

Fighting Terrorism through SAARC ?

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Introduction

- The theme of the 15th SAARC Summit in Colombo in August 2008 was “**Partnership for Growth of Our People,**” but editorials in the South Asian newspapers saw terrorism as the main challenge for the regional organization.
- *The Daily Mirror* in Sri Lanka went as far as to say that the 15th Summit would be judged by how “effectively and expeditiously” the Summit decision on terrorism is implemented.
- Although the **SAARC Charter deliberately excludes bilateral and contentious issues** from its deliberations, the environment of the **15th Summit** in both its formal and informal deliberations were **dominated by charges and counter-charges relating to cross-border terrorists** activities allegedly perpetrated from within the SAARC member states.

Introduction

- The **SAARC declaration** devoted a **significant portion of the text to “combating terrorism” in South Asia; out of 41 paragraphs** in the declaration, **5 were devoted to dealing with terrorism**
- **15th Summit** also saw the signing of the **SAARC Convention on Mutual Legal Assistance in Criminal Matters** aimed at supplementing the SAARC Regional Convention on Terrorism (1987) and the Additional Protocol (2004) to that Convention.
- **Dilemma:** There is a difference between *intentions* of SAARC to tackle terrorism in the region and the *willingness* of its member states to do so effectively. Although member states have committed to fight terrorism in the region, they have not undertaken appropriate measures to live up to their obligations.

1. Nature of South Asian Terrorism

- The American notion of “**war on terrorism**” after 9/11 has **distorted our understanding of conflicts in South Asia** by automatically labeling them as terrorism. Most, if not all, **intra-state conflicts in the region pre-date 9/11**, while some have been in existence for over half a century.
- **Distinguishing features** of intra-state conflicts in South Asia: -
 - i. South Asia has one of the largest numbers of **non-state armed groups** than any region of the world. A study by RCSS identifies at least 54 proscribed armed groups : **India – 32; Nepal – 1; Pakistan – 11; Sri Lanka – 1; and Bangladesh - 9.**
 - ii. Studies also indicate that **conflict in South Asia have lasted longer than in any other region of the world.** It is believed that **63 percent of the armed conflicts in South Asia** fall under the category of **protracted conflicts**, which is three times higher than the global average.
 - iii. A report issued by the **State Department in 2000**, entitled, ***Patterns of Global Terrorism***, suggests that **Asia accounts for 75 percent of all terrorism related casualties worldwide.** (In addition to the Central Asian countries, the list of countries in this arc were: Afghanistan, Pakistan, India, Nepal, Sri Lanka and Bangladesh)

1. Nature of South Asian Terrorism

- iv. “2007 Report on Terrorism” by *National Counterterrorism Centre* sees **South Asia second in the list after the Middle East**, but notes that the **number of deaths in Afghanistan and Pakistan have gone up** significantly, while many South Asian countries figure prominently in terrorist related kidnapping
- v. The **fight against various kinds of insurgencies** in South Asia has also led to “**militarization of [state’s] imagination**” where in the name of combating terrorism legislations have been passed by individual countries which harm “**the cause of democracy by increasing the impunity and immunity of the state.**”
- vi. For South Asia the **concept of “cross-border terrorism”** is even an even more **bedeviling phenomenon** since it frequently raises suspicions about the motives of neighboring countries and exacerbates tension even further.

1. Nature of South Asian Terrorism

- India's alleged cross-boarder threat from Pakistan

- a) Punjab Insurgencies (1980s)
- b) Srinagar's legislative assembly building (October 13, 2001)
- c) India's Parliament (December 11, 2001)
- d) Middle class market in New Delhi (October 29, 2005)
- e) Suburban train system of Mumbai attack (July 11, 2006)
- f) Other attacks since then in Malegaon, Hyderabad, Jaipur, Bangalore, Abmedabad and New Delhi.

- **November 26, 2008 attack on Mumbai** by group based in Pakistan, **Lashar-e-Toiba**, took the war on terrorism one step higher. This was a well planned military-type invasion. The possibility of Indo-Pak military conflict brought the US Secretary of State Condoleezza Rice to New Delhi and Islamabad to diffuse the crisis. Probably the first time that cross border terrorist attacks had provoked fears of war between India and Pakistan with international interlocutors involved in defusing the crisis

- India's cross-border threat with Bangladesh

- a) 194 rebel camps established by various rebel groups from the Northeast

1. Nature of South Asian Terrorism

-- India's cross-border support to Bhutan

a) India provided military support to the government of Bhutan against the ULFA rebels

- Pakistan's cross-border threat from India

a) Breakup of East Pakistan (1971)

b) Disturbances in Pakistan's Sindh province (1990s)

c) Perpetuating "state terrorism" against the Kashmiri people's struggle

- Bangladesh's cross-border accusation to India

a) Harboring Chakma rebels

- Sri Lanka's cross-border accusation to India

a) Training and arming Tamil militants (1980s)

-India also provided Sanctuary to rebels during the **Maoist Insurgency in Nepal.**

2. Regional Response to terrorism

- **SAARC is one of the first few regional organisations to sign a Regional Convention on Suppression on Terrorism as early as in 1987.**
- Following year the **SAARC Terrorist Offences Monitoring Desk (STOMD)** was established in Colombo, Sri Lanka, with specific responsibilities to ***collate, analyze and disseminate information*** about terrorist incidences, tactics, strategies and methods.
- **A decade later legal formulated guidelines and identified three key elements in the SAARC Convention as requisites for its successful implementation:**
 - a) **creation** of offences listed in the convention **as extraditable offences** under the domestic laws of SAARC member states;
 - b) treatment of such offences as **“non-political offences” for purposes of extradition**; and
 - c) **vesting of extra-territorial criminal jurisdiction in the event of extradition not being granted.**
- After the event of September 11, 2001, legal experts' meeting on May 15, 2002 called for member states of SAARC to adopt comprehensive domestic legislations to give practical effect to the Terrorism Convention

2. Regional Response to terrorism

- **12th SAARC Summit in Islamabad (2004)** led to signing of **Additional Protocol** to control financing of terrorism.
- **13th Summit in Dhaka (2005)** called on member to expand their cooperation through **exchange of information, coordination and cooperation among their relevant agencies**. As a result, the **SAARC Interior/Home Ministers have held two meetings since 2006** to work on the modalities to implement SAARC Conventions
- The **15th Summit** called for “**strongest possible cooperation in the fight against terrorism** and transnational crimes amongst the relevant agencies of the Member States especially in the area of information exchange.”
- **Achievements:**
 - **Not a single action has been taken** under Convention on Suppression of Terrorism .
 - **Terrorists activities** within many of the SAARC countries and on a cross border basis **have gone up**
 - They have **failed to enact enabling domestic legislations** that are compatible to the Convention
 - There is a “**ritualistic practice**” in **SAARC** . Member countries have **not been able to share even the basic information**.

2. Regional Response to terrorism

- **Difference among SAARC countries in defining Terrorism:**
 - India (Dr. Manmohan Singh)*
“Zero tolerance” to terrorism for **harbouring hostile insurgent groups** and criminal elements.
 - Pakistan*
Wants a **distinction between “acts of legitimate resistance and freedom struggle and acts of terrorism”**
- The SAARC Terrorist Offense Monitoring Desk (STOMD) is today largely “**defunct and inaccessible**”.

1. International Level: The definition conundrum

- At present there is **no internationally accepted definition of terrorism**.
- The **only comprehensive international definition** is the **1937 Convention for the Prevention and Punishment of Terrorism** which defines it as:
“criminal acts directed against a State or intended to create a state of terror in the mind of particular persons, or group of persons or the general public.”

3. Reasons for Limitations of regional response

- Definition is limited and does not specify which are illegal in the context of terrorism
- The **draft UN Comprehensive Convention on International Terrorism** is being prepared by the Ad Hoc Committee and its Working groups goes further. It states if a person “**by any means unlawfully and intentionally commits acts**” whose purpose and its nature and context “**is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act**”, then it constitute terrorism.
- Not clear if this definition will be universally accepted, especially since future definition of terrorism must also cover not only “**right of freedom struggle**” but also such phenomena as **cyber-terrorism** and **illegal financial transactions** across national borders.

3. Reasons for Limitations of regional response

- There may be **more delays** in reaching an agreement on the definition of terrorism due to the **inherent nature of the UN system**
 - UN experience in **defining “aggression”**, which took the world body **over 28 years**
 - In the **aftermath of 9/11**, the **57-member Organization of Islamic Conference** indicated that even though **it strongly condemns terrorism** “in all its forms,” it does so with qualifications that would leave **actions of groups who consider themselves national liberation movements**
 - In the aftermath of 9/11 there were **12 existing UN conventions and protocols dealing with terrorism**
- **By 2003**, only **four states had ratified the Conventions**, while it takes **22** for it to enter into force.
- **UN’s function** in dealing with terrorism **was severely limited before 9/11**.

3. Reasons for Limitations of regional response

- **After 9/11**, the Secretary General was given additional role :
 - **collection of data**
 - a **compendium of national law** as and regulations
 - an **analytical review of existing international** legal instruments
 - a review of **possibilities within the UN system**
- The **strongest measure** taken by the UN against terrorism is **resolution 1373 of the Security Council of September 28, 2001**. It was unanimously **adopted under Chapter VII of the Charter**.
 - It **outlines a common strategy** in the new international campaign to deal with international terrorists, their organisations and those who support them.
 - It **prevents the financing of terrorism** and **deny safe haven** to terrorists.
 - In order to **reinforce their own domestic capabilities**, States are asked to **review and strengthen their border security operation, banking practices, customs and immigration procedures, etc.**
 - It also **requires each state to report on measures it has taken** to committee of the Security Council

3. Reasons for Limitations of regional response

- **Another mechanism** established after 9/11 is the **Counter-Terrorism Committee (CTC)**, composed of all the **15 member of the Security Council**, which has three stages
 - a) states are expected to have **legislation as per Resolution 1373**
 - b) establish **executive machinery** to cover all aspect of resolution
 - c) expected to **use the legislation and executive machinery to cooperate with other states** to bring the terrorist and other supporters to justice.
- **Since September 2001, 700 accession/ratification** instruments relating to the 12 UN Conventions which is around **40 percent of the total** number of accession
- **Reports filed** by the seven member states of **SAARC** to the Counter Terrorism Committee within a year after 9/11 illustrates how **ill-equipped the members are in dealing with terrorism** along the broad parameters outlined by the United Nations.
- Out of the **12 UN conventions** : India and Sri Lanka – 10; Pakistan – 9; Bhutan – 8; Nepal and Maldives - 7; and Bangladesh - 3

3. Reasons for Limitations of regional response

- **Only recently have India** (Prevention of Terrorism Ordinance (POTO, August 24, 2001 and December 2008 unlawful activities(Prevention Bill), Pakistan (Anti-Terrorism Act, 1997, Amended in 2001)) and Nepal (Terrorism and Disruptive Activities Control and Punishment Ordinance 2058 (2001) passed specific legislation to deal with terrorism.
- Even now in their separate reports to the Security Council most of the **South Asian countries are unable to identify a focal point in their country** which would deal with terrorism.

Although South Asia is today considered the “epicenter” of terrorism, huge deficit in the desired level of cooperation and coordination” between Counter-Terrorism Committee and SAARC since they are “no more than non-existent.”

3. Reasons for Limitations of regional response

- South Asia had received some plaudits in dealing with terrorism in the past but recent events have proved it not to be truly effective.
 - In the aftermath of 9/11, the government of **President Musharraf** was credited for moving swiftly . Pakistan was **recognized by the United States as a ‘non-NATO ally’ of the United States**. President Musharraf had **not taken any strong measures against the extremist networks** that sustain the *jihadi* in Indian-administered Kashmir and in Afghanistan, **nor had any leaders of *Lashkar-e-Toiba, Haish-e-Mohammad, and Hizbul Mujahidin* been charged** under the terrorism act. Pakistan had also **not monitored and regulated funds to *madrassas* through the *hundi* system**.

2. ***Poor understanding of and response to terrorism in South Asia***

- The **inability of the South Asian countries to handle terrorist threats** effectively could be inexorably **linked with their inability to coordinate policy at regional level**.

3. Reasons for Limitations of regional response

- **Shortcomings of the state in the nation building process** may itself be providing the **breeding ground for a self-destructive cycle that it is unable to manage** at a given time. (RCSS study)

i) The misgovernance factor

- Misgovernance is a principle factor that has very often led to rebellion against the state.

- In Pakistan

- a) **In 1970 tussle** between the state and federating units in **Baluchistan** led to nearly 10,000 deaths
- b) **1980s saw Sindh** province up in arms against the government which led to confrontation between the **makeshifts Sindhi guerilla outfit and the army.**
- c) In 1990 rebellion led by **the MQM in Karachi** grew into a region of terror in Karachi

“The fact that the state in **Pakistan** clashed with **virtually all of its sub-national groups, showed the failure of the rulers to evolve a federal structure** with maximum provincial autonomy and a fair distribution of resources.” (Rubina Saigol)

3. Reasons for Limitations of regional response

- In India

- **insurgencies are modulated by different compulsions in different regions**
- **some areas it is based on ideological motives but driven by irredentist aspirations.**
- **some cases religion provides the motive force**
- **in other parts terrorism stems from ethno-centric and parochial motives, seeking to breakout from the majority fold**

- *In Northeast India*

- **difficulty in tackling insurrections that are multifaceted and multidimensional**
- **Except for Arunchal and Meghalay, other movements have graduated into violent militant movement**
- **seven states violence at many levels:** conflict between the center and the states, between the **states themselves**, between **tribes within the state and interstate tribal conflict**, between **tribal and non-tribal** and between **indigenous groups and 'outsiders'**.
- **Mizoram the only state where militancy has been contained.**
- **Nagaland and Assam remain the most violent states and Tripura and Manipur less so.**

3. Reasons for Limitations of regional response

- **Close nexus between militant and politicians and drug trade and criminal elements**
- **The failure of the state** to redress the grievances further **exacerbates tensions**

ii) The marginalization factor

- **Inability of the dominant groups** in society to **provide political space** on an even playing field to incipient political elements can lead to an insurrection
- The **Maoists uprising in Nepal** exemplifies this particular case
- January 1991, the CPN-Unity Centre formed United People's Front Nepal (UPFN) to "expose the inadequacy of the multiparty system"
- 1991 elections the **UPFN acquired nine seats**
- **Election Commission** recognized the Vaidya faction
- **A decade of civil war and after over 13,000 deaths**, Maoists today lead a coalition government
- Maoists from the jungle to mainstream politics became possible after all political parties led a successful movement to do away the Monarchy in 2006

3. Reasons for Limitations of regional response

iii) Insecurities of political leaders and lack of political vision

- **Insecurity of political leaders** in South Asia and their **determination to hold on to power at all cost** has either **sown the seeds of terrorism** or perpetuated conflict even further.

-In Pakistan

- Absence of popular legitimacy, **Gen. Zia's regime in Pakistan attempted to convert the state and society into a theocracy** to the extent not witnessed
- **Subsidising religious seminaries (*madrassas*)** in small town and rural areas
- **Money funneled into Pakistan to create Afghan Jihad** against Soviet occupation of Afghanistan
- **Growth of militant religious organisations**
- **Gen. Zia's policy** of using religion to prop up his regime has created a 'monster' that has returned to **haunt the states**

-In Sri Lanka

- **History of broken promises** made by the ruling group to live up to agreements made with the **Tamil community**.
- **SWRD Bandaranaike abrogated the agreement** he had **reached in 1957** with the Tamil leadership when it proved generally unpopular in the country.

3. Reasons for Limitations of regional response

- Later in 1965, Prime Minister Dudley Senanayake back-tracked similar **agreement** when there were strong internal divisions within the ruling party itself
- **SLFP and UP, do not allow political settlements** to take place since it is viewed as an **opportunity to undermine the role of the other party** when it is in power.
- The **party in power opts for an easy way out** of the dilemma by withdrawing its proposal
- The **track record of South Asian countries** in dealing with the threat of terrorism is a **mixed** because of the way it is perceived and handled:
 - **First sheer neglect**
 - **Then followed by shock and administrative collapse** with **confusion** on whether **the threat should be treated as a law and order problem** (the 'root cause') or **high security risk** (the military option)
 - **Terrorism takes its roots** under an **environment of political indifference, cynicism, or even political patronage**
 - State continues to function with **no clear cut approach to terrorism by wavering** between a policy that aims either for **political or military solution**, or a combination of both
 - No mechanisms of institutional learning within and among the states in South Asia in dealing with the threat of terrorism

3. Reasons for Limitations of regional response

The limitation of the SAARC process

- **Failure of SAARC** to implement the Regional Convention on Suppression of Terrorism is not an isolated phenomenon **reflects in large part the failure of SAARC to deliver on commitment at all level.**
 - **SAARC Food Security Reserve (1987)** remained notional till date and no one know where it is located; reserve has never been utilised; SAARC Food Bank was established in 2007
 - **Convention on Narcotic Drugs and Psychotropic Substances (1990)** so far has taken **not a single action**
 - **SAARC Convention on Preventing and Combating Trafficking in Woman and Children for Prostitution (2002)** ratified by all the member states has taken **no action to create and adopt enabling legislations** for implementation of the convention
 - **SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (2202)** has taken no regional action
 - 2001-2010 was declared as “**SAARC Decade on the Rights of the Child**” whose **mid- term review in 2005 has not yet taken place**

3. Reasons for Limitations of regional response

- There are signs **that SAARC leaders realize that the organization has not performed**, and concrete measures need to be taken.
 - In **1993** member states realised that SAARC needs to adopt more **businesslike approach**
 - **13th Summit in 2005** called on members to “**work collectively** towards a decade dedicated to implementation **so that a visible and discernible impact can be felt across South Asia**”
 - **14th Summit (2008)** underscored “the need to move SAARC from declaratory to implementation phase.”
 - **SAARC Secretariat has initiated comprehensive notes on the implementation** of the decisions taken by the previous Summits
 - However, the **degree of commitment is “appallingly low, conspicuously dismal and extraordinarily slow.”**

Conclusion

- It is **unlikely that we will witness SAARC seriously engaged in the process of fighting terrorism in South Asia in the near future unless considerable changes or progress is made at various levels that matter.**
- One area that matters is **how quickly and effectively international community can complete its work on a Comprehensive Convention on International Terrorism**
- After 9/11 , **Resolution 1373 has been effective to some extent in preventing the financing of terrorism, denying safe haven and requiring states their own domestic capabilities to deal with likely threat**
- **Counter-Terrorism Committee of the Security Council has expanded scope of many laws designed to suppress terrorism**
- **Ultimate impact of both Resolution 1373 and the CTC will be felt only when UN can encourage its member states to pass and use enabling legislations and establish executive machinery to cooperate regionally to bring terrorists and others to justice**
- **India has been relying on Resolution 1373 to put pressure on Pakistan to locate and remove terrorism from within its border, and deliver the culprits to India.**
- **Mumbai terror attack was a global phenomenon which took the lives of many nationalities; such incidence generates multilateral pressures for greater cooperation regionally**