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Terrorism- Law  
National Liberation.

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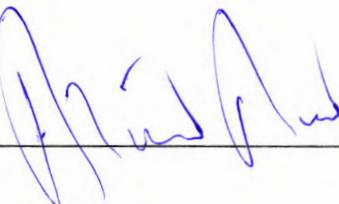
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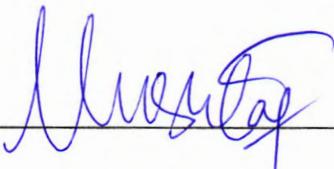
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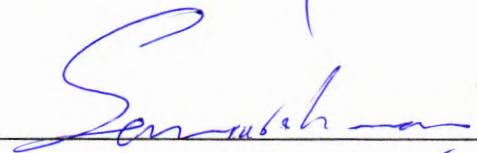


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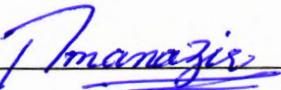
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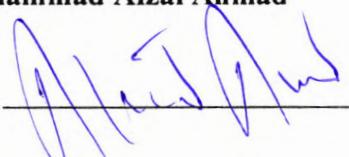
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## **ACRONYMS**

1. ECO	Economic Cooperation Organization
2. EU	European Union
3. ICCPR	International Covenant on Civil and Political Rights
4. ICESCR	International Covenant on Economic, Social and Cultural Rights
5. ICJ	International court of Justice
6. KP	Khyber Pakhtunkhwa
7. NLM	National Liberation Movement
8. PIA	Pakistan International Airline
9. UDHR	United Nation Convention of Human Right
10. UNGA	United Nation General Assembly
11. UNO	United Nation Organization
12. USA	United States of America
13. UNSC	United Nation Security Council
14. USSR	Union of Soviet Socialist Republics

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## ABSTRACT

There are legal controversies between terrorism and national liberation movement. Terrorist of one state is considered freedom fighter for other state. International community has not yet developed consensus on the definition of terrorism. After a long struggle, sixth committee of UNGA abled to develop consensus on the definition of terrorism, however it failed to develop consensus on the procedure of implementation. Two main issues, therefore, remained unsolved; that states use force against its population and small groups take up arms against government come in the sphere of terrorism or not.

Now every group demands right of self-determination. But it is not possible to give this right to everyone. For this purpose, there are three categories of people, first those who are under foreign domination secondly, for whom UNGA passed resolutions and thirdly, which already living under sovereign government but demanded right of self-determination. First two types has first level of right of self-determination but third kind has second level of right of self-determination. If government deprives those who have first level of right of self-determination they can take arms against the government but those who have second level of right of self-determination cannot take up arms against the government. If foreign government support to those who have first level of right of self-determination will not consider illegal. Those who have second level of right of self-determination cannot take arms against the government and if a foreign government support, it will consider the interference in the internal affairs of the state. But government should ensure their fundamental right.

Now international community should formulate a clear definition of terrorism and develop consensus on the procedure of implementation also. The matter of terrorist or freedom fighter

should be discussed in the UNGA and voting on it. It will declare this organization is terrorist or not.

# LEGAL CONTROVERSIES AND SOLUTIONS IN THE CLASSIFICATION OF “TERRORISM” AND “NATIONAL LIBERATION MOVEMENT”

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## INTRODUCTION

Terrorism and National Liberation Movement (NLM) are two different concepts and it has become difficult to define these terms separately. Terrorist of one state is freedom fighter for the other state. There are many reasons of disagreement between the countries in the definition of terrorism and NLM. One of them is political interests of the nations. International law acknowledges the right of self-determination but it is not possible to give such right to every group. For this purpose, researcher divided the right of self-determination into three classes. Firstly, those which are under foreign domination. Secondly, those for whom UNGA passed resolutions. Thirdly, those who are living under sovereign government and demanding their right of self-determination. The right of self-determination has classified into two levels. It gave the name of first level of right of self-determination to first two classes of people, and second level of right of self-determination to third class. Those who have first level of right of self-determination can claim for right of self-determination and if government deprives them from their right of self-determination then they can take up arms and wage war against the government. Foreign government support to those who are fighting for their first level of right of self-determination, it will not consider interference in the internal affairs of the country because it is not internal matter of state. As we discuss the Kashmir issue, they have first level of right of self-determination and their war against Indian government is legal and according to international law. If Kashmiris are taking support from Pakistan, it will not consider the interference in the internal affairs of the India because they are demanding their first level of right of self-determination. Those who have second level of right of self-determination cannot

initiate war for their right of self-determination but government should make sure their fundamental rights.

Terrorism is a complex concept and difficult to define. It is used in the meaning of soul trembling word. It also has discussed in the context of force which uses to create harassment. Sixth committee of general assembly was able to develop consensus on the general definition of terrorism, after a long struggle but it could not develop consensus on the procedure of implementation. If consensus arrived at on the procedure of implementation of the definition of terrorism at international level, then developed states will not intervene in the poor states. International community developed the consensus on the specific definition of terrorism as protection of aircraft hijacking, convention regarding attack on internationally protected persons and its procedure of implementation. It is the need of hour, to bring a universally accepted definition which will be a combination of general and specific approaches as well as the international community agree upon its procedure of implementation.

In first chapter, we will analysis all those definitions at national and international level provided by legal scholars and international institutions as UNGA and UNSC. We will also analyze and to highlight the reasons and causes behind the disagreement in the definition of terrorism. This chapter discusses the kinds of terrorism and briefly deliberates about conventions and case laws regarding terrorism.

In second chapter researcher will analyze the different definitions of NLM and its classification. NLM is an internal or external issue will be discussed. It also elaborate the method of recognition of newly emerged states, right of self-determination and four kinds of foreign support namely, moral, diplomatic, material and sanctuary and its legitimacy under international law. At the end of chapter, some significant movements of South Asia have been discussed.

Third and last chapter discusses the nature and meaning of legal controversies between terrorism and NLM. Terrorism, right of self-determination and NLM are separately discussed. It is also discuss the differences of NLM and terrorism according to Arab and western scholars. Further elaborated, why international community fail to develop consensus on the definition of terrorism and who is doing terrorism. Following it, Comparison is made between terrorism and NLM and efforts by UNSC to eradicate the menace of terrorism and Paris attack. At the end, case law is given: either Kashmiris are terrorists or freedom fighters. At the end of the theses, conclusion and recommendations are given to distinguish terrorism and NLM and control the menace of terrorism.

# CHAPTER ONE

## TERRORISM: DEFINITION AND CONTROVERCIES

### 1.1 INTRODUCTION

Terrorism is a complex concept. It is generally used in the meaning of soul trembling word.<sup>1</sup> It has also been discussed in the context of force which is used to create harassment. Terrorism has become an international issue but international community did not develop consensus on the general definition of terrorism but sixth committee of United Nation General Assembly (UNGA) developed consensus on the definition of terrorism, but there is no agreement on its procedure of implementation due to political interests of the states therefore international community should legislate a uniform definition which will combination of general and specific approach to restore the peace and security of the world.

Terrorism is a challenge at national and international level. It not only puts hostile effect on individual life, but whole international community has become its victim. Every country is facing serious challenge of terrorism. There are many reasons of terrorism e.g. injustice, unemployment, inequality, Inflation, food insecurity, poverty, dissatisfaction, over abundant population, illiteracy, massive corruption and interests of the countries.

In history, term of terrorism is come from French word ‘terrorisme’ which is oftenly used for state terrorism. It continued in the French Government from 1793 to 1794. The word terrorisme

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<sup>1</sup> Ozjur Nikbay and Suleyman Hancerli, ed., *Understanding and Responding to the Terrorism Phenomenon: A multi-dimensional Perspective* (Netherlands: IOS Press, 2007), 44.

is derived from Latin verb 'terreo'. Its mean "I frighten". *First time in history, term 'terror' was used to state the Jacobin, 'region of terror' which was in 1789 in French revolution.*<sup>2</sup> However, the term terrorism was first time used in English in 1528.

## 1.2 DEFINITION OF TERRORISM

Experts of international law face many challenges in defining terrorism. After a long struggle, they develop consensus on the definition, but they could not reach an agreed procedure of implementation. Dictionaries offer different definitions of terrorism. The *Oxford Advanced Learner's Dictionary* define the terrorism as "The unofficial or unauthorized use of violence and intimidation in the pursuit of political aims."<sup>3</sup> *Black's law dictionary has defined the terrorism as:*

Act of terrorism means an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and appears to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by assassination or kidnapping.<sup>4</sup>

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<sup>2</sup> Ben Golder and George Williams, "What is 'Terrorism'? Problems of Legal Definition," *UNSW Law Journal* 27(2) (2004): 270, accessed, October 29, 2015, [ssrn.com/abstract=1351612](http://ssrn.com/abstract=1351612).

<sup>3</sup> [www.oxforddictionaries.com/definition/english/terrorism](http://www.oxforddictionaries.com/definition/english/terrorism) (accessed January 11, 2016).

<sup>4</sup> Henry Black, *Black's Law Dictionary*, 6<sup>th</sup> ed. (United States: West Academic, 1994) 1473.

Different countries, League of Nation, UNGA and UNSC defined the terrorism in different ways.

Resolution 51/210, of the UNGA described terrorist activities as:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them<sup>5</sup>

Jeffrey Record in 2003 collected 109 definitions of terrorism<sup>6</sup> and Walter Laqueur has counted one hundred definitions of terrorism.<sup>7</sup> At the end, they generally agreed that terrorism is violence and threat of violence but to develop consensus of international community on one definition of terrorism and its method of implementation is very difficult.

### 1.3 ROLE OF INTERNATIONAL COMMUNITY IN DEFINING TERRORISM

#### 1.3.1 Efforts of international Community from 1920 to 1937

Terrorism has a long history and different facets. International community has been facing serious challenges in defining terrorism from decades. Stark define terrorism in 1920, but international community did not agree on his definition.<sup>8</sup> Many proposals had been given by

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<sup>5</sup> 1996 non-binding United Nations Declaration to supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed to the UN General Assembly Resolution 51/210.

<sup>6</sup> The Jeffrey Record in 2003 collected 109 definitions of terrorism.

<sup>7</sup> [www.sagepub.com/sites/default/files/upm-binaries/51172\\_ch\\_1.pdf](http://www.sagepub.com/sites/default/files/upm-binaries/51172_ch_1.pdf) (accessed August 31, 2015).

<sup>8</sup> Genevieve Lennon and Clive Walker, edit., *Routledge Handbook of Law and Terrorism* (New York: Routledge, 2015), 20.

scholars, but consensus could not be reached on any definition. All definitions are different from its goals, and means. Some efforts were made in 1935, and a definition was drafted in international conference for the unification of penal laws and League of Nation also drafted a definition in 1937 for the prevention of and punishment of terrorism. The definition which was drafted in 1935 is:

Willful acts directed against the life, physical integrity, health or freedom...  
(which have) endangered the community or created a state of terror calculated to cause a change in or impediment to the operation of the public authorities or to disturb international relations.<sup>9</sup>

The definition which was drafted in 1937 is “criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular person, or a group of persons or the general public”.<sup>10</sup> Both definitions never came into force.<sup>11</sup>

### 1.3.2 Efforts of UNGA to define terrorism

International Community made efforts to define terrorism and an Ad Hoc Committee on International Terrorism was established to formulate a universally accepted definition of terrorism. It works from 1972 to 1979. This committee did not agree the International Community on one definition.<sup>12</sup> One another sincere effort was made to define terrorism in the

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<sup>9</sup> Peter Romaniuk, *Multilateral Counter-terrorism: The Global Politics of Cooperation and contestation* (USA: Routledge, 2010), 35.

<sup>10</sup> 19<sup>th</sup> league of nation O.J. 23 (1938)

<sup>11</sup> Guomundur S. Alfrosson and Maria Stavropoulou, ed., *Justice Pending: Indigenous Peoples and Other Good Causes: Essays in Honour of Erica A. Daes* (The Hague: Martinus Nijhoff, 2002), 205-206.

<sup>12</sup> Jae-myong Koh, “Suppressing Terrorist Financing and Money Laundering,” *Springer Science and Business Media* (2006), 32-33.

sixth committee of UNGA to draft Comprehensive Convention on International Terrorism. There were lengthy negotiations among the member states of United Nation and they reach on common definition of terrorism, since 2002 reads as bellow:

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:
  - (a) Death or serious bodily injury to any person; or
  - (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
  - (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss.

When the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.<sup>13</sup>

This was a great achievement of the committee to develop consensuses on the definition of terrorism. The consensus was on definition but not on the procedure of implementation. It means, it was mere commonly accepted text. It could not help the international community to eradicate the menace of terrorism.<sup>14</sup>

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<sup>13</sup> United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Sixth session (28 January-1 February 2002), Annex II, art. 2.1.

<sup>14</sup> Rianne Letschert, Ines Staiger and Antony Pemberton, ed., *Assisting Victims of Terrorism: Towards a European Standard of Justice* (Netherlands: Springer science and business media, 2010), 8-10.

### 1.3.3 Problems Facing by International Community despite the Consensus on the Definition of Terrorism

Despite the consensus on the definition, there are two problems. The first one is “state terrorism” which is conducted by government forces. The term of terrorism was used for state ferocity against their public in the time of French revolution and continuously states are using violence against its public. Is it included in terrorism or not? The second impediment is, which mostly observed in Middle East and the Arab world, either the acts which are conducted in the name of revolution, and NLM i.e. exercise of ferocity to get political change by small groups are included in terrorism or not.

### 1.3.4 Professor Antonio Cassese’ Views

According to Professor Antonio Cassese, “It is not true that a definition of terrorism is lacking. What is lacking is agreement on the exception”.<sup>15</sup> It’s like a general agreement on the parts of a terrorist act and disagreement on its domain and its ability of perpetrators. In present times, there are many efforts to conclude a universally accepted definition. A significant step in this context is the unanimous adoption of Security Council resolution 1566. The clause three of this resolution states that:

Criminal acts, including against civilians, 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

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<sup>15</sup> Marcello Di Filippo, “Terrorist Crimes and International Co-operation: Critical Remarks on the Definition and Inclusion of Terrorism in the Category of International Crimes,” *European Journals of International Law* 19 (3) (2008): 533-570.

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, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.<sup>16</sup>

Some further efforts were made as resolution relating Measures to eliminate international terrorism<sup>17</sup>, the International Convention for the Suppression of Terrorist Bombings<sup>18</sup>, the International Convention for the Suppression of the Financing of Terrorism<sup>19</sup> and the International Convention for the Suppression of Acts of Nuclear Terrorism<sup>20</sup>.

### 1.3.5 Lack of consensus on implementation procedure: consequences

Said conventions could not draft a concrete legal definition of terrorism. Sixth Committee of UNGA also did not agree the international community on the procedure of implementation of the definition of terrorism. Terrorism has ever remain a broad term and mostly used for political interests. The “label” of terrorism is mostly used by governments and private actors against each other due to lack of consensus of international community. Governments have been wrongly interpreting the definition of terrorism and considering the protesters as terrorists while non-state actors demand their right of self-determination and consider the governments as oppressors. In this way, both parties blame to each other. Said factors, not only show the difficulties’ in defining terrorism but also show the importance of the universally accepted definition terrorism and its procedure of implementation.

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<sup>16</sup> Helen Duffy, *The 'War on Terror' and the Framework of International Law* (United Kingdom: Cambridge university press, 2015), 38.

<sup>17</sup> A/RES/49/60 (9 December 1994).

<sup>18</sup> G.A. Res. 164, U.N. GAOR, 52nd Sess., Supp. No. 49, at 389, U.N. Doc. A/52/49 (1998), *entered into force* May 23, 2001.

<sup>19</sup> G.A. Res. 54/109 (9 Dec. 1999).

<sup>20</sup> United Nations, *Treaty Series*, vol. 2445, p. 89; A/RES/59/290.

### 1.3.6 Considerations for Comprehensive Definition

In nutshell, it is clear that the drafted definition of terrorism as resulting from the negotiations on the Draft of Comprehensive Convention on International Terrorism includes the following:

A person's unlawfully and intentionally causing or threatening to cause violence by means of firearms, weapons, explosives, any lethal devices or dangerous substances, which results, or is likely to result, in death or serious bodily injury to a person, a group of persons or serious damage to property— whether for public use, a State or Government facility, a public transportation system or an infrastructure facility. Acts of terrorism also include such person's attempt to commit such an offense, participate as an accomplice in the commission of such an offense, or in organizing or directing others to commit such an offense, or in contributing to the commission of such an offense. A person also commits an offense if he/she commits any of the offenses defined in the following international instruments: the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, the 1979 International Convention against the Taking of Hostages, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the 1997 International Convention for the Suppression of Terrorist Bombings, as well as any Convention, global or regional, aimed at combating terrorism.<sup>21</sup>

## 1.4 PROBLEMS IN BOTH APPROCHES IN DEFINING TERRORISM

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<sup>21</sup> G.A. Res. 51/210 (17 Dec.1996).

#### 1.4.1 General and Specific approach to define Terrorism

There are two approaches to define the terrorism namely general and specific. The specific approach defines the particular acts of the terrorism as taking hostages and hijacking. The proponents of specific approach did not have general or definite approach to define terrorism. On the other side, proponents of General Approach defined the terrorism generally on the base of intention and motivation and other ideas relating to it. Former adopted the inductive while later adopted deductive approach. A combined definition can be constructed with the help of both approaches. Some countries adopted general approach in defining terrorism while others adopted specific approach. For instance section 5(1) (b) of *Terrorist suppression act* of New Zealand and Para (a) of section 83.01 of terrorist activities in Canadian Criminal code, which provide the list of offences which fall in the category of terrorism.

#### 1.4.2 Advantages and disadvantages

There are some advantages and disadvantages of both these approaches. The main criticism of Specific Approach, is limited in scope, if a new crime rise up, specific approach cannot cope with it. That's why; specific definition cannot help to eradicate the menace of future terrorism. In contrast, jurists are also not fully satisfied with General Approach, they argue:

the disadvantage of not listing specific acts as 'terrorist acts' is that the decision will be left up to policy makers to determine who is and who is not committing 'terrorist acts'. A subjective definition leaves too much room for political bias to affect the decision.<sup>22</sup>

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<sup>22</sup> Susan W. Tiefenbrun, *Decoding International Law: Semiotics and The Humanities* (Karachi: Oxford University press, 2010), 91.

Specific approach “not only ‘avoids political conflict over basic definitional principles’ but, perhaps more importantly, possesses the practical benefit of ‘permitting textual agreement to be reached’.”<sup>23</sup>

If we examine deeply, ‘individuals’ acts of terrorism’ cannot fulfill the criteria which is essential to meet requirement of terrorism. A fault in Specific Approach is, it cannot distinguish between terrorists and criminal acts, so, punishment can be awarded according to their acts. For instance, the Anti-Terrorist Bill of South Africa clause 1(a) says that all those offences which are prescribed in the Conventions are done in Republic of South Africa are called terrorists acts. Offences which are prescribed in convention, drafter did not focus to the intention of offender, whether he wants to intimidate a civilian population and influence the Government policies or he is hijacking planes (which usually in children use) and kidnapping a person for some rupees come in the sphere of International Convention against hijacking and the taking hostages. The issue is, whether all those crimes which are not intended to intimidate civilian population included in the terrorism or not.

#### 1.4.3 How to solve this issue

Terrorism is equally important in public and political discourse. If law to be according to the requirement of time then it is duty of Lawyers to bring a generic definition of terrorism, which fulfill the requirement of time and connected with rule of law principles. Leavitt was proponent of Specific Approach, he acknowledged:

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<sup>23</sup> Golder and Williams, “What is ‘Terrorism’?”, 287.

a multilateral anti-terrorism legal instrument based on a generic definition of terrorism would in effect put the official international seal of disapproval on a whole range of violent political behavior, with a moral emphasis that the facially a political inductive approach lacks.<sup>24</sup>

The said arguments show the importance of general definition of terrorism. General as well as Specific definitions have its importance. Researcher arrived at this point, international community should legislate a definition which will be a combination of both approaches General and Specific.

### 1.5 KINDS OF TERRORISM

Terrorism may be classified into certain kinds. Here only discuss those kinds which are directly related to right of self-determination and state sovereignty. Mostly, in present time, the word 'terrorism' is used for small groups who are fighting against the governments. Mostly those who are fighting for their right of self-determination, governments consider those movements as terrorist organizations while they consider themselves 'freedom movements'. If we examine the history, word 'terrorism' was used for state terrorism in the time of French Revolution in 1789. It is clear, state terrorism is more heinous and committed in the world throughout the history. As Indian Government is doing terrorism in Kashmir and Israeli Government in Palestine. International Community focused on terrorism in 1970 first time on revolutionary bases. Mostly, western nations claimed that we remained the victim of terrorism and many Muslim states are involved in terrorism and directly sends missions to foreign countries for terrorists' activities.

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<sup>24</sup> Ibid., 288.

Some states are not directly involved in terrorism but they help those small groups which may cause destruction in foreign states. There are many issues, relating transnational terrorism, rose up in the end of twenty century.

#### **The Republic of Nicaragua v. The United States of America (1986)**

Public international law case decided by ICJ in favor of Nicaragua. In this case ICJ fine to USA but this decision did not enforce because USA was permanent member of UNSC. ICJ decided that the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State. Now researcher wants to put some case laws which are important to understand the concept of transnational terrorism.

### **1.6 CONVENTIONS AND CASE LAWS RELATING TRANSNATIONAL TERRORISM**

#### **1.6.1 Aircraft Hijacking**

First time in 1970, a large number of cases of aircraft hijacking registered. In response, international community took steps and a convention was held in Hague relating unlawful possession of the aircrafts. It defined the unlawful possession of the aircraft and declared, all states are under compulsion to establish criminal courts where criminals are prosecuted or exiled.<sup>25</sup> In 1969, an institute that was working under the UNO also took steps, which shows,

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<sup>25</sup> Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague, on 16 December 1970, and called The Hague Convention 1970.

international community wanted to dig out solution of this issue. In December 1969, UNGA passed a resolution relating to turn the aircraft from their way fiercely. 77 votes were in favor of this resolution and two were against. 17 member countries did not use their right of vote. It was declared in this resolution, whosoever, create any impediment or possess flying aircraft unlawfully or took the aircraft in his possession through intimidation, member countries should legislate laws about such criminals and establish courts for them. It was announced, UNO is trying to legislate a code regarding hijacking. All states should help the UNO in the completion of this code regarding aircrafts hijacking. After completion of this code, international community will enforce it soon. This code was given the name of Hague Convention. In 1970, UNO passed 24<sup>th</sup> resolution, regarding the protection of skyjacking and force entrance in the air craft. In this resolution, it was condemned, to hijack the aircraft and to create harassment during flying and intimidate the workers and pilot. It was emphasized to take more initiatives. In 1970, UNO succeeded in holding a convention in respect of aircraft hijacking, and it was affirmed, those who commit this crime, to exile them or initiate criminal proceeding against them.<sup>26</sup>

#### 1.6.1.1 1981 Pakistan International Airlines Hijacking

In 1981, one of the PIA flight was in route from Karachi to Peshawar and it was hijacked by government's rival political party. The hijacked plane was taken from Pakistan to Afghanistan. It was kept there some days and then taken to the Syria.<sup>27</sup> Hijackers demanded to release dozens of political prisoners who belonged to Pakistan people party and other political parties. One hundred fifteen people were travelling through this flight. Five days passed after hijacking, hijackers killed a Pakistani ambassador. After two days, this flight was flown to Damascus. At

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<sup>26</sup> Geoffrey M. Levitt, *Dishtygardey ka khalaq jhamoori Mamalik ka jawab*, trans. Irfan Imtiazi (Karachi: Oxford University press, 1988), 27-34.

<sup>27</sup> Zheng Cirino, *1981 Pakistan International Airlines Boeing 720 Hijacking*. (New York: CIV, 2011), 4.

end, the dialogue process was completed on 12<sup>th</sup> of March 1981. In this way, the issue was resolved with peaceful means. According to agreement, Syrian Government give protection to people who were hijacked and allow the political prisoners to enter its homeland.

Two super powers, America and Soviet Union, of that time, blamed to each other for the incident of keeping the plane in Afghanistan and then taken to Syria. Both world powers denied the allegations. American official gave statement, after passing five days, Russian Government did nothing in this respect. While USSR blamed, Pakistani Government did not consult to us, therefore, flight flown from Afghanistan to Syria due to unnecessary delay of Pakistani Government.

In July 1981, the convention of world super powers was held in Aota, in which international community imposed sanctions on Afghan Airline Aryana according to boon convention. Two hijackers were living in Afghanistan. Pakistani Government formally requested the Afghan Government to hand over these two hijackers, but they denied. This justification was given by international community of sanctions. There were many incidents occurred in 20<sup>th</sup> century as hijacking of Indian aircraft on 25 November 1981<sup>28</sup> and the hijacking of aircraft no 847 of TWA in 1981.<sup>29</sup>

### 1.6.2 Attack on Internationally Protected Persons

To attack or abduct the internationally protected persons remained the routine matter in international terrorism throughout the history. Terrorists took double advantages in single time. Firstly, the government, from which ambassador belongs injured and worried and secondly, the government where this crime committed also injured and worried. In the decade of 1970, this

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<sup>28</sup> <http://www.dawn.com/news/403680/pilot-meets-hijacker-after-25-years> (accessed: February 02, 2016).

<sup>29</sup> Levitt, 49-54.

type of international terrorism was at top. After the World War II, mostly Americans were targeted in such type of terrorism. In these circumstances, an organization states conducted a convention to prevent the terrorists to target the envoys, and to punish those who takes part in such activities. This convention defines the international crimes of common nature<sup>30</sup>. Article two of this convention says, states are under duty to protect those persons who are protected under international law. In this convention, it was declared that all states will co-operate to one another and will take further steps to eradicate international terrorism.

This convention defines the terrorism but this definition could not play active role, because this definition was not clear. It will help in future, for further legislation, and it uses as model.

In 1972, the 27<sup>th</sup> session of General Assembly focused on international terrorism. The sixth committee of next session started work regarding the protection of those persons who are protected under international law. This committee gave some recommendations but they could not be enforced due to political disagreement. On 14<sup>th</sup> of August 1973, General Assembly passed a convention regarding those who are internationally protected and punish those who kill and injure these people. 70 states signed this convention. This convention got much importance in international community.<sup>31</sup>

In 1970, crimes regarding abduction of internationally protected persons increased. UNO have taken steps to control these crimes. In 1976, 31 annual session of GA in western Germany to legislate preliminary laws regarding the abduction of internationally protected persons was held. This task was assigned to an Ad hoc committee. After a long struggle, it presented preliminary laws to UNGA on 19<sup>th</sup> of December 1979. This convention defines the abduction. Article one of this convention says, to arrest one person by another without his will, to keep him in his custody,

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<sup>30</sup> United Nations Global Counter-Terrorism Strategy, General Assembly resolution 60/288.

<sup>31</sup> Levitt, 11-14.

### **1.6.3 Misuse of Diplomatic Immunities**

The Vienna Convention of 1961 is an international treaty about diplomatic relations. It describes immunities of diplomats, so they can perform their duties without any fear and coercion. 190 states ratified this convention till April 2014. Sometimes, terrorists' activities have been done under this legal cover. Many provisions regarding diplomats' immunities of the Vienna Convention can be misused. For example:

Article 22(1) says "the premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission."

Article 27(2) says "the official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions. And clause three of this article says the diplomatic bag shall not be opened or detained."

Article 29 states, "the person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity."

Article 31 describes "diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction."

Under diplomatic immunities, arms and destructive weapons can be brought in host country and these destructive weapons can be collected in embassy without permission of host country. If a diplomat is indulged in terrorist activities, host country neither arrest nor initiate criminal proceeding against him.

International law also provides protection to host country. Host country can declare the diplomat persona non-grata at any time. Sending state is responsible to call him back. If sending states do not fulfill its obligation. Host state can refuse to give him diplomatic immunities. Host country

can declare any diplomat a 'dislike person' before joining. In 1984 and 1986, Seven World Super Powers in London and Tokyo condemned the diplomatic terrorism and introduce different ways to end it. If host country considers, diplomat has become alarm of danger for country, host country may take step but it should be appropriate. USA and British wanted to introduce amendment in Article 31 of Vienna Convention. At end, they had developed consensus to not bring any change in this law, if we will bring any change, lot of worries will rise up for our own diplomats.<sup>36</sup>

#### 1.6.3.1 Public Bureau of Libya's Fire on London Public Protest

In April 1984, people were protesting against President Muammar Gaddafi in front of Labia embassy in London. Officials of embassy opened fire on protesters, a British Police Lady was killed who was on duty and ten others injured. Under law, it was legally bar on British police to enter in embassy therefore police surrounded the Libyan embassy. In a While, a message was sent by British Embassy that Libyan forces had surrounded the British embassy in Libya. British Ambassador and other officials were in the building.<sup>37</sup>

Libya had already indulged in terrorist activities in foreign countries. President Gaddafi was interested to defeat their political opponents through any way. For this purpose, Ambassadors and officials of Libyan embassy worked as agents of government and committed large number of causalities in foreign countries. This incident of firing in St. James's Square, and many other incidents like bomb blasting in London and Manchester became cause of immediate action. Due to these incidents, many Arab people died. British Police blamed, Libyan government is doing these acts against their political opponents. Four Libyan Ambassadors were sent back due to

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<sup>36</sup> Levitt, 16-19.

<sup>37</sup> Taylor and Francis Group, *The Middle and North Africa 2004*, 50<sup>th</sup> ed., (London and New York: Europa Publications, 2004), 779.

their activities, and such activities were not limited to British only. In May 1981, A Libyan diplomat in America was indulged in killing of politicians of Government's Opposite Political Party. Therefore, the Libyan embassy in Washington was closed by American Government. This incident of firing in St. James's Square was different from past incidents, because this time firing was directly come from embassy building. Libyan Government tried to suppress the basic right of people, right to protest and killed the British Police Lady. Though, it was clear, the murder of young police lady was not on the order of Libyan Government, and it was also clear, Tripoli sent message to deal the protesters with iron hands. A guess can be made easily, who is original culprit? British Government recorded protest to Libyan Government, and said that it is very shameful and illegitimate use of diplomatic immunities and requested to Libyan Government for co-operation. Foreign Minister of Libya directly said, we will not allow to anyone to enter in Libyan embassy at any cast. In this way, differences between London and Tripoli proceeded further.

British Government tried to settle dispute through pacific means, but Libyan Government did not co-operate, in result, British Government ended its diplomatic relations with Libya. At end, British and Libyan diplomats departed London to Tripoli and vice versa.<sup>38</sup>

## 1.7 OBSTACLES IN DEFINING TERRORISM

To define the terrorism has become a difficult job. Every country defined the terrorism according to its own interests.<sup>39</sup> Developing countries which have less military and economic resources define the terrorism in accordance to their own circumstances while developed countries like

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<sup>38</sup> Levitt, 68-69.

<sup>39</sup> Daniel Moeckli, *Human Rights and Non-discrimination in the 'War on Terror'* (New York: Oxford University press, 2008), 47. See for detail. OCED, West African Studies Conflict over Resources and Terrorism Two Facets of Insurgency (Paris: OECD, 2013), 118.

USA has a strong military and strong finance. They defined the terrorism in another method. Basically, main reason of lack of consensus on the definition as well as the procedure of implementation is interests of countries and non-state actors.

Non-state actors which have weak military power and weak financial resources and demand legitimate right of self-determination. Powerful and strong military states do not ready to give their legitimate right. Non-state actors used peaceful and forcible means to take their rights, resultantly; both parties level the allegations against each other. In such scenario, to draw a line between terrorists and freedom fighters is a difficult task; because each party gives his own justification that I am doing right and accordance with law.

Another problem is, once a group is declared a terrorist. It always remains in the list of terrorists for example Palestinians, Irish, Maoists, Hezbollah, and Taliban once declared terrorists, are still considered terrorists. Though, after it, they may change their manifesto and work for the international peace. International stakeholders consider them terrorists. International community should focus on terrorist activities instead of names of terrorists groups. Our focus is diverted from original word 'terrorism'. This is also an impediment in defining terrorism. International community should focus on terrorist acts instead of historical names. Consensus may develop in this way.

The bias and partial approach of countries is also hindrance in defining terrorism. Terrorism should describe according to the nature of particular acts of violence. Two main kinds of terrorism are, state terrorism against its public, and state terrorism across the boundaries. States do not intend to stop this violence. That's why they had created such a situation in which no legislation can be formulated at international level so their violence will be continued. I c did not control the menace of terrorism

## 1.8 CONCLUSION

To conclude researcher can say that terrorism has become a complex phenomenon. Every country is facing the terrorism. There are many efforts done at national and international level to define terrorism. In 1920 stark defined the terrorism but international community did not develop consensus. In 1935 international conference of unification of penal law and in 1937 league of nation defined the terrorism. Both definitions never come into force. International community is still unable to develop consensus on the definition of terrorism. International community develop consensus on the specific definition of terrorism and procedure of implementation but it did not develop consensus on the general definition of terrorism and its implementation. Once after a long struggle UNGA will able to develop consensus on the general definition of terrorism but consensus will not able to develop on the procedure of implementation. Large numbers of people are becoming the victim of terrorism daily. Now it is the need hour to bring a universal definition of terrorism which will be a combination of general and specific definition of terrorism and its procedure of implementation will also clear so the consensus will be developed and international peace can be restored.

## CHAPTER TWO

### NATIONAL LIBERATION MOVEMENT AND ITS LEGTIMICY

#### 2.1 INTRODUCTION

There are distinctive forms of armed conflicts. One of them is war of national liberation. Dictionaries offer different definitions of war of National Liberation Movement (NLM) according to their own way (1) “those struggles of peoples fighting a foreign invader or occupant.”<sup>40</sup> (2) “A revolutionary movement that seeks the national independence of a country, usually by guerrilla warfare.”<sup>41</sup> (3) “A revolution developing out of a national liberation movement and aimed at abolishing foreign domination, winning national independence, eliminating national and colonial oppression and exploitation, and gaining a nation’s right to self-determination and its right to establish its own nation-state.”<sup>42</sup> Terrorist of one state is freedom fighter for other state, now every group demand the right of self-determination but it is not possible for every group, due to it, small groups do terrorism against states and spread harassment in society, international community should fix some criteria if a person fall in this criteria then he is a freedom fighter otherwise terrorist.

Mostly wars of National Liberation were fought by third world countries against the western countries. Economic control of western was a major cause of cold war. Russia supported this war vocally and materially. China also presents a model of independent in nationalist development.

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<sup>40</sup> [http://tamilnation.co/humanrights/humanitarian\\_law/041126olalia.htm](http://tamilnation.co/humanrights/humanitarian_law/041126olalia.htm) (accessed January 24, 2016).

<sup>41</sup> <http://www.memidex.com/nlf> (accessed January 24, 2016).

<sup>42</sup> <http://encyclopedia2.thefreedictionary.com/National+Liberation+Revolution> (accessed January 24, 2016).

The Prime Minister of Russia Nikita Khrushchev declared open support for the proponents of "National Liberation Movement" in the entire world in January 1961.

## 2.2 CLASSIFICATION OF NLM

### 2.2.1 Classification by Dr. Muhammad Hamidullah

An Islamic Scholar Dr. Muhammad Hamidullah has divided the NLM in different kinds in respect to their violent stages as follows.

- i. "If it is directed against certain acts of government officials, and no revolution is intended, we call it as insurrection. The punishment belongs to the law of the land..."
- ii. If the insurrection is intended to overthrow the legally established government on unjustifiable grounds, we call it mutiny.
- iii. On the other hand, if the insurrection is directed against a government established illegally, or which has become illegal for its tyranny, we may term the agitation of war of deliverance...
- iv. If the insurgents grow more powerful to the extent of occupying some territory and controlling it in defiance of the home government, we may have a case of rebellion...
- v. If the rebellion grows to the proportion of a government equal to the mother government, and hostilities continue, we may term it a civil war."<sup>43</sup>

First two kinds clearly do not fulfill the criteria of NLM but later kinds can be included in NLM but for this purpose we have need further research.

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<sup>43</sup> Muhammad Hamidullah, *The Muslim Conduct of State* (Lahore: Sheikh Muhammad Ashraf, 1945), 167.

## 2.2.2 Professor Bard E. O'Neil's Classification

A professor of International Affairs at the National War College in Washington, D.C., Bard E. O'Neil has classified the NLM in another way. Which is looking more fruitful in this arena?<sup>44</sup> He has defined the insurgency as: "A struggle between a non-ruling group and the ruling authorities in which the non-ruling group consciously uses political resources (e.g., organizational expertise, propaganda, and demonstration) and violence to destroy reformulate, or sustain the basis of legitimacy of one or more aspects of politics."<sup>45</sup>

Here the word 'legitimacy' is, whether the facts of politics are known moral or immoral, correct or incorrect by the people or chosen parts thereof. He has taken these words 'aspects of politics' in meaning of "political community, the political system, the authorities and policies."<sup>46</sup>

The word political system indicates "the salient values, rules, and structures that make up the basic frame work guiding and limiting the making and execution of binding decision."<sup>47</sup> The political community is intended "for the most part, equivalent to the state."<sup>48</sup> A value signifies "general ideas of the desirable", as uniformity, freedom and individualism, there are some rules which develop pattern of behavior such as "prohibition of private property" which helps the quality of equality.<sup>49</sup>

Few groups may take into account some particular persons illegitimate, making a base; their behavior is not relevant with past values, and their apparent look means, they have indulge in

<sup>44</sup> DR. Jatin Kumar Mohanty, *Terrorism and Militancy in Central Asia* (India: Kalpaz publications, 2006), 50. see for further details: Bard E. O'Neill, *Insurgency and Terrorism – Inside Modern Revolutionary Warfare*, (New York: Brassey's, 1990), 13.

<sup>45</sup> Ibid. 50.

<sup>46</sup> Bard E. O'Neill, *Insurgency and Terrorism: Inside Modern Revolutionary Warfare*, (New York: Brassey's, 1990), 13.

<sup>47</sup> Ibid.14

<sup>48</sup> Ibid.13

<sup>49</sup> Ibid.14

corruption as well as they are incompetent and oppressive. In this way, insurgents create such circumstances, superior officers cannot decide the any situation but they do not want to substitute the system.<sup>50</sup> In conclusion, insurgents can start violence to replace past economic, social or political policies and wanted to differentiate against the specific groups in the masses.<sup>51</sup>

First Professor Bard define the insurgency and its nature, after it, he further divide the insurgency into many kinds making base the ultimate objectives of insurgency. He categorizes the insurgency into seven types.

- 1) Anarchist: This is first kind of insurgency which means “wish to eliminate all institutionalized political arrangements because they view the superordinate-subordinate authority relationships associated with them as unnecessary and illegitimate.”
- 2) Egalitarian: Egalitarian insurgency looks “to impose a new system based on the ultimate value of distributional equality and centrally controlled structures designed to mobilize the people and radically transform the social structure within the existing political community.”
- 3) Traditionalist: “Traditionalist insurgents also seek to displace the political system, but the values they articulate are primordial and sacred ones, rooted in ancestral ties and religion... within the category of traditionalist insurgents one also finds more zealous groups seeking to establish an ancient political system that they idealize as golden age. We refer to this subtype as reactionary-traditionlists.”
- 4) Pluralist: “The goal of pluralist insurgents is to establish a system in which the values of individual freedom, liberty, and compromise are emphasized and in which political structures are differentiated and autonomous.”

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<sup>50</sup> Ibid.16

<sup>51</sup> Ibid.17

- 5) Secessionist: "Secessionists renounce the political community of which they are formally a part. They seek to withdraw from it and constitute a new and independent political community."
- 6) Reformist: "Reformists want more political, social, and economic benefits for their community, system, or authorities. They are primarily concerned with the existing allocation of political and material resources, which they consider discriminatory and illegitimate. Insurgents who demand autonomy, as opposed to separation, fall within this category."
- 7) Preservationist: "They are essentially oriented toward maintaining the status quo because of the relative political, economic, and social privileges they derive from it. Basically, preservationist insurgents seek to maintain the existing political system and policies by engaging in illegal acts of violence against non-ruling groups and authorities who are trying to affect change."

It may possible, scholars are prejudice in the classifications of NLM, but these classifications are fruitful to understand the above concept. Above described seven forms can not cover all aspects. These kinds in some cases can be cut across and in some cases verbose. For instance, a secessionist is one type of insurgency; it can be egalitarian or pluralist in other case. Professor Bard analyses: "The type of political system that secessionists would establish varies between groups. The Sikh in India and most of the Kurds in Iraq, for example would no doubt opt for a traditional system, while the Eritrean popular Liberation Front favors a Marxist- egalitarian system."<sup>52</sup>

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<sup>52</sup> Robert W. Schaefer, *The Insurgency in Chechnya and the North Caucasus: From Gazavat to Jihad* (England: Praeger Security International, 2010), 16-17. See also: Bard E. O'Neill, *Insurgency and Terrorism : Inside Modern Revolutionary Warfare*, (New York: Brassey's, 1990), 17.

Now, Researcher divided the insurgency into two main classes:

- a) People who want to split alliance to political community, that is to say, i.e. those people who demand 'first level' of self-determination.
- b) People who demand to alter the political system, government, and policies of the state but they want to live with same political community. In this way, they are demanding 'second level' of self-determination.

Said seven kinds explained by Professor Bard, there is only one kind namely secessionist insurgency which fulfill the criteria of NLM.

### 2.3 RESOURCES OF VIOLENCE IN NLM

We discuss those resources which use by secessionists to attain their targets. There are two wide classes of resources of violence, which mostly exercise by insurgents. Our research is limited to use of these resources of violence to attain their targets is allowed under international law or not. Due to this reason, researcher will state concise characteristics of the various methods of violence exercised by insurgents.

Professor Bard has discussed three types of waging of war about insurgency. Their names are terrorism, guerrilla war, and conventional war.<sup>53</sup> He has defined the terrorism: "Terrorism is a form of warfare in which violence is directed primarily against non-combatant (usually unarmed civilians) rather than operational military and police forces or economic assets (public or private)."<sup>54</sup>

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<sup>53</sup> O'Neill, 24.

<sup>54</sup> Ibid. Researcher analyzed different definitions of terrorism in 1<sup>st</sup> chapter. Further Professor Bard further observes: "There actions are familiar, consisting of such things as assignations, bombing, tossing, grenades, arson, torture,

Guerrilla warfare is mostly acquainted type of violence. The real concept of guerrilla warfare is "highly mobile hit-and-run attacks by moderately armed groups that seek to harass the enemy and gradually erode his will and capability."<sup>55</sup>

The founder of china, Mao Tse-tung, has explained the guerrilla tactics as:

Guerrilla strategy must be based primarily on alertness, mobility, and attack. It must be adjusted to the enemy situation, the terrain, the existing lines of communication, the relative strength, the weather, and the situation of people... In guerrilla warfare, select the tactic of seeming to come from the east and attack from west; avoid the solid, attack the hollow; attack; withdraw; deliver a lightning blow, seek a lighting decision. When guerrilla engage a stronger enemy, they withdraw when they advances; harass him when he stops; strike him when he is weary; pursue him when he withdraws. In guerrilla strategy, the enemy's rear, flanks, and other vulnerable spots are his vital points, and there he must be harassed, attacked, dispersed, exhausted, and annihilated.<sup>56</sup>

There is a difference between Guerrilla warfare and terrorism from some aspects. In Guerrilla warfare mostly targets to police, government's armed forces, or those institutions that support them, sometimes they make target to main economic zones instead of unarmed civilians.

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mutilation, hijacking, and kidnapping... Although such terrorism has generally occurred within the borders of the state whose community, political system, authorities, or policies have become the focus of insurgent violence, there has been an increasing tendency since the-mid 1970s to strike at targets outside the country. Because acts are carried out by autonomous, non-state actors, they have been referred to as transnational terrorism to distinguish them from similar behavior on the part of individuals or groups controlled by sovereign state."

<sup>55</sup> [drgnewservice.org/resistance/strategy/time-short-revolution-devolution/](http://drgnewservice.org/resistance/strategy/time-short-revolution-devolution/) (accessed January 20, 2016).

<sup>56</sup> Robert W. Schaefer, *The Insurgency in Chechnya and the North Caucasus: From Gazavat to Jihad*, (New York: Fredrick A. Praeger, 2010), 257.

Professor Bard wrote as, "like terrorism, guerrilla warfare is a weapon of the weak"<sup>57</sup>. In conclusion, where government is unable to find proper solution of the conflict. To solve this is a need of hour, to unite terrorism with guerrilla warfare and change it into conventional warfare.

## 2.4 NLM IS INTERIOR OR EXTERIOR ISSUE

Now the researcher will raise some legal questions and try to answer. Whether liberation struggle is internal matter of the country? It is an established principle of international law, that liberation movement is not an internal issue of state. Some arguments in favor of it.

Firstly, international organizations have passed many resolutions in favor of NLM especially UNGA declared, liberation movement is an international issue instead of national issue i.e. the *Declaration on Granting of Independence to Colonial Territories 1960* is best example of condemnation of colonialism and alien domination as well.

The subjection of people to alien subjugation domination and exploitation constitutes a denial of fundamental human rights, is contrary to the chapter of the United Nations and is an impediment to the promotion of world peace and co-operation.<sup>58</sup>

It was also an urgent death or end of colonialism. Further appeal to take steps.

Immediate steps shall be taken, in Trust and Non-Self- Governing Territories or all other territories, which have not yet attained independence, to transfer all

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<sup>57</sup> Ilana Kass and Bard E. O'Neill, *The Deadly Embrace: The Impact of Israeli and Palestinian Rejectionism on the Peace Process* (New York: University press of America, 1997), 10.

<sup>58</sup> G.A. Res. 1514 (xv) (1960), section I Declaration on Granting Independence of Colonial peoples and Territories.

powers to the people of those territories, without any condition or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or color, in order to enjoy complete independence and freedom.<sup>59</sup>

Another section which further explains and extend the scope of right of self-determination beyond any context. "All people have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>60</sup> A resolution was passed in favor of independence, and condemns all types of 'excuses' to cause delaying in procedure of independence. The words are given as: "Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence."<sup>61</sup>

Many resolutions passed by UNGA in favor of right of self-determination. In present time, it is an admitted fact that NLM is an international nature issue rather an internal matter of state.

## 2.5 CLASSES OF PEOPLE WHO CAN USE FORCE FOR THEIR RIGHT

### 2.5.1 Classes of People who have Right of Self-determination

International community has recognized this right of self-determination for some kinds of masses. First of all, all those people who live under the colonial or alien domination have this right. Secondly, all those people for whom, UNSC has passed resolution,<sup>62</sup> for example, the masses of East Timor, Palestine and Kashmir. At least, right of self-determination is not an internal affair of state, for two classes of masses which researcher explained said.

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<sup>59</sup> Ibid. section 5

<sup>60</sup> Ibid. section 2

<sup>61</sup> Ibid. section 3

<sup>62</sup> Article 1(4) of the Additional Protocol I to the Geneva conventions

Using the power by states and those who demand their inherent right of self-determination may be examine in three different aspects. Firstly, will the state machinery exercise force against masses which are trying for their self-determination. Secondly, Can the depressed people take up arms against the government? Thirdly, can the foreign states provide military or non-military help to these oppressed people or not?

### 2.5.3 Depriving People to Their Right of Self-determination

Various countries which were under the foreign domination took up arms and the proponents of liberation movement start war in different territories. One cause behind this phenomenon was, that oppressor countries oftenly were not willing to acknowledge the right of self-determination. These resolutions of General Assembly are not only recognize this right for all nations, particularly those who are under foreign domination. It was declared in clear words, to exercise force against those who are fighting for their liberation is entirely illegal.<sup>63</sup>

In nutshell, Government is not allowed to deprive people who are entitled to first level of right of self-determination in any circumstances. It is not allowed to government to create any obstacle for those people who are trying for their liberation, making a base, this is an internal affair of the country. But this right is not only confined to foreign occupation. It is especially showed the “important role of the United Nations in assisting the movement for independence in Trust and Non self-governing Territories.”<sup>64</sup>

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<sup>63</sup> Muhammad Mushtaq Ahmad, *Jihad, Muzahmat and Bughawat: Islami Shariat aor Banul Aqwami Qnoon ki Roshni mayn*, 2<sup>nd</sup> ed. (Gujranwala: Sharian Acadmy, 2012), 533.

<sup>64</sup> Thus, it explicitly emphasized in the preamble: “The need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all people, and of universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion.”

It is clearly mentioned in many resolutions of the General Assembly. For example, the *Declaration on Granting Independence to Colonial People and Territories 1960* says in very explicit words, to deprive people from their legal right to self-determination may a cause to “increase conflicts”, which “constitute a serious threat to world peace.” This Declaration categorically states: “All armed action or repressive measures of all kind directed against dependent people shall cease in order to enable them to exercise peacefully and freely their right to complete independence and the integrity of their national territory shall be respected.”<sup>65</sup>

Like as, *Declaration of the Principles of International law 1970* says: “Every state has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.”<sup>66</sup> Such resolutions are witness for customary international law.<sup>67</sup> It is clear; these norms compel all states including those states which cast vote against these resolutions to act upon these resolutions because customary law is binding all states.<sup>68</sup>

#### 2.5.4 People Who Have Second Level of Right of Self-determination

The main issue concerning right of self-determination is distinct ethnic and religious groups who already have under sovereign and independent states and demanding the right of self-determination. For example in 1967 the Ibos Tribe unsuccessful attempt to separate from Nigeria; and in 1993 Eritrea separated from Ethiopia and in 1971 people of East Pakistan

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<sup>65</sup> Section 4 Declaration on Granting Independence to Colonial People and Territories 1960.

<sup>66</sup> Section 1 Declaration on Granting Independence to Colonial People and Territories 1960.

<sup>67</sup> H. Wheaton, *Elements of international law with a sketch of the science* (USA: carey, Lea and Blanchard, 1836), 46-47.

<sup>68</sup> Ibid.

separated from the Federation of Pakistan and a new country with the name of Bangladesh came into being.

There are two approaches to work out this issue. The narrower view limits this right to the people of non-self-governing territories. But there is a group who says that any distinct ethnic group; whether a part of any type of government it may part of a colonial, federal or unitary state have the right to self-determination. Under this view, the mass of Scotland (unitary state), Alaska (federal state), Gibraltar (colonial territory) all have right of self-determination, it could be protected by international law. Practically it is difficult to enforce.<sup>69</sup>

The EC Arbitration commission on Yugoslavia<sup>70</sup> in deciding the case tried to go a middle path. The Arbitration announced that the right of self-determination is crossed the stage of colonization. According to the views of Arbitration, right of self-determination for those people who are part of existing federal state, provided that they can attain the factual prerequisites for statehood identifies in the Montevideo Convention.<sup>71</sup> Some of ethnic and religious groups who were part of unitary state or within the territories formerly of federal state, commission acknowledged some sort of second level self-determination. Their culture, religious and social preference should be respected by the state of which they are part.

## 2.6 METHOD OF RECOGNITION OF NEWLY EMERGED STATES

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<sup>69</sup> Martin Dixon rightly argues: "Overall, a balance needs to be struck between protecting the human rights of peoples and individuals and preserving the fabric of international society. Self-determination can foster the former, but might well be destructive of the latter." (international law, p56)

<sup>70</sup> Report of the EC Arbitration Commission on Yugoslavia, (1993) 92 ILR 162

<sup>71</sup> Article one of the Montevideo Convention on Rights and Duties of States, 1933, put the following four essentials for statehood: a) A permanent population; b) A defined territory; c) a government; and d) a capacity to enter into relations with other states.

Several areas of Yugoslavia and Union of Soviet Socialist Republics (USSR) were separated; these territories were federating units of big countries and claimed its statehood. European Community (EC) introduced a method to the recognition for newly emerged states in Eastern Europe and Russia recognized this method. These countries brought a 'Declaration namely, 'Declaration on Yugoslavia'.<sup>72</sup> EC adopted this approach for those states which came into existence in Eastern Europe and in turmoil circumstances. Interestingly, in the Montevideo convention EC put more restrictions for recognition on those states which were required to statehood.<sup>73</sup> There were some prerequisites, which have to be fulfilled for recognition. These prerequisites are to honor the human rights, to give protection to minorities and to ratify those treaties which are about no-proliferation of nuclear weapons and to settle the conflicts peacefully.

But it doesn't mean to act upon those conditions which imposed by EC for statehood.<sup>74</sup> Said discussion shows International Community is more focus on minority rights. It describes an approach, *that states are no more deemed free to use force against their own population*. In conclusion, researcher has found that, states are not legally authorized to use force against those people, who have second level of right of self-determination. States are under compulsion to ensure their human right and other fundamental rights also.

## 2.7 DIFFERENT KINDS OF FOREIGN SUPPORT: IT'S LEGTIMACT

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<sup>72</sup>Daniel Thürer and Thomas Burri, "Self-Determination," Oxford Public International Law (December 2008): para. 31, <http://opil.ouplaw.com/view/10.1093/epil/9780199231690/law-9780199231690-e873>

<sup>73</sup> Article 1 of the Montevideo Convention on the Right and Duties of States, 1933, put the following four conditions for statehood: permanent population, defined territory, government and capacity to enter into relations with other states.

<sup>74</sup> Martin Dixon puts: "possibly, the point was that the EC would not treat a territory as a state until such conditions and concerns were met." Wheaton, 123.

It is necessary to discuss the various types of external support for NLM, which were provided by different countries. Four types of support which provided by foreign countries to the liberation movements, namely moral, diplomatic, material and sanctuary.<sup>75</sup>

### 2.7.1 Moral Support

Moral support means public and private announcement that “indicate sympathy” for the supporters of liberation movements.<sup>76</sup> Oppressor state is denying the political rights of its masses; foreign states pressurize the oppressor state to restore the political rights. To praise the bravery of insurgents is also included in it.

### 2.7.2 Diplomatic Support

Political or diplomatic support is one stage ahead as indicates “explicit and active backing for the ultimate goals of insurgents in diplomatic arena.”<sup>77</sup> Diplomatic and moral support is not necessary to occur at the same time but mostly it occurs together.

### 2.7.3 Material Support

Material support contains the tangible things which use for the benefits of insurgents or directly hand over to them. It is not necessary, they are only military arms. It may be in form of non-military resources as basic necessities or open radio station in favor of insurgents as well as financing, ideological, political, administrative policies and training to them.<sup>78</sup>

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<sup>75</sup> O'Neill, 111-24. And see for detail: Bernard B. Fall, *Street without Joy* (United States of America: Stackpole Books, 1994), 294-95.

<sup>76</sup> O'Neill, 26.

<sup>77</sup> Ibid. 115

<sup>78</sup> Ibid. 116

#### 2.7.4 Sanctuary Support

Sanctuary is fourth type of support, which play a vital role in insurgency. Bernard B. Fall states as: "In brutal fact, the success or failure of all rebellions after World War II depend entirely in whether the active sanctuary was willing and able to perform its role."<sup>79</sup>

#### 2.7.5 Foreign Support and Its Legitimacy

In fact, resolutions of GA in support of those people who are making efforts to get their liberation against the oppressor government show the legitimacy of NLM. Thus, the *Declaration of the principles of international law 1970* states: "In their action against, and resistance to, such forcible action pursuit of the exercise of their right to self-determination, such people are entitled to seek and to receive support in accordance with the purposes and principles of the chapter."<sup>80</sup>

Neither has it meant this is a surety to instigate the seditionists in the other countries nor it mean to use it as an instrument in the internal affairs of foreign countries.<sup>81</sup> Now a question has risen up, the people who are striving for self-determination can seek or take help? *The consensus definition of Aggression 1974* imposed two conditions to legalize to such support.

- Effort for their right should according to UN Charter and
- It should not violate the *Declaration of the principles of international law 1970*.

The charter of UN acknowledges the right of self-determination as other organs of UN. The problem is this, UN charter does not tells any method through which oppressed people can

<sup>79</sup> Bernard B. Fall, *Street without Joy* (United States of America: Stackpole Books, 1994), 294.

<sup>80</sup> Section I of Declaration of the principles of international law 1970

<sup>81</sup> Thus, Declaration goes on to say: "Every state has the duty to refrain from organizational or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another state... Every state has the duty to refrain from organization, instigating or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force." (Ibid.)

achieve their right. It does not describe specifically any mode through which other countries help those oppressed people. UN charter describes the non-interference principle in the internal affairs of the country. UN charter allows to support the liberation struggle but it must not interference in the internal affairs of the foreign states. Such negative statements create absurdity.

In same manner, the referred declaration recognize the legitimacy and support to liberation movement but adjacent to it, shows the rules of non-interference. In conclusion, it is stated, that all rules which displayed in the Declaration are mutually connected as well as it should be interpreted collectively.<sup>82</sup>

Liberation Movement is legitimate struggle; on other hand introduce the concept of non-interference. Similar issue is with *Resolution against state Terrorism 1984* and *Resolution to prevent international Terrorism 1989*.<sup>83</sup> What is method to solve this issue?

It has noted, NLM is not illegal when people are striving for their 'first level' of right of self-determination. To help these oppressed people in attaining their right of self-determination would not consider interference in the internal affairs of the country. So, to help these people would not consider the violation of the *Declaration of the principles of international law* and UN charter as well. It will be conforming the *Consensus Definition of aggression* also.

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<sup>82</sup> "In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles. Nothing in this declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties to Member States under the Charter or the rights of the people under the charter, taking into account the elaboration of these in this Declaration... The principle of the Charter Which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all states to be guided by these principles in their international conduct and to develop their mutual by these principles in their international conduct and to develop their mutual relation on the basis of strict observance of these principles." (Section 2 and 3 of the said Declaration)

<sup>83</sup> Alex Obote- Odora observes: "The main problem with the 1989 General Assembly Resolution is that it tried to accommodate the conflicting views of the developed and developing countries in a single document. The result is that neither terrorism was defined, nor adequate legal constrains were placed on actions of national liberation movement."

To support those people who have 'second level' of right of self-determination is considered the interference in the internal affairs of the country. Whether all kinds of support to those people is considered interference in the internal affairs of the country or only military support come in this sphere?

### 2.7.6 Difference Approaches of Developed and Developing Countries in respect of Military Support

As noted preceding, nobody deny the legitimacy of moral and diplomatic support of those people who have first level of right of self-determination. But one issue remained unsolved, military support to these people is legal under international law or not! There is a great debate among developed and developing countries. Developing countries are in favor of military support and think it legal under international law while developed nations are against the military support. It is obviously guess from the arguments of the state representatives in defining terrorism.<sup>84</sup> In spite of it, all states has almost developed consensus, to deprive these people from their legal right of self-determination forcedly considered to be a 'threat to peace'. Therefore, it is the need of hour, to take action under the UN charter chapter VII. The enforcement action should be taken against those states which deprive people forcefully, from their legal right. In East Timor, UN action was on this ground.

To conclude, international community should provide military support to frustrated people through the expression of their will i.e. voting in the resolution of UNGA and Security Council. International law does not allow unilaterally exercise of force. Such secure force may not be considered interference in the internal affairs of state. It will not remain internal matter, if it

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<sup>84</sup> I will explain further in third chapter.

breaks fundamental rights which are provided under international law as: general prohibition on the threat or use of force. If any state deprived these people forcefully, in such a situation, military action can be taken against state under the authority of UN.<sup>85</sup>

To military support to people having 'second level' right of self-determination considered interference in the internal affairs of country and come in the sphere of crime of 'indirect' aggression. Some countries restrict to diplomatic as well as moral support of such masses. But, now majority of states are considering the diplomatic and moral support as legitimate due to protection of human rights, which is particularly for minority groups.

## 2.8 THE USE OF FORCE IN NLM; DIVERGENT OPINION OF DEVELOPED AND DEVELOPING STATES

The developed states are not willing to accept the legality of force. These states argue, if we allow the use force, it will cause to disturbance the international system as well as many NLM will rise up in various parts of the world. It also considers interference in the internal matters of state.<sup>86</sup> Developed nations much focus on principle of non-interference. Their point of view is, if we allow using of force for their liberation, in result, a large number of casualties will occur and it will also cause to destructions in the society. It will amount to legalize the some types of

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<sup>85</sup> Some states claimed the right of 'humanitarian intervention' in such a situation, which may, in their opinion, amount to humanitarian catastrophe. International law in its present shape does not allow unilateral use of force in the name of humanity or on behalf of the international community.

<sup>86</sup> Professor Bard analyzes the positions of the super powers with regard to liberation struggles in the third world in this way: "Although some of these countries achieved independence peacefully, others such as Vietnam and Algeria underwent a long period of violent conflict. In cases where the anti-colonial insurrection were led by Marxist parties (e.g., Vietnam and Malaya), the prevailing perception of the bipolar international structure of power led to fears that victories by the insurgents were tantamount to losses for the west, due in part to the fact that international struggle for power was considered a Zero-sum game. Within this context, the policies of the west in general and the United States were particular were widely seen as oriented toward, or actively supporting, the status quo, While the Soviet Union and its allies were perceived to have the revolutionary mission of upsetting the existing order and structure of power." (*Insurgency and Terrorism*, pp 2-3).

terrorism. In such a situation, to distinguish between terrorism and NLM made the issue more absurd and complicated.<sup>87</sup>

## 2.9 AGGRESSION AND NLM

UNGA passed the basic resolution of analysis is the *Consensus Definition of aggression*.<sup>88</sup> This resolution describes the meaning of 'aggression' and made the work of Security Council easy in determining the definition under UN charter Article 39. Whether an act of state is aggression or not? Charter provides a detail list of those actions which constitute aggression. This resolution describe in these words "the duty of states not to use armed force to deprive people of their right of self-determination, freedom, and independence"<sup>89</sup>, on other hand barring the use of force "to disrupt the territorial integrity". Though, it is significant that it offers exception to liberation struggle from the definition of aggression.

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the *Declaration on Principles of International law concerning Friendly Relations and Cooperation among states in accordance with charter of the United Nations*, particularly peoples under colonial and racist regimes or other forms of alien domination: nor the right of these peoples to struggle to that end and to seek and

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<sup>87</sup> Israel, an ally of developed countries, and mindful of the activities of the PLO and Syria support for it, argued before UN Ad Hoc Committee on Terrorism that the proposed conference to differentiate terrorism from action taken by national liberation movement is an attempt "to legitimize and justify terrorism by distinguishing between permitted and forbidden terrorism."

<sup>88</sup> GA/Res/3314 (xxix) (1974)

<sup>89</sup> Ibid.

receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.<sup>90</sup>

Hence, it proved, for preservation of right of self-determination to use force is legal if following are fulfilled:

1. People who are taking arms are demanding liberation from the colonial, racist, or any other type of alien domination. Obviously, people who have 'first level right' of self-determination come under this category.
2. People exercise force at such time, when they are forcibly deprived from their right of self-determination. In such circumstances, they can take help from foreign countries.
3. Principles of international law must be observed in using of force especially UN Charter and the *Declaration on Principles of International law*.<sup>91</sup>

Some important provisions of UN Charter which are specially relate to unilateral use of force are mentioning below:

- The initial general prohibition of the use of force;
- Peaceful resources of solving disputes
- Non-interference in the internal affairs of states
- Use of unilateral force in self-defense is allowed but in exceptional circumstances and it should also in the time of necessity and proportionally.<sup>92</sup>

The *Declaration on Principles of International law* also describes above said provisions in the same manner.

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<sup>90</sup> Ibid. Article 7.

<sup>91</sup> Ahmad, *Jihad, Muzahmat and Bughawat: Islami Shariat aor Banul Aqwami Qnoon ki Roshni mayn*, 535.

<sup>92</sup> Muhammad Mushtaq Ahmad, "Use of force for the right of self-determination in International Law and Shariah," (LLM. Thesis, International Islamic University, 2006), 120.

- It is a fact, above said three provisions will fulfill at such time, when some people takes arms against those who forcefully deprive them from their legitimate right of self-determination. To take up arms in such situation will not consider the violation of principles of international law. Now researcher will discuss most significant constraints of international humanitarian law here:
- Inviolability of civilians, non-combatant people and property.
- the rule of proportionate use of force.
- Safety of those who sick, wounded, and captured combatants.
- Impose some bars of the means and methods of warfare

Proponents of national liberation should preserve the above mention points. If they ignore, national liberation fall into terrorism.

## 2.10 SOME IMPORTANT NLM'S OF SOUTH ASIA

A large number of people killed in South Asia who claimed for their right of self-determination, Tigers of Tamil Eelam in Sri Lanka started struggle against the military for 25 years for their separate homeland and eighty thousand people died. Kashmiris are fighting liberation war and more than forty thousand people have died. The numbers of people accede from one thousand who killed in Nepal from 1996 to 2006, during the war of their liberation. Sikh had fight the war of their liberation from 1984 to 1996 against the Indian Army and thirty thousand people died. Ayodha movement came into existence in 1980, it demanded return of holy place in Utter Pradesh city where great Mughal emperor build a Masjid, which also a sacred for Hindus

because they consider, it is a birth place of Lord Ram. Hindus took step on revolutionary basis against the Muslims in 1984 and started violence.<sup>93</sup>

Hindus activists took aggressive turn against the Muslims and violence. One thousand people died in Bhagalpur in 1989 and two thousand in 2002 in Gujarat respectively. Maoist insurgency which is facing by India from 1960 but it is less bloody and going to change, especially in Chhattisgarh, since the establishment of Naxalites militias' peace mission 2005. One thousand people had been died in this insurgency told in an address to the Nation in August 15, 2006 by Prime Minister Manmohan Singh and further said Maoist insurgency is a threat to Indian peace and number of Kashmiris victims are decreasing since 2001. Maoist's insurrections are doing their activities in 12 states of the India.

## 2.11 CONCLUSION

To conclude researcher can say define the NLM has become a difficult task. Every one define it according to his own desire. Dr. Muhammad Hamidullah divided it into five kinds while Professor Bard O'neil has dived into seven kinds. This division is also not complete and fully satisfied. There are three kinds of people who demand their right of self-determination, firstly those who are living under foreign domination secondly those for whom UNGA passed resolutions and thirdly those who are already under sovereign government and demand their right of self-determination. First two is given the name of first level of right of self-determination and third kind is given the name of second level of right of self-determination. Researcher reached on this conclusion if people who have first level of right of self-determination demand their right and government deprive them from their right they can take up arms against the

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<sup>93</sup> Laurent Gayer and Christophe Jaffrelot., ed., *Armed Militias of South Asia Fundamentalists, Maoists, and Separatists* (United Kingdom: C. Hurst and Co., 2009), 03.

government and their foreign support will also not consider the interference in the internal affair of the country because war of national liberation movement is not internal issue of the state. Those who have second level of right of self-determination cannot take arms against the government and if foreign countries help, it will consider the interference in the internal affairs of the country. But there is difference between the approach of developed and developing countries in respect of military support. Developed countries consider the military support illegal while developing countries consider it legal.

## CHAPTER THREE

### LEGAL CONTROVERSIES BETWEEN TERRORISM AND NATIONAL LIBERATIONAL MOVEMENT

#### 3.1 INTRODUCTION

International law generally concerned with the inter states relations and their effects but does not recognize in Toto the difference between rebellion and nation liberation movement. Though, it has a separate branch naming IHL dealing with the said issue. Western states tend to view these wars as civil wars and Third World states tend to view them as international wars.<sup>94</sup> This difference in classification leads to varying perceptions of the laws of war. Hence, the international community should formulate clear definitions of "terrorism" and "national liberation movement", and it is only a deeper study of the controversies surrounding these meanings will reveal the underlying reasons for the absence of suitable definitions along with a possible solutions for the problem so that international humanitarian law, as enshrined in Protocol I of 1977, can be effectively implemented.

International community is confused, what the terrorism is! It is oftenly said a man's terrorist is another man's freedom fighter. Each country defined the terrorism by its own words and great powers use this term according to its own purposes. Researcher set criteria to distinguish between terrorism and NLM. If particular group fulfill the criteria then it can claim for the right of self-determination. In present time, the mute mode of international community shows that

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<sup>94</sup> <http://www.idrc.ca/EN/Resources/Publications/openebooks/421-5/index.html> (accessed April 29, 2015).

right of self-determination is right of oppressed people but international community is not taking it seriously, as it is the need of the hours. International community is looking confused about this issue.

### **3.1.1 Queries in respect of Terrorism and NLM**

Some key questions are raised in the introduction of this chapter. The answer of key questions are given in this chapter. It is oftenly said a man's terrorist is another man's freedom fighter. Now a question needs to be answered what are the circumstances in which a man may or may not be a terrorist? Secondly, Jurists claim that NLM starts from violence. Is it mean, that proponents of NLM can start violence against the civilians or initiate war for their right of self-determination? Thirdly, is it possible for the international community to solve this issue without uniform definition of terrorism? In such a situation it is extremely important to resolve the controversies in respect of terrorism and NLM to bring a solution to the long standing issue of terrorism and nation liberation movement and to specify special rules and regulations being abided by state nations to bring peace and stability in the world.

## **3.2 RIGHT OF SELF-DETERMINATION, TRRORISM AND NLM**

### **3.2.1 Terrorism and Right of self-determination**

The right of self-determination is given to every man because man born free and he can use his right of self-determination. This right is 'jus-cogens' in international law. This right is given in article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which provides that: "All peoples have the

right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>95</sup>

United Nation Human rights council gives guarantee to the promotion and protection of human rights. Right of self-determination is an important human right. In other words, contempt of this right leads to loss of all other rights. In many meetings, Pakistan realized the International Community that the right of self-determination is based for other human rights and prerequisite for real freedom. People cannot enjoy their freedom in real sense until they get their right of self-determination. Kashmiris and Palestinians legitimate struggle for their right of self-determination is not terrorism. Pakistani Government presented this view before international community, Kashmiris and Palestinians cannot exercise their right of self-determination under alien domination. International community is not taking steps for their right of self-determination. History is witness; UN took actions in the name self-determination and human rights only for the protections of great powers.

Right of self-determination is most important right of people which acknowledged by UN charter as well as international law.<sup>96</sup> International Court of Justice (ICJ) declared in case of East Timor (Portugal v Australia),<sup>97</sup> principle of self-determination “is one of the essential principles of contemporary international law.” It is important to note that UNGA gave much importance to right of self-determination. By adopting a resolution on this issue, it gave legal status to right of self-determination, it also give legal cover to NLM and helped to end the evils of colonialism. United Nation Security council (UNSC) could not play pivotal role due to lack of consensus of five permanent members. It also plays their due role for the right of self-determination when

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<sup>95</sup> G.A. Res. 1514 (XV) (14 Dec. 1960).

<sup>96</sup> Martin Dixon says: “Today self-determination is a well-established principle of customary international law and may well be rule of *jus cogens*.” (International law, p 154).

<sup>97</sup> Case concerning East Timor (Portugal v Australia), ICJ 1955 Rep 89.

there was consensus in five permanent members.<sup>98</sup> Right of self-determination is accepted by international community and also acknowledged that states are not allowed to use force against the freedom fighters. Use of force for their liberation is not an act of aggression, if it is in accordance with the principal of UN charter.

### 3.2.2 NLM and the right of self-determination

The silent behavior of international community shows, to liberate from an oppressive regime is a right of oppressed nations, but it does not consider the inherent or fundamental right of the oppressed nations. UN charter is silent on this issue. It never ban or allow to use force for the right of self-determination against oppressive regime.<sup>99</sup> Practice of International Community shows, to use of force against oppressive government is allowed if oppressive government denies the right of self-determination.

## 3.3 INTERNATIONAL LAW AND WARS OF NATIONAL LIBERATION

War of National liberation is a kind of armed struggle initiated by people against the de jure government to gain their goal of self-determination. These types of war are very ancient. It started from the foundation of sovereign state system, especially, this type of wars started in Africa in the mid of twenty century and continued till end of century. Some disputes earlier from colonial regime are continued. There is a large difference between the approach of parties, NLM and government. The proponents of NLM challenge the de jure government as “just war” and

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<sup>98</sup> It is due to the well-concerted efforts of the UN that since its creation more than 80 former colonies have gained independence. Among them, all eleven Trust Territories have achieved self-determination through independence or free association with an independent state.

<sup>99</sup> [www.thessismun.org/2012/documentation/study-guides/SG-3rd-A.pdf](http://www.thessismun.org/2012/documentation/study-guides/SG-3rd-A.pdf) (accessed June 30, 2015).

they think, right of self-determination is the legitimate right of people and they can wage war to achieve this right. On the other hand, Governments call the proponents of NLM as terrorists and Criminals. Government lodges the charge on them because they are harming to public safety. Government deals with these proponents of NLM through domestic, criminal and martial laws. Some states acknowledged that NLM is the legitimate authority to wage war against the *de jure* government for their right of self-determination but there is no consensus. Now the wars of national liberation have been treated through international humanitarian law since 1977 through the adoption of Additional Protocol I to the Geneva Conventions of 1949. Article 1(4) of Additional Protocol I says: “international armed conflict situations include armed conflicts in which peoples are fighting against colonial domination, alien occupation, and against racist regimes in the exercise of their right of self-determination.”<sup>100</sup> Article 96(3) of Additional Protocol I gives a procedure through which we can apply the NLM in those limits which prescribed in Additional protocol 1.<sup>101</sup> This amendment was done on the pressure of developing countries. This was victory of the proponents of NLM in favor of self-determination. In spite of it, framework of NLM is weak.<sup>102</sup>

### 3.4 TERRORISM AND NLM: ARAB AND WESTERN SCHOLARS’ VIEWS

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<sup>100</sup> Protocol Additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of International Armed conflicts (protocol 1), 8 June 1977.

<sup>101</sup> *Ibid.*

<sup>102</sup> Noelle Higgins, “International Law and Wars of National Liberation,” *oxford bibliographies* (29 MAY 2014) <http://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0072.xml> (accessed January 17, 2016).

### 3.4.1 Defining Terrorism is Impossible without Distinguishing Terrorism with NLM

An efficient effort to define terrorism is meaningless until the international community is not able to distinct the activities of terrorism and NLM. For example, Syrian government declared, we will support to freedom fighters but we are against terrorists. The president of Syria Hafez al-Assad speech to 21<sup>st</sup> Convention of workers Unions on November 1986. He said: "We have always opposed terrorism. But terrorism is one thing and a national struggle against occupation is another. We are against terrorism... Nevertheless, we support the struggle against occupation waged by national liberation movements."<sup>103</sup>

### 3.4.2 Terrorism and NLM: Arab World

Arab world made the concept of terrorism and NLM more confuse in their different official speeches i.e. in 1987, in its 5<sup>th</sup> summit meeting in Kuwait, Arab world said in their resolution:

The conference reiterates its absolute faith in the need to distinguish the brutal and unlawful terrorist activities perpetrated by individuals, by groups, or by states, from the legitimate struggle of oppressed and subjugated nations against foreign occupation of any kind. This struggle is sanctioned by heavenly law, by human values, and by international conventions.<sup>104</sup>

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<sup>103</sup> Tishrin, Syria, November 17, 1986.

<sup>104</sup> Al-Anba'a, Kuwait, January 30, 1987.

The interior minister of Arab league contemplated in April 1998 in his conference at Cairo about said issue. In their notes entitled “Arab Strategy in the Struggle against Terrorism,” They put their attention to belligerent activities especially their aim at “liberation and self-determination” is not under the context of terrorism. While other types of illegal and hostile activities against government or families of ruling parties is not included in political attacks but only a criminal assault. In the visit of President of Libya Muammar Gaddafi in Soviet Union in 1981, the Former President of Russia Leonid Brezhnev said: “Imperialists have no regard either for the will of the people or the laws of history. Liberation struggles cause their indignation. They describe them as ‘terrorism’.”<sup>105</sup>

### 3.4.3 Western Scholars’ views on NLM and Terrorism

Many western Scholars acknowledged, terrorism and struggle for national liberation are two end points of legitimate scale to use violence. The force uses for national liberation is positive and able to justifiable but the force use for terrorism is negative as well as hatred. It’s a difficult for any organization to measure the terrorism and NLM on equal footing.

Terrorist organizations and their allies have confused the two different concepts, terrorism and NLM. In present time, it’s a difficult task to search the limit and essentials of terrorism and NLM separately. Senator Jackson wrote in Netanyahu’s book *Terrorism: How the West Can Win* as saying:

The idea that one person’s ‘terrorist’ is another’s ‘freedom fighter’ cannot be sanctioned. Freedom fighters or revolutionaries don’t blow up buses containing non-combatants; terrorist murderers do. Freedom fighters don’t set out to capture

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<sup>105</sup> David Lowe, Austin T. Turk and Dilip K. Das, ed., *Examining Political Violence: Studies of Terrorism, Counterterrorism, and Internal War* (USA: CRC press, 2014), 10.

and slaughter schoolchildren; terrorist murderers do . . . It is a disgrace that democracies would allow the treasured word 'freedom' to be associated with acts of terrorists.<sup>106</sup>

It shows, terrorism and struggle for national liberation is two different concepts. Terrorists are those who are fighting against their own country while Freedom Fighters are fighting against foreign occupier. One approach is, Freedom Fighters are not involved in indiscriminate killing, and other terrorists activities but this is baseless. A terrorist organization may be an organization of freedom fighters. The basic ideology of terrorists and freedom fighters are not equivalent contradictory.

### 3.4.4 NLM and Anuradha M. Chenoy

A well-known Scholar Anuradha M. Chenoy critically defined the NLM:

Ethnic and religious conflicts threaten to tear apart more societies today than any other issue. These Conflicts rise out of identity movements that construe an enemy "other" and characterize themselves as nationalists even though they are based on exclusionist agendas. Since these movements do not adhere to democratic norms they seek to achieve their goals through private armies or militias... Militias comprise unemployed youth who are given a purpose by virtue of arms and a free mandate, and they function as an underground sound sword arms for political parties or movements... The intention is to militarize civil society by militarizing religion, culture and people through the creation of militias.<sup>107</sup>

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<sup>106</sup> Binyamin Netanyahu, *Terrorism: How the West Can Win* (New York: Farrar, Strauss and Giroux, 1985), 18.

<sup>107</sup> Anuradha M. Chenoy, "Militia Mentality" , The times of India, 17 September 2002. This statement is also available. Laurent Gayer and Christophe Jaffrelot, ed., *Armed Militias of South Asia fundamentalists, Maoists and Separatists* (London: C. Hurt and Co. 2009), 2.

Anuradbha M. Chenoy had defined the NLM after a deep study of liberation movements which are working in South Asia. He expressed that a proliferation of military is an important factor of violence from last thirty five years. Now peace has become an important challenge due to clash between paramilitary forces and small armed groups. These are small groups and sometimes full-fledged armies work as terrorists but the difference can be made from only one aspect, these groups are grassroots in public. It is said, the nature of these armed groups varies from country to country but in reality, nature of phenomena may different in one country because it depends on the objective pursued. Once young people join armed group to get good rank after it become necessary for their survival.

### 3.5 COMPARISON BETWEEN TERRORISM AND NLM

Many Scholars have observed that difference between terrorism and NLM has entirely become a matter of perception.<sup>108</sup> If a person killed in war from our party than he is a freedom fighter, if he belongs to opponent group than he is a terrorist. Terrorists and freedom fighters do same acts in same war but real issue is group. Some scholar's argue, an act which purely related to destruction is a terrorism. For example an attacked on World Trade Center where four thousand people had died, was an act of terrorism.

Some jurists have ideas, "There is just a fine line separating both. If you die for the cause than it was a terrorism and when you kill all your enemies and stay alive at the end than it is a freedom movement."<sup>109</sup> Terrorism and NLM are two opposite sides of same coin. Nelson Mandela was hero for the Black people of South Africa while terrorist for White people, as Quaid-e-Azam is a

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<sup>108</sup> <https://www.ict.org.il/Article/1123/Defining-Terrorism-Is-One-Mans-Terrorist-Another-Mans-Freedom-Fighter> (accessed February 4, 2016).

<sup>109</sup> <http://www.siasat.pk/forum/showthread.php?49168-Difference-Between-Terrorism-amp-Freedom-Movements> (accessed November 13, 2015).

leader for Pakistanis and perpetrator for Indians. Sheikh Mujibur Rahman is leader of Bangladesh while perpetrator for Pakistan as George Washington is hero of America and terrorist for British while Bhagwat Singh was freedom fighter for India while terrorist and most unwanted person for British.<sup>110</sup>

We clearly judge the difference between Terrorism and NLM at end, if people got their freedom and get success in those goals which they set in the start of war then they were freedom fighters otherwise terrorists.

Some Scholars have views; terrorist or freedom fighter is totally a game of mind. There are many groups IRA, Tamil Tigers, Zapatistas, Mujahideen, which call to itself freedom fighters, now a question arises, either they are terrorists or freedom fighters. It totally depends on your approach which you got from your education system. Che Guevara is a sign of dichotomy. Left wing say him freedom fighter, while right wing say him terrorist. Though he fought and got victory in Cuba but failed. Che Guevara is terrorist or freedom fighter depends on your political belief.<sup>111</sup>

Kashmiris demands their right of self-determination and Hindus compel them to leave the country. If any Government deprives people from their legal right and use force against them. It is a state terrorism which is doing by Indian Government in Jammu and Kashmir.<sup>112</sup>

On Opposite side, Pakistan based Jihadists Movements attacked in Mumbai on 26th November 2008. In result, 200 civilians killed, some of them were American and Britain who came on vocation to visit India. Terrorist organizations were saying we were realizing to Indian Government about the Kashmiris right of independence. Is it Terrorism or not?

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<sup>110</sup><http://www.cssforum.com.pk/off-topic-section/general-knowledge-quizzes-iq-tests/24962-difference-between-freedom-fighter-terrorist.html> (accessed November 13, 2015).

<sup>111</sup> <https://www.quora.com/Whats-the-difference-between-freedom-fighters-and-terrorists> (accessed November 14, 2015).

<sup>112</sup> Khalid Rahman and Ershad Mahmud, "Kashmiri Refugees: Facts, Issues and the Future Ahead" *Pluto Journals* 3, no. 1 (January - June 2006): 43, <http://www.jstor.org/stable/42909151>

Some Scholars say, time will tell who is terrorist or freedom fighter. When a group initiates a war against government, it is economically weak and cannot express about their ideas and goals to public properly. When result of their efforts seen to general public. It can be easily decided; either they were terrorists or freedom fighters.<sup>113</sup>

Terrorists intimidate to civilian so they work for them in a political manner while freedom fighter have some roots in civilian and they directly fight against the government. Now we have to deep study, how we can categorize the persons as terrorists and freedom fighters.<sup>114</sup>

### 3.6 WHY INTERNATIONAL COMMUNITY FAILED TO DEVELOP CONSENSUS ON DEFINITION

UNO is a world organization which was established to maintain peace in the world. UNGA is an important organ of it. All states are member of UNGA, but it failed to develop consensus on the definition of terrorism. It means, states are not serious to define terrorism. If uniform definition of terrorism is legislated at international level, in result, restriction will impose on all member countries. USA and European Union (EU) will not invasion in different foreign countries as they did in Afghanistan, Iraq and Syria. Political interests of states are major cause of lack of definition of terrorism. International community especially USA and EU should give preference to international peace instead of its political interests. If International Community will be able to define terrorism and differentiate between terrorism and NLM, a large number of causalities can be stopped, which are continued in Syria, Iran, and Iraq. It is also better for USA and EU.

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<sup>113</sup> <https://www.quora.com/Whats-the-difference-between-freedom-fighters-and-terrorists> (accessed November 14, 2015).

<sup>114</sup> [http://insaf.net/pipermail/sacw\\_insaf.net/2002/001405.html](http://insaf.net/pipermail/sacw_insaf.net/2002/001405.html) (accessed January 24, 2016).

### 3.7 WHO IS DOING TERRORISM?

Basically, when word terrorism comes in mind, our whole attention converts to some groups, which are fighting against the established government.<sup>115</sup> States are strong from every aspect financial, military and advertisement. States funding to media and it broadcast news according to the will of state. In this way, every strong instrument work according to the instructions of the states. People heard the bias, partial and one sided arguments that small groups are fighting against government and spreading terrorism while states are innocent and protector of human rights. If we deep study about the facts, the reality is different, researcher read the in Jang Newspaper of 20<sup>th</sup> November, 2015, former police commissioner of New Delhi, Neeraj Kumar had said that funding to 9/11 attack from India.<sup>116</sup> It means India is a state and involved in terrorism. It uses different small groups against other states. Pakistani Government support and funding the Kashmiris and Indian Government funding to TTP and other small groups which may cause to destruction in Pakistan. Researcher found that states are playing a vital role in terrorism.

### 3.8 INTERESTS OF STATES AND DEFINITION OF TERRORISM

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<sup>115</sup> These Government may be democratic, dictatorship or anarchy. Mostly, already established government considered legal, though they came into being from coercion, violence, and help of other states. If particular group of people claims their right of self-determination, which is their legal right under national and international law, is consider immoral, unethical and illegal because these people challenge the establish government. With due respect, researcher want to put an example of joint family system in India and Pakistan, if any brother say to his brothers, I want to separate from you, his brothers considers it mutiny while this is a legal right of his brother. Our Islamic system is against the joint family system, it is very clear, Holy Prophet (PBUH) gave separate homes to his wives. He (PBUH) is model for us, we should follow to him, while we are following Hindus System of Joint Family System and Cast System and inheritance. Its means, we prefer those customs which adopted by our parents, we have no concern with, either they are right or wrong. As Holy Prophet (PBUH) preached to people, believe on Allah who is one, they replied to him, you want, we leave those methods, which adopted by our parents. Mostly people prefer old and say old is gold though it is totally wrong.

<sup>116</sup> The Times of India has reported.

As USA and EU supported those who are against the Syrian Government while Russia and Iran are continuous backup the Bashar al-Assad Government. A large number of people killed, now USSR is sending one Lack Army to Syria for the support of Assad Government. USA and EU is not helping the deprived people and nor Russia and Iran supporting the victimized Government. In reality, both parties are protecting their interests. USA and EU consider, our interests will not be protected in the presence of Assad Government while and Russia and Iran think, Government come through the support of USA and EU will not protect our interests. It clears; this is not a war of Syrian Government and Rebellion. This is an indirect war of USA and EU against Russia and Iran and this is a war of interests. These are causes to not legislate a uniform definition of terrorism.

In First World War, four crore and twenty lac people killed and in Second World War five crore people killed.<sup>117</sup> This all was done by states, not by individual or terrorists organizations. Now the problem arises, why international community has failed to develop consensus on the procedure on implementation of the definition terrorism. The world Super Powers do not want to limit their powers and they want invasion in different countries, so our interest remain protected therefore they do not make serious efforts to arrive at uniform definition and procedure of implementation.

### **3.8 UNSC EFFORTS TO CONTROL THE MENACE OF TERRORISM AND PARIS ATTACK**

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<sup>117</sup> The number of killing in World War I and II, are different in different books.

UNSC has declared war against Dish and passed resolution with consensus and emphasized to take part in this war. In this resolution, it is declared that some Islamists groups are danger for the world peace and emphasized to take practical measure to disperse these groups. UNSC invited the international community to play a vital role to solve this issue. President of France welcomed the efforts of UNSC and said these resolutions will help to control the menace of terrorism. Mostly Jurists hold a view, this resolution did not provide base to use force against Syrian Government because clause seven of UN Charter is not mention here. This gives power to any state to use force against another state. President of America Bark Husain Obama said in his speech in capital of Malaysia, Kuala Lumpur, it is dire need of new government in Syria, ultimately Bashar al-Assad Government will dissolve soon. So we can stop the supply of Dish. Kingdom of Saudi Arabia is also ready to help us. We will search the Head of Dish very soon and end this terrorist organization. More than 100 countries are taking part to end this terrorist organization. Mostly American claimed, Dish came in power due to the bomb blasting of Russia in favor of Syrian Government and advising to Russia to reconsider its policy against Damask. We will not give chance to Dish to hijack the international peace.

It is clear from the resolution of UNSC and statement of Bark Husain Obama, a new war is going to initiate in the Syria. USA is going to wage war against Dish and AL Assad Government. USA and its Allied will use modern arms in Syria which cause to large scale causalities. American and its Allied Forces will bomb blast against Government Forces, and Government Forces bomb blast in response. Russia and Iran will try safe the Government of Assad. It's not clear to what extent Russia will take steps to safe the Assad Government? If Russia supports the Assad Government, war may spread in whole Middle East. Some analysts hold this view, USA form an issue to demolish the Islamic Countries. As it is said, 9/11 was done by USA agencies and Paris

attack to demolish the Assad Government. Strong Government could not be formed after the invasion of USA in Iraq. If America and its Allies will be able to get success in dissolving the Assad Government, same will be done in Syria, as continued in Iraq.<sup>118</sup>

## CASE LAW

### 3.9 KASHMIRIES ARE FREEDOM FIGHTERS OR TERRORISTS

Now researcher is going to check, either Kashmiris are terrorists or freedom fighters. For this purpose, we have discussed some rules, if they fulfill the criteria which we have discussed then they are freedom fighters otherwise terrorists. Many jurists wrote about this issue but they discussed this issue in the context of their national interests. That literature did not fully help to understand this issue, now researcher will try to present real face of Kashmiris; either they are freedom fighters or terrorists.

#### 3.9.1 Arguments Presented by Kashmiris for Their Right of Self-determination and Independence

##### 3.9.1.1 Kashmiris are deprived from Their Right of Self-Determination

Researcher will present those points which rose by Kashmiris before every international forum. Kashmir issue was come into existence when Subcontinent was divided into two parts in 1947. 77 percent Muslims population were living in Kashmir. It was declared at the time of separation of subcontinent, all independent states are free to join any state Pakistan or India and they can live independent also. The Maharaja of Kashmir, Hari Singh joined the India without the consent of his public. Pakistan did not accept this accession because it was against the rule of law. By

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<sup>118</sup> Hugh Whittow, "the declaration of war against Syria by UNSC," The Jung, 23 November 2015, p. 12.

observing the gravity of situation, India had taken this dispute in UNSC in 1947. UNSC passed a resolution and decided that referendum should be held to take the consent of the Kashmiris. For this purpose, a commission was established under UNO and it passed two resolutions. In these resolutions, it was made compulsory for both states India and Pakistan; they will not create any hindrance in referendum. These both states acknowledged, we would not interfere because this is a legal right of Kashmiris. After it, India tried to pass resolution through constituent assembly that Kashmir is its part which was rejected by UNSC. On 10<sup>th</sup> May 1994 the president of General Assembly declared, Kashmir is including in those issues which are not solved yet. Both states India and Pakistan did not agree on the procedure of referendum therefore these resolutions ended without any result. After that, India claimed that it is my integral part and I cannot leave it at any cost. This is tyranny with Kashmiris; India is usurper and not giving their right of self-determination and depriving them from those rights which are given in the UNO Charter and Geneva Conventions.<sup>119</sup>

### 3.9.1.2 Kashmiris Have First Level of Right of Self- determination

As we discussed in in second chapter, there are two types of right of self-determination. Those who are under foreign domination have their first level of right self-determination, and to get liberation is their legal right. Kashmir was an autonomous state before the partition of subcontinent. In history, it also remained an independent state. In Mughal regime, it was part of their state but Kashmir was a separate province. The attack of India in Kashmir and took control of it in its hand against the will of Kashmiris is a clear foreign dominations. People who are under foreign domination have right to self-determination. If oppressor Government does not

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<sup>119</sup> Dr. Tahir Ameen, *Kashmir main Tahrika Muzamit: Ibtada, Irtqa, aur Imkanat* (Islamabad: Institute of Policy studies, 1998), 18. See for detail. Harun Yahya, "It Is a Natural Right for Kashmiri People to Have the Right to Self-Determination," Daily Mail International <http://dailymailnews.com/2015/11/16/it-is-a-natural-right-for-kashmiri-people-to-have-the-right-to-self-determination/> (accessed: January 28, 2016).

give the legal of right of self-determination of oppressed people, they can take up arms against Government.<sup>120</sup>

### 3.9.1.3 Violation of Partition Plan in the Accession of Three States Namely Hyderabad, Junagar and Kashmir

At the time of independence, there were 584 princely states, which were autonomous in its internal affairs. Raja and Maharajas were Rulers of those states. When subcontinent was divided, this order was issued to Rulers of states to join Pakistan or India after taking the consent of their public. There were three states namely Hyderabad, Junagar, and Kashmir, which decision was not made till 15<sup>th</sup> of December 1947. Ruler of Jamnagar was Muslim and he decided to join Pakistan, while it's mostly population was Hindus. Indian Forces attacked and took possession of state. After that referendum was held and this state joined to India. Same was done with Hyderabad. In contrast, Kashmir population was Muslim while Ruler was Hindu. Kashmiris wanted to join Pakistan while Ruler wanted to live independent. Kashmiris were against the decision of Ruler; therefore, he started violence against the Muslims. To observing the gravity of situation some Fata people reached for the help of Kashmiris Muslim. Ruler of Kashmir request for help and temporary accession to India, though many analysis's did not accept this temporary accession, because India did not present this document at any forum. Indian Government claimed, Hari Singh join to India. Indian Government attacked and took control of Kashmir and doing terrorism from very first day of separation. A large number of causalities committed by it in Kashmir. In result, majority Muslim areas have changed into minority.

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<sup>120</sup> Ministry of Foreign Affairs, Government of Pakistan, Islamabad, *Foreign Affairs Pakistan, Volume 26, Issue 1* (Islamabad: Ministry of Foreign Affairs, 2008), 273.

### 3.9.1.4 Kashmir Accession to India Was Conditional and Temporary

Pakistan didn't accept the accession of Kashmir to India. If Pakistan accepted this accession for time being, it also prove, Kashmir made accession with India temporary and conditional. If Kashmiris would not accept the accession of Kashmir to India then consent of Kashmiris will take through referendum and it will prevail. Maharaja wrote a letter to Lord Mount Batten, in reply of this letter Mount Batten wrote, if any dispute arise in accordance to our policy, the decision of Kashmir will be according to the sweet will of public. It is desire of my government, as soon as peace restore, Armies will send back and referendum will be held to know the consent of Kashmiris.<sup>121</sup>

Prime Minister of India declared on 2th November, we have cleared; decision of Kashmir will be done by Kashmiris. This is our promise not only to Kashmiris as well as to international community, which also acknowledged by Maharaja. We will fulfill our promise at any cost. We are ready for referendum under any international institution; this referendum will be transparent and based on justice. We will accept the decision of people. This is best solution of the issue.<sup>122</sup>

### 3.9.1.5 Hari Singh Did Not Acceded to India Claimed by Alastair Lamb

Alastair Lamb has researched about subcontinent and claimed in his book 'Birth of a Tragedy: Kashmir 1947' that the Indian claim of accession of Kashmir to India is baseless. The consistency of facts clears that Army had attacked in Kashmir before the accession. Lamb believed Maharaja did not sign on any document regarding accession. His arguments are very strong because Indian Government did not present these documents at any forum. India Government claimed that Kashmir had become part of India when Indian force attacked the

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<sup>121</sup> Ameen, 36. And another book by R.L.Lakhan Pal,edit, *Essential Documents and Notes on Kashmir Dispute*, (Delhi: 1965), 57.

<sup>122</sup> Ibid. 37

Kashmir. This claim is baseless when Alastair proved that there was not any agreement between Hari Singh and Indian Government regarding accession.<sup>123</sup>

### 3.9.1.6 Independence of Kashmir and Section 370 of the Constitution of India

Section 370 of the Indian constitution categorically says Kashmir is a separate state. An independent government was established in a territory which is in Pakistan. It proves that both states believe the independence of Kashmir.

### 3.9.1.7 Violation of Human Rights in Kashmir by Indian Forces

164 Kashmiris martyr in 2015 by Indian Forces.<sup>124</sup> More than thirty thousand Kashmiris martyr in Kashmir and sixty thousand have become permanent disable. Government Forces raped with thousands of Muslim women. Government Forces arrest healthy and intelligent Kashmiris youth and violence on them. Terrorism, theft, dacoity has become a routine in Kashmir.

### 3.9.1.8 Right of Independence of Kashmir Acknowledged by International Organizations and Prominent Personalities of India

Kashmiris are fighting their war of liberation. The prominent personalities of India as Former Prime Minister Rajiv Gandhi, Former Home Minister George Fernandez and Justice V.M. Tarkunde and many human right movements acknowledged that Kashmiris are separate nation and they have right of self-determination. For example Former Prime Minister said in an interview in 21th April 1990, India has lost the Kashmir. Former Foreign Minister of India J.N. Dixit admitted in an interview to vice of America, our control is losing in Kashmir.<sup>125</sup>

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<sup>123</sup> <http://www.rediff.com/news/1999/jun/01jk.htm> (accessed January 29, 2016).

<sup>124</sup> Daily Express 01 January 2016, p. 3.

<sup>125</sup> Ameen, 152.

It is admitted in Shimla treaty, Kashmir is unsolved issue between Pakistan and India.<sup>126</sup> But it doesn't mean that this matter is out of the jurisdiction of international community and treaty is more effective than the resolutions of the UNO and nor it repeal to those resolutions. The first clause of this treaty says all matters between Pakistan and India will be settled accordance to the charter and principles of UNO.<sup>127</sup>

### 3.9.1.9 Proceeding at International Level

Kashmir issue acknowledged at international level. International Organization for example Islamic conference, impartial movement, ECO and European Union, passed resolutions for the independence of Kashmir. The international organizations of human rights for example Amnesty International, Asian Watch, physicians for human rights and many other French, German and Indian organizations condemned the Indian violation of human rights in Kashmir. In the inauguration of 48<sup>th</sup> session of GA, President Kalen ton discussed the Kashmir dispute, and Secretary General of the UNO offered arbitration for Kashmir dispute. President of USA in reply of letter of Dr. Ghulam Nabi Fai in 1994, who was president of Kashmiris American Council, said American Government admitted, Kashmir is a disputed territory between Pakistan and India.<sup>128</sup>

Kashmir is an occupied territory and Kashmiris struggle is against the alien domination. We cannot call to it an internal issue of occupied state. UNSC accepted the right of self-determination for these people and now it has become international issue.<sup>129</sup>

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<sup>126</sup> <http://mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972> (accessed February 4, 2016).

<sup>127</sup> Ameen, 157.

<sup>128</sup> Ibid. 166

<sup>129</sup> Ahmad, *Jihad, Muzahmat and Bughawat: Islami Shariat aor Banul Aqwami Qnoon ki Roshni mayn*, 530.

### 3.9.1.10 International Media and Kashmir Issue

Media makes the opinion of people; either Kashmiris are freedom fighters or terrorists. In Kashmir, Indian Government does not allow International Media to enter in Kashmiris. If Indian Government allows entering in Kashmir, it will bring real facts about the causalities in front of international community. It is not permitted to enter in Kashmir to any International Organization of human rights, so it cannot see those heinous crimes which are doing by Indian Army against Kashmiris; even Foreign Novelists are not allowed to enter in valley. Local Media also fear from Government and broadcast news on the direction.

Indian Government once invited the EU and some Muslim countries ambassadors in Kashmir to fraud the international community in 1994. This visit was limited to some areas of Srinagar in strict security. Indian Government did not chance to these ambassadors to meet public representative of Kashmir and general public. Some ambassadors recorded their protest. Indian Government suffered due to this protest. After it, Indian Government did not allow to any international institution to visit the Kashmir.

### 3.9.2 Arguments of Indian Government about Kashmir Issue

#### 3.9.2.1 Pakistani Army is supporting to Kashmiris

Indian Government said many times that Pakistani Army is real cause of terrorism in Kashmir. They say:

ISI provides the arms, funds, infrastructure and communication equipment. But as it cannot recruit directly, the jihadist movements supply the fighters and the

indoctrination. It's as if you and me were mounting a 'joint venture' \_ I'll supply one part, you supply the other \_ the dependence is mutual.<sup>130</sup>

Indian Analysts have views Pakistan is interfering in Jammu and Kashmir. General Zia-ul-Haq made a secret policy to liberate Kashmir from India in the name of "operation to Pak". Under this policy, Pakistani Forces started to train the Kashmiris for Jihad. These Pakistani trained Kashmiris youth do terrorist activities in Kashmir. The Hizb-ul-Mujahideen is an important Jihadi movement of Kashmir. Its three camps are in AJK and five in KPK up to 2001. It's one camp is in Mansehra (KPK) and its second camp is in Garhi Habibullah near the border of AJK and KPK. One of the militant was interviewed in Mansehra, he said all camps are ended by General Pervez Musharraf in 2004. Musharraf was first president of Pakistan who banned on all jihadist movements due to changing of domestic environment and external pressure of USA and India after September 11. It means that these all movements were working on the direction of the Pakistan Government.<sup>131</sup>

### 3.9.2.2 Kashmiris Liberations Leadership is the puppet of Pakistani Army

Indian analysts also claimed, Kashmiris Movement cannot survive without the help of Army and JI-P. The leaders of mostly Kashmiris Jihadist Movements are Pakistani and Pakistani Army help these organizations.<sup>132</sup> For example Harkat-ul-Ansar, the Lashkar-e-Tayyiba and the Jaish-e-Muhammad all are puppets of Pakistani Army. There are three types of leadership of these organizations, first local leadership, secondly, external (Pakistani based) leadership, combination

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<sup>130</sup> Laurent Gayer and Christophe Jaffrelot., ed., *Armed Militias of South Asia Fundamentalists, Maoists, and Separatists* (United Kingdom: C. Hurst and Co., 2009), 142.

<sup>131</sup> Ibid. 140

<sup>132</sup> <http://www.cfr.org/pakistan/pakistans-new-generation-terrorists/p15422> (accessed February 4, 2016).

of military and political, and thirdly various leaders of Hizb were armed officers.<sup>133</sup> Indian Government claimed that real cause of destruction in Kashmir is Pakistani who abets the Kashmiris to do such terrorists activities.

### 3.9.2.3 Indian Army Attacks in Response of Pakistan Jihadist Actions

Indian Government blamed that Azad “free” Kashmir is run through Islamabad.<sup>134</sup> Furthermore, Jihadists are freedom fighters if they fight in Kashmir and terrorists if they do same in Pakistan. Mujahedeen attacked on Indian forces, in response Indian Army attacked which results Kashmiris suffered.<sup>135</sup> Indian analysis's said these Jihadist Movements recruited young boys from madrasas, schools, colleges, and universities of Kashmir and Pakistan.

### 3.9.2.4 Pakistan Indulged India in Kashmir for its Defense

Kashmir issue was created by Pakistan to indulge India into Kashmir. Indian Government gave name of “cross border terrorism”<sup>136</sup>. Tanveer-ul-Islam is the head of Muttahida Jihad Council, who works on the direction of Pakistani Army. Pakistan Secret Agency ISI controls this movement. Tanveer-ul-Islam asked a question to Army Commander Aslam Bag, when we will start the second phase of this movement “independent Kashmir”. In reply he said, we have started war against India in Kashmir so it indulge in Kashmir and cannot attack on Pakistan. In reply, Tanveer-ul-Islam said; why are we martyring here. Consistency of facts also proves that Kashmir issue is the creation of Pakistan and Kashmiris are used to destabilize the India.<sup>137</sup>

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<sup>133</sup> Gayer and Jaffrelot., edit., 141.

<sup>134</sup> <http://topdocumentaryfilms.com/the-killing-of-kashmir/> (accessed February 4, 2016).

<sup>135</sup> Gayer and Jaffrelot., edit., 142.

<sup>136</sup> Asgher Abdullah, “Indian approach about Pakistan,” Daily Express, 19 January 2016, p. 12.

<sup>137</sup> Dr. Bashir Chaudhary, *Gilgit Bislitan aor Kashmir* (London: Institute of Kashmir Affair, 2011), 122.

### 3.9.3 Assessment by Some Neutral Analysis's

Some analysis's from both states Pakistan and India hold view, main obstacle in the pacific settlement in Kashmir dispute is Pakistani Army<sup>138</sup> and Indian Army. Seven Lack Indian Army is in Kashmir and approximately two lac Army of Pakistan. If Kashmir issue solved through pacific means, ultimately these nine lac Army men will be back into their barracks. International Community will pressurize to decrease their Armies. Army is strong institution in both countries and it want to continue this issue but Democratic Government interested to solve this at any cast as soon as possible.

### 3.10 REPLY TO THE INDIA'S ALLEGATIONS

Mostly analysis's have views that these terrorists activities is due to political, economic and cultural policies which adopted by Indian Government in Kashmir and another important cause is Indian armies attacks in Kashmir. Secondly, Kashmiris activities are due to interference of Central Government in Kashmiris government. Thirdly, majority of Muslims did not accept the accession of Kashmir to India with heart and its superiority. Kashmiris are continuously struggle for liberation since 1947. Forth reason to Kashmiris liberation movement is changing political environment at international level. There were many movements rose up in the name of democracy and national liberation and especially many Muslim liberation movements rose in 20<sup>th</sup> century. Kashmiris also started struggle against Indian Government at that time when colonial states remained the hit point at international level. A resistance movement of Afghanistan defeated world super power Russia in 1988-90. It effects to Kashmir in a

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<sup>138</sup><http://defence.pk/threads/pakistan-army-wants-to-keep-kashmir-issue-alive-american-scholar.316358/> (accessed January 19, 2016).

dramatically manner. Iran revolution of 1979 also caused to encourage the Kashmiris. Iran and Afghanistan democratic movement success may also cause to abet the Kashmiris Muslims to mutiny against the Indian Government.<sup>139</sup>

### 3.11 CONCLUSION

To conclude, it is clear from above discussion there is difference between terrorism and national liberation movement. Jurists have different views. Some people say the difference between terrorism and NLM can be made at the end while some others say it depend upon the level of destruction. Some jurists have views terrorism and NLM are two opposite sides of same coin and there is just a fine line between terrorism and NLM. The main obstacle in defining the terrorism and NLM is political interests of the countries.

Secondly, analyzing the arguments of Kashmiris and Indian Government, now it is clear, Kashmiris are fighting their own war. Though, Pakistani Government is providing funds and infrastructure to Kashmiris. Support from foreign country does not change freedom movement into terrorism. As we classified the right of self-determination into two classes in second chapter. Firstly, those who has first level of right of self-determination, if de jure Government deprive its people from their legal right of self-determination than they can take arms against the government for their liberation. If foreign government support to those who are waging war for their first level of right of self-determination then it will not be considered as the interference in internal affairs of the that country. Researcher found, Kashmiris are freedom fighter, not the terrorists and fighting for their legal right.

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<sup>139</sup> Ameen, 40.

## CONCLUSION

International community has failed to bring a distinctive definition of terrorism and NLM. Terrorist of one state is freedom fighter for other state. UNSC and other worldwide organizations are facing many challenges in their efforts to maintain peace and implementation of IHL due to lack of distinctive definitions of terrorism and NLM. UNGA and UNSC did efforts to define terrorism, but the consensus could not develop on the definition and procedure of implementation. Sixth committee of GA will able to agree the international community on uniform definition of terrorism. Developed and developing states did not agree on its procedure of implementation. According to Professor Antonio, there is not a lack of definition, but problem is to agree the international community on exceptions. For example state terrorism come in the sphere of terrorism or not and secondly, small groups who do terrorism in the name of national liberation come in the context terrorism or not. International law generally holds that people who have right of self-determination are entitled to wage wars for their liberation. Every person demands right of self-determination. But it is not possible to give this right to everyone. Therefore, the right of self-determination is divided into three kinds. Firstly, those who are living under foreign occupation secondly, those for whom UNGA passed resolutions and thirdly, those who are already living under sovereign government but claiming for their right of self-determination. Researcher gave the name of first level of right of self-determination to first two kinds and second level of right of self-determination to third kind. Those who have first level of right of right of self-determination can claim for their liberation and if government deprives them from their right then it is doing terrorism and they can wage war against the government for their

right. As we discuss the Kashmiris who have first level of right of self-determination and living under alien domination. UNGA passed resolutions in their favor. If any foreign government support to those who have first level of right of self-determination, it will not consider the interference in internal affair of country. Those who have second level of right of self-determination cannot start war against government but Government should also make sure the fundamental rights of these people. If they start war against the government, it will not come in the sphere of NLM.

## RECOMMENDATIONS

Many organizations in different countries are fighting against its governments. The composition and activities of every organization is different to other organization. To guess about any organization either it is a terrorist or freedom fighter; depend on the objective it pursued. We should fix some criteria, if any organization or state fall in this criteria then it can be called freedom movement otherwise terrorism.

- There are two approaches to define the terrorism namely, general and specific. International community has developed consensus on specific definition of terrorism and its procedure of implementation. It is the need of hour to bring a definition which will be a combination of both approaches and agree the world on its procedure of implementation. So future challenges can be meet in respect of terrorism and NLM.
- Strong UNO is needed, which have power to stop developed countries to invasions in developing or under developed countries. All countries should contribute equally to UNO, so it can protect to all members on equal footing and it can also stop the big powers to commit atrocities.

- UNGA should give power to decide the issues regarding terrorism and NLM. Disputed matter presented before General Assembly. Speaker presents the concern law regarding terrorism before the assembly. After hearing the disputed matter and concerned law, member countries cast vote either this organization is terrorist or not.
- An army is needed under the UNO. If any organization is declared terrorist by UNGA. UNO Army helps the legally established government. If any Government helps the terrorists, UNO should impose sanction on it.
- Impartial International Media under UNO is utmost needed. This broadcast the news impartially and presents the real facts. In present time, media is controlled by governments and it works on their directions. If any channel broadcast wrong news, UNO should cancel its license.
- Such program should start under the supervision of UNO, every country should make responsible to hundred percent literacy rate. So the world population can understand the real issues and can make a proper opinion about the issues.
- Rules of equity should observe. No country is above the law, same law for all countries, and law protect all countries on equal footing.
- Terrorism is not only a problem of Muslim or developing countries, now developed countries are also facing it. USA and France seriously injured from terrorism recently. Every century hold a major issue, major issue of this century is terrorism. To control this menace of terrorism collective efforts should make to developed and developing countries.

- Religious scholars can play a vital role to control the menace of terrorism. Religious Scholars should give the teachings of tolerance. As Holy Prophet (PBUH) said, to kill of one Muslim considers killing whole humanity.
- Government should not permit to speech those scholars, who abet the people toward terrorist activities. If they violate the order of government, punishment should be given to them.
- Government should legislation for religious scholars, who give sermon on religious days. So they cannot spread hatred feeling among masses.
- Distinctive education systems in a same country are also play pivotal role in terrorism. One education system in one country is utmost needed for the development of country as well as to control the menace of terrorism.
- Poverty is mother of all crimes. Governments should put its attention to control the menace of poverty then terrorists' activities will decrease automatically. No doubt developed countries are also facing the menace of terrorism but if we compare the ratio of terrorism between developed states and developing states, there is a large difference. In developing countries, people have no job; no education and it easily fall into terrorist activities.
- When courts decide the cases on the directions of government, then public deprives from justice, in result, they take arms in hand and start war against state. Strong judicial system is utmost needed to control the menace of terrorism, which can provide justice.
- Political stability and mature political parties also play effective role to end the terrorism. If political parties are mature and respect the political norms then political system works properly and solves the problems of masses.

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