over territory, but as “a matter of right to self-determination of the region’s inhabitants, an issue of human rights and justice, of right versus wrong. In their eyes, Azerbaijani oppression and not Armenian irredentism, was the problem.”¹⁹ While within Armenia, this was a near unanimous view, within Azerbaijan, it was severely polarised. This polarised perception to the conflict has, precisely, made the Karabakh conflict a bleeding wound of the Caucasus.

Russia has been shifting side with the warring factions. Initially, it helped Azerbaijan against Armenia; and in post-Soviet times, ever since it noticed Armenian upperhand in the conflict, it had been siding with Armenia, apparently because of her interest in the region. Since 1988, when the armed conflict began in Karabakh, an estimated 18,000 people have died, nearly 25,000 have been wounded and over a million have become refugee. This is tantamount to the entire population of Nagorno-Karabakh being affected. The exodus of refugees has created an unsurmountable problem and has alarmed the international community. Iran has been struggling with the onerous burden of providing shelter and other amenities to 100,000 Karabakh and Nakhichevan refugees. Turkey has stationed 50,000 soldiers to guard her border after mass influx of refugee to Turkish territory. Karabakh refugees have also fled to Russia, Dagestan, Georgia and to all other neighbouring countries. Azerbaijan claims that 25 per cent of her territory has been occupied by Armenia and that it has caused an estimated loss of over \$ 665 million. Cease-fires have not proved to be enduring, and tripartite initiatives, formulated by Russia, Turkey and USA during talks in Moscow in April 1993 had proved to be ephemeral. The UN mediation has brought about a no-war-no-peace situation. The crescent of Azerbaijan, despite heavy loss, continues to defy the cross of Armenia. Fluid political situation in Azerbaijan has complicated the problem by infusing indecisiveness to

the continuing peace process, while Armenia's triumph has emboldened her to take the Karabakh conflict by force to a final. Since the physical merger of Nagorno-Karabakh is excluded by the presence of Lacin Corridor of Azerbaijan, the Armenians in Karabakh, belonging to Armyano-Gregoryan group of Christianity, have been feeling "landlocked by a predominantly Muslim dominated Azerbaijan".²⁰

Their apprehensions have increased, since the Muslims of Azerbaijan had publicly extolled the late Iranian religious leader, Ayatollah Khomeini. The impact of Khomeinism on the severed relationship between Armenians and Azeris had geared the Muslims of Azerbaijan poignantly against Armenian Christians. Muslim demonstrators had carried "the photographs of Khomeini and chanted slogans like Long live Ayatollah Khomeini".²¹ Ever since, a possible solution has evaded both the warring factions and the territorial dispute continues to be the basis of widening religious divide.

CONCLUSION

While the catastrophe of Karabakh continues to wreck the Caucasus, Geider Aliyev, the trusted atheist of the Soviet era, has been trying to lead Azerbaijan to a secular, democratic future. Although he has discarded his atheist cloak in favour of a so called secular model, his style of secularism, as a plausible alternative for Azerbaijan remains highly misleading on the face of rising Islamic consciousness. Azerbaijan is set to be guided by two cardinal principles beyond the nineties : economic imperatives and Islamic consciousness. In any case, as throughout history, Azerbaijan will remain a place, where the crescent shall continue to confront the cross.

Post-Soviet Russia has been pursuing a three tier policy in the Caucasus. At the interior level it is the low intensity war in Chechnya; on the exterior line, it is the endeavour to ensure the return of Russia to independent Caucasian countries with a view to containing the growing influence of Iran and Turkey. In the middle layer, the Karabakh dispute and all links of Georgian ethnic conflicts engage Russia's strategic attention. Unlike Azerbaijan, which has been partially driven by a dominant trend of

Islamic revivalism, Russia is likely to be guided by regional, strategic and economic realities rather than by any other extraneous influence on its southern underbelly. It is unlikely to forsake its vision of Greater Caucasus, where it is prepared to meet and interact with the crescent on a broad geographical canvas stretching from the Caucasus to the Chinese border. The interest of other countries might welter in the tide of time.

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HANS CHRISTIAN OSTRO : A TRIBUTE

ABOUT HANS CHRISTIAN OSTRO

*Ravinder Kaul**

“Ever since I was caught, I have been walking through mountains and passes and I am tired. I appeal to the Government of India and the Norwegian Government to do anything they can to release us because we don't know when we will be killed. I appeal especially to the tourist office because everybody there told me that this place was safe. An officer even gave me his card and said I could call him if there was a problem. Well Mr. Naseer, I am calling you now....”

That was the last message from Hans Christian Ostro, a 27 year old Norwegian who had come to India in February 1995. Naseer was a tourism official whom he had consulted in Srinagar before trekking into the hazardous heights of Pahalgam from where he would never return alive. On August 13, 1995, less than six weeks after he was abducted, Ostro was found dead - his hands and feet tied, his head chopped off.



The body (beheaded) of Hans Christian Ostro

** Ravinder Kaul is a cultural activist and freelance journalist from Jammu.*

Hans Christian Ostro was born in Oslo, Norway in the year 1967. There was always something special and original about Hans Christian. As a child he was active, intense, creative, extrovert and kind. He loved animals and his areas of interest had a wide variety. For instance he took a great interest in Indians, model airplanes, theatre, music, folk tales, poetry and so on....His theatrical career started in the autumn of 1988. He attended classes in theatre for one year. During that year he played the main character in the play 'A Folk Friend' by the famous Norwegian author Henrik Ibsen.

The following spring Hans Christian tried to be accepted as a student at the National School of Theatre in Norway but did not succeed. Altogether Hans Christian tried to get accepted at this school five times but never got further than the second audition. This was very disappointing for him and in his opinion his theatrical expressions did not fit in with those established at the school. The next year he started group for teenagers in the area. There, while improving, he wrote a play 'Youth Sex and Sentiments'. He also directed the play and was responsible for its scenography and music.

Hans Christian also attended a drama school but quit because he thought that the education there was too analytical and too slow for his liking. He later regretted not having taken the challenge of working under those circumstances. The following year, Hans Christian made his living as a street musician. He twice directed shows for a state cooperative, acted in a few short movies, attended some auditions and got married.

In the spring of 1993 the marriage ended. Hans Christian became a vegetarian and went into a period of deep search for God. He meditated, read about other religions and philosophy. He searched his soul and worked hard to be humble and true to himself. He was one person before his marriage and another person afterwards. In the autumn of 1993 he joined the theatre group Stella Polaris which took part in the cultural programmes organised during the 1994 Winter Olympic Games at Lillehammer. During that year he was convinced that it was the physical theatrical expression that was his future. He was greatly inspired by Artaud and Grotowsky. In the autumn of 1994 he got a scholarship and

started his own theatre group *Catharsis*. He had taken an intense interest in cultural exchange and wanted to use his scholarship to finance an educational stay abroad. The choice was between India and Brazil.

Theatre Europe is a network of people that wants to use theatre to convert the mankind and help people in getting a better insight of their own souls. After having communicated with some members of this network, Hans Christian took the decision that he would go to India and study Kathakali dance. He also was eager to learn more about Indian culture. On February 3, 1995, a Stockholm based play director Tom Fjerdefalk introduced Ostro to Srikrishanapuram and its 63 year old resident Narayan Namboodiri, who arranged for a Guru for him, Kalamandalam Soman, and thus began a life of exploring Carnatic culture. Up at 7.00 every morning, a frugal breakfast and then would come six to eight hours of practice with Soman. He meditated every day, read a lot of literature, wrote many letters to his family and friends and finally found himself at peace and harmony with himself. In a letter he described the place as the Garden of Eden.

Ostro's ideal evening would be one spent singing with Namboodiri and his family. The palm trees, the muddy village pond and the undulating paths of Srikrishnapuram would then hear a unique combination - Ostro strumming his Guitar, singing in Norwegian, and the Namboodiris giving him company in Malayalam. "My name is Hamsam Namboodiri", he would say. Ostro learned the dance for three months and organised his Arangetram on May 28, 1995. He wanted to start a Kathakali troupe with Srikrishnapuram's performers and take them to Norway. He had already recorded some Carnatic music in a Kochi studio. He loved Indian art and culture. He would get annoyed with anyone trying to denigrate it. Once he saw a Kathakali performance where the palyers were drunk. He nearly got into a fight with them.

For Hans Christian, the stay in India was a challenge he was proud to have met. It gave him great inspiration and many ideas about how he would continue his theatrical education back in Norway. Before he left he wanted to make a pilgrimage to Kashmir. His journey ended there.

Hans Christian as a person was an ocean of waves. He was sensitive towards himself and his surroundings, passionately engaged

when he had his heart set at something, very intuitive to art, nature, human beings and animals. He was creative and in possession of a great artistic way of expression. He acted in, wrote, and directed plays. He composed music, played both the piano and the guitar, and had a beautiful voice. He wrote stories and poems. He had a great sense of humor. Hans Christian loved people. Even though he was often broke, he liked to give away small gifts and was generous to people around him. He wanted so much to give pleasure to others, specially those who were close to him. He made everybody feel important. His belief in the goodness of all human beings was firm and, unfortunately, it was this belief that ultimately betrayed him and cost him his life.

Hans Christian Ostro's murder by the militants in Kashmir provoked widespread condemnation. We reproduce here translations of some of these press comments published in European newspapers and also in Time magazine.

Farewell to Ostro By Bjorn Berg

(Translation of an article in the Norwegian newspaper)

A packed Tonsberg Cathedral took a last farewell yesterday of Hans Christian Ostro (27) who became the victim of a brutal terrorist action in Kashmir on 13 August. Over 300 persons, family members, close friends, representatives of the Government, embassies and local institutions in Vestfold took part in the funeral yesterday.

Bishop Sigurd Osberg officiated, and in his memorial speech over Hans Christian Ostro, he took as his starting-point the words by the philosopher Immanuel Kant : "The worst form of immorality is to use a human being as a means instead of an end". We are reminded of the truth of these words by Kant in a terrible way. The action committed against Ostro awakens aversion not only in our small country but in the whole world, said Osberg. Hans Christian Ostro is a representative for other hostages in Kashmir and in other parts of the world. "Tourists are used uncompromisingly by people who want to attain political goals. No political goals can justify that human life is taken in this

way”, the Bishop said, and described a young man who wanted to enter into the Indian art of acting; theatre and acting were for him important channels of communication between people from different cultures. The Minister of Foreign Affairs of Norway, Bjorn Tore Godal laid the wreath of flowers at the bier on behalf of the Government. “Hans Christian Ostro became the victim of a brutal terrorist action that has shaken all of us”, Godal said. “A painful loss for all those who are working for building bridges between the cultures. We have lost a person with a deep international education and insight. He used his background for research and convey art across the national borders. Ostro unafraidly sought to find new impulses until so hastily and tragically his life was taken”. Godal stated expressing his deepest condolences on behalf of the Norwegian Government. Frithiof Torkildsen deposited wreaths on behalf of the families of the four hostages who are still held in captivity in Kashmir. The families of the hostages wish to stress their gratitude to Ostro for keeping up the morale of the other hostages. In a last touching farewell at the bier Anette Ostro gave a beautiful and personal picture of a careful, kind and loveable elder brother, while Lars Oyno on behalf of friends among the actors’ course at Gjovik thanked him for the fine work Ostro had done in connection with theatre.

A wall of flowers and wreaths adorned the bier and the cathedral. There were wreaths from the English, German, American and Indian embassies. Ole Paus sang the song “I am afraid no more”, and Cathedral organist Arne Rodvelt Olsen played the organ.

Took his leave with Poetry by Einar Hagvaag

(Dagbladet, Norway 26 August, 1995)

Hans Christian Ostro took an overwhelming poetic leave from this world, written down on 13 scraps of paper (and even of bark), hidden in his clothes when he was found dead.

He wrote about plans to escape. He wrote a very short testament, and a last greeting to his nearest friends and family. But most of what he wrote was poetry. The 13 archived scraps seem to have been written under difficult circumstances. The handwriting is difficult to read in

many places and in other places unclear. Most of the pieces of paper are surprisingly long, whole pages, written on both sides. Some of the messages by Ostro are even written on (birch) bark. In contrast to what had been expected, these are not about how he was faring, what he was thinking, about his plans or about his kidnappers. Most of it is poetry and philosophy of life. But the circumstances are also shining forth through the poems. In two of these - or may be they would have formed one poem. The lines *If I were to die now* are reiterated as a refrain coming back. But it is still not a sorrow laden poem. Part of it follows :

“It I were to die now there would
appear bubbles of the tenderest love for
those who shall continue”.

And at the end :

“If I were to die now, I will not die poor
I contain many woolds like this one with
all its richness, its beauty and its con-
trasts.”

One whole page is filled with names of songs, most of them by the Beatles, Bob Dylan, Velvet underground and other rock music classics. It looks like a kind of “graffiti poem”.

Another poem ends:

“Allah and Oh my God,
a pistol’
I was not afraid
The end”

In antoher poem it is written; *Free Free* in every other line and the poem is overflowing with joy of life.

“Free Free
Streams of mild light
and light from your eyes
Free Free
I have the whole of the universe
to breathe in

Free Free
I am sailing away”.

On one of the scraps of paper Ostro is speaking about escaping. It says: “I have talked to Dirk and shared some thoughts and questions with him. We have been thinking of the same; about women and about how to get away. It we have not escaped, I think we will do it in the middle of this month if nothing happens. Or In shallah - what God wills.”,

At another place it says :
“Death is 100 percent good”.

Terrorism in Kashmir

Time, October 2, 1995

I PRAY THAT THE TRAGEDY THAT BEFELL Hans Christian Ostro, the Norwegian hostage who was beheaded alive in Kashmir (August 28), will turn minds toward greater understanding for peace. Ostro was close friend and colleague. Very rarely have I met a person of such integrity, dedication, compassion and intelligence. When a good person dies, it has a meaning. Ostro was only 27 years old, but his life will not have been in vain if his death can inspire people to peaceful coexistence in the world, even in places like Kashmir.

Nina Falkenberg
Stockholm

Bombs are falling in the Valley of Paradise by Rolf Gauffin

The Dagens Nyheter (Daily News) Stockholm
December 3, 1995

“Out in the countryside I hear about a nomad who saw the kidnappers during several days last summer.

“The young Norwegian” he said “was dancing and telling his comrades about India. He kept the courage up for them all. Among the hostages he was the real hero.”

IN MEMORY OF HANS CHRISTIAN OSTRO

*Arne walther**

Terrorism hits hard. Its casualties count also the innocent. Hans Christian Ostro came to India to learn Kathakali. He fell in love with Kerala, and with the people of Srikrishnapuram, where he studied and learned to master a unique cultural expression. His ambition was to bring a piece of vibrant foreign culture home to Norway.

Hans Christian Ostro saw cultural understanding as a vehicle to promote international co-operation and peace. He was an advocate of non-violence. Before returning home from India, he wanted to spend a few weeks in the beautiful mountains of Kashmir. These weeks were to be his last.

In mountains reminiscent of Norway, he was taken hostage by an unknown group of militants that called themselves the *Al Faran*. His ordeal lasted a month. He was found brutally murdered on 13 August 1995.

Hans Christian Ostro was taken hostage along with other innocent tourists from Germany, the United Kingdom and the United States. Today, two years and eight months after the kidnapping, we still do not know the fate of the remaining four hostages, whether they still are alive or have been killed. The Governments of Norway, Germany, the United Kingdom and the United States have worked closely with Indian authorities to secure the safe release of the hostages. We are still working closely together, making every effort to ascertain the fate of the remaining hostages and to bring this matter to a conclusion.

Terrorism, wherever it strikes, is a crime. Those responsible must be apprehended and brought to justice. Our position on international terrorism is clear. We condemn it and believe that it can only be combated successfully in international co-operation. Underlining this view in the General Assembly of the United Nations and elsewhere, Norwegian authorities have also made reference to the hostage taking and murder

* *Arne Walther is Ambassador of Norway in India.*

of Hans Christian Ostro in Kashmir.

Hans Christian Ostro was the first Norwegian to be taken hostage and killed since the Second World War. The tragic and brutal events of the summer of 1995 made a strong and lasting impact on our people and country. A foundation has been set up in his name. It awards a special prize each year to an artist recognised for building bridges between cultures, for promoting human rights or for combating terrorism.



*Mr. Arne Walther, the Ambassador of Norway
to India paying his tribute*

HANS CHRISTIAN - FRIEND AND COLLEAGUE

*Percival**

"I am a poet. A friend of mine, the poet Octavio Paz, who got the Nobel Prize for Literature in the beginning of the nineties and was Mexico's Ambassador in India during the sixties, writes in one of his essays : "Poetry belongs to this world; it creates another." My presence here is due to the absence of my friends Hans Christian Ostro. I see him as a representative of free art and free spiritual thinking in a world full of narrow-minded people and despotic rulers.

I will start by telling you a few things about his life before his real creative work started and the circumstances around our first meeting. There are a lot of stories among those who knew Hans Christian telling about his extraordinary will power and the fact that he never gave up. The year of 1988 (when he was 20 years old) was one of the turning points in his life's story, his adventurous living, full of unpredictable events took a new turn. His career as an actor started when he played one of the leading parts in a play by the famous Norwegian playwright Henrik Ibsen. After that valuable experience he worked at a vacation school, studied theatre communication in the city of Oslo, the capital of Norway, and joined a clown course at a free school of theatre, a course he really enjoyed.

1991-92 he played in short films and got married. When his money had run out on his wedding trip to Amsterdam, he had to earn his living by singing in the streets. Strangely enough he then enrolled in the army of Norway and went through a very harsh physical training. He met a culture based on hierarchy, and experienced the opposite of what he had done before. During the autumn of 1993 he became a member of a theatre group called Stella Polaris. This group invited me to give some lectures on modern theatre and lead some theatre training. During this short period I got to know Hans Christian quite well by talking to him after the workshop sessions. We kept in touch until he went to India in the winter of 1995 when I was invited to direct theatre ceremonies in Mexico.

* *Percival is a writer and theatre Director from Stokholm, Sweden*

During my workshops, in which he participated, I talked a lot about two world-famous writers and theatre-men : Samuel Beckett and Antonin Artaud. Hans Christian got especially interested in the works by Artaud, who really was well-informed on Oriental art and religion, and whom I have translated into Swedish, a language similar to his mother tongue, Norwegian. He also became very much attracted by the sensitive and poetic film art of the Russian director Andrey Tarkovsky, whose last film is called “The Sacrifice”, a picture that he mentions in a letter to me written at Puerto Inca in Peru, South America. In that letter he writes about an ancient Inca temple of reincarnation that he has visited. He also writes the following words (translated into English) :

On the inner planes I can say that I have had some fantastic visions in connection with visualizing light towards the earth. The Earth has opened itself in and unto all the light and turned into a lotus of light. This vision and others of the same kind are for me a sign of grace, that everything is brilliantly well and that it will sprout and grow in the compost heap.

Before going to India, Ostro revealed his ideas around his Catharsis Theatre, an original ancient Greek ritual theatre practice, that I had discussed with him at length. In his South American letter he informs me of a performance built on a poem by Rabindranath Tagore as one of his projects. He received a scholarship so that he could study theatre abroad during at least five months. First of all he wanted to go to India to learn Kathakali and in Kerala, South India, he was taught Kathakali before going on a pilgrimage to Amarnath in Kashmir. After having been captured by a militant group in Kashmir he wrote poetry and messages on small pieces of paper and birch bark. One of these messages seems to be addressed to his fellow prisoners. It has the following wording :

I have changed a bit since I wrote the first note and I hope your chances are good. I can't personally put my faith in these people. I believe it will be harder for the big command to impose a death sentence with me alive.

You might get home before me. I am doing it because I still have some strength left. I am slowly vanishing and I am of that kind which you can't really see if I am ill.

Good luck to you all. If I should die; I am wearing a message to my family inside my underwear. I have a big notebook, of great importance, left at Ringo's Guest House, in a large black bag. God bless you in the fight!

And in one of his last poems before he was beheaded he writes :

Free Free/I have the whole of the universe to breathe
in/Free Free/ Take what you want from me/Free Free/
I am sailing away.

The tragic event of his death was reported by media worldwide, and millions of people reacted. We are all aware of the only possible solution of mankind's problems : a quick ascension of consciousness, and a more subtle knowledge of spiritual creative practice in a degenerated materialistic time.

I am not a politician. As I am a poet I will now read a part of one of my first poems, called "*he Dream of Asia*, here in my translation into English. I'll read this poem as a dedication to my friend Hans Christian Ostro, who shared my interest in Asian culture.

The Dream of Asia

Even Hsuan-Tsang acquired wisdom
And wrote with approval of dancing-girls of Kucha
And their vermilion turbans.
Like Marco Polo
(this man from the seat of indulgence)
700 years later
He wondered at the well-polished Buddha statues
And this totally surrendering reverence.

Buddha

On the roof of the world
a lama calls
The sound from his horn vibrates :

From the Non-Self
to the cradle of the Self
the messenger of the gods
the perfect Buddha
in his trunk
the lotus of fulfilment
he meets his mother
as an elephant-kid
soaring at the snow-waste
the Void.

His history
this non-baptised History of the Smile
was his benignity's purifying wind
a storm

height

the lonely
a sailing

peace

that dignity of eternity
once enlightened therefore immovable

his insight :

a free-born light-force
in restful Enlightenment.

The Course of History

Soldiers moulded into monks,
the peace of man took root
in Tibet, China and Japan,
but the swarming dreams of Asia
spread its haze above the stream.
As always the Dharma was buried,
turned into a hardly perceptible stone
at the bottom of
the turbid torrent of magic.

HANS CHRISTIAN OSTRO : A TRIBUTE

“And finally to wind up : newly written words : Life on earth has become desecrated and dishonoured. Noise pollution, pollution of water, air, soil... We are sometimes proud of our common sense. But can we be proud of our nature sense? No, I don't think so, Civilization has become a monster, and the ways we have acted : polluted environment, wars, terrorism, fundamentalism, commercialism, nuclear and other wastes, are a horror. We have reached a threshold, and I spoke to Hans Christian on this matter. He was aware that the Day of Purification is at hand.



Mr. Percival speaking at the seminar

TO HANS CHRISTIAN OSTRO

(A tribute to the Norwegian Tourist beheaded by militants in Kashmir)

*Riyaz Punjabi**

That headless body
which lay frozen
beyond the tall pine trees
in the sprawling paddy field,

The genteel morning breeze
filling the scene,
the aroma of lillies, roses and sunflowers
touching the motionless body,

That headless body
Just a while ago
enthralled the folk
the young, the old, the men and the women
near the muddy village pond across the palm trees
in the village of Srikrishanpuram

That headless body
Just a while ago
delighted the Namboodiris
with the gestures so perfect,
narrating a thousand tales,
reliving the history,
images from the epics coming alive,
and casting their shadows
over the village pond,
the beating of drums
resonating with the strums of Guitar
filling the air with Joy;

* *Prof. Riyaz Punjabi is Director, Centre for Peace Studies, New Delhi*

That headless body lying frozen
beyond the tall pine trees
Just a while ago
carried the placard
marching the streets:
Human Rights, Human Rights
Freedom, Liberty, Fraternity

The message echoed
beyond the vales, the lush green
fields, meadows of Norway,
Moses, Jesus, Ahmad
All joining the chorus
in the vales of Oslo
Human Rights, Human Rights;

That headless body lying frozen
beyond the tall pine trees,
Just a little farther
The massoleum of Zain Shah Rishi
Stands in the stunning silence
the gloom, the anguish, the mourning
the incense, the all pervading fragrance,
making the air heavier;
the Rishis
who bound it all:

Buddham Sharanam Gachchami
Om Namah Shivaye
Lal Illah-a-Ilal-Allah

Nund-the great seer,
lost in the Gobi desert,
looking for the skull, the bones
of revered Laltadatiya,

the great King of Kashmir,
Badshah the Great,
bringing in harmony;

Slokas, Ayats
Shastras, Awrad-I-Fatihya
Aslam, Aslam,
Om Shanti, Om Shanti
Slam, Slam, Shanti, Shanti

The floating earthen lamps
on the bosom of river Jehlum;
the Nund, suckling from
Laleshwari-the eternal mother,
The Rishis, the Sufis,
standing in stunned silence
in the pall of gloom
befallen, on the vale, the paradise,
watching the headless body
lying in tattered clothes;
Countless headless bodies
scattered all over the vale,
the roaring gunfire and in the cries of
Crusades, Dharam Yudhs and Jehads,
Headless bodies, countless
in Bosnia Harzegovina,
in Karachi, Jaffna and Kashmir
in Kabul, in Algeria and Egypt,
Countless Ostros, waiting for
Human Rights, Human Rights.

AN URGENT MESSAGE OF PEACE

(An open letter sent by Ms. Nina Falkenberg from Stockholm on August 22, 1995)*

It is from a feeling of urgency that this letter is written. There is a possibility of world peace right now. Too many atrocities have happened, and with divine intervention at this moment our joint responsibility to humanity is being helped. I pray every moment that the tragedy that happened to Hans Christian Ostro in Kashmir last week will turn the minds towards greater understanding, tolerance and actions for peace. Revenge is of no use any longer. Only peace and the beauty of life. With your help it is possible.

Hans Christian Ostro from Norway is a close friend and collaborator of ours here in the neighbour country of Sweden. Though I have only met him personally twice he feels like a close friend. Very rarely have I met a person of such inner integrity, dedication, compassion and intelligence paired with deep intention and a creative purpose in life, a young actor understanding in cultural exchange for the purpose of mutual understanding and co-creation, - I cannot believe that he is no longer here. I believe on one level death is an illusion and the one who crosses the border lives and continues his life work, though maybe as yet no longer visible to us.

My work for several decades here in Stockholm as a cultural anthropologist is for understanding between peoples and insight into all the various cultures and religions of the earth, a deeply inspiring work (lectures, slide-shows, workshops, guided tours, stories and legends for children, etc....) mainly at the National Museum of Anthropology of Stockholm, Sweden, e.g. at the exhibition of Indian culture and religion on display right now. Religion is the highest aspect of human life, and the differences between religions cannot possibly be meant to result in hate and war and terror and fear and hostilities. From a divine point of view we must all be one.

Thousands of people have heard about what happened to Hans Christian Ostro in Kashmir last week. Someone said : "When a good

* *Nina Falkenberg is a cultural anthropologist from Stockholm, Sweden.*

person dies it has a meaning.” He was only 27 years old, he had travelled the world. He was leading an intense and dedicated life. His whole career was before him, bright and hopeful. He had just started the Catharsis Theatre in Oslo, Norway. Now we have to continue his work inspired by his life and dedication, our project in Stockholm, Sweden is called Theatre Europe, and some of the best friends of Hans Christian Ostro are involved in work on a play with actors from the Royal Dramatic Theatre in Stockholm. They want to dedicate this coming performance to Hans Christian. He himself wrote us in a letter that he had planned the first performance of his work to be staged on October 21 this year in Oslo...

His life will not have been in vain if it can inspire people to peaceful co-existence in the world so that countries like India and Pakistan and ordinary people everywhere, e.g. in Kashmir, can lead a life of peace and beauty, compassion and generosity.

Thank you for taking part of this letter. I know you will. This is an open letter to you, and I wish it could be read by many.

Sd /-

(Nina Falkenberg)



Ms. Nina Falkenberg speaking at the seminar



सत्यमेव जयते

प्रधान मंत्री

PRIME MINISTER

New Delhi: 1st September, 1995

Dear Ms. Falkenberg,

Please refer to your letter dated 20 August 1995 regarding the tragic fate of Mr. Ostro in Jammu & Kashmir.

I appreciate your thoughtful letter and your commitment to continuing the good work that Mr. Ostro has engaged in. I entirely agree with you that the event - which should never have taken place, but terrorists have no compunction in such matters - should be a lesson to peoples all over the world that there is no alternative to peaceful coexistence. It is our fervent hope that peace and harmony, so rudely shaken by terrorists in Jammu & Kashmir, will return so that the innocents will no longer have to suffer. This is our objective, and we derive strength from all right-thinking peoples around the world.

In condoling the untimely death of Mr. Ostro, I send you my good wishes in your work as a cultural anthropologist promoting understanding between peoples.

Yours sincerely,

(P.V. Narasimha Rao)

Ms. Nina Falkenberg
Askrikegatan 13
S-115 57 Stockholm
Sweden

HANS CHRISTIAN OSTRO REMEMBERED

The Himalayan Research and Cultural Foundation took the initiative of organising special composite programmes in memory of late Hans Christian Ostro, the Norwegian Theatre Director who was slain by the terrorists in August 1995.

First such programme was organised at Jammu on October 7, 1997 by staging a play *Andha Yug* and holding a symposium in the Abhinav theatre. This function marked the formal launch of the J&K Chapter of the Himalayan Research and Cultural Foundation. The event was widely covered by the local and national press.

Speaking on the occasion eminent intellectuals, social and cultural activists of Jammu dilated upon the adverse impact of terrorism on society and culture in the State. Commending the efforts of the Himalayan Research and Cultural Foundation for taking the initiative to preserve and promote the ethno-cultural heritage of the peoples of the Himalayan region, the speakers called upon academics and writers to expose the true dimensions of the scourge of terrorism and its disastrous consequences for various sections of the society.

Prominent speakers included Prof. T.N. Shalla, Prof A.N. Sadhu, Prof Lalit Magotra, Prof M.C. Sharma all from University of Jammu and Dr. Ashok Jerath, Smt. Padma Sachdev, who was the chief guest and Mr. S.P. Sahni, who presided over the function.

The speakers pointed out that terrorism had destroyed culture from its basic roots as militants had issued their dictates against music, dance and finer values of life. Yet there has been tendency among the people for assertion of their cultural heritage and values, they added. Mr. S.P. Sahni lamented that whereas everybody was talking about economic destruction due to terrorism, nobody seemed to be bothered about the future generation-the children of Kashmir who had not seen peaceful orderly way of life. Mr. Sahni commended the Himalayan Research and Cultural Foundation for staging the play *Andha Yug* by late Dr. Dharamveer Bharti in memory of Hans Christian Ostro, himself a theatre personality.

HANS CHRISTIAN OSTRO : A TRIBUTE

Mr. Ravinder Kaul in his speech threw light on the life and work of Ostro. He described Ostro as a person who was sensitive towards himself and his surroundings. He was creative and in possession of a great artistic way of expression, he added.

Earlier welcoming the delegates Prof. K. Warikoo of Jawaharlal Nehru University and Secretary General of the Himalayan Research and Cultural Foundation stated that the Foundation articulates and seeks to fulfil the ethno-cultural aspirations of the peoples of the Himalayan region. He applauded the efforts of Mr. Ravinder Kaul, a cultural activist of Jammu and Mr. Mushtak Kak, Director of the play *Andha Yug* for activating the J & K Chapter of the Himalayan Foundation.

Presentation of the play *Andha Yug* by Amateur Theatre Group was the concluding item of the programme. It is a powerful allegorical play on the futility of violence. The play wright, late Dharamveer Bharti, had interpreted the Mahabharata war in a new light, giving a universal meaning against the backdrop of death and destruction. It is the story of lost souls caught in the web of their weakness. It is also the story of their self exploration and quest for enlightenment. It is this very self questioning wherein the seeds of hope and light are sown for all mankind. The play was directed by Mushtaq Kak. The artists whose acting was especially appreciated by the audience were J.R. Sagar, Vijay Bhardwaj, Umesh Singh, Raj Kumar Bhat and Sunita Pandit. The music by Bhupinder Singh Jamwal was melodious. The lights were appropriate.



A scene from the play "Andha Yug", (staged at Abhinav theatre, Jammu)

Another major function was organised at the India International Centre Auditorium on Tuesday, March 10, 1998 in memory of Hans Ostro. This special programme included the unveiling of Hans Christian Ostro's portrait made by Suman Gupta, a Jammu based artist member of the Himalayan Research and Cultural Foundation; symposium on "Fundamentalism and Terrorism : Threat to Culture and Art;" and staging Mahesh Elkunchwar's play *Pratibimb* (Reflections) by the Amateur Theatre Group, Jammu and Kashmir. Among the notable participants were representatives from the embassies of Norway, Germany, United Kingdom and Egypt; Mr. T.N. Kaul, Mr. A.K. Ray and Mr. S.K. Bhutani, all former diplomats, Mr. Nirmal Verma, a renowned literateur, Prof. K. Warikoo, Prof. Devender Kaushik, Prof. Riyaz Punjabi all from JNU, Mr. Prakash Singh, former Director General, BSF, Mr. C.V. Gopinath, Dy. Director General, Telecommunications, Mr. R.N. Kaul, Editor-in-Chief, *Koshur Samachar*, Mr. L.C. Kaul, Vice President, AIKS, Mr. Ravinder Kaul, Mr. Mushtaq Kak, Mr. M.K. Raina and other theatre and cultural persons.

Mr. Percival, writer and theatre Director from Sweden and Ms. Nina Falkenberg, a cultural anthropologist from the National Museum of Ethnography, Stockholm, both friends and associates of late Hans Ostro, came all the way from Sweden to participate in this memorial function.

H.E. the Ambassador of Norway, Mr. Arne Walther unveiled the portrait of Hans Christian Ostro before a galaxy of diplomats, writers, academics, artists and human rights activists.

The Ambassador of Norway thanked the Himalayan Research and Cultural Foundation for organising this event in memory of Hans Christian Ostro. He also conveyed the greetings of Ostro's family to whom he had spoken last evening. He stated that "they are deeply moved and appreciative of what you are doing to honour Hans Christian and his values. As Norway's Ambassador to India, I am honoured to unveil this portrait made by Suman Gupta of Jammu, Unveiling it, my thoughts and respects go not only to Hans Christian Ostro and his family, but also to the other four hostages and to their

families, whose ordeal has continued. Looking at the portrait, let us also, in the spirit of Hans Christian Ostro, look to the future, to the better world that cultural understanding and fellowship across international borders hold in promise.”

Earlier welcoming the delegates and representatives of foreign missions in Delhi, Prof. K. Warikoo, Secretary General of the Foundation stated that this memorial function which was being organised to pay homage to the innocent victims of terrorism in Kashmir, provided an opportunity to have an introspection of causes and circumstances of fundamentalism and terrorism. Warikoo described Ostro’s killing as a symbol of the brutal terrorist and fundamentalist assault on culture and philosophy of peace and harmony. He condemned the recent (January 1998) spine-chilling carnage in Wandhama village in Kashmir, where 23 Kashmiri Pandits including two infants and nine women were massacred by the terrorists.

Recalling the Norwegian interface with Kashmir and its culture, Prof. Warikoo mentioned the visit of Dr. Sten Konow, a great linguist, of the University of Oslo to India in the year 1908, to work as chief Epigraphist. Subsequently, Konow worked along with Grierson on 5 volumes of non-Indo European languages. He also worked as the Supdt. Archeologist, North West Frontier Circle. During his stint in India, Konow got closely associated with Kashmiri scholars particularly Dr. Mukund Ram Shastri and Prof. Nityanand Shastri, with whom he worked on the *Dictionary of Kashmiri language*. Konow and Nityanand Shastri also worked together with J.P.H. Vogel in deciphering Sharda inscriptions on rocks and pottery in Chamba region. Warikoo expressed satisfaction at the active participation of two colleagues from Sweden, Mr. Percival and Ms. Nina Falkenberg, close associates of Hans Ostro, in this memorial function.

Mr. T.N. Kaul described terrorism sponsored by religious fanaticism and aided by state terrorism on behalf of certain governments as a threat and menace not only to certain parts of India but to the whole world. He called upon all peace loving nations to join hands to protect the innocent, men, women and children from



Mr. Arne Walther, H.E. the Ambassador of Norway unveiling the portrait of Hans Christian Ostro. Mr. T.N. Kaul, President of HRCF is seen on the right.

the cruelties, tortures and atrocities committed by these religious fanatic militants that are aided, trained, equipped and financed by drug lords and misguided military hotheads of certain countries. Kaul expressed his happiness over the coming together of friends of Hans Christian Ostro not only from Kashmir but rest of India as well as from Norway and Sweden. He hoped that the martyrdom of Hans Christian Ostro will strengthen the movement against the spread of the atrocious doctrine of religious fanaticism and terrorism. Kaul stated, "We regard Norway as one of the most peace loving and cultured countries in the world. We shall not allow the repetition of Wandhama Village in Kashmir where 23 innocent men, women and children were set on fire, or allow blasts to be carried out by our neighbour's agents, as in Coimbatore, Delhi and elsewhere. The people of India are one and united on this." He enjoined upon the State and central governments to take all necessary measures to ensure this and warn the government of our neighbouring country to refrain from arming and aiding such evil forces.

Mr. A.K. Ray, former Indian Ambassador to Romania and Syria and author of the book *Religion and the Secular Man*, asked whether Hans Christian Ostro an innocent man and artist, was actually the victim of an individual act of madness or was his killing a symbolic warning to the world and to the human civilisation? He stated, “Those who killed him were not lunatics in the ordinary sense of the time. They killed him deliberately, knowingly and justified the killing in a peculiar reasoning of the Islamic fundamentalist. Such reasoning contains the threat to what humanity has driven to achieve for millenium, the freedom of the mind, the freedom to think, the freedom to express one’s innermost convictions. It is the threat of totalitarian thought control, culture control and art control. And this totalitarianism has adopted terror as the weapon to kill one in order to terrorise the rest into conformity.” Kashmir is lesson in this and so is Algeria where 60,000 people have been killed in cold blood by Islamic terrorists. That Ostro was murdered by a bunch of terrorists in Kashmir highlights the core of the problem in Kashmir, struggle between the free individual, the free citizen and the gun totting band who are determind to establish an extremist and totalitarian polity and society *Nizam-e-Mustafa* in which human rights and freedom have no place.

Ray stated that “Islamic fundamentalism as a movement enforces its ideas with terror, with killings and that’s why 60,000 innocents died in Algeria. That is why so many have died in Kashmir, the latest outrage was the killing of 23 Pandits. That is why Hans Christian Ostro had to die because he did not compromise his dignity as a human being, he did not compromise his artistic soul”.

Mr. Nirmal Verma, the renowned literateur and poet complimented the Himalayan Research and Cultural Foundation for initiating a discussion on one of the most crucial problems which threaten the unity and integrity of Indian civilisational entity. He lamented that “in the present atomosphere of Indian polity there are no real secularist solutions to problems like Kashmir”. The death of the poet and the dramatist and a brave Norwegian, Hans Christian Ostro underlined the importance of some of the unpleasant questions that are pushed under the carpet for want of courage.

He pointed to the ironical paradox that Kashmir which for centuries through its culture, religion, and traditions remained an integral part of the Indian civilization, has been subjected to armed aggression and now proxy war by Pakistan. “The freedom of the spirit makes India the last civilization that is still existing. If this civilized spirit has to be preserved then I think all of us should leave no stone unturned in making Kashmir as the corner stone of the Indian culture”.

Mr. Percival, the writer and theatre Director from Sweden recalled association with Hans Christian and paid a poetic tribute to his late friend and colleague.

Prof. Riyaz Punjabi of University of Kashmir linked the rise of Islamic fundamentalism to the U.S. sponsorship of war in Afghanistan, where symbols and myths from Islamic history were articulated and projected by the US and allies to fight the Soviet Union. And during the last ten years beheadings and slitting of throats has become prevalent after that. Prof. Riyaz drew attention to the internal struggles going on within the Islamic societies which are faced with this threat.

Mr. M.K. Raina was critical of what he described as the fundamentalism of the developed world. “It is of war, its machine, its gunpowder, its nuclear bombs, its development. And in this, continent we saw pumping of arms and drug ideology which finances whole things.”

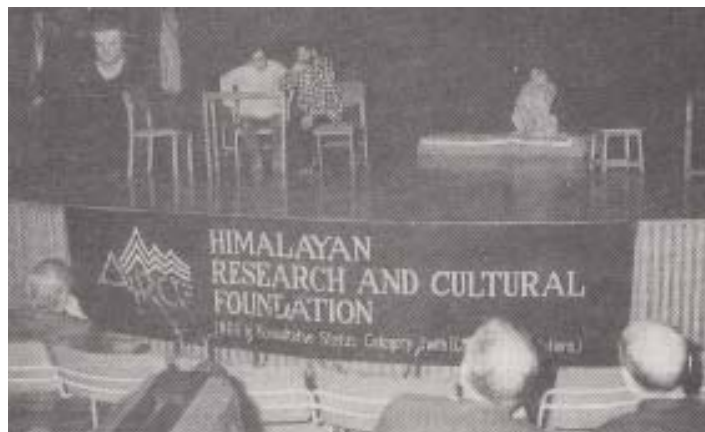
Mr. Prakash Singh, former Director General of BSF, described fundamentalism and terrorism as a threat not only to art and culture but a threat to the human civilization. “These are a threat to democracy, secularism and all the human institutions that have been built up for centuries.” And the combination of terrorism and fundamentalism is the deadliest one. India has been at the receiving end of Islamic fundamentalism particularly in Kashmir and also in Maharashtra, Kerala and Tamil Nadu. But in Kashmir not only Kashmiri terrorists but mercenaries from Afghanistan, Algeria, Chechenya, Jordan, etc. are involved in terrorist activities. “We have lost not less than 40,000 people in terrorist related incidents in Punjab and Kashmir and other parts of the country. Terrorism wherever it is, has to be condemned unequivocally”.

HANS CHRISTIAN OSTRO : A TRIBUTE

Prof. Devender Kaushik of Jawaharlal Nehru University described fundamentalism as the mother of terrorism. According to Kaushik, at present humanity has only one fundamentalism and one terrorism on its agenda, it is Islamic fundamentalism and terrorism generated by it. "We have to face facts squarely. Ostro was killed by a collective mind set propagated by religious extremists", he added.

Ms. Nina Falkenberg threw light on the world reaction to the tragic killing of Ostro in Kashmir. "It was amazingly big and great reaction to what happened to him and other hostages. All the newspapers and televisions all over the world reacted and letters from all over the world reached to his younger sister." Ms. Falkenberg stated that only thing to do for us here now is to be inspired by the kind of mindset Ostro had for our future which will guide the way like the beacon of light for every body." She concluded with T.S. Eliot's words, "the soul of man must quicken to creation".

Mr. Gopinath was of the view that preservation of art, culture, language is innate, to preserve and to conserve it is too innate. "But in the process of preservation if one tries to impose the same thing on the other person who has no conviction of faith in that, one trasgresses the limits and hurts the other man. And enforcing of views and faith on others becomes the fundamentalism."



A scene from the play "Pratibimb" staged at IIC, New Delhi

**UN Sub-Commission on Prevention of
Discrimination and Protection of Minorities
(49th Session) : A Report on HRCF's Participation**

Sharad K. Soni

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities convened for the 49th time on August 4, 1997 at Geneva for a period of four weeks ending on August 29, 1997 to discuss the human rights situation all over the world. The Sub-Commission which comprises a panel of 26 experts has been involved in undertaking studies concerning the prevention of discrimination and the protection of national or ethnic, religious and linguistic minorities. On the basis of studies undertaken, the Sub-Commission further makes recommendations to the Commission on Human Rights for taking necessary action on the concerned issues. Mr. Jose Bengoa, expert from Chile was the Chairman of this session.

The Sub-Commission held discussions in its 49th session on various important issues such as the Realisation of Economic, Social and Cultural Rights and Right to Development; Rights of the Indigenous Peoples; Prevention of Discrimination against and Protection of Minorities; Freedom of Movement including Population Displacement and the Right to seek asylum from Persecution; Elimination of all forms of Intolerance and Discrimination based on Religion or Belief; Promotion, Protection and Restoration of Human Rights at national, regional and international levels; Encouragement of Universal acceptance of Human Rights Instruments; Elimination of Racial Discrimination including the situation of migrant workers and their families; Rights of Women; Rights of Children and Youth; Contemporary forms of Slavery; Adverse consequences of the transfer of arms on the enjoyment of human rights etc. Besides, the Sub-Commission considered communications from individuals, non-governmental organisations and other sources dealing with allegations of human rights violations. In all, the Sub-Commission had before it

* *Dr. Sharad K. Soni is a Journalist.*

51 documents for discussion and it adopted 43 resolutions and 19 decisions. Moreover, 118 non-governmental organisations from all over the world, 102 observer countries and 23 specialised agencies participated in the deliberations. This session also provided an opportunity for members of the Sub-Commission to review the progress of further developments in the preparations for the celebration of 50th anniversary of the adoption on the Universal Declaration of Human Rights.

Prevention of Discrimination against and Protection of Minorities.

As in previous sessions, the rights of Minorities were on this year's agenda as well. Racism, religious discrimination and ethnic conflict were the key issues raised during the discussion. Mohammed Sardar Ali Khan, member of the Working Group on Minorities and Sub-Commission expert from India was in favour of working out a legal definition of minorities. However, he stressed that the discussion was worth pursuing because it would help shed light on the various norms which could be used to identify minorities. He said that the Working Group on minorities sometimes considered things too much from the European point of view, while there were problems peculiar to the Asian and African regions and countries. On the Working Group's recommendation for the organisation of a seminar on multicultural and intercultural education, Khan personally preferred the term intercultural to multicultural since it emphasised exchanges of views and experience and the fact that such exchanges were a source of mutual enrichment for various cultural groups.

Meanwhile, during the discussion on this agenda item, several NGOs focussed on the complexity of issues related to the protection of rights of minorities. They pointed to the importance of democracy and pluralism in the resolution of conflicts between majority and minority groups in multi-ethnic States. The HIMALAYAN RESEARCH AND CULTURAL FOUNDATION (HRCF) too presented its view before the Sub-Commission on this issue. Prof. Riyaz Punjabi of the HRCF in his statement welcomed the efforts initiated by the Commission on Human Rights to promote and protect the rights of minorities, as set out in the Declaration on the rights of

persons belonging to national or ethnic, religious and linguistic minorities. He said that as defined in the Declaration, not only in terms of religion but also in terms of a national, ethnic or linguistic nature, there were many kinds of minorities throughout the world. Consequently, “when the specific status of persons or groups was not recognised or when one group tried to dilute the particularity of another, the rights recognised in the Declaration were denied,” he added. “For that reason the constitutional and legal measures that protected minorities should also be supplemented by measures of a social and administrative nature”. He pointed to the violations of human rights in South Asia particularly in Pakistan where the situation of the Christian and Shia minorities remained extremely precarious. He stated that by declaring Ahmadiyas to be non - Muslims, Pakistan had transformed a majority into a minority. He urged the Sub-Commission to take serious note of this new dimension to the problem of minorities and develop a mechanism to deal with it.

Freedom of Movement

The Sub-Commission before opening the general discussion on this agenda item heard the Special Rapporteur’s final report on human rights and population transfer (E/CN.4/Sub.2/1997/23). The report contained a draft declaration on population transfer and the implantation of settlers. According to the report, the range of human rights violated by population transfer and the implantation of settlers place this phenomenon in the category of systematic or mass violations of human rights. The phenomenon of population transfer is closely associated with political problems arising from the relation between territory and population. In his report Mr. Awn Shawkat Al Khasawneh concluded that acts such as ethnic cleansing, dispersal of minorities or ethnic populations from their homeland within or outside the State, and the implantation of settlers are unlawful and engage state responsibility and the criminal responsibility of individuals. He recommended, among other things, that the Sub-Commission must consider the possibility of preparing an international instrument to set or codify international standards which are applicable to the situation

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of population transfer and the implantation of settlers. Such an instrument should provide for an express reaffirmation of the unlawfulness of population transfer and the implantation of settlers; define state responsibility in the matter of unlawful population transfer, including the implantation of settlers; provide for the criminal responsibility of individuals involved in population transfer, whether such individuals be private or officials of the State and also provide machinery for deciding upon claims presented by the individuals or populations involved. The report also envisaged the possibility of a draft resolution or a protocol on establishing an ongoing monitoring process and an international fund for victims of population transfers. The Sub-Commission had also before it a working paper on the right to freedom of movement and the right to leave any country, including one's own, and to return to one's own country (E/CN.4/Sub.2/1997/22) prepared by Mr. Volodymyr Boutkevitch, expert from Ukraine. Introducing his working paper Boutkevitch said that since 1952 when the Sub-Commission had first considered the topic, years and decades had gone by; studies made, but no decisive decisions or actions had been taken. He stressed that the time had come to prepare a new study on the subject. "There had been changes in inter - state relations with an impact on freedom of movement, such as the collapse of the Soviet Union", he added. "A new study should be based on reports of the two previous Special Rapporteurs and develop the concepts and ideas already introduced".

During the discussion on this agenda item much of the debate centred around the above mentioned two studies i.e. the final report on population transfer and the working paper on freedom of movement. Several Member States, UN agencies and NGOs participated in the discussion. Richard Towle of the United Nations High Commission for Refugees (UNHCR) said that refugees were frequently the product of human rights violations, and were entitled to the respect of their fundamental rights during their difficult time of exile and alienation. He made particular reference to the women and children whose plight was the most vulnerable and acute despite the proliferation of human rights standards. According to him, UNHCR believed that now some

attention needed to be given to a survey that rationalised the existing standards relating to forced displacement and freedom of movement as a whole. “What was needed was not new standards, but a rationalisation and implementation of existing one”, stressed Mr. Towle.

In his intervention, the Secretary-General of the HIMALAYAN RESEARCH AND CULTURAL FOUNDATION, Prof. K. Warikoo stated that armed conflicts, inter-ethnic conflicts, terrorist violence and xenophobia are the main causes of the forced population displacements and mass exoduses. He said that the number of internally displaced has crossed 30 million which underscores the need for paying urgent attention to this problem. Because displacement not only entails deprivation of rights to land, property and housing, but leads to break-up of families, social and cultural community ties and termination of employment and educational opportunities. He lamented that the psychological trauma and physical hardships suffered by the persons in displacement are beyond one’s imagination. He urged the Sub-Commission to make a special study of religious extremism and terrorism which had been a direct cause of population displacements in South and Central Asia, causing untold social, psychological and physical trauma. He cited the example of Afghanistan where the human rights situation worsened since the Taliban military take-over in September 1996, resulting in the displacement of some 120,000 persons, 50,000 of whom had left when the Taliban imposed strict Islamic law on Kabul, closing all schools and banning women from working. In the case of Tajikistan 60,000 persons had been displaced in the civil war of 1992 which had been provoked by a rise in religious extremism in the area. Himself an eyewitness to the miserable plight of the 400,000 displaced Kashmiri Hindus presently living in Jammu, Delhi and elsewhere in India, Prof. K. Warikoo stated that “they had been displaced in a classic example of ethnic and religious cleansing, by armed terrorists who publicly took pride in killing Hindus in the name of *Jehad*”. More than 20,000 houses belonging to Kashmiri Pandits, hundreds of their business establishments, educational, cultural and religious institutions have been destroyed with the object of

decimating all traces of the 5000 years old civilisation of this indigenous minority community, he added. “Now that the elected government in Jammu and Kashmir has been talking of the return of Kashmiri displaced persons to their homeland in the valley, there have been renewed acts of terrorist violence and arson, in a bid to thwart the process of restoring peace and amity”. Prof. Warikoo stressed that religious extremism, xenophobia and acts of violence by terrorists and mercenaries inspired by hostile states, are the root cause of population displacements and their traumatic experiences. “It is high time that steps are taken to protect and promote human rights of such displaced persons”, he urged the Sub-Commission.

Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief

The Sub-Commission on Prevention of Discrimination and Protection of Minorities also discussed further developments related to issues like promotion and protection and restoration of human rights at all levels; elimination of all forms of intolerance and discrimination based on religion or belief; encouragement of universal acceptance of human rights instruments; implication of humanitarian activities for the enjoyment of human rights; terrorism and human rights; and adverse consequences of transfers in arms and illicit trafficking in arms.

During the discussion on the item “elimination of all forms of intolerance and discrimination based on religion or belief”, several member countries and NGO’s made their interventions. Ashok Bhan of the HRCF stated that intolerance and discrimination based on religion, race or belief existed in many countries thereby posing a grave threat to the progress of mankind and the future of children. Such discrimination which led to human rights violations was often sanctioned by law and by political and social attitudes. Citing an example, he said, “In 1947, the Constituent Assembly of Pakistan approved the objectives resolution which provided for the minorities in Pakistan to freely profess and practice their religion and develop their cultural identities”. But in 1972, the Pakistani Government had nationalised the private schools run by Christians and under the 1974

constitutional amendment, the Ahmediyas, a religious sect founded in 1889, had been declared non - Muslims. He drew attention of the Sub-Commission to the conditions of Mohajirs in Pakistan, who though Muslims faced persecution because of their distinct cultural identity. Mr. Bhan stressed that although both India and Pakistan had become independent at the same time, the Muslim minority in India had the benefit of legal equality and protection of law. "In the Indian State of Jammu and Kashmir, Pakistan trained Kashmiri militants and foreign trained mercenaries have killed several thousand members of Hindu minority, let loose a reign of terror, desecrated and destroyed several shrines and places of worship in order to force the Hindu minority to leave Kashmir", he added. "The Muslim fundamentalist forces have not only perpetrated the cult of intolerance and violence in Pakistan and the Indian State of Jammu and Kashmir, but are also trying to dismantle and subvert the secular fabric of societies outside this region as well". He urged the Sub-Commission to call on all governments to dismantle those legal and constitutional structures that not only permit but encourage discrimination on the basis of religion, race or creed.

The Chairman of the Sub-Commission Mr. Jose Bengoa declared the 49th session closed on August 29, 1997. In his concluding remarks he expressed satisfaction that the Sub-Commission's new agenda, based on the systematic grouping of topics, had proved to be rational and had contributed to the high level of its discussions, particularly those on racism and migrant workers and new forms of xenophobia, as well as on the effects of these factors on economic, social and cultural conditions in the modern world.

The Chairman declared that economic, social and cultural rights in which increasing interest was being shown each year in the Sub-Commission would in future be examined with an increasing amount of attention. He stressed that other topics with which the Sub-Commission had dealt, such as freedom of movement, forced eviction, etc. should also be kept under consideration. Besides, the issue of arms traffic should be studied in greater detail. He said that the Sub-Commission should continue to improve the quality of its discussions by taking into account as much as possible the diversity of existing political and cultural situations.

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**RESOLUTIONS / DECLARATION ADOPTED BY THE
UNITED NATIONS COMMISSION ON HUMAN RIGHTS
on HOSTAGE-TAKING**

A) Commission on Human Rights Resolution 1996/62

The Commission on Human Rights,

Recalling the Universal Declaration of Human Rights, which guarantees the right to life, liberty and security of person, freedom from torture or degrading treatment, freedom of movement and protection from arbitrary detention,

Taking into account the International Convention against the Taking of Hostages adopted by the General Assembly in its resolution 34/146 of 17 December 1979, which also recognizes that everyone has the right to life, liberty and security of person and that the taking of hostages is an offence of grave concern to the international community,

Taking into consideration the provisions of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977, which prohibit the taking of hostages in time of armed conflict,

Recalling the previous resolutions of the Commission on Human Rights on the subject, including the latest, resolution 1992/23 of 28 February 1992, in which it condemned the taking of any person as hostage,

Bearing in mind the pertinent Security Council resolutions condemning all cases of hostage-taking,

Deeply concerned that, despite the efforts of the international community, acts of hostage-taking, in different forms and manifestations, including, *inter alia*, those committed by terrorists and armed groups, have increased in many regions of the world,

Especially alarmed at the taking hostage of women and children, expressing its distress at the violence committed against innocent victims, and sharing the anxiety and suffering of the families concerned,

Expressing its outrage at the continuing manifestations of brutality and violence in connection with hostage-taking, including the killing of innocent people and their use as human shields,

Appealing for the humanitarian action of the International Committee of the Red Cross and its delegates to be respected and facilitated in all relevant circumstances,

Recognizing that hostage-taking calls for resolute, firm and concerted efforts on the part of the international community in order, in strict conformity with international human rights standards, to bring such abhorrent practices to an end,

1. Emphasizes that the taking of hostages, wherever and by whomever committed, constitutes a serious obstacle to the full enjoyment of all human rights and is, under any circumstances, *unjustifiable*;
2. Demands that all hostages be released immediately and without any preconditions;
3. Calls upon States to take all necessary measures, in accordance with relevant provisions of international law and international standards of human rights, to prevent, combat and punish acts of hostage-taking, including strengthening international cooperation in this field;
4. Invites relevant non-governmental organizations to bear in mind, where appropriate, the problem of hostage-taking in their deliberations;
5. Urges all thematic special rapporteurs and working groups to address, as appropriate, the consequences of hostage-taking in their forthcoming reports to the Commission;
6. Decides to consider this question at its fifty-fourth session under the same agenda item.

58th meeting, 23 April 1996 (Adopted without a vote)

B) Declaration adopted at the 48th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 29 August 1996

"The Sub-Commission on Prevention of Discrimination and Protection of Minorities, considering the declaration of the Chairman of the Sub-Commission at its forty-seventh session relating to the kidnapping and murder of hostages, reiterates its strongest

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condemnation of these practices, and emphasizes that hostage-taking of any sort constitutes not only a heinous crime but also, in situations of armed conflict, a violation of the applicable humanitarian standards.

The Sub-Commission again urges all organizations that use such barbaric methods for political gain to cease immediately this vile practice and unconditionally set free all the persons they are holding.”

C) *Commission on Human Rights Resolution 1997/28*

The Commission on Human Rights,

Recalling the Universal Declaration of Human Rights, which guarantees the right to life, liberty and security of person, freedom from torture or degrading treatment, freedom of movement and protection from arbitrary detention,

Taking into account the International Convention against the Taking of Hostages, adopted by the General Assembly in its resolution 34/146 of 17 December 1979, which also recognizes that everyone has the right to life, liberty and security of person and that the taking of hostages is an offence of grave concern to the international community, as well as the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly in its resolution 3166 (XXVIII) of 14 December 1973,

Bearing in mind the pertinent Security Council resolutions condemning all cases of hostage-taking, as well as the statement to the press made by its President on 19 December 1996, condemning the taking of hostages by terrorist elements,

Recalling its resolution 1996/62 and other previous resolutions on the subject, in particular its resolution 1992/23 of 28 February 1992, in which it condemned the taking of any person as hostage,

Deeply concerned that, despite the efforts of the international community, acts of hostage-taking, in different forms and manifestations, including, *inter alia*, those committed by terrorists and armed groups, have increased in many regions of the world,

Expressing its outrage at the continuing manifestations of brutality and violence in connection with hostage-taking, including the killing of innocent people and their use as human shields,

Especially alarmed at the taking hostage of women and children, expressing its distress at the violence committed against innocent victims, and sharing the anxiety and suffering of the families concerned,

Appealing for the humanitarian action of the International Committee of the Red Cross and its delegates to be respected, in accordance with the Geneva Conventions of 1949 and the Additional Protocols thereto,

Recognizing that hostage-taking calls for resolute, firm and concerted efforts on the part of the international community in order, in strict conformity with international human rights standards, to bring such abhorrent practices to an end,

1. Reaffirms that hostage-taking, wherever and by whomever committed, is an illegal act aimed at the destruction of human rights and is, under any circumstances, unjustifiable;
2. Strongly condemns all acts of hostage-taking, anywhere in the world;
3. Demands that all hostages be released immediately and without any preconditions;
4. Calls upon States to take all necessary measures, in accordance with relevant provisions of international law and international human rights standards, to prevent, combat and punish acts of hostage-taking, including by strengthening international cooperation in this field;
5. Invites relevant non-governmental organizations to join States in condemning acts of hostage-taking;
6. Urges all thematic special rapporteurs and working groups to address, as appropriate, the consequences of hostage-taking in their forthcoming reports to the Commission;
7. Decides to consider this question at its fifty-fourth session under the same agenda item.

57th meeting, 11 April 1997 (Adopted without a vote)

BOOK REVIEW

'JACKALS' OF THE HIMALAYAS : KASHMIR HOSTAGES' MYSTERY

By **S.P. Sinha**. Applied Media, New Delhi, 1997. xv,132 pp.Rs. 235.

Three years have passed since five innocent foreign tourists were kidnapped by *Al-Faran* militants in Kashmir. It was the month of July 1995 when tourism was beginning to pick up in Kashmir valley after a lean trot of five seasons in a row. But who knew it that *Jackals of the Himalayas* would kidnap the five foreigners who came to spend their holidays in the paradise of India. The more shocking news came a month later when one of them, the 27-year-old Norwegian, Hans Christian Ostro was beheaded by the kidnappers and his body was found with a note tied containing a grim warning and a demand by *Al Faran*, an extremist outfit consisting of Afghan mercenaries, for the release of 21 of their colleagues from jail. The other four kidnapped tourists included two Americans - John Childs and Donald Fred Hutchings, two Britons - Keith Charles Mangan and Paul Saymour wells and one German-Dirk Hasert. While John Childs luckily managed to escape after three days of his abduction, the fate of the other four remains unknown till date.

Undecided fate of these hostages and the agony of their dear ones has moved S.P. Sinha to record this treacherous aspect of human history in a book form. '*Jackals' of the Himalayas* which details various stages of this agonising drama. Ever since this tragic episode, the traumatised relatives of the other four hostages, have been engaged in a helpless wait for the return of their dear ones. As one of the relatives Cath Moselely expressed simple sentences. "We are asking for such a simple thing. We want to know what has happened to our loved ones." The other Julie Mangan said, "*Al Faran* militants have cut our hearts into ribbons" and the clincher came from the third one Bob Wells who said, "we want the wall of silence to be broken".

The book which presents numerous hostage and murder drama, throws enough light on the extent and pattern of terrorism, hostage taking and killing of innocent victims including the foreign tourists in Kashmir. For a proper understanding of the militancy and the hostage crisis, the book has been divided into twelve chapters besides two appendices.

While Appendix I gives details of foreign nationals abducted with dates and place, Appendix II lists the militants freed by the government in return of hostages like Dr. Rubiya Sayeed, Nahida Imtiaz and K. Doraiswamy.

While discussing the hostage taking episodes in the post-1989 era of militancy, in Kashmir the book sheds interesting light on the rise of *Al-Fran* and influx of Afghan and Pakistani mercenaries in Kashmir. It also provides details of various militant and terrorist outfits or groups active in the valley as well as counter-insurgents. The origin and growth of fundamentalism has also been dealt though briefly.

The book has some poignant photographs showing the relatives of the hostages tying yellow ribbons on tree branches in All Saints' Church in Srinagar, addressing a press conference after the kidnapping, distributing appeals among the villagers seeking to know the whereabouts of hostages, praying at the Jama Masjid and talking to villagers - all in the hope of reaching the hostages.

The book has explained that the kidnappers belonged to the *Al-Faran* group, a front organisation of *Harkat-ul-Ansar*, a pro-Pakistan terrorist group comprising Afghan as well as Pakistani mercenaries. The main abductors of hostages are reported to have been Abdul Hamid Turki (Turkey), Zubair Ahmed (Pakistan), Ali Hassan (Pakistan), Safdar (Pakistan), Abdullah (Pakistan) and Abu Torab (Pakistan).

As such the book reminds its readers the nefarious activities being carried out by foreign trained armed mercenaries and terrorists in the Kashmir valley. Even though the mystery about the whereabouts of the four hostages remains unresolved, one thing stands clear, that is the government needs to evolve and follow a consistent and tough policy *vis-a-vis* the politics of extortion and blackmail indulged by the terrorists in Kashmir.

Dr. Sharad K. Soni