



Security Council

Distr.: General
27 December 2001
English
Original: French

Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from India, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(Signed) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee



Annex

[Original: English]

Letter dated 24 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of India to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I forward herewith India's report in response to Security Council resolution 1373 (2001) (see enclosure).

The report is in four parts. Of these, the first three, which are attached, are meant for general distribution, and may be circulated as documents of the Security Council.

The fourth section, which I am sending to you separately, is a confidential document, meant only for the information and use of the Counter-Terrorism Committee, and is not for wider distribution.

(Signed) Satyabrata **Pal**

Enclosure**Report by India to the Counter-Terrorism Committee pursuant to resolution 1373 (2001)**

India's report concerning the implementation is organised under the following Sections:

Section I: Measures Against Terrorism: This Section addresses issues in Operative Para 2 of the Resolution which relates to aspects such as criminalisation of Terrorist Act, recruitment, training, supply of weapons and punitive measures against commission of terrorist acts.

Note: For orderly presentation, it is felt that it is useful to begin with Operative Para 2.

Section II: Financing of Terrorism: This Section addresses issues covered under Operative Para I of the Resolution on aspects such as financial flows, freezing of accounts and assets, contributions to funds for terrorist purpose, etc.

Section III: International Cooperation Against Terrorism: This Section deals with India's approach to international cooperation including bilateral and multilateral agreements, extradition arrangements, etc.

Section IV: External Support to Terrorism: This is a "confidential" Section wherein the extensive external support to Terrorism in India is documented. This Section is not for publication as it contains sensitive material.

Section I: Measures Against Terrorism:

1. Resolution 1373 Operative Para-2 reads as follows:

Decides also that all States shall:

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;
- (g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

2. Based on the above, the Committee under the Security Council has formulated the following questions:

Sub-paragraph (a): What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) **recruitment to terrorist groups** and (ii) **the supply of weapons** to terrorists? What other measures help prevent such activities?

Sub-paragraph (b): What other steps are being taken **to prevent the commission of terrorist acts**, and in particular, what early warning mechanisms exist to allow exchange of information with other states?

Sub-paragraph (c): What legislation or procedures exist **for denying safe haven to terrorists**, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if States supplied examples of any relevant action taken.

Sub-paragraph (d): What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens? It would be helpful if States supplied examples of any relevant action taken.

Sub-paragraph (e): What steps have been taken **to establish terrorist acts as serious criminal offences** and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

Sub-paragraph (f): What procedures and mechanisms are in place to assist other states? Please provide any available details of how these have been used in practice.

Sub-paragraph (g): How **do border controls in your country prevent the movement of terrorists?** How do your procedures for issuance of **identity papers and travel documents** support this? What measures exist to prevent their forgery etc?

3. India has waged a sustained war against Terrorism for over two decades. As a victim of Terrorism mainly sponsored from across its border, the Indian State and its people are cognizant of the consequences of and to sensitive to the need to strengthen measures to combat Terrorism.

Prevention of Terrorism Ordinance (POTO):

4. The Prevention of Terrorism Ordinance (POTO) was promulgated by the President of India in exercise of his powers conferred by Article 123(1) of the Constitution of India on October 24, 2001 (at Annexure). The POTO specifically aims to deal with all aspects of prevention of Terrorism. An Ordinance, once promulgated, has the same effect and force as any other law for the time being in force in India. An Ordinance has to be approved by the Parliament and the intended legislation is currently under consideration and discussion. The POTO in its existing form, or the Act as adopted by the Indian Parliament after due consideration, will be the comprehensive piece of legislation specifically to tackle Terrorism.

5. Features in Prevention of Terrorism Ordinance: The full text is at Appendix I. The POTO has 61 Sections and is divided into six Chapters. It has a territorial as well as extra-territorial application. Some prominent features are:

Section 3(1) of the Ordinance defines “**terrorist acts**” as acts done with the intent to threaten the unity or integrity of India or to strike terror in any section of the people by using weapons and explosive substances or other methods (chemical, biological etc.) in a manner as to cause or likely to cause death or injuries to any person or persons or loss or damage to property or disruption of essential supplies and services etc.

Membership of an Association declared as “Unlawful” under “Unlawful Activities (Prevention) Act, 1967” would also be treated as “**terrorist act**.”

The act of raising funds intended for the purpose of terrorism shall also be treated as “**terrorist act**”.

Section 18 of the Ordinance defines “**terrorist organizations**” and provides for their ban under a prescribed procedure as laid down. Any person who is a member or supports or invites support for a terrorist organization by way of raising finances, arranging or participating in meetings or encouraging support to such organizations in any other way commits an offence under the Ordinance.

Possession of explosives and weapons of mass destruction: Section 4 of the Ordinance relates to possession of unauthorized arms, explosive substances or other lethal weapons capable of mass destruction and /or used in biological and chemical warfare. Such acts will also be treated as “**terrorist acts**”;

Enhanced punishment has been prescribed for violation of Arms Act, 1959, The Explosives Act, 1884, The Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 with the intention to aid any terrorist;

Financing of terrorism: Proceeds of terrorism, whether held by terrorist or by any other person liable to be forfeited (**Section 6**). Provisions of seizing properties, assets etc. of terrorist organization.

Under the Ordinance (Section 1(4)) any person who commits an offence beyond India which is punishable under this Ordinance is to be dealt with according to the provisions of this Ordinance in the same manner as if such act had been committed in India. Activities of organizations/persons acting against India’s interests while being based outside India are covered.

Special features/safeguards have been built in to prevent the possibility of misuse of the special power given to investigating authorities also keeping in view the observations of the Supreme Court of India.

6. The terrorist groups listed and banned under the Prevention of Terrorism Ordinance (POTO) are seen in the schedule under Section 18 of POTO. It is also provided under the Ordinance that this list could be modified, as necessary.

7. Apart from POTO, there are several other pieces of legislation under which unlawful acts or criminal acts which may amount to Terrorism can be dealt with. Some of the acts available are listed below with short descriptions of the areas covered:

- (i) The Indian Penal Code, 1860;
- (ii) The Code of Criminal Procedure, 1973;
- (iii) The Arms Act, 1959;
- (iv) The Explosives Act, 1884;
- (v) The Explosive Substances Act, 1908;
- (vi) The Indian Telegraph Act, 1885;
- (vii) The Armed Forces (Special) Powers Act, 1958;
- (viii) The Unlawful Activities (Prevention) Act, 1967;
- (ix) The Anti-Hijacking Act, 1982;
- (x) The Merchant Shipping Act, 1948;
- (xi) The United Nations Security Council Act, 1947.

Indian Penal Code, 1860:

Indian Penal Code, 1860 is the comprehensive criminal law of the country which deals with all the general offences. It deals with offences against human body, offences relating to religion, offences against property, offences relating to criminal breach of contracts of service, offences relating to marriage, offences against public tranquility, State, elections, public justice etc.

However, IPC does not provide for preventive action against terrorists. It only prescribes punishment for criminal acts after the commission of such acts. However, after the commission of the crime/terrorist act, the offenders are charged under relevant sections of IPC along with relevant sections of specific laws relating to that offence (if any).

The Code of Criminal Procedure 1973:

This is the uniform law of criminal procedure for the whole of India. The various sections of the Code provide for conduct of criminal proceedings in the courts of law.

The provisions for preventive action against terrorists/criminals are very mild in Cr.P.C. As per section 41, a Police Officer may arrest a person without warrant provided there is information that the person is likely to commit a cognizable offence (Section 109, 110 Cr.PC). However, the offender has to be produced before Executive Magistrate within 24 hours of detention.

Section 151 Cr.P.C. provides for arrests to prevent the commission of cognizable offence. A Police Officer knowing of a design to commit any cognizable offence may arrest without orders from the Magistrate and without a warrant the person so designing if it appears to such officer that the commission of the offence cannot be otherwise be prevented. However, no person arrested under this section shall be detained in custody for more than 24 hours.

The Arms Act 1959:

The Arms Act 1959 deals with acquisition, possession, manufacture, import and export of arms in India. The Act provides certain safeguards to prevent access to arms and weapons falling in hands of terrorists/anti social elements. The salient features of the Act are

No person can acquire small arms/weapons unless he holds in this behalf a license issued in accordance with Arms Act (Section 3).

Punishment of violation of this section is imprisonment for a term not less than one year but extendable up to three years. The offence also carries a fine in addition to imprisonment.

Certain categories of arms like automatic/semi-automatic weapons, artillery, anti-aircraft and anti-tank fire arms, weapons designed to discharge chemical agents, other specified weapons have been categorized as “prohibited arms” (Section 2).

Similarly, “prohibited ammunition” has been defined in the Act to include chemical agents, rockets, bombs, grenade, shells, missiles and such other articles as specified by Central Government. (Sec.2).

There is complete prohibition of acquisition or possession or of manufacture or sale of prohibited arms or prohibited ammunition. (Section 7)

Punishment for violation of this section is imprisonment for a term which shall not be less than five years but which may extend to ten years and shall also be liable to fine.

Central Government has powers to declare certain areas as “disturbed areas” whenever it is satisfied that there is extensive disturbance of public peace and tranquility or imminent danger of such disturbances in any area.

Punishment for offences under Arms Act in disturbed areas are higher than those prescribed in peaceful areas. Punishment for such offences under Section 3 in such areas is imprisonment for a term which shall not be less than three years but which may extend to seven years.

The Explosives Act 1884:

This Act was enacted to provide a comprehensive law regulating the manufacture, storage, sale, conveyance and importation of explosives throughout India.

As per Section 9(B) of the Act, whoever manufactures, imports or exports any explosives in contravention of rules or conditions of license is liable for imprisonment up to three years or with fine, or with both.

Whoever possesses, uses, sells or transports any explosive in violation of rules/license conditions shall be punishable with imprisonment up to two years or with fine or with both.

In case of specially dangerous explosives the punishment for offences mentioned above extend up to imprisonment for three years or fine or with both.

The Explosive Substances Act, 1908:

This Act was framed as the provisions of Indian Explosive Act, 1884 which was framed to prevent accidents. The Indian Penal Code also does not provide for any penalty for making or possessing explosive substances with unlawful intent and it does not in other cases always provide such severe penalties as were requisite to meet the increasing number of crimes.

As per this Act, punishment for causing explosion likely to endanger life or property is imprisonment for a term up to ten years (Section 3).

Punishment for attempt to cause explosion or for making or keeping explosive with intent to endanger life or property is imprisonment for a term up to seven years (Section 4).

The Indian Telegraph Act, 1885:

Section 5 of the Indian Telegraph Act, 1885 provides that on the occurrence of any public emergency or in the interest of public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may if satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, security of the State, friendly relations with Foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing by order direct at any message or class of messages to or from any person or class of persons or relating to any particular subject brought for transmission by or transmitted or received by any Telegraph shall not be transmitted or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order.

This section authorizes Government to tap the phones/communication of terrorist organizations or organized crime syndicates.

The Armed Forces (Special) Powers Act, 1958:

Section 3 of the said Act empowers Central or State Government to declare the whole or any part of State as “disturbed area” when in its opinion the situation there is so disturbed that use of Armed Forces in aid of civil power is necessary.

Section 4 of the said Act confers special powers to any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in Armed Forces in disturbed areas.

It allows the use of force against persons acting in contravention of any law or order for the time being in force in disturbed area.

To destroy any arms dump, shelter etc. from which armed attacks are made, any structure used for training camp, for armed volunteers or utilized as a hide out by armed gangs or absconders.

Arrest without warrant any person who has committed a cognizable offence or against a person who is likely to commit a cognizable offence.

Search and seizure of any premises without warrant.

The Unlawful Activities (Prevention) Act, 1967:

The object of this Act is to make powers available for dealing with activities directed against the integrity and sovereignty of India. “Unlawful activity” has been defined in relation to an individual or association as an action taken by such individual or association:

- (i) which is intended, or supports any claim to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;

“Unlawful association” has been defined as any association which has for its object any unlawful activity or encourages any unlawful activity or any activity punishable under section 153(A) or 153(B) of Indian Penal Code.

Section 7 of the said Act empowers the Central Government to prohibit the use of funds of an unlawful association. It effectively freezes the financial operations of an unlawful association.

Section 8 of the said Act empowers the Central Government to notify places used for the purpose of an unlawful association. It effectively restrains the use of moveable and immovable property by unlawful associations.

The punishment provided for unlawful activity is imprisonment up to seven years and fine. Any person assisting any unlawful activity is punishable for imprisonment up to five years or with fine or with both.

This was the first Act under which the assets of any terrorist organization could be frozen. The punishment provided for unlawful activity is also not commensurate with terrorist acts.

It provides for banning of organizations but it covers only those organizations who support cession or secession of a part of a territory of India from the Union or Acts which are intended to disrupt the sovereignty and territorial integrity of India.

The Anti-Hijacking Act, 1982:

A convention for suppression of unlawful seizure of aircraft was drawn up at the Diplomatic conference in The Hague in December, 1970. The Hague convention created a new international offence, the offence unlawful seizure of aircraft alias Hijacking. The convention covers offences committed by any person on board an aircraft in flight.

This Act was enacted to give effect to The Hague convention.

Section 4 of the said Act gives punishment for hijacking which shall be imprisonment for life and the person shall also be liable to fine.

Section 5 of the Act provides for punishment for acts of violence connected with hijacking. Any act of violence against any passenger or crew member is punishable with the same punishment with which the hijacker would have been punishable under any law for the time being in force in India if such act had been committed in India.

Section 7 provides that offences under section 4 and 5 shall be deemed to be extraditable offences.

The United Nations Security Council Act, 1947:

This act supplements other Acts, where necessary. Action can be taken against terrorist organisations, which are not banned under domestic legislation in India. As per the provisions of this Act, government can take necessary measures for implementation of the decisions of the UN Security Council.

8. It will be seen from the above that the specific questions raised in Operative Para-2 of UNSCR 1373 on issues inter-alia such as: steps being taken to prevent commission of terrorist acts; supply of weapons to terrorists; prohibition of recruitment to terrorist organisations; criminalisation of terrorist acts; are covered under these provisions.

9. Provisions relating to Passports, travel documents, visas are covered in the following paragraphs.**(a) Provisions in the Passport Manual to ensure that terrorists/suspected terrorist do not get passports:**

Under Section 2 of the Passports Act, 1967, the passport authority is required to make such inquiry, as it may consider necessary before issuing a passport. The means of conducting such inquiry is through a police verification report, which is obtained through the State Police authorities. Most passports are issued after due police verification which inter-alia establishes the Indian nationality of the applicant. The police verification also establishes the antecedents of the applicant including any terrorist activity of the applicant or that of a suspected terrorist. In cases where a passport is issued without a Police Report for some reason, and a negative report is received later such passport applicants are contacted for clarification and where necessary, the passports are revoked or impounded. This system of issue of passports on Police Report overdue basis is not applicable in areas, which are sensitive from a security point of view. The list of States where passports are issued on police report overdue basis is periodically reviewed in consultation with the security agencies.

Under Clause 6(2) of the Passports Act, 1967, the Passport Authority has the power to refuse issue of passport to person in whose case issuing a passport is not in the interest of Security and Integrity of the Country or is not in Public Interest. The input regarding this is received from the concerned Security/Investigating Agencies.

(b) Passport (Entry into India) Act:

Foreigners Division, Ministry of Home Affairs (MHA) administers the Passport (Entry into India) Act, 1920. Powers under this act have been delegated to the State Governments. As per the provisions of this Act every person must be in possession of valid travel documents as defined in Passport (Entry into India) Rules, 1950. In case of foreigners, valid visa issued by the competent authority on the travel documents is also necessary. Violation of provisions of this Act attracts a penal provision of imprisonment up to a term of five years and with fine or with both.

(c) Provisions from the Visa Manual to ensure that suspected terrorists do not get visas to visit India:

Before issuing visas to foreigners, Indian Missions carry out several checks to ensure that visas are not granted to any persons in negative or suspect lists and thus to persons suspected of involvement in terrorist acts or are members of terrorist organisations.

The visa applicants are also interviewed, wherever necessary, to bring out facts which might have been purposefully suppressed or omitted to mention in their applications.

(d) The mechanism of blacklisting of terrorists:

Terrorists and other anti-social activists are blacklisted by Ministry of Home Affairs on the basis of inputs received from central intelligence agencies, State Governments and Indian Missions/Posts abroad. The names and personal particulars of such personnel are circulated by MHA to all Indian Missions and Posts abroad and all immigration check posts in India. The names are removed from the black list only after receiving recommendation/consent to this effect from the originating agency and others.

(e) Prior Reference Category (PRC)/NEGATIVE LIST:

A negative list is maintained to prevent the entry of undesirable foreigners into the country. Missions/other agencies do not issue visas to persons whose name figure on the list without prior clearance. This list is periodically reviewed for deletion/addition of names, based on various inputs.

(f) HOW OUR PASSPORT AND VISA PROCEDURE SUPPLEMENTS THESE BORDER CHECKS:

As per the provisions of the passport (Entry into India) Act, 1920 and the rules framed under it, every person (except the nationals of Bhutan and Nepal) are required to be in possession of valid travel documents for entry into India. In case of a foreigner a valid visa issued by a competent authority is also required for entry into India. Entry into India is allowed only from the specified entry points (Immigration check-posts). Any person found entering into India without travel documents is arrested and handed over to the local police for taking further necessary action. Persons arrested for entering into India without travel documents or from unspecified points are liable to be awarded imprisonment up to a period of five years and with fine or with both. Persons who repeat the violation are liable to be awarded double the penalty prescribed for such violation. The stay and movement of foreigner inside the country is also governed by other acts viz., Foreigners Act, Registration of Foreigners Act etc. and rules made there under.

Every foreigner who enters into India on a visa for more than 180 days is required to get himself registered with the concerned Foreigners Registration office within 14 days of his arrival in India. Pakistani nationals are required to get themselves registered within 24 hours. Afghan nationals are required to get themselves registered within 7 days.

Section II: Financing of Terrorism

10. Security Council Resolution 1373 in Operative Paragraph 1 states:

1. Decides that all States shall:

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

11. The guidelines issued by the Committee has the following questions with regard to Operative Paragraph 1 of Financial Flows:

Sub-paragraph (a) – What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d).

Sub-paragraph (b) – What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

Sub-paragraph (c) – What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Sub-paragraph (d) – What measures exist to prohibit the activities listed in this sub-paragraph?

12. **Introduction:** In describing the financial aspects related to Terrorism, some broad features of the Indian system need to be underlined; on the financial side traditionally there has been a highly regulated approach to foreign currency transactions and banking. Rules and regulations scattered over a number of Acts deal with several aspects (described below) and empower the Executive with wide powers to investigate; where necessary to prosecute; freeze and forfeit accounts or assets. At the same time, most transactions in the criminal world are unorganised, are informal, shadowy and as they are not through institutional mechanisms are extremely difficult to track, let alone offer evidence or proof for purposes of prosecution.

12(a). The criminal laws in general were used to prosecute and penalize terrorists. The need for special laws were felt when certain terrorists acts required to be prosecuted under a combination of legal provisions drawn from different legislations. The Indian Constitution provides for a Union List (subjects under the jurisdiction of the Central/Federal Government of India), States List (subjects under the jurisdiction of the State/Provincial Government), and Concurrent List (subjects under the jurisdiction of both). Subjects such as Arms, Explosive, Preventive Detention, National Security belong to the Union list; the Concurrent list deals with criminal laws and criminal procedure code.

Legal Provisions

13. As stated in the introduction, under the Indian Legislative framework, there are a number of laws, regulations and administrative arrangements to deal with illegal financial flows, and finances suspected with linkages to serious criminal activities. Depending on the nature of the criminal activity, one or more of these provisions could be used by the investigating and prosecuting authorities.

Broadly speaking the provisions work as follows:

A determination has to be made concerning criminal or terrorist activities of the individuals or entities. Based on such a determination, provisions as included in respective acts quoted below could be used for detention of persons, seizure, forfeiture of properties and prohibition on the use of funds.

- (i) The Unlawful Activities (Prevention) Act, 1967 (Act 37, 1967)
(Power to prohibit the use of funds of an unlawful association)

As per the provisions of Section 3 read with Section 7 of the Unlawful Activities (Prevention) Act, 1967, the Central Government may, by order in writing, prohibit any person (who has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association) from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order.

- (ii) Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (52 of 1974)
(Power to make orders detaining certain persons)

The Act provides for preventive detention in certain cases for the purposes of conversion and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith. Section 3 of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, relates to power to make orders detaining any person with a view to preventing him from acting in any manner prejudicial to the conversion or augmentation of foreign exchange or with a view to prevent attempts at future smuggling or keeping of smuggled goods in future as referred to therein.

- (iii) The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (Act 13 of 1976)
(Forfeiture of Property)

As per provisions of Section 7 read with provisions of Sections 2 and 6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 the Competent Authority, under the Act is empowered to pass orders for forfeiture of the properties of persons as referred to under Section 2 of the Act.

- (iv) The Foreign Exchange Management Act, 1999
(Reserve Bank's powers to issue directions to authorized person)

For the purpose of securing compliance with the provisions of the Foreign Exchange Management Act, 1999 Rules/Regulations/Notifications /directions made or issued there under, Reserve Bank may in terms of Section 11 of the Act give directions to the authorized persons in regard to making of payment or doing or desist from doing any act relating to foreign exchange or foreign security.

- (v) Code of Criminal Procedure, 1973
(Power of Police Officer to seize certain property)

As per provisions of Section 102, Police Officer is empowered to seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances, which create suspicion of the commission of any offence.

- (vi) Banking Regulation Act, 1949
(Power of the Reserve Bank to give directions)

Section 35A of the Banking Regulation Act, 1949 empowers the Reserve Bank to issue directions to banking companies generally or to any banking company in particular. Amongst other criterion for exercise of such power, the public interest is also one of the criteria.

- (vii) Forfeiture of Illegally Acquired Property under the NDPS Act.

Illicit drug trade generates large profits for the traffickers. As the money so generated is unaccounted, there are inherent difficulties in utilising the same. The traffickers therefore apply various techniques to launder the money to conceal its origin and there after use the same for legitimate transactions. To divest the drug traffickers of the profits generated by their illegal activities, is a significant approach to curtail their activities and great emphasis was laid on this aspect by the UN General Assembly Special Session on Narcotic Drugs & Psychotropic Substance.

Provisions have been made in Chapter V A of the NDPS Act, 1985 for tracing, identification, freezing and forfeiture of all properties attributable to drug trafficking.

The property derived out of drug trafficking of any person, his associates or relative, convicted of an offence punishable under the Narcotic Drugs and Psychotropic Substances Act with imprisonment for a term of 10 years or more or who has been convicted of a similar offence by the Competent Court of criminal jurisdiction outside India or a person in respect of whom an order of detention has been made under Prevention of Illicit Trafficking in Narcotic Drugs & Psychotropic Substances Act 1988 and such order of detention has not been revoked or set aside or who has been arrested or against whom a warrant of arrest has been issued can be frozen. Such properties on the conviction of the said person or completion of his detention period are liable to forfeiture.

By a recent amendment, the entire process of money laundering has also been made a punishable offence under the Narcotic Drugs & Psychotropic Substances Act.

14. Note on freezing, seizing and forfeiture of illegally acquired property.

The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976 (SAFEM (FOP)A), provides for forfeiture of illegally acquired property of the persons convicted under the Sea Customs Act, 1978, the Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973 and the persons detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) provides for tracing, freezing, seizure and forfeiture of illegally acquired property of persons convicted under that Act or any corresponding law of any foreign country and those who are detained under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and Jammu & Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

While the illegally acquired property covered under the respective Acts could be forfeited under both the above Acts, the NDPS Act also provides for tracing, freezing and seizing illegally acquired property. The Act also provides for forfeiture of the 'proceeds' of drug trafficking, including property acquired with such proceeds. Under the NDPS Act, officers who are in charge of police station and officers empowered under Section 53 of the Act can on receipt of information on holding of illegally acquired property take steps to trace and seize and if not possible to seize, freeze such illegally acquired property pending forfeiture. Orders of seizing or freezing have to be confirmed by the Competent Authority within a period of 30 days. Once the property is due for forfeiture, the Competent Authority shall issue a notice for forfeiture to the affected persons. After giving them an opportunity to be heard, the Competent Authority may forfeit the illegally acquired property. Against the orders of the Competent Authority, the affected persons can go in appeal before the Appellate Tribunal for Forfeited Property.

Although participation in terrorism or other subversive activities are not grounds for forfeiture of the illegally acquired property under the above said Acts, since most of the terrorists commit offences like smuggling or drug trafficking, their property could be forfeited if they are either convicted under the relevant laws for smuggling or drug trafficking or against them orders for preventive detention are issued. As a matter of fact the main suspects of Mumbai serial blast case like Dawood Ibrahim, Tiger Memon, Iqbal Mirchi, Bhai Thakur and Mohd. Dossa were all involved in either smuggling or drug trafficking and at some point of time some orders of preventive detention were issued against them and on the basis of those orders their illegally acquired properties could be forfeited either under the SAFEM(FOP)A or under the NDPS Act.

Prevention of Terrorism Ordinance (POTO)

15. The Prevention of Terrorism Ordinance (POTO) was promulgated by the President of India in exercise of his powers conferred by Article 123(1) of the Constitution of India on October 24, 2001 (text at Annexure). (The Prevention of Organized Crime legislations in Karnataka, Maharashtra and Andhra Pradesh states are precursors of POTO; they deal with most the requirements of UNSCR. Other relevant legislations include Prevention of Unlawful Activities Act, Prevention of Disruptive Activities Act, Disturbed Areas Special Courts Act 1976, Terrorism Affected Areas (Special Courts) Act, 1984.) The POTO specifically aims to deal with all aspects of prevention of Terrorism. An Ordinance, once promulgated, has the same effect and force as any other law for the time being in force in India. An Ordinance has to be approved by the Parliament and the intended legislation is currently under consideration and discussion. The POTO in its existing form, or the Act as adopted by the Indian Parliament after due consideration, will be the comprehensive piece of legislation specifically to tackle Terrorism. (A description of the features of POTO is contained in Section I).

16. In POTO the term "Proceeds of Terrorism" has been defined in a broad manner to include all kinds of properties which:

- (i) Have been derived or obtained from the commission of any terrorist act, or
- (ii) Have been acquired through funds traceable to a terrorist act.

For this purpose the person in whose name such proceeds are standing or in whose possession they are recovered is immaterial.

Under POTO, a person also commits a terrorist act if he raises funds intended for purpose of terrorism.

Section III: UNSC 1373: Strengthening International Cooperation to Combat Terrorism

Operative Para-3 of 1373 reads as follows:

- (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
- (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
- (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
- (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
- (e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
- (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;
- (g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

The Committee under Security Council in its guidelines has raised the following questions with regard to Operative Para 3:

Sub-paragraph (a): What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

Sub-paragraph (b): What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?

Sub-paragraph (c): What steps have been taken to cooperate in the areas indicated in this sub-paragraph?

Sub-paragraph (d): What are your government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?

Sub-paragraph (e): Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph.

Sub-paragraph (f): What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

Sub-paragraph (g): What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being

recognised as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

17. India has consistently, over the decades, sought to intensify and strengthen international cooperation to combat the global phenomenon of terrorism through a variety of means.

BILATERAL MECHANISMS TO ADDRESS TERRORISM

18. Joint Working Groups

India has established Joint Working Groups with several key countries to exchange information and strengthen international cooperation to combat terrorism. In these Joint Working Groups there is an effort to explore ways of intensifying the exchange of information, especially regarding review of threat perceptions, early warnings, cooperation on administrative and judicial matters to prevent and suppress the commission of terrorist acts and to facilitate action against perpetrators of such acts. These Joint Working Groups meet periodically to review the status of cooperation in the fight against Terrorism. Apart from this, issues relating to the fight against terrorism are taken up in bilateral discussions.

19. Bilateral Treaties to Combat International Terrorism

India has entered into three types of bilateral treaties to combat international terrorism:

- a. Agreements to Combat Terrorism and Organized Crime, Narcotic Drug offences, etc.
- b. Extradition Treaties,
- c. Treaties on Mutual Legal Assistance in Criminal Matters.

20. Bilateral agreements to combat terrorism and organized crime, etc.

These agreements are essentially framework agreements designed to facilitate exchange of operational information and development of joint programmes to combat organized crime and terrorism. Legally binding measures such as service of summons, search and seizure of persons, property or funds etc. are outside the scope of these agreements, as these subjects usually fall within the scope of treaties on mutual legal assistance in criminal matters. India has signed such agreements with Bulgaria, Croatia, China, Egypt, Oman, Italy, Romania and Russian Federation.

21. Extradition treaties

Extradition treaties are more focussed in operational scope and are designed to facilitate the transfer of fugitive offenders, suspected terrorists etc. so that they can stand trial in the State in which the offence is committed. Such treaties cover extradition in respect of almost all serious offences (i.e., offences punishable with a penalty of imprisonment of two years or more). The more recent treaties concluded by India provide for the 'no list' method for which extradition may be given. The recent treaties also deny the political exception plea as a defence against extradition.

India has concluded extradition treaties with Belgium, Bhutan, Canada, Hong Kong, Nepal Netherlands, Russia, Switzerland, UAE, UK, and USA. Such treaties have been signed, (but not yet exchanged), with Mongolia, Germany, Tunisia, Turkey and Uzbekistan. India has entered into extradition arrangements with Australia, Fiji, Papua New Guinea, Singapore, Sri Lanka, Sweden, Tanzania, and Thailand.

22. Bilateral Treaties on Mutual Legal Assistance in Criminal Matters

These treaties are designed to provide mutual legal assistance in criminal matters that are necessary for the prosecution of offences, searching persons and property in question, location of fugitives and property involved, transfer of witnesses and exhibits, freezing and confiscation of proceeds of crime, etc., and play a useful role in the punishment of crime and prosecution of offenders.

India has signed agreements on Mutual Legal Assistance in Criminal Matters with Canada, Switzerland, Turkey, Russian Federation, UAE, UK and Uzbekistan and signed, (but not yet exchanged), the agreements with France, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan and USA. The domestic legislation governing the procedural aspects of such cooperation is governed by the Code of Criminal Procedure, 1973 (sply ss. 105, 166A, 166B and Chapter VII-A of Cr. P.C. 1973).

MULTILATERAL ARRANGEMENTS AND AGREEMENTS

23. International Conventions on Terrorism

Of the twelve International Sectoral Conventions on Terrorism which have been concluded under the aegis of the UN, India is a party to eleven of these conventions except the International Convention on the Physical Protection of Nuclear Material, 1979 and has taken steps to effectively implement its commitments under these Conventions. (List of Conventions to which India is a party is at Appendix II.)

There is proposed legislation, i.e., Prevention of Terrorism Ordinance to cover/address measures to suppress financing of Terrorism (which has been covered in Sections I and II in the report).

24. Regional Conventions on Terrorism

India is a party to the SAARC Regional Convention on Suppression of Terrorism, 1987. Pursuant to this convention, an enabling legislation titled “The SAARC Convention (Suppression of Terrorism) Act” was enacted in 1993.

25. Arrangements for Consideration of Status of Refugee/Asylum

There is no specific law in India to deal with refugees or asylum seekers and such cases are dealt with under existing laws pertaining to foreigners. “Foreigners” fleeing from neighboring countries into India due to ethnic violence, threat to their lives etc. are allowed to stay in India temporarily on humanitarian grounds. As and when the situation in their home country improves they are encouraged to return. Such foreigners who have been allowed to stay in India on humanitarian grounds may also be issued registration certificates and extensions are granted on their RCs for specified periods. Movements of all such refugees are monitored by specifically designated authorities who register foreigners. All efforts are made to ensure that suspected Terrorists do not misuse these arrangements to seek refuge in India.

OTHER MODALITIES OF INTERNATIONAL COOPERATION TO COMBAT TERRORISM

26. Cooperation with Interpol

India has been a member of Interpol since 1946 and there is an Indian member on secondment to the Interpol. There is considerable liaison with various Interpol member countries.

Within India, the Director CBI has been designated as the Head of National Central Bureau (NCB) India, Interpol, New Delhi. Under the supervision of the Director CBI there is an Interpol Wing in the Central Bureau of Investigation, whose day to day activities are supervised by an officer of the rank of Superintendent of Police who is designated as Assistant Director, Interpol.

Additionally, an informal arrangement has been made with all the States of the Union to have them designate one senior officer as an Interpol Liaison Officer (ILO) for helping the Indian Chapter of Interpol in carrying out its activities in India.

27. The Mechanics of Red Corner Alerts

Under Interpol there is a mechanism, i.e., issue of Red Corner Alerts, which is designed to facilitate international search for terrorists, fugitives from justice etc. A Red Corner Notice (RCN) is a Circular or a Notification issued by Interpol, upon a request from the member countries, calling for vigilance at border check posts etc so as to arrest and detain and possibly extradite them.

Whenever investigative agency draws a conclusion upon investigation that criminal or a suspected terrorist has fled national jurisdiction, a request is made to Interpol for issue of a Red Corner Alert. Interpol then assess whether the request is violative of any of the basic principles of coordination and cooperation of Interpol. Essentially, this scrutiny is restricted to seeing that the offences for which an RCN is sought to be issued are not political offences and they are not an affront to the sovereignty of any of member country. Another aspect which may be considered is whether the offences for which an RCN is sought to be issued is one for which extradition can be sought and granted as per the internationally acceptable norms. Interpol then issues a Red Corner Notice which clearly mentions that Extradition may be possible on the basis of bilateral agreements or Treaties, between the member countries.

This is a modality of cooperation that India has supported and used.

28. Enhanced Cooperation and Full Implementation of Security Council Resolutions Relating to Terrorism

As a victim of terrorism, India has, over the last two decades, consistently sought to prioritise the need to combat terrorism in international fora, particularly in the UN. India has been supportive of all measures within the UN in the General Assembly, in the Sixth Committee and in the UN Security Council to address the complex global phenomenon of terrorism. It has supported the Security Council Resolutions 1269 and 1368 which note that terrorism poses a threat to international peace and security.

India has also supported and fully implemented resolutions 1267, 1333 and 1363 relating to terrorism by the Taliban regime in Afghanistan and had fully implemented the provisions of these resolutions.

Appendix II

I. India is a Party to the following international anti-terrorism conventions:

1. The Convention on Offences and Certain Acts Committed on Board Aircraft, signed at Tokyo on 14th September 1963;
(Implemented by the Tokyo Convention Act, 1975).
2. The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970;
(Implemented by the Anti Hijacking Act, 1982).
3. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23rd September 1971;
(Implemented by the Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982).
4. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the UN on 14th December, 1973;
(No implementing legislation is required as the offenses covered are punishable under the Indian Penal Code).
5. The International Convention against the Taking of Hostages, adopted by the General Assembly of the UN on 17th December, 1979;
(Implemented by Section 364 A of Indian Penal Code, 1860, inserted by Criminal Law Amendment Act, 1993, s.2).
6. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving international Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24th February 1988;
7. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10th March, 1988;
(Implementation by Amending Merchant Shipping Act, 1948).
8. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental shelf, done at Rome on 10th March, 1988;
(Implementation by Amending Merchant Shipping Act, 1948).
9. The Convention on the Marking of Plastic Explosives for the purpose of Detection, signed at Montreal on 1st March 1991;
10. The International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly of the UN on 15th December, 1997;
11. In addition, India has signed the International Convention for the Suppression of Financing of Terrorism, adopted by the General Assembly of the UN on 9th December 1999.

(Many aspects of financing of Terrorism are addressed in recent legislation, i.e., the Prevention of Terrorism Ordinance.)