BACK TO THE FUTURE: AN ANALYSIS OF THE COMPREHENSIVE CONVENTION ON INTERNATIONAL TERRORISM

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INTRODUCTION

As of December 2016, the Governments of India and Pakistan have been scrambling to have Sayyed Muzzakir Mudassar Hussain alias Munna Jhingra extradited to their respective countries. Currently imprisoned in Thailand, Munna is a noted member of the D-Company criminal outfit which has had strong links to the financing and facilitation of terrorist activity.[1, 2] Munna has been personally involved in the supply of narcotics and counterfeit Indian currency, and a key player in D-Company operations in Thailand.

India claims to have, and has, provided the Thai government significant evidence to establish Munna as an Indian national, while Pakistan claims Munna as one of its own (at the time of his arrest in 2000, he was carrying a Pakistani passport).[3] Claims and counter-claims about Munna's rightful

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1. http://www.southasiaanalysis.org/paper818
2. https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/individual/dawood-ibrahim-kaskar
3. http://www.hindustantimes.com/india-news/chotta-shakeel-s-hitman-s-extradition-turns-into-indo-pak-contest/story-spKs4aEzd5E6hlLAh0DwiK.html

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place of extradition are, no doubt, a cause for great confusion for the Thai government. Cases such as this are not new in international law, and neither are actors like Munna who blur the line between "criminal" and "terrorist".

It would be a remarkable step to see a development on the global stage that would alleviate such issues. But what if this development, the key to classifying, prosecuting, and even extraditing the Munna Jhingras of the world, had been suggested two decades ago?

The Comprehensive Convention on International Terrorism (CCIT) is such one legislation. In 1996, India proposed a convention aimed at addressing certain elemental (but controversial) aspects of terrorism. Broadly, the CCIT aims to: provide a universal definition of terrorism; create special procedures for the prosecution of terrorists acting across borders; unequivocally make illegal all terror groups and terror camps; and make cross-border terrorism an extraditable offence worldwide. An ad-hoc committee was established by Resolution 51/210 of December 17, 1996 to deliberate on the convention in the Sixth Committee of the UN General Assembly (UNGA), (the UN's legal committee). However, since 1997, this committee has stood deadlocked.

Despite a lack of significant progress in the adoption of the convention, the Indian state has not withdrawn support for it. Typically, India reiterates support for the convention whenever it has been impacted by international terrorism, as was seen after the attacks on the Parliament in 2001 and the events of 26/11. The present government too seems to share an affinity for the proposed convention, with Prime Minister Modi making mention of it in his maiden address to the UNGA in 2014. More recently, the spate of terrorist attacks within India and in its neighbourhood (like those in Bangladesh) in 2016, have further cemented India's interest in the adoption of this convention. In September of 2016, India's Foreign Minister Sushma Swaraj appealed to the UNGA to end two decades of deadlock and adopt this "critical" convention.

This paper seeks to understand the CCIT and the reasons why this deadlock persists even after two decades and what is the possible future of the CCIT in the fast changing global world order.

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BACKGROUND

In the discourse on terror, be it academic or otherwise, 9/11 appears to be the transformative event. It is not uncommon to see an analysis of terror being discussed in a paradigm of a world pre-9/11 and post-9/11. For a multitude of reasons that would merit their own paper, 9/11 changed not only the level of focus that terror received, but also conceptions about terrorism itself. In today's world, it is almost a logical progression for nations to push for a uniform and global law to address issues associated with terrorism.

However, the CCIT was proposed by India long before 9/11. Certainly, not in a world without terrorism, but in a world yet to give terrorism the place and priority in policy-making that it occupies today. What then motivated India to propose a comprehensive convention targeted at transnational terror way back in 1996, half a decade before 9/11? The answer is, of course, a multifaceted one, but this paper will limit itself to looking at it from a legal perspective, because, while terrorism may be viewed from the lens of varying socio-political constructs, laws are the most enforceable manifestation of such thoughts. In addition to this, as will be seen, the CCIT is more a legal document than anything else.

To begin with an understanding of India's views on terror, it should be acknowledged that many of the Indian state's most pressing internal disturbances have had a transnational tint to them. These "domestic but transnational" disturbances include the Naga secessionist movement immediately post-independence in 1947, the Maoist insurgency that began in

To begin with an understanding of India's views on terror, it should be acknowledged that many of the Indian state's most pressing internal disturbances have had a transnational tint to them. These "domestic but transnational" disturbances include the Naga secessionist movement immediately post-independence in 1947, the Maoist insurgency that began in the late 1960s, the Khalistani secessionist terrorists who were active between the 1980s-1990s, and in the same period, rampant terrorism in Kashmir.

the late 1960s, the Khalistani secessionist terrorists who were active between the 1980s-1990s, and in the same period, rampant terrorism in Kashmir. It is important to note that the Indian state doesn't label all of the aforementioned issues as terrorism (the difference in labelling brings with it significantly different legal implications). However, by 1996, India's experiences with Khalistani terror and the crisis in Kashmir, in particular, seem to have had an impact on the policy on terrorism of successive governments. After the end of the war in Afghanistan in 1989, a large number of militants who had been combating the Soviets, shifted their focus to Kashmir, widely held to be supported by the elements within the Pakistani state. By the 1990s, violence stemming from terrorism, specifically from foreign fighters, escalated intensely. The 1990s in Kashmir are remembered as a particularly violent time, with cross-border infiltration, domestic insurgency, and secessionist activities all coming together to form a mishmash of confusion that defied neat categorisation. The view (that persists to this day) that military intervention in Kashmir was not enough, and to effectively combat terror, the Indian state would need a way to transcend the limitations of international borders, gained traction. Such a view may even be reflected in India's championing of the CCIT.

Under such circumstances, it would seem but natural for India to have proposed a convention in the vein of the CCIT. The CCIT, as its name suggests, was focussed on tackling the issue of terror, not India's other concurrent issues of insurgency, violent secessionism, separatism, etc. Before one delves into

the CCIT, it is important to pause and reflect upon the Indian government's perspective on terror. In many ways, what a government's view on terror is, decides if an activity is characterised as a terrorist activity. What distinguishes terrorist activity from other types of criminal activity is often a complex interplay of domestic security concerns as well as political considerations. That being said, in the domestic sphere, the definition of a terrorist can be tailored any number of ways, leading to a multitude of views all around the world.

So then, to further an understanding of the CCIT, one must ask how the Indian state chose to define terrorism legally (for the reasons mentioned above) in the years leading up to the presentation of the CCIT in 1996. The earliest domestic definition of a terrorist can be found in the Terrorist Affected Areas Act (TAAA) of 1984.

Section 2, sub-section H, stated:

> ..."terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to:
> - putting the public or any section of the public in fear; or
> - affecting adversely the harmony between different religious, racial, language or regional,groups or castes or communities; or
> - coercing or overawing the government established by law; or
> - endangering the sovereignty and integrity of India…[4]

The TAAA was passed in the Parliament in response to the situation that had been escalating in Punjab since the late 1970s (especially the activities of the Khalistani movement). The TAAA was applicable to particularly designated areas and called for special courts to expedite the process of trying suspected terrorists. Expediting the often cumbersome Indian judicial process is a commonality that would go on to be shared with subsequent domestic legislations on terror. Coming to how the TAAA defined terror, we observe some aspects that are to be expected, such as killing/ acting violently and

4. Full text of the TAAA available on the South Asia Terrorism Portal, at http://www.satp.org/satporgtp/countries/india/document/actandordinances/terroristaffectedact.htm. Accessed on January 2, 2017.

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damaging property. One unique addition made to the definition of a terrorist was that it extended to those persons who negatively affected the harmony between various religious/racial/regional, etc. groups within the country.

This reflects the focus on secessionist and separatist terror outfits that coloured the Indian government's conception of what a terrorist was. Following the TAAA was the TADA ("Terrorist and Disruptive Activities (Prevention) Act") of 1985. The definition of a terrorist remained much the same, with a focus on those affecting the integrity of India[5], but the applicability of the Act grew. Where the TAAA only applied to specific areas, TADA had nationwide applicability. TADA also allowed for increased police powers with regards to confessions (as per Section 15, certain confessions made in police custody were permissible as evidence) as well as heightened penalties for terrorist activities. TADA remained in force till 1995.

Just as domestic political considerations were at work shaping the Indian view of terrorism, they were also a force in other countries, shaping the views of those nations. This is an important factor to acknowledge, as not only does it help us explore disconnects between views in the world at the time of the CCIT's being originally proposed, but also provides more context when studying a "universal" convention like the CCIT.

Around the time the TADA was to lapse, the United States too was creating some of its earliest definitions of terrorism. The bombing of the World Trade Centre in 1993 and the Oklahoma bombing two years later had necessitated

5. Section 3, Sub-section 1 reads: "Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act…" Full text available at http://www.satp.org/satporgtp/countries/india/document/actandordinances/TADA.HTM#3. Accessed on January 2, 2017.

action. The World Trade Centre bombing involved foreign nationals operating in America, while the more devastating Oklahoma bombing was carried out by US nationals. Both involved the use of dangerous, but not impossible to source, chemicals and explosives. Along with a spate of legislation to increase security around federal buildings, the United States' legislature passed the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA).

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Domestically, the AEDPA had implications on the application of *habeas corpus*[6] but more to our interest is its role in designating certain organisations as FTOs (Foreign Terrorist Organisations). The AEDPA laid down a detailed procedure by which a terrorist organisation would be designated. Once designated, the assets of an FTO would be frozen, individuals associated with it barred entry into the US, and those who aided FTOs with material and financial assistance would be subject to heavy punishment as well.

So, as can be seen, around the time the CCIT was about to be introduced, the concept of who a terrorist was and, more specifically, what activities needed to be curtailed, were somewhat dissimilar in India and the United States. From the Indian legislation, it would appear there was a focus on terrorism leading to internal instability. This was not so much the case in American legislation. This distinction is significant as in the years to come, America's experience with terror would impact views the world over.

Shortly after the attacks of September 11, 2001, the fight against terrorism went global. About two weeks after the event, on September 28, 2001, the United Nations Security Council (UNSC) passed Resolution 1373 unanimously. Resolution 1373 called for member states to have increased intelligence cooperation, ratify international conventions on terror into

6. A more detailed explanation of the concept of *habeus corpus* can be found at http://legal-dictionary.thefreedictionary.com/habeas+corpus. Accessed on January 2, 2017.

This is significant because of the manner in which Resolution 1373 was adopted. Being a Security Council resolution, it became binding upon all member states. It carried even further (albeit non-binding) weight as it was adopted under Chapter VII of the United Nations Charter which pertains to determining and dealing with threats to international peace.

domestic law, adapt immigration law so as to not allow its misuse by terrorists, and also establish a counter-terrorism committee to monitor state compliance.

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What is interesting is that despite taking such a forward step, nowhere does the resolution define terror. Even the 13 odd international conventions that the resolution mandates member countries to ratify into law do not define terror. These conventions define aspects of terror certainly, but not what constitutes terror itself. For example, the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 lays down that it is a terrorist act to hijack a plane, the Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991) deals with, as its name suggests, the making and storing of plastic explosives, and so on.

Of course, the omission of a definition of terror is not some hasty oversight but something of an apparent necessity in international law. As mentioned earlier, it is the state and the state's interests that define terror: not only is the definition of a terrorist a fluid one, but also one that is hard to gather consensus on in the global sphere. Many factors obscure a clear path to a definition.

Distinguishing among self-determination movements, acts of persons responding to unjust aggression, and other similar activities has generated much debate but little change in the UNGA. Though, under Resolution 1566, the UNSC did provide a definition of terror and stated that there was no valid justification for acts that are:

> …committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of, and as defined in, the international conventions and protocols relating to terrorism are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature… [7]

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The definition aspect of international terrorism is one that will keep coming up as this paper progresses.

Resolutions like 1373 and 1566 did little to harmonise international law with regard to terrorism. Certainly, member states assented to them (or, at least, to aspects of them) but the implementation of such laws was up to the state. Venezuela, for example, expressed serious reservations about freezing the assets of suspected terrorists while Russia went as far as to convert Resolution 1373 *ad verbatim* into domestic law. India passed POTA (Prevention of Terrorism Act) 2002, partially motivated by its obligation towards Resolution 1373 as well in response to the attacks that occurred on the Parliament of India in 2001. Though repealed now, POTA has had a lasting legacy on terrorism legislation in India, with many of its provisions finding their way into successive legislations on terror, such as India's present day definition of a terrorist. However, these developments do not appear to have made a world more amenable to the adoption of the CCIT, for along with debates regarding the definition of terror that have existed for decades, it now had to contend with a world that was adopting an increasingly Western-led conception of terror.

7. http://www.un.org/press/en/2004/sc8214.doc.htm. Accessed on January 2, 2017.

The US led War on Terror became a prime focus of international legislation on terror, the discourse, and on the ground efforts against terror in the international sphere. While the definition of terrorism remained as elusive as ever, which terrorist the globe should focus on did not. Nor did the means and methods with which this would be done.

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So it would appear that the CCIT was a convention introduced before its time. But by the time its time came, it was parallel to the dominant discourse. Parallel, but not necessarily divergent in its aims, as the next section explores.

THE TEXT OF THE CCIT

As mentioned earlier, the CCIT was originally proposed by India in 1996, at the 88th plenary meeting of the UNGA. As a result of this meeting, the UNGA passed Resolution 51/210, aimed at instituting measures to eliminate international terrorism. In it were appeals for international cooperation and a call for member states to ratify existing conventions on international terror. Of relevance to the CCIT is the concluding portion of Clause 9 of Part III which states:

> ...decides to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism; [8]

8. http://legal.un.org/docs/?symbol=A/RES/51/210. Accessed on January 2, 2017.

It was to be in this Ad Hoc Committee that the CCIT would be deliberated upon. The Ad-Hoc Committee has typically met once per year in since 1997. Most recently, the Ad-Hoc Committee met in December 2015 where it was resolved that more time would be needed to flesh out the CCIT. Part of the reason for such long drawn deliberations is the committee's decision that the convention not be adopted without full consensus. This, compounded by the complex subject matter of the convention itself, has, and continues to, obscure a clear path forward.

For the purposes of our analysis, we will refer to the latest iteration of the convention, first circulated in the 2013 report of the Ad-Hoc Committee. The convention remains much the same since its inception, however, there has been a degree of reordering, rewording, and additions to it over the years. After an analysis of the convention, as it stands, the value of these changes will be analysed.

So far, much has been said about the role definitions play in the discourse on terrorism, therefore, it seems right to begin the analysis of the convention with its definition of terrorism. Article 2 of the convention defines a terrorist as one who intentionally causes:

1. (a) …death or serious bodily injury to any person…
   (b) …serious damage to public or private property…
   (c) …damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present Article resulting or likely to result in major economic loss, …
2. … if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1...
3. … if that person attempts to commit an offence as set forth in paragraph 1…
4. …any person also commits an offence if that person: (a) participates as an accomplice, (b) organizes or directs others, (c) contributes to the commission of one or more offences… by a group of persons acting with a common purpose. …"[9]

9. http://legal.un.org/docs/?symbol=A/68/37. Accessed on January 2, 2017.

As can be seen from the definition clause, the scope of terrorist activity is broad but specific in identifying certain kinds of acts. Such a definition lends itself well to interpretation by state parties domestically. A wide array of criminal activity can now be defined as terrorist activity too. This, on the whole, is more a positive feature than a negative one, as it does not impose a view of terrorism on its members but rather allows for a coopting of multiple views.

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The convention does make clear that acts fitting this definition are unequivocally terrorist acts. as Article 7 specifies, no justification on the grounds of a "political, philosophical, ideological, racial, ethnic, religious", etc. nature is permissible. The preamble clauses in the convention try and place this convention well within the existing counter-terrorism regime, but the convention does not necessarily try and establish a "normal" for what terrorism is. Also the nature of the acts laid down is such that were they committed within the domestic territory of any of the member states, they would attract criminal liability anyhow. These aspects bode well for how amenable the convention will be and give it a long lasting scope. This Article has on the whole been well received by state parties, with a few significant amendments suggested.

Article 3 has proved far more contentious than Article 2. Originally Article 18, it has been renumbered several times, it was last renumbered as Article 3 around 2010 by the committee to reflect its importance. Article 3 deals with the CCIT's relation to international law at large. It originally stated:

1. Nothing in the present Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals

under international law, in 17 A/59/894, particularly the purposes and principles of the Charter of the United Nations, and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by the present Convention.
3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by the present Convention.
4. Nothing in the present Article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.[10]

Article 3 has been discussed in greater detail in a subsequent section of the paper. This has been done because the debates surrounding Article 3 have been considered by committee members as the major stumbling block, preventing the deliberations from moving forward.

The CCIT's role in harmonising the global counter-terrorism regime has been laid down in Article 6 which asks member countries:

a. To establish as criminal offences under its domestic law, the offences set forth in Article 2 of the present Convention;
b. To make these offences punishable by appropriate penalties which take into account the grave nature of these offences."[11]

The Ad Hoc Committee has specified that the onus of the actual domestic enforcement of the CCIT will be on the states. Also as per Article 5, the CCIT does not apply in situations where an offence has been committed by a domestic actor within one's domestic territory. Such aspects are important to gather state support for such a convention, as instead of upending the framework within states, it allows it to be moulded in conformity to the CCIT, leaving enough room for state autonomy.

10. The Article in question is numbered Article 20 in this early document of the committee, http://legal.un.org/docs/index.asp?symbol=A/59/894. Accessed on January 2, 2017.
11. http://legal.un.org/docs/?symbol=A/68/37. Accessed on January 2, 2017.

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> …1. (a) The offence is committed in the territory of that State...
>
> (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State…
>
> 2. (a) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State…
>
> (b) The offence is committed wholly or partially outside its territory, if the effects of the conduct or its intended effects constitute or result in, within its territory, the commission of an offence set forth in Article 2…
>
> (c) The offence is committed against a national of that State….
>
> (d) The offence is committed against a State or government facility of that State abroad…
>
> (f) The offence is committed in an attempt to compel that State to do or to abstain from doing any act. …[12]

In matters of a dispute between parties over who rightfully has jurisdiction, Clause 5 of Article 8 asks them to "coordinate their actions appropriately"[13].

This is an aspect of the convention that is open to critique. In an apparent desire for a convention acceptable to all, its dispute resolution mechanism

12. Ibid.
13. Ibid.

is not particularly strong. Clause 5, Article 8 is just one example; Article 23 which deals with dispute resolution, in particular, is more telling.

For further disputes (not just jurisdictional ones) regarding the interpretation or application of the convention where such inter-state coordination is fruitless, Article 23 calls on them to move for arbitration. If arbitration proves fruitless as well, then they can then move to the International Court of Justice (ICJ). However, as is further laid down in Article 23, state parties can choose to opt out of this clause and thereby not have to submit to the ICJ at all.

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Indeed, the aspect of cooperation in the CCIT is, at times, an issue, but, at other times, has the potential to yield great results. As can be seen in Article 10, state parties must take steps to prevent and counteract the following offences both within their territory and outside it:

1. (a) …the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in Article 2;

If the CCIT comes into being, this clause will be particularly beneficial to India. India has long alleged that terrorist training camps within the Pakistani state have been used to train and equip actors carrying out terrorist activity in India. Such a clause will go a long way in setting a legal ground for the Pakistani state to dismantle such camps.

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in Article 2."

Such cooperation will be accomplished by –

"… 2. (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in Article 2

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in Article 2, concerning: (i) the identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences; (ii) the movement of funds, property, equipment or other instrumentalities…[14]

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Having fairly substantially covered the prosecution aspect of the convention as well as some the associated issues, the extradition aspect can now be delved into. Article 12, firstly, calls on member countries to initiate investigation if it comes to their attention that an offender, as defined under Article 2, is present in their territory. Then:

14. http://legal.un.org/docs/?symbol=A/68/37. Accessed on January 2, 2017.

> 2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition[15]

Article 15 elaborates on extradition, stating that parties:

> 1. …shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in Article 2 of the present Convention, including assistance in obtaining evidence at their disposal necessary for the proceedings…[16]

The type of extradition envisaged is that for the purposes of counter-terrorism efforts, the CCIT specifies that extradition on the grounds of "race, religion, nationality, ethnic origin or political opinion," will not be entertained in Article 7. It would appear that the convention is trying to create an environment that could lend itself to the creation of a strong extradition and prosecution regime to tackle this longstanding issue in counter-terrorism efforts.

It is apparent there are some aspects of these key Articles that seem to work well and have the potential to lend themselves well to the international regime, while others are more problematic and prove to be stumbling blocks for progress with regard to the convention. To further analyse these aspects, one can refer to reports of the Ad-Hoc Committees and its Working Group. Doing so allows for greater clarity on aspects that have been touched upon in this section.

THE CONTEXT OF THE CCIT

From the use of the word 'comprehensive' in the title and the wide scope of the proposed Articles, it would be easy to overstate the role the CCIT

15. Ibid.
16. Ibid.

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intends to play in the global sphere. However, a reading of the reports of the Ad-Hoc Committee and its Working Group show that while the convention aims to have wide scope and applicability, it does not aim to be an overreaching instrument. It would appear that those steering the deliberations are aware that consensus for such a legislation is contingent on certain limitations that have to be clearly defined.

The first thing that subsequent committee reports have tried to make clear (through statements by the chairman and coordinators) is that the CCIT is entirely a law enforcement instrument. It is not a condemnation of terror or a declaration of principles pertaining to the fight against terror. As a law enforcement instrument, it seeks to function within the existing international legal regimes: international human rights laws, the UN's own Charter, and a medley of international and national laws pertaining to security and terrorism. This appears a sensible approach for such an ambitious convention—it would be somewhat unreasonable to think that a single convention could override an entire body of international law pertaining to terrorism that has been developing for decades (certain aspects for centuries). In line with the existing international regime is the CCIT's use of exclusionary clauses: simply put, if not expressly forbidden by the CCIT, nothing is in contravention of it. This committee acknowledged that such an approach had a precedent in previous anti-terror conventions like the Convention for the Suppression of Terrorist Bombings which it had played a role in shaping. In such an approach where there is a possibility of intersection between other laws and the CCIT, say, for example, laws pertaining to the actions of the armed forces, the already existing laws will apply.

Further clarifying its scope as a legal instrument, the CCIT is one aimed at establishing individual criminal liability premised on an 'extradite or prosecute regime'. This clarification became pertinent when the question of

state criminality and state sponsored terrorism came up around 2008 when, during the course of bilateral talks between certain member states and the coordinator, the question arose of what role the CCIT would play in situations where forces, under the direction of the state, acted in contravention to the CCIT, as well as in situations of state-sponsored terrorism. But again here, the coordinator chose to play a limiting role, citing that since the draft convention had been entirely premised on the individual, to then shift focus onto the state would result in a loss of consensus already gained. Further, the coordinator stated that such acts that involved the wrongful behaviour of states in perpetrating violence, were already governed by international law anyhow (citing the example of the United Nations Charter in this regard).

By 2009 (about 12 years into the deliberations), talks within the committee began on "managing expectations". With longstanding areas of disagreement as well as the need to limit the 'comprehensiveness', two new developments occurred in the committee that are worthy of mention.

The first development regarding managing expectations was the suggestion that the convention be renamed as something that would lend itself to greater compromise and limitation. "United Nations Convention for International Cooperation in the Prevention and Suppression of International Terrorism" was one name that was suggested.[17]

The second suggestion focussed on aspects of counter-terrorism that the CCIT could not address. It was proposed that they be addressed in subsequent, separate conventions/instruments. An example was given of the ICJ judgement in the case of the Democratic Republic of the Congo vs Uganda, in which the court called on the states 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 involved a

17. Suggestion made on paragraph 22 on Page 4 of in the Report of the Ad-Hoc Committee 13th Session, available at http://legal.un.org/docs/index.asp?symbol=A/C.6/64/SR.14

Perhaps the greatest stumbling blocks of the past two decades have been the issues surrounding Article 3 (originally Article 18). This has been acknowledged by almost every single committee report as well as within the Ad-Hoc Committee over the past decade. Interestingly, Article 3 which, as stated earlier, deals with the CCIT's relations with the international regime, has attracted more contention and debate than the clause defining terror.

threat or use of force"[18,19]. This judgement could be the basis for another instrument particularly directed at the issue of state terrorism.

These need not be perceived as negative developments, as the convention still has immense potential as an instrument for extradition and prosecution, and its definition of terror could still go a long way in harmonising aspects of the international regime. What remains to be seen is whether in the attempt to move forward after almost two decades, the deliberators of the convention will open themselves up to too much dilution in favour of progress.

Perhaps the greatest stumbling blocks of the past two decades have been the issues surrounding Article 3 (originally Article 18). This has been acknowledged by almost every single committee report as well as within the Ad-Hoc Committee over the past decade. Interestingly, Article 3 which, as stated earlier, deals with the CCIT's relations with the international regime, has attracted more contention and debate than the clause defining terror. The most notable early contention comes from the Organisation of the Islamic Conference (OIC)—as early as 2001, the OIC had proposed a different draft version for Clause 2 of (then) Article 18. Where the original read:

18. Quoted from the " Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations" of 1970 found, at http://www.un-documents.net/a25r2625.htm
19. Mentioned on paragraph 48 on page 11 on the Summary Record of the 14th Meeting, available at http://legal.un.org/docs/index.asp?symbol=A/C.6/63/SR.14

> 2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by the present Convention. [20]

The OIC version read:

> 2. The activities of the parties during an armed conflict, including in situations of foreign occupation, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention. [21]

The OIC's use of the word parties is to protect the actions of those persons it views as taking part in self-determination struggles the world over as in the case of Palestine and Kashmir. These situations involved many non-state parties, such as the Palestinian newspaper *Al-Quds* which the OIC was sympathetic towards.[22] This suggestion to use the word parties opened a lasting debate. On one side were the nations that supported the OIC's view stating that as per international law (specifically, the Geneva Convention) the term 'parties to an armed conflict' was a well-used one. According to them, the scope for misuse of this clause was limited by this factor. Though it is worth noting that while 'parties to an armed conflict' has indeed been well used in Additional Protocol 1 of 1977 of the Geneva Convention, it has not been defined. While the context of its use and the situations where it applies may provide some clarity on it, this approach suggested by the OIC appears to fall short of providing a clear and unambiguous definition. The mention of "including situations of foreign occupation" seems to have been added by the OIC to highlight situations in which it felt the parties would

20. The Article in question is numbered Article 20 in this early document of the committee, http://legal.un.org/docs/index.asp?symbol=A/59/894. Accessed on January 20, 2017.
21. Mentioned in Annexe II of Ad Hoc Committee's report on its 16th Session, found at http://legal.un.org/docs/index.asp?symbol=A/68/37
22. Recent statements by the OIC that better elucidate this view can be found in the Tashkent Declaration of 2016, found at http://www.oic-oci.org/subweb/cfm/43/en/docs/fin/43cfm_dec_en.pdf and the reports of the OIC contact groups, found at -http://www.oic-oci.org//topic/ampg.asp?t_id=11570&t_ref=4538&lan=en

The use of the term armed forces too opened the door to a series of questions, primarily those centred around how the convention would regulate the activities of the armed forces. However, as we have observed, the view that the convention would not override existing aspects of international law has clarified this to some extent.

need to be protected. However, the way the clause is worded, essentially means that it is intended to apply in all situations, and "including situations of foreign occupation" may also apply to situations of no foreign occupation and even situations of relative peace-time.

Further, in view of the CCIT being a legal document, one of the features of any good legal document is that it should have clear and well-defined clauses. While there will (and should) be scope for interpretation, definitiveness is largely considered a virtue. The opposing view was in line with this logic to a great extent, holding that the use of the word parties was too ambiguous and could actually give the colour of law to the activities of a bona fide terrorist. The use of the term armed forces too opened the door to a series of questions, primarily those centred around how the convention would regulate the activities of the armed forces. However, as we have observed, the view that the convention would not override existing aspects of international law has clarified this to some extent. It would appear that where the armed forces are concerned, the existing laws (either domestic laws or international ones like the Geneva Convention) related to their governance will apply.

In an attempt to balance out views and move forward, the coordinator submitted a version of Article 3 in 2007 that was hoped would be amenable to all. It made an addition to the fourth clause and added a fifth. The updated Article read:

> 4. Nothing in the present Article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws. Acts which would amount to an offence as defined in Article 2 of this Convention remain punishable under such laws.

5. This Convention is without prejudice to the rules of international law applicable in armed conflict, in particular those rules applicable to acts lawful under international humanitarian law.

The attempt here was to maintain the character of the convention as a supplement to international law as well as to close the door on the provision of legal sanction to activities that would in other circumstances contravene the convention. In that respect, this clause can be seen to be particularly successful. As early as 2007, this proposal garnered a modicum of support and it was suggested that this "breakthrough" development find its way in the *travaux préparatoires* of the CCIT. While this suggestion was fairly well received and commended within the committee, it did little to take the OIC proposal off the table—it would appear that this is the view that those steering the deliberations on the CCIT want it to adopt. In 2011, the chairman of the committee implored members to accept the coordinator's suggestion and resolve the deadlock. This appeal has been repeated almost every year since.

CONCLUSION

As per UN Resolution 70/120, passed in 2015, the UN's Sixth Committee decided once again that a working group be established to carry on deliberations. It does not require much deductive ability to predict that these deliberations too will be bogged down unless the debate around Article 3 is resolved.

While this is not the only debate surrounding the CCIT, and the OIC and the 2007 coordinator's versions are far from being the only views on the matter, they do comprise a well-acknowledged part of the deadlock. If progress can be made in this regard, then perhaps, the CCIT has hope to see the light of day. For this to move forward, the most likely path forward would appear be that consensus be built for the 2007 coordinator's version.

Given the emphatic appeals that have been made in this regard, it is an avenue that is already being actively pursued. Such a convention has the

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potential to drastically alter the extradition and prosecution regime (in many ways it seeks to create a regime of a scope not seen before), and perhaps for this reason, it might not be in the best interest of certain states that such a convention exists. Realistically, while this convention cannot compel states to cooperate in extradition and prosecution, it does at the very least act as a tool of moral suasion.

This is not an aspect to be regarded lightly. It is one thing to deny extradition and prosecution in the current international set-up but to deny (especially repeatedly) the same kind of assistance in a harmonised regime is an entirely different matter. The political ramifications of such contravention would be far greater in the latter case.

Munna Jhingra, sitting in his cell in Thailand, has an equal shot at being extradited to India or his (allegedly) desired country, Pakistan. His fate remains largely unaffected by the CCIT and as far as people on India's extradition wish list go, Munna is perhaps not even the biggest fish either. But in the years to come, many such Munna's will pile up as they have continued to do over the past few decades, not just in India but the world over. From mere pawns of the masterminds in the global chess game of terror, such people will have a significant impact on our world. Failure to take legal action against such persons, merely as a result of a lack of consensus, will not just be a tragedy for the CCIT but for the world and the larger effort against global terror.