ASPEK - ASPEK HUKUM TERORISME INTERNASIONAL MENURUT HUKUM PIDANA INTERNASIONAL

S K R I P S I

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UCAPAN TERIMA KASIH

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(Zainul Arifin Harahap)

DAFTAR ISI

BAB I

P E N D A H U L U A N

A. LATAR BELAKANG MASALAH

Teori sebagai alat politik yang sering digunakan dalam usaha untuk memperoleh kekuasaan maupun mendapatkan imbalan tertentu bukan merupakan barang baru dalam sejarah manusia. Terorisme itu sendiri merupakan barang atau fenomena masa lampau tetapi terorisme moderen yang gejalanya mulai meningkat sejak awal tahun 70 an adalah merupakan sesuatu yang baru baik dalam tujuan, korban, cara kerja dan pola pengendalian.

Rezim-rezim yang telah mapan maupun kelompok-kelompok oposisi dalam usaha untuk mencapai tujuan ideologi maupun politiknya sering sekali menggunakan cara ini, baik secara fisik maupun psikis. Intimidasi, penekanan penganiayaan bahkan sampai tingkat tertentu mengorbankan jiwa dan harta adalah bagian dari cara ini.

Mereka melakukan teror untuk mengadakan perubahan dalam struktur politik yang telah mapan atau bahkan untuk meruntuhkan dan meniadakan sistem yang telah ada. Tidak sedikit pula kelompok yang berjuang melawan kolonialisme atau pendudukan untuk memerdekakan negerinya melakukan metode ini, karena harus kita akui bahwa terisme adalah suatu taktik perang yang pada saat-saat tertentu kadang-kadang efektif.

Dari tahun ke tahun meningkatnya aksi-aksi terorisme menunjukkan angka-angka yang mengagetkan. Di negara-negara tertentu aksi-aksi terorisme ini sudah sampai pada tingkat yang mengkhawatirkan yang tidak saja bagi negara tersebut, tetapi juga dunia Internasional. Aksi-aksi terorisme ini tidak hanya menyebar secara geografis saja, tapi jumlah kelompok yang beroperasi dan jumlah korban yang mati maupun yang luka akibat aksi-aksi tersebut bertambah besar.

Robert H. Kupperman dalam penelitiannya mengungkapkan terdapat kurang lebih 50 kelompok teroris yang sekarang ini beroperasi.[1)]

1. Bahkan yang lain menduga ada kira-kira 300 kelompok teroris yang beroperasi.
2. Di Amerika saja terdapat kurang lebih 20 kelompok terorisme.
3. Tiap-tiap kelompok memiliki jumlah anggota yang berbeda, ada yang hanya beberapa orang saja, ada juga yang memiliki jumlah anggota sampai ratusan.

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1) Bandingkan dengan penelitian yang dilakukan oleh US Departement of State, angka-angka tersebut jauh berbeda. Mungkin ini perbedaan kriteria dalam memandang apakah suatu kejahatan merupakan aksi terorisme atau bukan.

Rand Corporation, sebuah lembaga di Amerika yang sering melakukan penelitian terhadap masalah-masalah internasional, dalam satu risetnya mengungkapkan jumlah-jumlah serangan terorisme internasional dari tahun 1968 sampai dengan tahun 1982. Tahun 1968 ada 111 serangan, tahun 1976 ada 236 serangan, tahun 1978 ada 418 serangan dan tahun 1980 kurang lebih 712 serangan dan yang tertinggi tahun 1982 kurang lebih sebanyak 774 serangan.

Angka-angka tersebut menunjukkan bahwa serangan terorisme itu meningkat dari tahun ke tahun dan kalau dihitung maka setiap tahun naik 10%. Sejumlah 117 kelompok menyatakan bertanggung jawab atas penyerangan-penyerangan yang terjadi pada tahun 1982. Jumlah kelompok yang menyatakan bertanggung jawab ini kedua terbesar tahun 1968 (128 kelompok menyatakan bertanggung jawab dalam serangan peristiwa tahun 1980).

Kelompok-kelompok teroris ini, mewakili 71 kebangsaan yang berbeda dan yang terbesar adalah Armenia, Palestina, Jerman, Italia serta di Amerika Latin dan Tengah. Korban dari serangan terorisme internasional ini sebagian besar orang sipil dan tidak bersalah, bahkan kadang-kadang sama sekali tidak ada hubungan antara konflik yang terjadi antara teroris dan negara-negara sasaran.

Pejabat pemerintahan, politikus, hakim, diplomat, bussnesman, profesor, mahasiswa, anak-anak sekolah, turis adalah kalangan yang sering menjadi korban terorisme.

Yang sering menjadi sasaran terorisme internasional diantara kalangan tersebut di atas adalah Diplomat. Teroris menganggap bahwa diplomat ini adalah merupakan suatu lambang yang mewakili kepentingan dari negara-negara yang menjadi sasarannya. Diantara para diplomat, diplomat Amerika adalah sasaran yang paling populer, disamping itu diplomat Turki juga salah satu sasaran yang populer. Meningkatnya sasaran teroris internasional terhadap diplomat tidak terlepas dan berkaitan erat dengan perang yang terjadi antara negara atau antara kelompok oposisi dengan pemerintahnya. Serangan-serangan terhadap diplomat Iran dan irak meningkat sejak pecah perang antara keduanya. Begitu juga meningkatnya konflik yang terjadi di Amerika Tengah, menambah jumlah serangan terhadap diplomat-diplomat negara Amerika Tengah maupun diplomat-diplomat asing yang ditempatkan di Region tersebut.[2)]

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2) Diplomat Amerika paling sering menjadi sasaran teroris karena Amerika mempunyai peranan yang menyolok dalam dunia internasional atau kehadiran mereka sering menyolok karena diplomat-diplomat Amerika hampir ada di semua negara-negara di dunia internasional ini.

Disamping diplomat, bussnesman juga sering menjadi sasaran teroris mereka menganggap bahwa "bussnesman executive" ini sebagai lambang dari perjuangan untuk membatasi dominasi modal asing dalam sistem ekonomi mereka. Mereka menculik atau mengancam bussnesman atau perusahaannya untuk mendapatkan uang tebusan, sebagai biaya operasi perjuangan mereka selanjutnya. Dalam 10 tahun terakhir ini teroris telah mengumpulkan antara 125 sampai 250 juta dollar sebagai hasil uang tebusan.

Untuk mencapai tujuannya, kadang-kadang teroris menghalalkan segala cara yang digunakan. Pada awal tahun 70 an, membajak pesawat adalah metode yang populer, karena metode ini dapat menarik perhatian masyarakat di dunia ini. Disamping itu metode dasar dalam aksi terorisme seperti pembunuhan, penganiayaan, penculikan masih tetap menjadi alat yang ampuh. Suatu metode yang paling disukai dalam tahun 80 an sekarang ini adalah pemboman. Alat ini lebih berbahaya karena mempunyai daya pemusnah yang lebih besar dibandingkan dengan alat yang lain. Hal ini tergambar dalam peristiwa pemboman yang terjadi pada tanggal 8 Oktober 1983, dimana sebuah bom meledak di Mousleum Martir Rangoon Birma. Bom itu menewaskan 21 orang dan 17 diantaranya pejabat tinggi Korea Selatan. Tujuan dari pemboman ini sebenarnya untuk membunuh Presiden Korea Selatan, Chun Doo Hwan, tetapi Chun selamat. Bom ini juga

diduga sebagai alat yang menjatuhkan pesawat Boeing 747 Air India di lautan Atlantik dan menewaskan 325 orang.

Dalam lima belas tahun terakhir ini, banyak kelompok teroris yang beroperasi secara internasional. Mereka tidak hanya menyerang sasaran-sasaran lokal saja tetapi juga kepentingan internasional. Hal ini merupakan tantangan yang serius terhadap stabilitas internasional, hubungan diplomatik maupun hubungan ekonomi. Tidak dapat dielakkan lagi terorisme internasional adalah problem yang serius dalam hubungan antar bangsa. Dalam beberapa kasus mereka menciptakan kesalahan pengertian dalam perselisihan-perselisihan diplomatik, bahkan menuju ke arah perang terbuka. Sebagai contoh hubungan yang keruh dapat saja timbul dari perselisihan masalah yurisdiksi, permintaan ekstradisi, memberi perlindungan bagi teroris atau membantu kegiatan mereka secara tersembunyi.[3)]

Disamping itu terdapat bukti-bukti yang kuat yang menunjukkan adanya kerja sama internasional yang erat antara kelompok-kelompok teroris yang satu dengan yang lainnya baik dengan dasar bilateral maupun regional. Kelompok-kelompok teroris ini bekerja sama dalam hal penyediaan fasilitas lainnya yaitu seperti latihan para teroris, pertukaran senjata sampai pada operasi gabungan.

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3) Kenya dan Uganda mengalami hubungan yang panas seteleh terjadinya drama pembajakan di Entebbe tahun 1976.

Masyarakat internasional menjadi begitu khawatir dengan meningkatnya aksi-aksi terorisme internasional ini, R. Kupperman (seorang sarjana) menamakan sekarang ini sebagai "Age of Terorist", dan menurut penulis ini tidak berlebihan.

Sebelum Perang Dunia ke II telah ada beberapa perjanjian-perjanjian multilateral yang berkaitan dengan masalah terorisme. Yang secara langsung mengatur adalah "Convention for Provention and Punishment of Terrorism" di Jenewa pada tanggal 16 November 1937. Konvensi ini ditangani oleh 24 negara, tetapi tidak mempunyai kekuatan hukum karena hanya satu negara yang meratifikasinya yaitu negara India. Konvensi ini dibuat sebagai tanggapan atas terbunuhnya Raja Alexander dari Yugoslavia di Marseiles tahun 1934. Konvensi ini menitik beratkan pada perlindungan kepala negara dari serangan teroris. Konvensi ini kurang mendapat respon dari negara-negara karena mendefinisikan terorisme secara luas dan diharuskan pembunuhan ekstradisi secara mutlak. Beberapa ketentuan dari Konvensi ini tidak sesuai lagi dengan perkembangan atau praktek terorisme dewasa ini.

Kemajuan tekhnologi setelah Perang Dunia II berkembang dengan pesat. Perhubungan yang dulu didominasi lewat darat atau laut sekarang digantikan dengan pesawat-

pesawat udara yang lebih cepat dan effisien karena kemajuan tekhnologi penerbangan. Teroris memanfaatkan kesempatan ini dengan membajak pesawat-pesawat sipil dan operasi terorisme dengan cara ini paling populer. Hal ini memaksa PBB untuk menanggulangi melalui salah satu lembaganya yaitu ICAO sampai kini telah menghasilkan 3 buah Konvensi dan sebagian besar negara terikat pada konvensi-konvensi ini. Konvensi-konvensi ini adalah :

1. Konvensi tentang keamanan pada komisi penerbangan, Tokyo 14 September tahun 1963.
2. Hijacking, The Hague 15 Desember 1970.
3. Sabotage, Montreal 23 September 1971.

Negara-negara yang terletak pada region tertentu tidak ketinggalan mengatur penanggulangan terorisme ini. Negara-negara yang terletak di Amerika melalui OAS (Organisation of American States) pada tanggal 2 Februari 1971 berhasil mencapai konsensus yang menghasilkan konvensi yang berusaha menanggulangi aksi-aksi terorisme seperti penculikan, pembunuhan atau penyerangan terhadap diplomat-diplomat. Negara-negara dimana ditempatkan diwajibkan untuk melindungi, karena mereka ini dilindungi oleh hukum pidana internasional.

B. POKOK PERMASALAHAN

Sejalan dengan judul di atas, maka pokok permasalahan yang akan timbul adalah :

1. Apa sajakah batasan-batasan yang dimaksud dengan terorisme internasional ?
2. Akibat-akbiat apa sajakah yang ditimbulkan oleh terorisme internasional itu terjadi ?
3. Persoalan hukum yang bagaimanakah yang timbul bila terorisme itu terjadi ?
4. Bagaimanakah legal respon dari konvensi-konvensi tentang terorisme internasional terhadap kejahatan internasional ?

C. TUJUAN PENELITIAN

Hal ini disusun dengan tujuan memberikan gambaran situasi latar belakang masalah tentang perlunya persetujuan-persetujuan internasional guna mengamankan idiologi negara dari tindakan terorisme internasional yang semakin pelik dan berbelit-belik dalam usaha pencegahan dan penanggulangannya.

D. RUANG LINGKUP PEMBAHASAN

Secara substansi yang akan diuraikan adalah sebab, usaha, dan antisipasi masyarakat dunia atas terjadinya masalah terorisme internasional dari gangguan dan kejahatannya terhadap idiologi internasional.

Disadari pula bahwa penjabaran masalah ini tidak terlepas dari faktor-faktor politik, sosial, budaya yang melatar belakangi masalah yang ada. Namun faktor-faktor itu hanya akan menjadi suatu alasan adanya asal mula terjadinya terorisme internasional.

E. SISTEMATIKA

Skripsi ini penulis bagi menjadi lima bab dan berbagai sub bab di dalamnya. Bab I berisi pendahuluan yang didalamnya menguraikan tentang latar belakang masalah, pokok permasalahan, tujuan penelitian, ruang lingkup serta sistematika penulisan.

Dalam Bab II penulis menguraikan tentang segi-segi teoristis mengenai terorisme internasional. Dalam bab ini dibahas tentang batasan terorisme internasional, sebab-sebab terjadinya terorisme internasional, faktor-faktor yang mempengaruhi timbulnya terorisme internasional serta cara-cara kerja

terorisme internasional.

Dalam Bab III penulis menguraikan mengenai metodologi dan kerangka analisa. Di dalamnya dibahas tentang kerangka konsepsional dan metodologi penelitian yang dipergunakan.

Dalam Bab IV penulis membahas penemuan dan pembahasan. Bab ini secara rinci membahas terorisme internasional perlu diatur di dalam peraturan Undang-undang tersendiri, cara penanggulangan tindakan terorisme internasional serta implikasi masalah/telaah kasus.

Sebagai penutup dari uraian penulis, dalam Bab V disajikan kesimpulan dan saran.

BAB II

SEGI-SEGI TEORITIS TERORISME INTERNASIONAL

A. BATASAN TERORISME INTERNASIONAL

Terorisme sangat erat berkaitan dengan idiologi dan kejahatan politik. Nicholas N. Kitrie dalam tulsiannya yang berjudul "Terrorisme dan kejahatan politik dalam hukum Internasional", yang mana terorisme itu memberikan batasan apa yang dimaksud dengan kejahatan politik. Sebagian besar kelompok teroris berlandaskan pada idiologi tertentu, dan mempunyai tujuan politik. Masalah idiologi dan politik adalah suatu yang kompleks, oleh karena itu sampai saat ini masih belum tercapai kesepakatan mengenai batasan terorisme yang dapat memuaskan semua pihak. Masalah batasan terorisme ini lebih dipersulit lagi dengan adanya kenyataan, bahwa "terorisme" ini menjadi kata-kata yang iseng dan bercampur aduk karena sering dikenakan terhadap kejahatan-kejahatan yang sebenarnya tidak dapat dimasukkan dalam kategori terorisme.

Beberapa negara mengerti terorisme sebagai semua tindakan kejahatan yang dilakukan oleh pihak oposisi. Tidak jarang pula pihak oposisi ini sering mengatakan bahwa mereka adalah korban "gorvermental terror".

Dengan demikian kelihatannya apa yang disebut "terorisme" ini tergantung pada penilaian masing-masing dari sudut mana mereka memandangnya.

Dalam membahas batasan ini agar diperoleh gambaran yang lebih jelas, penulis membagi 2 kelompok bagasan. Kelompok pertama adalah batasan-batasan yang dikemukakan oleh para sarjana dan kelompok kedua adalah batasan yang berkembang dalam forum PBB. Pembagian ini penting karena di kalangan sarjana, dalam forum yang tidak resmi, segi objektifitasnya masih terjamin dan pengaruh politik tidak terlalu mendominir pendapat mereka sedangkan dalam forum PBB masalah politik adalah pertimbangan yang amat mendasar.

Ada beberapa hal yang patut dicatat mengenai batasan-batasan yang memasukkan baik terorisme dari "atas" (govermental terror), yang dilakukan oleh negara terhadap penentangan di dalam maupun di luar (internal and external enemies), maupun terorisme dari "bawah". Dalam batasan-batasan selanjutnya bahwa aksi-aksi terorisme dari "bawah" berkaitan erat dengan tujuan politik. Aksi teroris ini mempunyal latar belakang politis, karena tindakan-tindakan tersebut ditujukan untuk merubah struktur pemerintahan yang telah mapan atau untuk memperkecil perbedaan pendapat dalam partisipasi politik. Termasuk aksi-aksi teroris ini adalah rentetan atau urutan peristiwa-peristiwa menuju

sasaran politik tersebut. Rumusan di atas tidak secara langsung membatasi terorisme internasional. Mungkin lebih baik melihat segi "internasional" dari karakteristik peristiwa yang terjadi atau dari sifat tindakan tersebut. Segi internasional ini dilihat dari peristiwa yang jelas mempunyai akibat internasional, pelaku, tempat, sasaran, korban dapat menginternasional kan terorisme.

Problem yang dihadapi dalam membatasi terorisme internasional yang timbul dalam forum PBB lebih rumit. Perbedaan antara satu batasan dengan batasan lainnya yang dihasilkan oleh negara-negara anggauta sangat tajam. Batasan ini diusulkan oleh negara-negara atas permintaan Komisi Ad Hoc sebagai bahan pertimbangan untuk membatasi terorisme internasional secara keseluruhan dn dapat memuaskan semua pihak. Negara-negara yang mempunyai batasan-batasan terorisme adalah Haiti, Perancis serta negara-negara dunia ketiga, yaitu : Algeria, Congo, Syiria dan Zaire yang mana negara tersebut mengusulkan batasan terorisme internasional.

1. Philip Divine dan Robert Z. Rapalko : "Terorisme sebagai kejahatan langsung, sebagai sebuah masalah dari strategi politik, terhadap orang-orang tidak bersalah".

2. Jordan J. Paul : "Sebagai suatu dana yang melibatkan, penggunaan kejahatan Internasional, atau ancaman kejahatan, pada sasaran tertentu sebelum mencapai target utama sebuah ancaman kejahatan masa datang akan menempatkan target utama dalam redusi atau sikap pada suatu keadaan yang menakutkan atau kecemasan dan akhirnya sampai pada tujuan-tujuan khusus dari politik tertentu"
3. Richard Skulaz : "Aksi dari teroris adalah beberapa tindakan yang merupakan bagian dari metode perjuangan politik, yang bertujuan untuk mempengaruhi, atau menaklukkan atau mempertahankan kekuatan negara, menyatakan secara tidak langsung penggunaan dari kejahatan tingkat tinggi (mengakibatkan kematian atau penderitaan atau luka-luka) pada orang yang tidak bersalah, dan orang-orang non combatant".
4. G. Pontaros : "Terorisme menjadi bersifat Internasional bila ia secara langsung mengarah pada (a) langsung pada orang-orang asing atau sangat asing atau (b) bersama dengan pemerintah atau kelompok atau lebih dari satu negara atau (c) mengarah pada pengaruh politic dari suatu pemerintahan asing atau masyarakat Internasional".[1)]

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1) Nosbaum Arthur, A Conrcise History of the Law Nations, diterjemahkan ke dalam buku Indonesia oleh Sum Suhaedi, Sejarah Hukum Internasional, Bandung : Bina Cipta, 1969, hal. 30-31.

Jika kita lihat batasan-batasan yang diatur negara-negara tersebut di atas maka ada perbedaan yang mendasar, yaitu di suatu batasan disebut pertama tidak memasukan "state terror". Sedangkan batasan yang kedua memasukkan. Disamping itu batasan-batasan di atas langsung memasukkan segi "Internasional", karena secara langsung PBB menangani masalah-masalah yang berhubungan dengan segi-segi internasional.

Dengan adanya perbedaan yang tajam ini, tidak heran jika komisi Adhoc gagal untuk mencapai konsensus mengenai apa yang dinamakan terorisme internasional itu. Beberapa negara anggota mengusulkan menghimpun daftar dari tindakan-tindakan yang hampir sebagian besar negara menganggap bahwa tindakan -tindakan itu masuk katagori terorisme yang umum. Karakteristik dari aksi-aksi terorisme ini misalnya, mereka melibatkan orang-orang yang tidak bersalah, aksi-aksi ini sering kali ditujukan untuk mendapat publisitas, penggunaan ancaman kekerasan sering kali dikaitkan dengan tuntutan tertentu, mereka mempertaruhkan nyawa sanderanya.

Jika kita menganalisa batasan-batasan serta rumusan-rumusan yang ada/terdapat dalam konvensi-konvensi maka sedikitnya ada 5 masalah yang berkaitan erat dengan batasan terorisme internasional.

Pertama, masalah subjek dari teroris internasional. Apakah batasan ini hanya terbatas pada individu atau terbatas pada negara ? Mungkin pula memasukkan baik individu maupun negara dalam subjek terorisme.

Kedua, masalah ruang lingkup dari tindakan-tindakan terorisme. Apakah kita akan merumuskan batasan terorisme dengan memperinci semua tindakan yang termasuk dalam kategori atau disusun secara ringkas ? Contoh yang pertama terdapat dalam "Convention for the prevention and punishment of terrorism", Jenewa 1937. Sedangkan rumusan yang sederhana terdapat dalam "Draft Convention for the Prevention and Punishment of Certain Acts of Internasional Terrorism" yang diajukan oleh Amerika Serikat ke Komisi Adhoc. Disamping itu, dalam Konvensi 1937 juga ditegaskan, bahwa perusakan terhadap "publik proverty" dimasukkan dalam batasan, sedangkan dalam "Draft Convention", tindakan perusakan terhadap "property" ini bukan tindakan terrorisme. Hal ini dimungkinkan berhubungan dengan anggapan, bahwa kerusakan harta benda pada umumnya adalah perbuatan yang hukumnya relatif ringan dan negara-negara walaupun tidak diperkuat dengan treaty seringkali beranggapan bahwa kejahatan ini adalah kejahatan biasa.

Ketiga, segi internasional dari tindakan teorisme. Di sini harus dipisahkan antara tindakan-tindakan yang telah diatur dalam lingkup-lingkup peraturan domestik dari negara-negara dan yang berada di luar lingkup peraturan domestik, sehingga perlu diatur secara internasional. Disamping itu dalam batasan ini tidak dimasukkan jenis tertentu dari pada pelanggaran yang hanya mendapat perhatian kecil dari masyarakat internasional atau tidak mempunyai pengaruh yang berarti dalam hubungan antar negara, ketertiban dunia atau kemanusiaan.

Keempat, masalah motif, yang merupakan suatu faktor yang sukar difahami. Sebagian berpendapat, bahwa motif tersebut perlu dirumuskan untuk memperjelas masalah. Sedangkan sebagian lagi berpendapat, bahwa kita tidak usah memperhatikannya motif apapun untuk suatu tindakan yang membenarkan semua cara dalam mencapai tujuannya.

Kelima, masalah korban dari terorisme. Seperti yang telah diketahui, aksi terorisme seringkali melibatkan orang-orang yang tidak bersalah (innocent person). Sejumlah besar negara yang menyokong konvensi mengenai terorisme internasional memberikan perhatian yang khusus terhadap keselamatan "innocent person" ini. "Innocent' sendiri tidak mempunyai status yang jelas,

yang ada hanya anggapan yang samar-samar bahwa rakyat biasa yang tidak ada hubungannya dengan perjuangan teroris adalah "innocent person". Yang menjadi persoalan adalah apakah pejabat pemerintah, tokoh politik atau diplomat termasuk "innocent" ?

Jika kita kaji pengertian ini, maka pejabat pemerintah dan tokoh politik dalam keadaan tertentu termasuk berbahaya karena secara langsung berpartisipasi dan membantu regim yang menjadi musuh teroris. Begitu juga diplomat, mereka dapat dianggap berbahaya karena mereka mungkin juga terlibat dalam jaringan spionase yang merugikan tuan rumah. Tetapi khusus mengenai diplomat mereka tidak dapat dihukum atau ditahan oleh negara tuan rumah kecuali di usir.

Dari uraian di atas terlihat betapa komplek masalahnya, jika kita ingin memberikan suatu batasan yang dapat diterima dan memuaskan semua pihak. Kesulitan ini memberikan gambaran bahwa jalan menuju terbentuknya suatu konvensi mengenai terorisme internasional yang menyeluruh semakin samar dan jauh karena prinsip dasarnya sendiri belum terpecahkan. Hal ini tidak berarti bahwa usaha ke arah ini sama sekali buntu, karena tanpa harus mencantumkan batasan, konvensi dapat juga terbentuk, walaupun hanya sebagian dari terorisme internasional.

Para sarjana pun tidak tinggal diam dalam menghadapi masalah ini, mereka telah berusaha memberikan pendapatnya.

B. SEBAB-SEBAB TERJADINYA TERORISME INTERNASIONAL

Seorang atau kelompok yang melakukan aksi-aksi terorisme melakukan hal itu dengan latar belakang yang berlainan. Mereka melakukannya dengan latar belakang kriminil biasa, ekonomi atau politis. Pada dasarnya seseorang yang melakukan aksi-aksi terorisme degnan latar belakang kriminal biasa selalu dikaitkan dengan alasan-alasan pribadi. Mereka ini melakukan aksi-aksi terorisme dikarenakan kekecewaan atau konflik maupun kekhawatiran yang terjadi padanya. Untuk mengatasi keadaan itu mereka melakukan aksi teroris sebagai suatu kompensasi atas gangguan perkembangan pribadi yang tidak wajar. Dengan aksi-aksi terorisme ini yang kadang-kadang tidak jelas tujuannya, mereka beranggapan bahwa aksi terorisme yang dijalankannya dapat memecahkan problem yang dihadapi dengan tuntutan-tuntutan tertentu.

Disamping aksi-aksi terorisme dengan latar belakang alasan pribadi, sering pula aksi-aksi terorisme dijalankan dengan tujuan ekonomi. Tidak jarang seseorang atau kelompok-kelompok tertentu

melakukan aksi-aksi terorisme dengan menuntut uang tebusan. Mereka menculik, menyandera, menganiaya bahkan kadang-kadang membunuh dengan latar belakang ekonomi. Hal ini bisa terjadi karena pelaku terorisme ini mengalami tekanan-tekanan ekonomi atau mungkin juga pelaku-pelaku terorisme ini tidak mengalami tekanan tetapi hal ini dilakukan dengan dikaitkan pada perkembangan politis. Tidak jarang kelompok-kelompok tertentu melakukan aksi-aksi terorisme dengan menuntut uang tebusan hanya sebagai tujuan sekunder, karena mereka memiliki tujuan yang primer, dimana uang tebusan hanya sebagai tujuan sekunder dan sebagai biaya operasi-operasi aksi mereka selanjutnya.

Kecenderungan yang kuat sekarang dalam aksi-aksi terorisme adalah bahwa aksi-aksi tersebut dilakukan dengan latar belakang politis. Sebagian besar dari kejahatan-kejahatan terorisme yang dilakukan akhir-akhir ini, faktor politik memegang peranan besar. Juga perhatian internasional banyak dicurahkan untuk membahas aksi-aksi ini dapat saja dilakukan dengan tujuan untuk mendapatkan perlindungan politik, perjuangan melenyapkan kolonialisme, mendapatkan kekuasaan politik dengan latar belakang perbedaan idiologi dan lain-lain.

Sebenarnya batasan dari "political offence" itu sendiri masih tidak jelas. Karena betapa luasnya pengertian dari "political offence" ini karena seolah-olah hanya disandarkan pada adanya pertentangan antara dua kelompok dalam suatu negara, dimana kegiatan suatu negara bertentangan dengan suatu struktur dan sistim politik negara.

Dikarenakan tidak jelasnya konsep mengenai latar belakang politis ini, maka hal ini merupakan masalah yang kontroversial dalam setiap forum, karena adanya pandangan bahwa sebab-sebab yang mendasari timbulnya terorisme yang memiliki fenomena politik, tidak dapat dilihat dari segi kejahatan "an sich".[2)]

Idealnya jika kita menganalisa suatu masalah, maka kita harus mengupas keseluruhan aspek-aspek dari masalah tersebut, hal inipun berlaku pada masalah terorisme internasional. Salah satu aspek yang penting dalam masalah terorisme internasional ini adalah sebab-sebab yang mendasari dilakukannya aksi-aksi terorisme. Penyelidikan terhadap sebab-sebab terorisme ini penting, jika kita ingin mendapatkan hasil yang kekal bagi penanggulangan terrorisme. Kita tidak akan

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2) Alona E. Evans, Aircraft and Aviation Facilities, Legal Aspects of Terrorisme, Lixington Books, Toronto 1978, hal. 47.

mendapatkan suatu rumusan yang sempurna, jika kita konsentrasinya hanya ditujukan pada penyelesaian secara tehnis operasional. Penyelesaian secara tehnis operasio nal hanya menyentuh permukaan masalah saja, jika kita mengabaikan sebab-sebab yang menimbulkan suatu keadaan. Jika memungkinkan kita berusaha mencari jalan dan cara untuk menghapuskan sebab-sebab tersebut. Sebab-sebab mendasari terorisme internasional ini perlu diselidiki lebih lanjut dikarenakan adanya anggapan bahwa terorisme internasional ini merupakan suatu akibat wajar dari situasi dan kondisi masyarakat internasional yang kadang-kadang membenarkan secara tidak langsung terhadap ketidak adilan, perbedaan hak, penaklukan, penekanan dan berbagai bentuk eksplotasi. Disamping itu menyelidiki sebab-sebab terorisme akan lebih memperjelas konsep terorisme internasional, dimana hal ini akan berguna dalam pemilihan langkah yang tepa dalam membasmi terorisme internasional.

Memang sebaiknya jika kita ingin tuntas menanggulangi masalah terorisme internasional ini, maka kita berusaha untuk membatasi kalau kita tidak bisa menghapuskan sebab-sebab terorisme internasional ini, maka kita berusaha untuk membatasi, kalau tidak bisa menghapuskan sebab-sebab terorisme internasional. Tetapi anggapan bahwa sebelum kita mengambil tindakan-

tindakan praktis untuk membasmi internasional. Tetapi anggapan bahwa sebelum kita mengambil tindakan-tindakan tersebut, kita harus menyelesaikan penyelidikan dan pemberhentian dari sebab-sebab terorisme adalah suatu hal yang berlebihan. Karena untuk menyelesaikan masalah sebab-sebab dari terorisme internasional ini memerlukan waktu yang panjang dan melibatkan berbagai ahli dari disiplin ilmu yang berbeda tidak cukup hanya diselesaikan oleh para diplomat dan ahli hukum saja. Jadi usaha praktis untuk menanggulangi tetap jalan terus, dengan catatan bahwa sebab-sebab yang mendasari terorisme internasional tidak diabaikan.

Sebagai perbandingan, Martha Crensaw membagi suatu kondisi yang menyebabkan timbulnya terorisme. Pembagian ini sebenarnya terlalu umum, karena kriteria pembedanya tidak jelas. Martha Crensaw membagi ke dalam dua golongan besar bebab yang menimbulkan terorisme.

1. Adanya keluhan-keluhan yang nyata dari kelompok-kelompok tertentu dalam masyarakat luas. Misalnya kelompok etnis minoritas yang mendapat tekanan dari mayoritas. Gerakan-gerakan sosial dalam masyarakat minoritas itu lalu mengubah keluhan-keluhan tersebut untuk memperoleh apa yang mereka tidak peroleh. Aksi-aksi terorisme adalah salah satu jalannya yang

dilakukan oleh kelompok-kelompok axtrimis dalam golongan minoritas tersebut.

2. Kondisi kedua yang menyebabkan adalah kurangnya terorisme berkesempatan dalam partisipasi politik. Rezim-rezim yang menutup kesempatan bagi kelompok lain untuk mencapai kekuasaan dan menghukum orang-orang yang berbeda pendapat, menciptakan ketidak puasan. Dalam hal ini keluhan-keluhan adalah semata-mata masalah politik bukan masalah sosial ekonomi.[3)]

Salah satu hal yang komplek yang menyangkut sebab-sebab dari terorisme ini adalah adanya anggapan bahwa suatu peristiwa teror, tidak dapat dinilai dari segi kejahatan "an sich", jika sebab-sebab yang mendasari terorisme ini dapat dibenarkan. Di mata terorisme hal ini merupakan sesuatu yang penting, karena dengan latar belakang atau sebab-sebab yang tertentu kita baru dapat menilai secara objektif apakah tindakan tersebut adil atau tidak. Sebab-sebab yang mendasari terorisme dapat dijadikan alat pembenar dan alat yang mengesahkan aksi-aksi terorisme.

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3) Martha Crensaw, The Causes of Terrorism, LSR, 1981, hal. 385.

Hal ini tergambar misalnya dalam hak menentukan nasib sendiri, melawan penjajah, melawan regim yang menekan dan tidak adil, menentang kolonialisme, segala cara alat dipergunakan dan dibenarkan walaupun yang menjadi korban orang-orang yang tidak bersalah. Hal ini tidak sesuai dengan penyelidikan yang dilakukan oleh Ad Hoc yang menyebutkan :

> "..... even when the use of force is legally and moraly justified, there are some means, as in every form of human conflic which must not be used; the legitimacy of cause does not in it self legitimize the use of certain forms of violence, especially againts the innocent. This has long been recognised even in the customery law of war". 4)

Yang biasanya diikuti kemudian oleh penuntutan kehendaknya agar dipenuhi atau dipertukarkan dengan apa yang mereka kuasai saat itu dan dekade 80 an, modus ini sering dilakukanyaitu berupa pembajakan pada pesawat udara (hijacking).

Merubah tujuan pesawat udara dari tujuan asalnya secara melawan hukum dengan kekerasan atau dengan ancaman, yang secara populer disebut pembajakan pesawat udara. Contoh yang paling spektakuler dalam kasus pembajakan pesawat udara oleh kelompok gerilyawan/

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4) UNDOC, dikutip dari John Norton Moore Toward Legal Restaintson Internasional.

teroris aliansinya pro-Palestina PFLP pada tanggal 27 Juni 1976 yang membajak pesawat Air France, yaitu jenis Air Bus A 300, di wilayah Bapaj,yaitu di udara Yunani yang membawa dua belas awak pesawat dan dua ratus lima puluh enam penumpang, dibajak ke Libya kemudian dibawa ke Entebe – Uganda dengan suatu tuntutannya agar Israel membebaskan 53 rekannya di penjara di Israel. Enam puluh satu dari penumpang tersebut adalah warga negara Israel. Kemudian dengan suatu operasi komando dari Tel Aviv dan singgah di Kenya, pasukan para Komando Israel berhasil membebaskan semua sandera dan berhasil pula membunuh para teroris serta pasukan Uganda yang ada di sekitar pesawat. Tampaknya bahwa para teroris lebih sering menggunakan cara yang pertama, dan dekade 80 an aksi pembajakan dan serangan jibaku merupakan metode yang juga sering dilakukan dalam tindakan terorisme internasional.

Dari cara-cara kerja terorisme, penulis mengamati bahwa Amerika atau objek yang mempunyai hubungan dengan Amerika atau negara-negara Eropa Barat merupakan sasaran utama (main of target) dari para teroris internasional, yang dianggapnya sebagai kaum imperialis, yang sangat dibenci karena diidentikkan dengan pengeksplotasian manusia atas manusia Amerika

Serikat serta negara-negara barat merupakan pendukung utama atas segala sikap Irael.[5)]

C. FAKTOR-FAKTOR YANG MEMPENGARUHI TIMBULNYA TERORISME INTERNASIONAL

Akar jaringan terorisme internasional dapat dilacak langsung dari trikontinental di Havana pada bulan Januari 1966. Lebih dari 500 delegasi menyetujui resolusi-resolusi yang menekankan pentingnya kerja sama yang erat antara "negara-negara sosialisme", yaitu negara Rusia dan negara-negara satelitnya serta gerakan pembebasan untuk menilai tindakan terorisme sporadis yang berkelanjutan sebagai eksplosif dari manifestasi konstruksi politik dan kepentingan golongan tertentu. Dan ini tampak inklinasi dari beberapa kejadian tindakan terorisme menunjukkan peningkatan angka yang cukup serius, terutama terhadap negara-negara yang merupakan sasaran primadona kaum teroris.[6)]

Walaupun asal mula ideologi dan politik dari beberapa kelompok teroris tidak memiliki kwalitas secara tepat, dan ternyata ada beberapa kriteria atau

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5) Priyatna Abdurasyid, Kedaulatan Negara di Ruang Udra disertai Umpad, Indonesia : Pusat Penelitian HUkum Angkasa, 1974.

6) Sinar Harapan, 6 Juli 1976.

golongan, seperti yang diungkapkan di atas yang dalam dua dasawarsa belakangan ini golongan sayap kiri yang dipengaruhi oleh aliran Marxisme lebih berperan. Ini disebabkan adanya dukungan seara langsung, baik secara latihan, dukungan mental, dukungan finansial maupun suaka politik terhadap para teroris internasional ini, misalnya : Kelompok Beader-Meinhoft, Brigade Rosse, Rengo Seikegun (tentara merah Jepang), Turkey People Liberation Army, New People Army, dan kelompok lainnya yang berada di Eropa Timur, Timur Tengah, atau negara-negara pembebasan nasional, dimana resolusi tersebut bukan saja dari kelompok-kelompok negara ketiga tetapi juga dari "buruh-buruh Demokratis dan gerakan-gerakan Mahasiswa" dari Eropa Barat dan Amerika Utara untuk membentuk suatu "Strategi revolusioner global untuk melawan strategi dunia dan imperialisme Amerika Serikat".

Dengan pendapat-pendapat tersebut di atas paham terorisme Internasional berkembang dan meluas dan terintegrasi antar kelompok terorisme Internasional dalam melakukan aksi-aksinya. Apalagi dengan dukungan dari negara tertentu jelas dunia ketiga/negara kecil yaitu kaum terorisme yang merupakan ekstrim kanan, nasionalis atau sporatis yang berjuang melawan

kekuasaan metropolitan, misalnya golongan Sporatis Basque (ETA), IRA yang meyakinkan hubungan dengan kelompok teroris internasional yang lain, sehingga menjadi suatu jaringan yang mapan dan terorganisir dengan baik. Faktor finansial sangat menentukan keberlangsungan tindakan terorisme internasional, danuntuk msalah ini ternyata banyak donatur yang bersimpati terhadap para teroris, baik secara pribadi maupun sebagai pendukung, seperti yang dilakukan oleh negara-negara di Jazirah Arab yang bersimpati terhadap perjuangan rakyat Palestina. Pihak Rusia juga disebut-sebut sebagai pendukung sentral dari beberapa kelompok teroris internasional dan juga ternyata Amerika Serikat sendiri terbukti banyak melakukan tindakan terorisme internasional, melalui tangan-tangan C.I.A. (Central Investigation Agency), meski dirinya mengkultuskan sebagai pendukung demokrasi di dunia. Seperti tindakannya di perairan Nicaragua yang menyebarkan ranjau-ranjau di laut pada tahun 1986, atau penyerbuannya ke Granadha tahun 1984, dan invansinya ke Panama yang kemudian menciduk Jendral Antonio Noriega, Desember 1989.

D. CARA-CARA KERJA TERORISME

Terorisme internasional dalam setiap tindakannya selalu diwarnai dengan tindak kekerasan, yang dalam realisasinya dikelompokkan atas tiga cara pokok, yaitu:

1. Penculikan, pembunuhan, pemerasan dan pembebasan dengan tebusan sejumlah uang atau pembebasan dari rekan-rekannya yang ditawan atau ditahan.
2. Pemboman termasuk di dalamnya penyerangan.
3. Pembajakan.

Ad. 1. Penculikan, pembunuhan, pemerasan dan pembebasan dengan tebusan sejumlah uang atau pembebasan dari rekan-rekannya yang ditawan atau ditahan.

Tindakan penculikan yang kemudian diikuti oleh suatu tuntutan atas sejumlah uang atau dengan kata lain diikuti dengan pemerasan lainnya dan dapat pula dilakukan dengan pembunuhan, atau penuntutan pembebasan kawan-kawannya dari para teroris. Contoh misalnya drama penculikan Rabinna Sayeed, putri menteri dalam negeri India Mufti Mohammad Sayeed, diculik dari rumah sakit di Sinaggar pada tanggal 8 Desember 1989 oleh kaum militan Kashmir. Rabinna Sayeed kemudian dibebaskan oleh para teroris setelah tuntutannya itu dipenuhi oleh pemerintah India untuk membebaskan kelima rekannya kaum militan yang dipenjara.

ad. 2. Pemboman termasuk di dalamnya penyerangan.

Tindakan pemboman lebih banyak menuntut resiko bagi pelaku-pelaku tindak terorisme, namun jika dikaitkan dengan publisitas tampaknya pemboman lebih memberikan suatu keuntungan tertentu. Pemboman memiliki media dalam pelaksanaannya yaitu :

a. "The letter bomb" suatu tindakan dengan sasarannya adalah alamat tertentu yang mempunyai posisi eksekutif atau berhubungan erat dengan publik.
b. "The shoping bag", pemboman terhadap stasiun, diskotik, pub, dan tempat-tempat keramaian lainnya. Misalnya : bulan Desember 1989 kelompok Medellin yang merupakan teroris kriminal meledakkan kantor berita El Espectadore, di Bogota Kolombia.
c. "The suitcase bomb", pemboman yang biasanya dilakukan dalam transportasi umum, pesawat terbang atau ruangan bagasi.

Hal ini bisa dikaitkan pada pasa. 479 KUHP dari a sampai r buku II KUHP dengan menyebutkan dalam satu Bab, sekaligus menjadikannya sebagai delik khusus, dalam hal jika dengan tindakan yang sama terjadi perbarengan delik atau aturan.

Misalnya : musibah pesawat PANAM 103, Desember 1988 jatuh dan hancur di Lockerbie - Scotlandia.

d. "The car bomb" pemboman yang biasanya dilakukan dengan sasaran industri, pabrik, barak militer, pos penjagaan dan lainnya yang merupakan objek atau kepentingan militer atau memiliki nilai-nilai strategis.

Misalnya : Oktober 1963, 241 dan 300 Marinir Amerika Serikat tewas akibat truk maut yang menabrkkan kendaraannya di barak militer Parukan penjagaan keamanan di Bairut yang merupakan serangan jibaku kaum teroris atau gerilyawan, atau menganggap serangan itu sebagai perang sambil dengan tindakan syahid.

ad. 3. Pembajakan

Pembajakan adalah suatu tindakan secara melawan hukum terhadap suatu alat transportasi tertentu, biasanya pesawat udara, kapal pesiar dan jika terorisme internasional dalam perkembangan kemudian merugikan mereka sendiri maka "counter terrorisme" atau kontrak terorisme pun mereka pergunakan.

Dalam perkembangan tahap selanjutnya, di lain pihak terbentuknya tim-tim khusus dalam upaya menangkal aksi-aksi terorisme internasional, baik upaya nasional maupun kerja sama antara negara-negara berdaulat sebagai ujung tombak menghadapi insiden tersebut sangat diperlukan.

Kerjasama dalam upaya menanggulangi terorisme internasional dapat berbentuk kerjasama militer, atau penyediaan sarana pengoperasian militer untuk menanggulangi terorisme internasional, pemberian informasi vital dan sangat membantu/bermanfaat, atau pernyataan politis secara bersama dengan tindakan nyata tidak mendukung dan tidak membiarkan tumbuhnya terorisme di wilayah nasional maupun internasional.

Kerjasama semacam ini setidak-tidaknya dapat memperkecil tumbuh dan berkembangnya terorisme internasional maupun efek yang ditimbulkan, dan wibawa suatu negara tetap terjaga stabil, sehingga keadaan seperti itu dapat memperkecil ruang dan gerak timbulnya aksi-aksi kekerasan dan terorisme internasional.

Dari dukungan pendanaan, tersedianya sarana latihan semacam sekolah-sekolah dalam "Ilmu Penterorisan" ditemui di Kuba, Syria, Korea utara, Italia atau sekitar daerah-daerah segi tiga emas, yaitu di Burma (Myanmar), Thailand dan Laos, yang merupakan suplemen aksi-aksi terorisme. Tampaknya opium, canabis, heroin dan obat terlarang lainnya juga menjadi sarana utama guna memperoleh dana yang cukup untuk melakukan aksi-aksi terorisme, seperti yang sekarang sering terjadi di Bogota - Colombia, dimana pemerintahnya

berupaya memerangi secara total tindak terorisme yang dikaitkan dengan obat-obatan terlarang tersebut.

Dinamakan kultur masyarakat yang beda dalam proses modernisasi sosial ekonomi, dapat pula merupakan keadaan yang memungkinkan timbulnya aksi-aksi sejenis, karena ada fakta-fakta yang membawa suatu konklusi bahwa pertumbuhan ekonomi tinggi dan ketidak stabilan politik mempunyai korelasi yang ajeg dalam situasi yang memungkinkan meledaknya tatanan masyarakat, sehingga dapat dimanfaatkan untuk aksi-aksi terorisme. Revolusi Perancis didahului oleh kepincangan sosial dan kesejahteraan bangsa yang tidak ada sebelumnya. Kepincangan sosial yang terus meningkat ini jauh dari menenangkan rakyat kemudian menimbulkan kegelisahan dimana-mana, sehingga timbul eksploitasi agitasi serta ketidak puasan. Dan ini nampaknya suatu paradigma terhadap masyarakat transisi.

Sisi lain, dengan kemajuan teknologi juga akan membuat makin suburnya aksi-aksi terorisme internasional, baik teknologi komunikasi, transportasi maupun letal. Seperti musibah PANAM 103 tersebut, dimana pada tanggal 21 Desember 1988, dari jenis pesawat Boeing 747 yang bernama Maid of the Seas jatuh di Lockerbie, pesawat terbang tersebut sedang dalam perjalanan berjadwal dari London menuju New York,

ternyata jatuh berkeping-keping oleh bom yang dipasang oleh kaum teroris internasional sebelumnya, dan dipercaya dilakukan oleh Komando Umum Front Popular Front Palestina, di bawah pimpinan Admed Jibril. Insiden tersebut mengakibatkan tewasnya dua ratus tujuh puluh tiga penumpangnya, dan diduga akibat lebih jauh pada peristiwa penembakan Air Iran oleh kapal perusak Amerika Serikat USS Vincennes pada tahun yang sama oleh peluru kendali jenis Aegis, jadi merupakan balas dendam yang berkepanjangan. Dari insiden tersebut ditemukan adanya disinvestigasi dari dinas rahasia Jerman Barat BKA (Bundes Kriminalamt), BfV (Bundesamt fur Verfassungsshutz), dan BND (Bundesnachrichtendientst), sehingga fakta dari insiden tersebut ditutupi dari dunia luar.

Hal yang demikian tentunya membuat ekses positif bagi teroris internasional dan merupakan suatu kemenangan, yang menjadikan motif faktor dalam aksi-aksi selanjutnya dengan menggelarkan modus-modus yang canggih untuk membuat sedemikian rupa dalam menghapus jejak para pelaku yang memang konsekwensinya sangat serius.

Dan kalau dikaji lebih lanjut, terorisme internasional dalam setiap insiden, baik korban yang

ditimbulkan maupun frekwensi aktifitasnya menunjukkan grafik yang meningkat, apapun cara maupun metode yang digunakan.

Hal ini menunjukkan bahwa terorisme internasional tersebut akan tetap berlangsung aktivitasnya. Keadaan ini terjadi karena faktor-faktor yang mempengaruhinya, yaitu : 7)

1. Perpecahan politik yang terjadi di seluruh dunia.
2. Sikap yang tidak puas yang melanda beberapa negara-negara di dunia maupun kelompok-kelompok pembebasan nasional misalnya dikarenakan misalnya masalah perbatasan negara satu dengan yang lainnya seperti yang sekarang terjadi di Jamhu Kashmir-India, masalah rasialisme, masalah agama dan sebagainya.
3. Terdapatnya kenyataan kelemahan-kelemahan sistim keamanan negara tertentu.
4. Mudahnya memperoleh senjata-senjata modern baik saluran resmi maupun tidak, dalam meningkatkan kekuatan tempat kelompok-kelompok serta organisasi-organisasi teroris tertentu, ataupun partisipan pejuang seperti di Libanon.

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7) M. Karyadi, Interpol (Polisi Internasional) Bogor, Politea, 1976, hal. 17-19.

5. Kemajuan tekhnologi letal, komunikasi dan transportasi yang dimanfaatkan secara maksimal, baik sofistikasinya itu sendiri maupun kelemahannya.
6. Dukungan finansial, persenjataan dan latihan bagi para teroris yang disediakan oleh berbagai negara baik secara langsung maupun tidak, serta pemberian tempat perlindungan ("sanctuary") yang aman apabila tindakan terorisme itu telah dilakukan.
7. Bantuan penyebar luasan, atau propaganda, untuk kepentingan terorisme terutama mengenai keabsahan mengenai tujuan perjuangan oleh media massa, sehinggga memberikan simpati dunia.

Kemajuan tekhnologi dan semakin meningkatnya interdepensi antara negara-negara di dunia, telah memberikan suatu keadaan mobilitas baru bagi teroris internasional, sasaran-sasaran baru, persenjataan baru, dan kemungkinan sifatnya yang hampir-hampir pasti bahwa aksi-aksi mereka yang lebih dramatis akan memperoleh publikasi yang cepat dan meluas ke seluruh dunia. Ditambah dengan perubahan-perubahan akhir-akhir ini dalam iklim politik dan ekonomi secara menyeluruh, akan melahirkan implikasi bagi para teroris untuk melancarkan aksi-aksinya, disamping sistim kehidupan masyarakat modern itu sendiri yang mudah terkena kegiatan teroris internasional.

Penulis sendiri pada esensinya berasumsi, bahwa ketidak stabilan dunia internasional yang terus bergejolak, khususnya dalam dua bidang pokok yaitu politik dan ekonomi yang saling mempengaruhi. Dengan ini jelas dapat menimbulkan frustasi bagi negara-negara dunia ketiga dan organisasi-organisasi pembebasan dalam usaha memformulasikan suatu penyelesaian yang menyangkut kepentingan-kepentingan dasarnya yang kompetensinya dengan negara-negara besar karena keterbatasan kemampuan atau power yang dimilikinya.

Karena dengan keterbatasan power ini maka akan melahirkan cara-cara terorisme internasional, baik yang dilakukan oleh kelompok/organisasi resmi maupun tidak dan yang tergolong dalam revolusionist power di satu pihak, dan memberikan kesempatan kepada negara adi daya untuk memanfaatkan ketidak mampuannya menghadapi ketidak stabilan politik internasional. Hal ini menjadikan atau menimbulkan sikap frustasi bagi kepentingan-kepentingan mereka.

BAB III

METODELOGI DAN KERANGKA ANALISA

A. KERANGKA KONSEPSIONAL

Organisasi pembebasan Palestina yang didirikan tanggal 2 Juni 1964 adalah suatu gerakan pembebasan Nasional Bangsa Palestina untuk mengusir dominasi kekuasaan asing (Israel) atas wilayahnya. Berdasarkan sejarah wilayah Palestina merupakan wilayah Bangsa Arab Palestina, namun karena adanya Deklarasi Balfour usaha pendudukan zionis Yahudi terhadap wilayah Palestina makin lancar dan kuat.

Didalam Hukum Internasional sebagaimana diketahui, terdapat macam-macam yang menyangkut subjek hukum Internasional berikut kapasitas hukum yang melekat didalam subjek hukum Internasional tersebut. Secara umum, subjek hukum Internasional itu dapat dijabarkan sebagai berikut :

a. Negara
b. Organisasi Internasional
c. Entites
d. Individu
e. Gerakan Pembebasan Nasional.

Sekarang yang menjadi sorotan utama adalah apakah organisasi pembebasan Palestina tersebut termasuk di dalam kategori sebagai subjek hukum Internasional.

Pertama, suatu gerakan pembebasan Nasional dapat dikatakan sebagai subjek hukum Internasional apabila telah mendapatkan suatu pengakuan dari masyarakat Internasional terhadap gerakan pembebasan nasional tersebut, pengakuan itu bisa bersifat regional dan internasional. Gerakan pembebasan tersebut adalah murni gerakan yang berusaha melawan atau menghapuskan dominasi dan kekuasaan bangsa asing terhadap wilayahnya, yang semata-mata untuk menciptakan dan memulihkan hak mereka atas nasib sendiri dari kemerdekaan. Hal ini tergambar atas aspirasi dari perjuangan organisasi pembebasan Palestina.

Kedua, didalam pengakuan yang bersifat regional, Organisasi Pembebeasan Palestina telah mendapat pengakuan yang sah sebagai wakil bangsa palestina dari Liga Arab bulan Oktober 1974 pada waktu konfrensi tingkat tinggi Liga Arab ke - 7 di Rabat Maroko. Begitu juga tahun 1973, organisasi pembebasan Palestina diakui sebagai anggota organisasi konfrensi Islam (OKI), Keberadaan organisasi konfrensi Islam itu selanjutnya dilaporkan oleh Sekretaris Jenderal Perserikatan

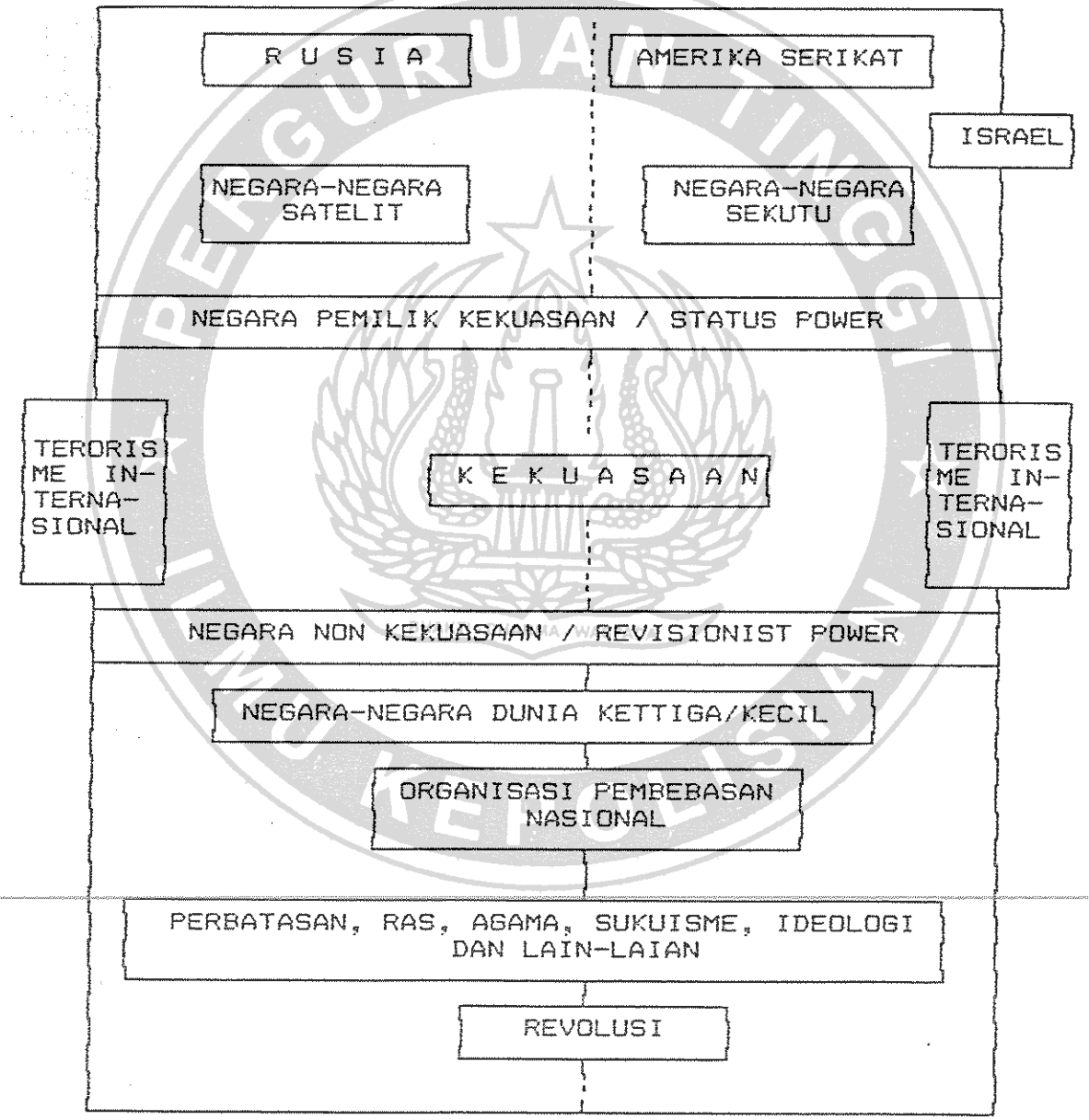
Bangsa-bangsa pada tanggal 1 Februari 1974 untuk disahkan dan diakui sebagai organisasi internasional. Maka secara tidak langsung diakui bahwa organisasi pembebasan Palestina itu sebagai subjek hukum internasional. Selanjutnya, usaha-usaha organisasi pembebasan Palestina untuk mendapatkan pengakuan yang bersifat internasional tentunya dapat didasarkan kepada resolusi-resolusi Majelis Umum Perserikatan Bangsa-bangsa.

Resolusi Majelis umum Perserikatan Bangsa-Bangsa Nomor 3236 (XXIX) dan resolusi nomor 3237 (XXIX) tanggal 22 November 1974 yang memperjelas ketentuan resolusi 181 (II) dan 242 tahun 1967, resolusi-resolusi tersebut merupakan dasar pokok pengakuan bagi Organisasi Pembebasan Palestina unutk melaksanakan aspirasi perjuangannya di forum internasional.

Jadi perjuangan dan status hukum Organisasi Pembebasan Palestina sekarang telah diakui baik oleh organisasi internasional yang bersifat regional maupun global yaitu Perserikatan Bangsa-bangsa. Hal ini terbukti dengan resolusi-resolusi Majelis Umum Perserikatan Bangsa-bangsa yang dikeluarkannya untuk mempertegas status dan kedudukan Organisasi Pembebasan Palestina di Forum Internasional. Hal ini bila dihubungkan dengan doktrin para ahli hukum internasional, bahwasannya Organisasi Pembebasan

Palestina termasuk kedalam subjek hukum internasional, yang dikarenakan inti perjuangan gerakan pembebasan nasional tersebut adalah menghapus atau mengusir dominasi kekuasaan asing di wilayahnya.

Dari kerangka konsepsi skripsi ini, penulis mengaplikasikan kedalam kerangka teori, dalam suatu bagan :



Keterangan

Amerika Serikat yang berideologi liberal kapitalis dan Rusia dengan ideologi sosialis adalah merupakan negara-negara yang saat ini sebagai negara dua adidaya dan berada pada posisi sebagai pemilik kekuasaan, sedangkan negara-negara Dunia Ketiga adalah negara-negara yang ingin merubah kekuasaan (Revisionist power).

Kedua kelompok ini mempunyai kepentingan tertentu yang saling berbeda sesuai dengan situasi dan kondisinya masing-massing. Disamping itu, diantara negara-negara yang ada dalam kelompok tersebut tentunya memiliki kepentingan-kepentingan tertentu pula, dan merupakan ajang pengaruh dari pertarungan kedua ideologi, dimana Amerika Serikat mewakili Blok barat dan Rusia dalam Blok Timur.

Amerika Serikat dan Rusia terlibat konflik yang berkepanjangan dan mengakibatkan ambivalensi ideologi dan mendominir pengaruhnya, sehingga timbul pro dan kontra, dengan manifestasinya yang ekstrim/radikal maupun moderat. Dan ini menimbulkan konflik suplemen diantara negara-negara Dunia Ketiga, disamping konflik sejati diantara mereka sendiri dengan beberapa faktor internalnya. Sedangkan dalam pasal 1 (4), Protokol

Tambahan - Jenewa 1949, menyebutkan :

> "Sebagai tambahan dalam sengketa-sengketa bersenjata dalam masa rakyat berjuang terhadap dominasi kolonial dan pendudukan asing serta rejim rasis dalam usahanya mendapatkan hak untuk menentukan nasib sendiri (The right of self determination), seperti yang ditentukan dalam Piagam Perserikatan bangsa-bangsa dan Deklarasi terhadap prinsip-prinsp Hukum Internasional, tentang hubungan persaudaraan dan kerja sama antar bangsa-bangsa dari Piagam Perserikatan Bangsa-bangsa".8)

Konflik tersebut terjadi dalam struktur atau kehidupan politik internasional tersebut yang didasarkan pada ideologi, hak menentukan nasib sendiri atau kepentingan nasional yang dimiliki oleh subyek-subyek politik internasional dalam berinteraksi dalam tatanan yang berjalan, sesuai dengan norma-norma universal.

Dan meskipun sarana politik legal, yang telah tersedia melalui institusi yang diakui oleh norma-norma internasional, baik melalui saluran diplomatik atau terpaksanya dengan perang, dimana ketentuan atau peraturan perang ini telah diatur tersendiri dengan Konvensi yang telah ada. Namun suatu pertimbangan

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8)Catatan kuliah Hukum Humanitar, tahun 1988

kalkulatif persepsi tertentu maka bentuk kekerasan lain ditempuhnya dalam suatu konflik, yang bahkan dapat mempengaruhi secara efektif situasi regional sekitarnya. Misalnya kedudukan Israel di Timur Tengah adalah upaya Amerika Serikat menandingi dominasi pengaruh Rusia di Timur Tengah, yang secara konstan "tutup mata dan telinga" dan selalu mendukung ulah Israel apapun manisfestasi dan sifat yang ditimbulkan, guna menciptakan pengaruhnya di kawasan tersebut, secara simultan dengan negara-negara sekutunya. Demikian pula dengan Rusia dan negara-negara satelitnya, meskipun situasi global negara-negara satelit Rusia ini mengalami katalisasi besar-besaran, namun pada prinsipnya mereka sama dengan Amerika Serikat. Semua kawasan di dunia ini merupakan sarana dan wahana perebutan pengaruh yang ajeg dan kontinu dari dua kekuatan ini.

Sebenarnya setiap kelompok tertentu akan terbentuk dari orang-orang yang mempunyai persamaan kepentingan dan keinginan, namun suatu kelompok juga akan merupakan musuh bagi kelompok lainnya dan akibatnya maka timbullah suatu konflik yang berkepanjangan. Kecenderungan penggunaan kekerasan pada hakekatnya terdapat dalam diri manusia itu sendiri.

Bila seorang atau sekelompok dihadapkan pada keterbatasan atau situasi yang begitu tertekan atau dihadapkan pada pilihan antara pencapaian tujuan dan cara-cara mencapainya yang hampir tidak dicapainya secara alamiah dan wajar maka cara/jalan yang dipilihnya adalah melalui cara kekerasan, tentunya dimanifestasikan dalam bentuk tindakan teror, guna memperoleh apa yang dikendaki. Dan cara tersebut merupakan pilihan yang dianggapnya paling memungkinkan untuk memperoleh dan menghasilkan keadaan serta tujuan dibalik tindakannya. Suatu keseluruhan yang merupakan pendukung guna berkembangnya dan makin kompleksnya pengkajian masalah terorisme internasional ini. Dalam hubungannya secara keseluruhan dan integral dengan kontra terorisme, dengaan suatu analisa bahwa akan timbul terorisme-terorisme internasional berikutnya yang lebih terorganisir rapi, dan lebih mungkin sampai menjangkau sel-sel sistem lainnya. Dalam mengevaluasi perkembangan terorisme dan peranan bangsa-bangssa lain dalam menanggulangi dan upaya mencari penyelesaian lainnya atau bahkan mengimbangi dan memicu tumbuh serta berkembangnya tindakan terorisme internasional, dengan menselaraskan perubahan-perubahan situasi politik dan kondisi internasional sekarang dan masa yang akan datang.

B. METODE PENELITIAN

1. Metode Pengumpulan Data

Bahwa dalam usaha mengumpulkan data yang berhubungan dengan judul tersebut diatas, telah dilakukan secara objektif analisis, yaitu dengan memakai study literatur yang dihubungkan kepada pernyataan atau doktrin para ahli hukum internasional serta pengamat masalah internasional khususnya masalah Timur Tengah. Di dalam penggunaan study dokumentar, bahan-bahan yang diambil dan berhubungan dengan judul tersebut yaitu dengan mengumpulkan :

a. Peraturan-peraturan atau resolusi-resolusi Perserikatan Bangsa-bangsa.

b. Konvensi internasional atau treaty yang berkaitan dengan masalah Palestina.

Kemudian untuk yang berkaitan dengan study literatur, bahan-bahan yang dapat dikumpulkan adalah dengan tinjauan ke perpustakaan. Maksudnya dengan mencari dan menghubungkan satu teori hukum internasional yang lainnya tanpa menghindarkan hubungan yang pokok dari masalah yang dibahas.

Satu hal yang tidak diabaikan adalah dengan mendapatkan bahan dari instansi-instansi yang berhubungan langsung atau yang khusus mengamati

masalah-masalah internasional seperti Departemen Luar Negeri, Centre Strtegic of Internasional Studies (CSIS), serta Kepolisian negara Republik Indonesia (POLRI).

2. Analisa Data

Guna menganalisa data yang didapat, maka teknik yang dipakai yaitu dengan pendekatan secara deskriptif historis dan deskriptif analisis, maksudnya adalah data yang diterima atau didapat secara umum dijabarkan dengan melihat kepada faktor sejarah dan keputusan-keputusan atau doktrin-doktrin yang berkaitan dengan masalah itu sehingga dapat di hubungkan antara satu dengan yang lainnya.

Penjabaran secara deskriptif historis, maksudnya adalah upaya penggambaran dari peristiwa yang melatar belakangi masalah palestina tersebut. Hal ini dimulai dengan saat adanya campur tangan pemerintah Inggris atas wilayah Palestina yang di dukung dengan adanya deklarasi balfour serta pressing group dari masyarakat Yahudi Amerika dan internasional untuk merebut wilayah Palestina dan sampai titik puncak dari didirikannya Organisasi Pembebasan Palestina.

Sedangkan deskriptif analisis, yaitu

penjabaran dalam upayanya dalam fakta-fakta yang diketemukan atau didapat baik pernyataan-pernyataan atau keputusan-keputusan yang bersifat regional maupun internasional, keputusan yang bersifat regional, yaitu dengan melihat keputusan yang diberikan oleh Liga Arab dan organisasi Konfrensi Islam kepada organisasi Pembebasan Palestina akibat dari pengakuannya itu. Sedangkan untuk keputusan yang bersifat internasional hal ini jelas terlihat dari resolusi-resolusi Majelis Umum Perserikatan Bangsa-bangsa mengenai pengakuan atas hak-hak bangsa palestina atas wilayah Palestina serta pengakuannya terhadap Organisasi Pembebasan Palestina baik seecara organsatoris maupun status hukum organisasi itu di masyarakat internasional.

BAB IV

PENEMUAN DAN PEMBAHASAN

A. TERORISME INTERNASIONAL PERLU DIATUR DALAM PERATURAN/ UNDANG-UNDANG TERSENDIRI

Salah satu kunci sukses untuk memberantas terorisme adalah ekstradisi. Setiap negara yang meminta ekstradisi seorang tersangka, tentunya didasarkan bahwa negara tersebut memiliki yurisdiksi untuk menuntut ataupun menghukum terhadap si pelaku baik itu didasarkan pada Hukum Internasional maupun hukum nasional negara yang meminta. Tentunya negara yang diminta untuk mengekstradisikan si pelaku tidak akan memenuhi permintaan itu, jika negara yang meminta tidak mempunyai yurisdiksi untuk menuntut pelaku tersebut. Dengan kata lain, negara itu tidak mempunyai dasar hukum untuk menuntut si pelaku. Karena syarat ini merupakan prosedure formal dalam penentuan ekstradisi, maka adanya yurisdiksi adalah dasar pertimbangan baik untuk meminta ekstradisi maupun memberikan ekstradisi.

Ada 4 teori yurisdiksi yang diakui oleh hukum Internasional. Teori-teori ini adalah : [1)]

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1) Negara-negara yang sistem hukumnya berdasarkan Anglo Saxon tidak mengakui teori ini. Misalnya Inggris tidak mengakui teori ini kecuali untuk kejahatan tertentu. Amerika Serikat bahkan sama sekali menolak teori ini.

1. Teori teritorial;
2. Teori nasionalitas;
3. Teori proteksi;
4. Teori universilitas.

Tidak semua teori ini mendapat pengakuan yang sama, hal ini tergantung sistem hukum yang dianut.

Teori yurisdiksi teritorial sudah diakui secara umum, dimana semua negara berwenang untuk menuntut dan menghukum semua kejahatan yang seluruhnya atau sebagian dilakukan didalam teritorialnya, terlepas dari kewarganegaraan orang yang melakukannya.

Kewenangan negara untuk menuntut dan menghukum warga negaranya berdasarkan azas nasionalitas juga banyak dipraktekan. Walaupun beberapa negara tidak mempraktekan teori ini dalam hukum nasionalnya. Dengan teori ini suatu negara dapat menuntut dan menghukum warganegaranya, bagi kejahatan-kejahatan yang mereka lakukan di luar teritorialnya. Terlepas dari kenyataan bahwa perbuatan kriminal tersebut tidak mempunyai pengaruh dari atau terhadap negara si pelaku. teori ini dikenal sebagai "active nationalty". Dalam hal ini juga dimana dari korban kejahatan, menjadi dasar hukum utama bagi negara untuk menuntut dan menghukum kejahatan-kejahatan yang dilakukan terhadap warganegaranya diluar teritorialnya.

Teori yang keempat dari yurisdiksi adalah universalitas. Teori ini membangun dasar yurisdiksi bagi negara yang berkaitan dengan kejahatan-kejahatan tertentu yang dikenal buruk. Semua negara berhak menerapkan yurisdiksinya walaupun tidak dilakukan dalam teritorialnya, oleh atau terhadap warganegaranya dan tidak menimbulkan pengaruh terhadap negara tersebut.

Dari keempat teori diatas, yang memerlukan analisis dan pembahasan lebih lanjut adalah prinsip teritorial dan universalitas dalam hubungannya dengan konvensi-konvensi yang penulis bahas. Yurisdiksi teritorial sudah diakui sejak lama, dan merupakan sesuatu yang terjadi dalam batas-batas kekuasaannya. Dalam perkembangan selanjutnya, teori ini mengalami perluasan-perluasan. Perluasan yang pertama dari teori ini adalah dilanjutkannya teori ini pada kapal laut, pesawat udara dan pesawat ruang angkasa.

Seperti kita tahu, penerbangan sipil internasional memiliki sifat-sifat khusus. Dalam waktu yang singkat pesawat yang sedang terbang dapat melalui beberapa negara. Jika dalam pesawat yang berkecepatan tinggi tersebut terjadi suatu pembajakan atau kejahatan penerbangan lainnya, maka akan sulit sekali untuk menentukan diatas negara mana sebenarnya kejahatan itu terjadi seandainya kita mempertahankan teori teritorial

dengan kaku. Konvensi Tokyo 1963 yang mencoba menerobos kesulitan ini dengan perluasan teori teritorial. Jika terjadi kejahatan yang dilakukan didalam pesawat udara yang sedang dalam penerbangan maka "negara dimana pesawat udara didaftarkan memiliki kewenangan untuk melaksanakan yurisdiksinya". Ketentuan ini diatur dalam pasal 3. Pengaturan seperti ini juga menjadi dasar prinsip yuridksi bagi konvensi The Hague, dan konvensi Montreal. Dengan ditetapkannya negara dimana pesawat udara didaftarkan yang memiliki kewenangan untuk melaksanakan yurisdiksinya, kesulitan menjadi tertolong dan juga membantu menyelesaikan masalah kekosongan yurisdiksi. Dalam keadaan tertentu timbul suatu masalah dengan ketentuan yurisdiksi dari negara dimana pesawat udara didaftarkan, jika negara tersebut menolak untuk melaksanakan yurisdiksinya dengan alasan tertentu. Yurisdiksi ini dapat beralih kenegara lain dan hal ini diatur dalam pasal 4 Konvensi Tokyo, dimana disebutkan:[2] "negara yang bukan negara dimana pesawat udara didaftarkan, dapat melakukan campur tangan yurisdiksi terhadap pesawat udara yang berada dalam

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2) Lembaran Negara a) Konvensi The Hague, pasal 4.1 dan pasal 5.1 tentang b) Konvensi Montreal.

penerbangan dengan tujuan untuk dapat melaksanakan yurisdiksi kriminalnya, dengan syarat :

a. Kejahatan itu diselesaikan diatas negara tersebut
b. kejahatan tersebut dilakukaan terhadap warganegara atau penduduk negara tersebut.
c. Kejahatan itu membahayakan keamanan negara tersebut.

Konvensi The Hague maupun Konvensi Montreal memperluas yurisdiksi kriminal dari negara peserta dengan menetapkan bahwa ada kewajiban bagi setiap negara peserta untuk bertindak sebagai negara yang memiliki kewenangan untuk melaksankan yurisdiksi terhadap kejahatan-kejahatan penerbangan tersebut. Penyelesaiannya harus diadakan urutan prioritas dan yang paling utama adalah negara dimana pesawat udara didaftarkan.

Perluasan yang kedua dari teori teritorial dikembangkan oleh negara-negara yang tidak mengakui teori nasionalitas seperti Amerika Serikat dan Inggris.

Dengan menerapkan tipe "teritorial subjektif hukum" suatu negara memiliki yurisdiksi untuk menuntut dan menghukum kejahatan-kejahatan yang dilakukan diwilayahnya, tetapi diselesaikan diwilayah negara lain. Walaupun tipe ini tidak diakui secara umum, tetapi sudah menjadi bagian dari hukum pidana Internasional. Type yang kedua membuat suatu negara

berhak atas seseorang pelaku yang melakukan aksi terorisme terhadap warganegaranya dimana semua aksi tersebut dilakukan diluar wilayah negara tersebut. Hanya disini diisyaratkan adanya perantara untuk mewujudkan tindakan itu. Sebagai contoh, Amerika Serikat yang tidak mengakui asas nasionalitas. Jika terdapat tergugat yang melakukan aksinya diluar Amerika, Pengadilan Amerika Serikat akan mempunyai yurisdiksinya jika dapat menyatakan secara tidak langsung adanya "agency relationship", dimana tergugat dengan sengaja menggunakan perantara untuk mewujudkan rencana dan aktifitasnya didalam Amerika.

Jadi disini tergugat yang berada diluar teritorial Amerika, tunduk pada yurisdiksi amerika, jika ia secara sadar menggunakan pelayanan pos Amerika Serikat untuk melaksanakan rencananya atau aktivitasnya. Pengembangan selanjutnya dari teori ini adalah walaupun secara nyata tidak terdapat "agent" dalam suatu tindakan seperti diatas, tidak berarti bahwa negara tersebut tidak dapat memberlakukan yurisdiksinya. Sebagai contoh misalnya seseorang yang berdiri di Meksiko dan menembak seseorang yang berada di Amerika. Orang tersebut tidak dapat menyangkal bahwa Amerika Serikat tidak mempunyai atau tidak dapat menerapkan yurisdiksinya. Dalam kasus ini Amerika

Serikat tidak dapat melaksanakan yurisdiksinya walaupun tidak terdapat agent secara nyata. Hal ini karena adanya maksud untuk melahirkan atau mengakibatkan pengaruh kedalam Amerika Serikat. Tindakan yang digerakkan dari luar Amerika Serikat dan berkelanjutan kedalam Amerika pengertiannya sama dengan menggunakan "agent".

Dalam perundang-undangan di Indonesia, juga hal tersebut terdapat di dalam pasal 1 Undang-undang tentang penerbangan (Undang-Undang No.83 Tahun 1958) ditentukan : Pesawat udara ialah tiap alat yang dapat memperoleh gaya angkat dari reaksi udara. Tentunya sesuai dengan hukum alam, adanya reaksi adalah karena ada aksi. Sedangkan aksi ini ada tentunya karena adanya suatu daya/energi. Karenanya sudah tepat jika disebut pesawat. tentunya tidaklah dimaksudkan oleh Undang-undang No.83 tahun 1958 bahwa suatu kapal layang (yang semula ditarik lalu dilepas di udara oleh suatu pesawat udara) termasuk pesawat udara. padahal jika terjadi pembunuhan di atas kapal layang tersebut, kendati diluar wilayah Indonesia, dengan menggunakan tafsir-ekstensif terhadap pasal 3 lama, berlaku hukum pidana Indonesia kepada pelaku tersebut. Juga jika terjadi pembunuhan diatas suatu balon dengan cara tafsir tersebut diatas, berlaku juga hukum pidana di

Indonesia. Lebih jauh lagi, apabila ada suatu pesawat udara yang dikuasai oleh seseorang Indonesia (dalam hal ini: tidak/belumterdaftar di Indonesia), kemudian ketika ia terbang dan berada di luar wilayah Indonesia. Berlakulah hukum pidana Indonesia kepada pelakunya? Penulis berpendapat: "ya", sejalan dengan suatu kejadian yang sama diatas suatu perahu Indonesia, kendati perahu itu belum punya surat/pas kaapal atau belum terdaftar di Indonesia sesuai dengan perundangan.

Azas Universalitas juga diperluas dalam rangka memberlakukan hukum pidana Indonesia, sebagaimana ditentukan dalam pasal 4 angka 4 KUHP (baru). Ketentuan ini dihubungkan dengan kejahatan tersebut pasal 479 huruf j, yaitu tentang penguasaan pesawat udara secara meelawan hukum dan pasal-pasal 479 huruf l,m,n dan o tentang kejahatan yang mengancam keselamatan penerbangan sipil yang pada garis besarnya berupa : [3)]

- Melakukan perbuatan kekerasan terhadap orang dalam suatu pesawat udara dalam penerbangan,
- Merusak pesawat udara dalam dinas, dan

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3) Perluasan UU. No.83 tahun 1958, Tindak pidana di KUHP berikut uraiannya, S.R Sianturi S.H, (Penerbit Alumni Ahaem PT HM Jakarta), hal 479-483

- Menempatkan di pesawat udara dalam dinas alat-alat/bahan yang dapat menghancurkan pesawat tersebut.

Jika kita lihat, semua tepi yurisdiksi jika akan dilaksanakan oleh suatu negara terlihat adanya hubungan antara yang menginginkan menerapkan yurisdiksinya dengan pelaku, korban atau kejahatan itu sendiri. Didalam teori ini bisa saja suatu negara yang tidak mempunyai kepentingan terhadap kejahatan, korban atau pelaku dapat melaksanakan yurisdiksinya atas nama masyarakat bangsa-bangsa. Teori ini disebut universilitas, yang dapat menjadi dassar bagi negara untuk dapat menerapkan.

Yurisdiksinya terhadap kejahatan-kejahatan tertentu. Teori ini pertama diterapkan pada bentuk kejahatan pembajakan di laut, tetapi setelah masyarakat bangsa-bangsa menyadari betapa bahayanya kejahatan-kejahatan tertentu, maka teori ini diterapkan pada bentuk-bentuk kejahatan lain.

Suatu langkah maju yang dicapai oleh konvensi-konvensi internasional yang berkaitan dengan terorisme internasional, adalah bahwa konvensi-konvensi ini telah meluaskan prinsip universalitas. hal ini merupakan pengakuan, bahwa kejahatan terorisme ini

merupakan kejahatan terhadap masyarakat internasional dan terhadap masyarakat internasional?. Hal ini berarti bahwa penerapan atau penyelenggaraan yurisdiksi internasional ini dilakukan atas nama masyarakat Internasional. Dengan dimasukkannya kejahatan terorisme ini dalam yurisdiksi universal.

Jadi pada prinsipnya dimana dalam teritorial suatu negara ditemukan orang yang diduga keras melakukan tindakan terorisme, walaupun bukan dilakukan didalam teritorial negara tersebut dan juga bukan terhadap warga negaranya. Kewajiban utama yang timbul adalah mengekstradisikan orang tersebut. Seandainya dengan pertimbangan tertentu negara tersebut tidak mengekstradisikan pelaku itu, maka negara tersebut otomatis mempunyai yurisdiksi untuk menuntut dan menghukum orang itu.

Jika dilihat secara keseluruhan, sebenarnya yurisdiksi suatu negara untuk menuntut dan menghukum pelaku aksi-aksi terorisme tidak menemui aksi-aksi terorisme dalam masalah-masalah hukum yang besar dan pelik. Apalagi dengan adanya ketentuan pada setiap konvensi diatas bahwa pengaturan yurisdiksi dalam konvensi-konvensi diatas tidak menyisihkan pengaturan yurisdiksi dalam konvensi-konvensi oleh hukum nasional masing-masing negara. Hanya mungkin sedikit masalah

timbul jika dihubungkan dengan negara yang bukan anggota dari konvensi-konvensi internasionaal ini. Dengan pengaturan yurisdiksi secara komprehensif, kemungkinan terjadinya kekosongan yurisdiksi kecil sekali, yang menjadi problem sekarang adalah kemauan negara-negara peserta untuk melaksanakan konvensi-konvensi ini secara konsekwen.

Seperti yang kita tahu bahwa menurut hukum kebiasaan internasional, tidak adanya perjanjian ekstradisi antar negara, tidak menimbulkan kewajiban untuk mengekstradisikan seorang tersangka pada negara yang meminta. Suatu langkah maju yang dicapai oleh konvensi-konvensi internasional ini yang berusaha memberantas aksi-aksi terorisme, adalah bahwa aksi-aksi teror yang telah diatur oleh konvensi-konvensi merupakan kejahatan yang dapat diekstradisikan. Negara-negara peserta konvensi diwajibkan untuk memasukkan kejahatan-kejahatan tersebut dalam perjanjian ekstradisinya. Lebih luas lagi tidak adanya perjanjian ekstradisi antar negara bukan merupakan halangan untuk mengekstradisikan pelaku terorisme karena kecuali konvensi Tokyo, semua konvensi yang lainnya dapat dijadikan dasar hukum bagi penuntutan ekstradisi.

Tetapi kemajuan-kemajuan di atas menemui beberapa hambatan dengan belum terpecahkannya masalah

"political offence exception". Tidak adanya rumusan dan konsep yang jelas mengenai hal ini menambah kompleksnya masalah ekstradisi.

Konvensi Konvensi Tokyo dengan tegas menyatakan bahwa "political offence exeption". Sedangkan konvensi-konvensi yang lain tidak secara tegas mencantumkan masalah masalah ini kecuali konvensi Eropa yang membatasi pengertian "political offence" dengan menyebutkan secara berurutan mengenai kejahatan-kejahatan yang tidak dapat dikategorikan sebagai "political offence". Dengan membatasi pengertian "political offence" ini, sebenarnya merupakan langkah awal yang baik sekali, tetapi konvensi Eropa ini masih menyimpan peluang-peluang untuk mengelak dari ketentuan ini.

Sebenarnya usaha-usaha untuk membatasi pengertian dari political offence ini telah lama dicoba. Tidak dapat diekstradisikannya penjahat politik sudah lama dikenal dalam perjanjian ekstradisi. Belgia dalam tahun 1833 sudah memberlakukan peraturan tidak dapat diekstradisikannya penjahat politik dan pada awal abad 19 hampir semua perjanjian ekstradisi di Eropa berisi pengecualian terhadap kejahatan politik. Banyak negara memberikan suaka pada penjahat-penjahat politik ini. Sejak semula pelaku dari kejahatan politik ini

tidak dapat dipandang sebagai penjahat "an sich".

Hal ini kemudian dikuatkan oleh pasal 14 dari United Nation Declaration of Human Right yang menyatakan, bahwa setiap orang mempunyai hak untuk mencari dan menikmati perlindungan dari tuntutan negara lain.

Panjang peliknya kesepakatan internasional dalam memformulasikan definisi terorisme menjadi suatu kendala, lantaran apa yang oleh satu pihak dikatakan sebagai terorisme ternyata dilain pihak boleh jadi sebagai ekses tindakan perjuangan oleh para pejuang kemerdekaan yang tidak kenal menyerah dan sering menggunakan tindakan-tindakan ekstrim. Padahal pemahaman terhadapnya, sebagai problema sosio-politiko militer, kemudian kematangan konsepsi menghadapi dan menangkalnya apabila dikendaki penggarisan strategik nasional, amat tergantung pada identifikasi permasalahan berdasarkan tindakan yang dilakukan.

B. Cara Penanggulangan Tindakan Terorisme Internasional

Masalah terorisme internasional merupakan masalah yang kompleks dan ada keterpautan dengan masalah yang lainnya dan melibatkan kepentingan suatu kelompok atau pihak tertentu, sebagai kompensasi adanya rasa ketidak puasan dengan mengimplementasikan kedalam

bentuk penekanan (presure).

Berbagai kendala yang mencuat dalam rangka memperkecil ruang gerak terorisme/terorisme internasional juga berekses serius terhadap perkembangan tindakan terorisme internasional selanjutnya. Ini diakibatkan adanya ketidak seragaman persepsi di negara-negara satu dengan lainnya yang menyediakan sarana dan prasarana aksi-aksi terorisme dan diantaranya ada yang menjadi "primadona" dari tindakan-tindakan terorisme internasional. Di lain pihak dalam hubungan internasional serta acuan dari hukum yang diakui secara internasional semakin lama semakin kompleks. Kompleksitas ini disebabkan oleh berbagai multiplikasi, baik mengenai pelaku aktifnya, masalah yang ditimbulkan, negara pendukung, maupun cara dan sarana yang dipakai untuk memecahkan permasalahan terorisme ini.

Antogonistik ini memberikan suatu asumsi baru terhadap konsep kejahatan terutama dalam bidang hukum pidana internasional. Dibutuhkan suatu kiat tertentu jika tatanan masyarakat internasional tidak ingin membiarkannya dalam peradaban dan norma-norma internasional.

Dalam ketiadaan definisi secara universal mengekspresikan polarisasi dari dunia internasional,

baik secara ideologis politis maupun militer akan menempatkan masalah terorisme internasional ini menjadi "tradisi" bagi kehidupan masyarakat internasional yang memang sarat dengan berbagai kemungkinan dan peluang.

Tanggapan dibidang hukum, yang ditentukan adanya kemungkinan batasan secara normatif, terus menerus gagal karena adanya kepentingan yang fundamental dan politis sebagai manifestasi 'satus quo' yang diidentifisir dalam percaturan politik internasional. Hingga pada sidang yang ke-44 komite VI Majelis Perserikatan bangsa-bangsa belum berhasil menyusun suatu definisi yang diharapkan, yang diadakan pada bulan September - Desember 1989.

Ada tujuan nyata pada terorisme yang pada esensinya lebih mengacu pada suatu tindakan militer dari pada suatu kejahatan murni. Para teroris mempunyai tujuan yang mengarah terhadap konsepsi ciptaan opini umum yang bertujuan destruksi perimbangan sosial setelah terjadinya fenomena ini dengan cara disorientatif.

Tujuan para teroris bukanlah hidup tenang dalam suatu masyarakat yang sudah ada, tetapi akan menghancurkannya melalui tindakan yang dipilihnya, ini merupakan antitesis yang esensi dari pendekatan umum yang bersifat membangun (konstruktif) untuk melindungi

segenap kehidupan yang ada.

Usaha-usaha untuk mencari penyelesaian dan jalan keluar yang baru secara hukum melalui proses mengadakan perjanjian telah menghasilkan beberapa konvensi internasional, seperti Konvensi Tokyo tahun 1963 tentang pelanggaran yang dilakukan dalam Pesawat Udara, Konvensi Den Haag tahun 1970 tentang pemberantasan terhadap tindakan secara melawan hukum/penguasaan Pesawat Udara, Konvensi Montreal 1971 tentang pemberantasan tindakan-tindakan melawan hukum yang mengancam keamanan penerbangan sipil. (Indonesia telah meratifikasi Ketiga konvensi tersebut kedalam Undang-undang Republik Indonesia Nomor 2 tahun 1976, dan konvensi lainnya tentang masalah teorisme, yaitu Convention against Internationally Proctected, including Diplomatic agents 1973 dan International Convention againts the Taking Hostages, 1979 serta European Convention on the Suppression of Terrorism tahun 1977. [4)]

Selain telah ditempuh cara memperkecil tindakan-tindakan terorisme internasional melalui ketentuan hukum internasional, juga diadakan suatu

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4) UU Republik Indonesia No. 7 Tahun 1976

kerjasama antar negara yang berkepentingan dalam upaya meng-counter terorisme internasional, seperti kerjasama bidang intelijen, keamanan dan luar negeri, pemberian fasilitas dan sarana militer dalam rangka operasi pembebasan sandera dengan tujuan tidak akan membiarkan tumbuhnya terorisme dalam suatu negara tertentu, kerjasama latihan/militer sesama pasukan para komando negara-negara sahabat dan lain sebagainya.

Usaha meng-couter terorisme memang merupakan kewajiban/tugas dan rekayasa militer. Dengan asumsi yang identik dengan militer, bahwa tindakan teror harus dibasmi keakar-akarnya. Dilain pihak kemudian timbul argumen lain, bahwa pembasmian terorisme hendaknya mencakup upaya-upaya sosiologi dan politis. Jika cara ini

Dilakukan maka tujuan terorisme itu sendiri telah dicapai dan konsekwensinya akan tercipta peluang selanjutnya.

Hal ini tentu tidak dikehendaki oleh pihak yang lebih dominan dan mayoritas. Kondisinya akan menjadi bersifat dikotomik. Dan justru pengingkaran serta pengakuan terhadap terorisme internasional inilah yang sebenarnya merupakan 'kekeliruan' yang mengesahkan kehadiran terorisme internasional. Karekteristik terorisme yang ada dengan eksistensinya dalam mewakili

setiap konflik kepentingan secara vertikal merupakan latar belakang dari terorisme yang terjadi akhir-akhir ini di seluruh dunia. Disini terorisme itu sendiri merupakan keadaan sebagai usaha untuk menyamakan tingkat tawar menawar, sehingga satu pihak dapat mendesak (menekan) kepentingannya terhadap pihak lainnya. Sebagai akibat kontraksi dari perjanjian pertama bergeser kearah perimbangan baru yang diharapkan.

Dari segi efisiensi, sistem letal militer baik yang konvensial maaupun nonkonvensial juga tampaknya tertinggal dengan metode terorisme. Terorisme dapat dilakukan oleh beberapa orang tanpa perlu mengadakan pertempuran terbuka. Tingkat pencapaian tujuan sasaran lebih besar, dimana nilai strategis merupakan sasaran utama, di samping memiliki dampak sosial dan politik segera. Korban dipihak lawan merupakan ekses dan bukannya tujuan dan jatuhnya korban dipihak kawan diperhitungkan matang dengan perhitungan untung rugi dari tindakannya.

Jadi pembatasan terhadap peristiwa terorisme tidak hanya mencakup hukum belaka, akan tetapi perlu ditentukan langkah-langkah lainnya yang bersifat non disiplin hukum. Upaya-upaya hukum dan non hukum untuk jangka yang relatif panjang dapat diarahkan pada

prevensi dan untuk jangka pendek dengan melancarkan ancaman serta tindakan yang realistis. Prevensi berarti mengurangi atau berarti menghilangkan kekecewaan dibidang sosial, ekonomi dan politik. Warga-warga masyarakat yang menderita karena dilibatkan ke dalam tindakan terorisme, lebih mudah mencari saluran kekerasan imbangan sebagai jalan keluar atau pembalasan dalan bentuk yang lainnya.

Usaha-usaha untuk membatasi peristiwa-peristiwa terorisme dapat dilakukan dengan ancaman-ancaman. Di dalam hal ini harus ada suatu jaminan, bahwa pelaku-pelaku dari terorisme/terorisme internasional harus dikenakan hukuman yang sangat berat. Sebab banyak peristiwa terorisme ternyata dibebaskan kembali, yang kemudian diberi perlindungan oleh negara-negara tertentu.

Selain itu sebaiknya pelindung dari pelaku terorisme tersebut hendaknya diberi sanksi tertentu, misalnya penutupan jalur penerbangan internasional atau upaya menutup dari hubungan internasional dibidang ekonomi. Atau dilakukan pemboikotan dari fasilitas-fasilitad tertentu. Dengan adanya perjanjian ekstradisi dan peningkatan komunikasi antar negara serta sikap "no ransom" didalam menyelesaikan terorisme internasional.

Penulis menyadari bahwa cara-cara tersebut

tampaknya sukar untuk dilaksanakan karena banyak aspek terorisme internasional yang mengakibatkan pula sanksi Perserikatan Bangsa-bangsa kurang efektif dalam upaya menyelesaikan permasalahan terorisme internasional, dimana pada kahirnya segala keputusan dilakukan oleh negara yang bersangkutan.

Dalam hal ini apakah terorisme merupakan cara yang efektif untuk merubah kondisi sosial dan politik. Kendati demikian, kemampuan untuk menarik perhatian umum secara luas dan segera terhadap tuntutan yang mereka perjuangkan merupakan langkah penting kearah realisasi tujuannya.

Dalam studi terhadap terorisme internasional, menunjukan bahwa fenomena ini semakin lama semakin tampak meningkat dengan cepat. Dalam sepuluh tahun terakhir ini tidak kurang dua ribu peristiwa tindakan terorisme internasional dengan pembagian prosentasenya sebagai berikut : sabotase sebesar 0,9 %, pemboman tempat strategis 48,2 %, tindak penyanderaan 3,7 %, serangan bersenjata 15,1 %, pembajakan pesawat udara 9,4 %, (misalnya, pembakaran, penculikan) yang merupakan pelanggaran hak asasi manusia.[5)]

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5) Departement of State Publication 9661 - Office of the Secretary of state

Untuk itu, beberapa negara telah menjalin kerjasama dalam upaya penanggulangan tindakan terorisme atau telah disusnnya konvensi tertentu, seperti European Convention tahun 1977. Ini merupakan upaya serius dalam rangka mencagah dan menghukum aksi-aksi terorisme internasional terhadap orang-orang yang berhak mendapatkan perlindungannya atau diberlakukannya extradisi secara umum diregional Eropa dan mendepolitisasikan segala bentuk tindakan terorisme/ terorisme internasional. Terorisme saat ini telah melampaui jurisdiksi nasional tertentu, yang bersifat Internasional, dan harus dihadapi pada tingkat nasional maupun internasional. Sikap internasional sendiri pada prinsipnya menentang segala bentuk terorisme, meskipun dengan alasan tertentu dapat dijadikan sebagai suatu "kebijaksanaan" politik suatu negara.[6)]

Upaya-upaya masyarakat internasional menunjukan sikap yang semakin valid untuk menciptakan tindakan prevensi dalam menghadapi terorisme. Terorisme tidak relevan dengan konsepsi harrkat manusia yang beradab, karena aksi-aksi terorisme merupakan tindakan kejahatan dan jelas sebagai pelanggaran hak-hak asasi manusia,

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[6)] K. Martono, Hukum Udara, Angkutan Udara dan Hukum Angkasa, Alumni, Bandung, 1987.

apapun yang melatar belakangi dan motivasinya. Ini tentunya semakin diperlukan persetujuan internasional yang kokoh dan berwibawa dengan deklarasi tidak akan membiarkan atau memberi kesempatan tumbuh dan berkembangnya tindakan yang dikategorikan terorisme internasional di wilayah negara tertentu atau tidak akan memberikan perlindungan bagi para teroris.

Indonesia dalam hal ini jelas sikapnya terhadap segala bentuk terorisme, Indonesia tidak akan mentolerir tindakan-tindakan terorisme apapun bentuk serta modus dari aksi tersebut, karena hal ini julas bertentangan seperti yang termaksud dalam Pembukaan Undang-Undang Dasar 1945, alinea I, dimana penulis mengidentikan segala ujud/bentuk terorisme adalah formulasi lain dari penjajahan manusia atas manusia.

Upaya Indonesia sendiri dalam bidang hukum untuk mengatur terhadap segala tindakan ini tentunya bersandar pada Kitab Undang-Undang Hukum Pidana atau berdasarkan ketentuan/hukum militer serta adanya ratifikasi konvensi Internasional sebagai suplemen hukum nasional, yaitu Undang-Undang Republik Indonesia Nomor 2 tahun 1976, dan selain itu Indonesia selalu aktif dalam mencari formulasi pendefinisian terorisme internasional serta upaya prevensinya yang disponsori oleh Perserikatan Bangsa-bangsa, dengan turut

menandatangani resolusi-resolusi yang telah diterbitkan, guna mencari jalan keluar seecara universal atas kendala yang ada.[11)]

C. IMPLIKASI MASALAH/TELAAH KASUS

Upaya internasional pada hakekatnya adalah menjalin suatu kerjasama antar negara dalam rangka tindakan preventif terhadap terorisme internasional. Upaya-upaya yang akan ditempuh dapat berupa kerjasama dibidang hukum, pemberian informasi intelijen yang berguna dan usaha diplomatik guna mewujudkan perdamaian dunia serta memperkecil keinginan negara-negara pendukung terorisme tetap menjalankan kebijaksanaan politiknya yang riskan tersebut. Upaya di bidang hukum dan sistem intelijen adalah guna mempersempit ruang gerak dan membatasi jalur terorisme internasional. Kegiatan diplomasi adalah untuk menyelesaikan pertikaian dan ketegangan antar negara yang tidak jarang berekses sebagai sumber timbulnya terorisme internasional baru. Usaha diplomasi harus diintensifikasikan karena tergetnya adalah menetralisir terorisme internasional.

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7) I Wayan Partiana, Beberapa dalam Hukum Internasional dan Hukum Nasional Indonesia, Bina Cipta,Bandung, 1983,

Masalah "International Terrorism" mulai dibahas pada Sidang Majelis Umum Perserikatan bangsa-bangsa tahun 1972 atas prakarsa Sekretaris Jenderal, yang menghasilkan dibentuknya Komite Khusus tentang Terorisme Internasional dan berada dibawah Komite VI (Legal Committee). Komite khusus ini beranggotakan tiga puluh lima negara dan bertugas menelaah sebab-sebab terjadinya tindak kekerasan tersebut dengan menyusun suatu rekomendasi tentang tindakan-tindakan yang diperlukan dalam rangka pencegahan. Namun setelah Komite itu terbentuk hampir duapuluh tahun belum tersusun secara resmi dan baku apa dan siapa saja yang dimaksud dengan terorisme dan pelakunya, dan tindakan pencegahan secara internasional, bahkan frekwensi dari insiden-insiden terorisme serta korban yang ditimbulkannya terus meningkat.

Tindakan terorisme ini merupakan kejahatan internasional, dan pelakunya harus dihukum berat serta dapat diekstradisikan dimanapun ia berada. Hal ini secara khusus pelaku perorangan atau kelompok, karena pelaku terorisme yang dijalankan oleh suatu negara sangat sulit untuk dimanifestasikan dalam ketentuan normatifnya, meskipun dapat diambil tindakan konsekwensinya, misalnya embargo ekonomi, blokade transportasi, pembekuan asset-asset kekayaan negaranya dan dikucilkan dari masyarakat internasional, dan lain sebagainya.

Dalam pasal 8 (ayat 1) Konvensi Jenewa tahun

1973 disebutkan, bahwa kejahatan seperti tercantum dalam Konvensi sebagai "kejahatan – ekstradisi". Selanjutnya pasal 8 (ayat 4) menetapkan bahwa kewajiban untuk mengekstradisi disesuaikan dengan keadaan dan batas-batas dalam Undang-Undang negara yang diminta untuk mengekstradisikan. Dengan demikian meskipun ketentuan Konvensi tersebut berdasarkan pasal yang termaksud, meskipun sudah sangat lama diberlakukannya, namun dapat menjadikan suatu acuan atas nama internasional guna menyelesaikan kendala yang ada, sehingga negara-negara yang terkena atau terlibat dalam peristiwa terorisme internasional dapat mengambil langkah-langkah yang pasti, dan hendaknya tidak mempolitisir keadaan untuk tercapainya kepastian hukum (internasional).

Terorisme internasional esensinya tidak termasuk golongan pelaku pidana politik, karena pelaku pidana politik pada umumnya tidak membahayakan jiwa atau milik warga negara lain. Jika seseorang/kelompok melakukan perbuatan yang membahayakan stabilitas di negara lain dan juga terhadap negaranya sendiri dengan terpenuhinya unsur internasional, yaitu adanya keterlibatan negara atau warga negara asing atau merongrong tata tertib internasional maka ia tidak lagi merupakan pelaku pidana politik, melainkan menjadi kejahatan biasa seperti terorisme tersebut, dan ini merupakan musuh bagi semua negara.

BAB V

P E N U T U P

A. KESIMPULAN

Terorisme bukan merupakan gejala baru, namun ada dan makin berkembang searah dengan adanya masyarakat manusia pada kurun waktu yang lama. Terorisme dalam keadaan tertentu dapat merupakan suatu cara yang efektif guna mencapai maksud-Maksud tertentu malalui cara/jalan paksaan atau intimidasi dengan kekerasan, dimana semua tindakan tersebut akan menimbulkan perasaan mencekam dari sebagian besar umat manusia. Tingkat frekwensinya merupakan indikasi yang relatif terus meningkat dengan suatu cara yang dipergunakan secara sadar, berencana, sistimatis, terorganisir rapi dan adanya daya pendadakan guna memperoleh publisitas maksimal dari peristiwa yang terjadi. Terorisme itu sendiri tidak terlepas dari anasir lainnya yang akan diperolehnya, dimana aktivitas pelaksanaannya melampaui perbatasan wilayah nasional suatu negara atau dengan kata lain melibatkan unsur-unsur ekstra teritorial serta dengan memperhitungkan pengaruh dari aksi-aksinya terhadap dunia internasional.

Terorisme telah berkembang menjadi senjata politik yang berada diluar kelembagaan dan struktur

politik yang diakui masyarakat internasional guna menciptakan keadaan atau situasi yang baru sesuai dengan tujuan dari tindakan terorisme itu sendiri. Muncul dan berkembangnya terorisme internasional, yang setiap tahunnya selalu terjadi dalam jumlah yang relatif naik baik kualitas, kuantitas maupun korban materi dan korban jiwa. Ini disebabkan oleh adanya situasi dan kondisi yang memungkinkan dari dinamika kehidupan masyarakat dan peta politik internasional yang memang sarat dengan berbagai konflik dan perselisihan dan ketidak puasan terhadap kekuasaan nasional ataupun faktor-faktor lainnya yang memang memicu tindakan terorisme.

Suatu konklusi yang dapat ditarik dari beberapa tindakan terorisme yang diekspresikan dalam konsepsi yang relatif sederhana penulis mengkontruksi sebagai berikut :

1. Bahwa tindakan terorisme merupakan tindak kriminal apapun motivasi yang melatar belakanginya, disini tentu dapat ditarik titik pembeda dengan gerakan pembebasan nasional ataupun masalah sengketa perbatasan suatu negara, dan pelakunya dikenakan sanksi yang berat ataupun diekstradisi.
2. Semua pelanggaran ataupun ancaman pelanggaran dari tindakan terorisme, biasanya secara langsung

diarahkan pada sasaran sipil dan militer, motif dari para teroris biasanya bersifat politis, apa yang dilakukan oleh kaum teroris biasanya mengarah pada publisitas maksimal guna memperoleh tujuan yang dikehendaki. Dan para pelaku biasanya dari anggota-anggota suatu kelompok organisasi tertentu dan tindakannya tidak identik dengan tindak kriminal baisa, mereka sering menuntut/mengklaim kebanggaan atas tindakannya serta diiringi dengan tuntutan tertentu dengan menciptakantekanan psikologis guna menimbulkan pengaruh/dampak segera pada kerusakan fisik.

3. Suatu pemerintah atau negara dapat juga bertindak sebagai teroris, dan ini merupakan deferensi kecil atas korban yang ditimbulkan terhadap ekstrimis anti pemerintah dalam bentuk lainnya. Pemerintahan teror cenderung mengutamakan situasi dalam negeri. Meskipun tidak sedikit dari beberapa tindakan terorisme internasional melibatkan suatu pemerintahan negara tertentu, baik dengan dukungan secara langsung ataupun tidak, dalam rangka 'policy' politiknya yang subyektif.
4. Terorisme internasional, termasuk setiap insiden yang mempunyai dampak/aspek internasional, baik dalam beberapa tindakan dengan menyerang

sasaran-sasaran asing/diluar negeri. Memilih korbannya atau sasarannya terhadap mereka yang mempunyai koneksitas dengan negara asing (para agen diplomat, eksekutif asing, dan lainnya), menyerang perusahaan-perusahaan penerbangan internasional, atau memaksa pesawat-pesawat udara secara melawan hukum, atau memaksa suatu pemerintahan/negara asing dengan suatu intimidasi terhadap kepala negara/pemerintah asing, penyerangan terhadap suatu negara berdaulat serta beberapa tindak kekerasan lainnya yang digolonglkan dalam bentuk/kriteria terorisme dan penggunaan kekerasan/ancaman lainnya yang mempunyai konsekwensi internasional.

5. Terorisme/terorisme internasional merupakan tindak kejahatan terhadap hak-hak asasi manusia yang diakui oleh masyarakat internasional.[1)]

Disisi lain, ternyata hingga saat ini masih sulit diformulasikannya suatu definisi mengenai tindakan terorisme/terorisme internasional secara universal, hal ini disebabkan karena ambivalensi kepentingan politik negara-negara yang pluralistik dari

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1) I Wayan Partiana, Enstradidisi dalam Hukum Internasional dan Hukum Nasional, Bina Cipta, Bandung, 1983.

masing-masing negara sehingga hal ini dapat memungkinkan pemicu terorisme selanjutnya. Juga adanya ketidak stabilan yang terdapat di arena politik internasional, diperkeruh dengan timbulnya konflik-konflik yang terjadi secara ekstarnal disamping konflik internal yang ada, dan yang merupakan bagian kontra teror dalam menghadapi terorisme yang ada.

Upaya-upaya untuk menanggulangi tindak terorisme internasional telah banyak dilakukan baik yang bersifat regional berupa kerjasama dua negara untuk mengcounter tindakan terorisme yang menyangkut kepentingan kedua negara, atau yang bersifat regional seperti adanya European Convention, merupakan dasar bersama bagi negara-negara di wilayah Eropa dalam menghadapi segala bentuk terorisme yang terjadi di regionalnya, dan bersifat internasional masih dalam penggodogan dan memerlukan kesadaran dari negara-negara tertentu yang cenderung mengesahkan segala tindakannya dengan mempolitisir formulasi yang jelas sebenarnya merupakan tindakan biadab berupa terorisme tersebut, terlebih pula dengan dukungan suatu negara lain. Upaya tersebut, baik secara sepihak maupun dengan kerjasama antar negara yang mempunyai kompetensi didalamnya.

Peranan Perserikatan Bangsa-bangsa cukup besar, namun ditilik ulang masih terbentur dengan kepentingan-

kepentingan politik negara-negara besar dan menjadikannya permasalahan diadoptir ini tidak tercapai dari apa yang diharapkan. Ini merfleksikan adanya obyektifitas "pengaruh" dari negara-negara yang mempunyai kekuasaan dengan negara-negara yang relatif tidak mempunyai kekuasaan/kekuatan (negara-negara Dunia Ketiga) sehingga penulis berasumsi bahwa tindakan terorisme internasional sulit dicapai tindakan prevensi secara simultan dengan intensitas yang ada.

Dengan demikian dapat direvisir bahwa, terorisme internasional kemungkinan perkembangannya secara melluas sangat tergantung kepada "power" dunia yang besar dan mapan yang atributnya melekat pada negara-negara besar, apakah negara-negara besar tersebut dapat menciptakan kestabilan dalam arena hubungan internasional dengan menciptakan keseimbangan dari konflik-konflik yang terjadi, ataukah seperti yang sekarang mewarnai sikap internasionalnya, bermain dua wajah, disisi lain mengutuk terrorisme internasional dan sisi lain mendukung tindakan terorisme internasional tersebut.

B. SARAN - SARAN

Dalam menelusuri kajian tentang terorisme internasional serta upaya mencari rumusan yang

konstruktif sebagai ungkapan atas restriksi ini terhadap prevensinya, memang tidak mudah, dikarenakan tiadanya sikap yang dapat diterima secara universal tentang terorisme serta antagonisme yang mewarnai kehidupan masyarakat internasional, serta adanya perbedaan kepentingan negara-negara besar dalam upaya perebutan pengaruh dan "pendiktean" terhadap suatu negara tertentu dengan cara tertentu, serta indegradasi konflik-konflik internasional sebagai refleksi dari upaya penanaman pengaruh tersebut yang dimanifestasikan dalam bentuk tindakan terorisme internasional ataupun adanya tindakan kompensasi dari rasa frustasi suatu kelompok negara tertentu sehingga menempuh cara ini.

Dilain pihak, rasanya kekhawatiran bersama yang diakibatkan makin meningkatnya kualitas dan kuantitas tindakan terorisme internasional menimbulkan kesadaran dari negara-negara berdaulat untuk berusaha memperkecil ruang dan waktu kemungkinan meluasnya jaringan terorisme yang terlepas dari suatu tendensi tertentu politik negaranya, sehingga terbentuk suatu kerjasama upaya penanggulangan tindakan terorisme, dengan mengacu pada perjanjian bersama ataupun konvensi khusus yang telah diakui dan telah diratifikasi oleh banyak negara.

Kendati demikian, kendala dalam menghadapi terorisme internasional masih banyak ditemui, baik

secara eksplisit maupun implisit. Untuk itu penulis mencoba urun saran atas kendala yang ada, dalam rangka kerja sama internasional guna penanggulangan tindakan-tindakan terorisme internasional, antara lain :

1. Hendaknya setiap negara memberikan suatu tindakan nyata dalam menghadapi setiap insiden terorisme guna kepentingan bersama umat manusia dan menjaga norma-norma hukum yang diakui secara internasional. Mendukung setiap langkah Perserikatan Bangsa-bangsa dalam menentukan dan membakukan definisi tindakan terorisme internasional dan pencegahannya, serta menciptakan situasi dan kondisi yang memungkinkan terbatasnya ruang gerak terorisme dengan mempertimbangkan faktor eksternal dan internalnya sesuai dengan kebijaksanaan politiknya dengan kesadaran bagian dari tatanan bermasyarakat dan mempolitisir keadaan.
2. Tidak membiarkan setiap tindakan terorisme/terorisme internasional berlalu tanpa dikenakan sanksi hukum yang berat baik berdasarkan ketentuan nasionalnya ataupun internasionalnya, wajib menghukum setiap pelaku terorisme dan tidak memberikan perlindungan kepada pelakunya, tidak memberikan konsumsi pemberitaan berlebihan karena akan menimbulkan perhatian sesuai dengan tujuan dari tindakan

terorisme tersebut, teror harus dibasmi secara tuntas, dengan tugas dari rekayasa pasukan para komando anti teroris sebagai ujung tombaknya.

3. Negara yang terkena/terlibat peristiwa terorisme, wajib menindak dan mengekstradisikan pelaku jika diminta oleh negara lain yang lebih berkepentingan dan memperhitungkan sekecil mungkin korban yang ditimbulkan.
4. Khusus kepada Amerika Serikat, Rusia serta negara-negara Besar lainnya hendaknya konsekuen dengan konsepsi anti terorismenya, serta membantu hal-hal yang diperlukan terhadap negara yang terkena aksi terorisme internasional.
5. Khusus bagi Indonesia, melanjutkan sikapnya yang konsisten menentang dan berusaha menangkal setiap tindakan terorisme yang terjadi dan akan terjadi serta tidak memberikan dukungan secara politis terhadap negara-negara teror.

ABSTRAKSI

A. ZAINUL ARIFIN HARAHAP (H-487347/8731093300506291)

B. ASPEK-ASPEK HUKUM TEORISME INTERNASIONAL MENURUT HUKUM PIDANA INTERNASIONAL.

C. iv + 84 Halaman ; 1993 + Lampiran.

D. Kata Kunci : Terorisme dan Upaya Penanggulangannya.

E. Terorisme merupakan suatu organisasi yang mempunyai tujuan yang kompleks sebab bisa menimbulkan dampak yang merugikan negara di beberapa bidang. Hal ini diakibatkan dari faktor-faktor penyebab terjadinya tindakan terorisme itu disebabkan oleh adanya perbedaan faktor politik, etnis dan ras. Terorisme itu sendiri adalah merupakan organisasi yang tidak selalu dipatuhi oleh negara yang menjadi markas organisasi terorisme tersebut, karena oleh negara tersebut organisasi terorisme itu dipandang menjadi suatu permasalahan Internasional dan hal itu dapat merusak hubungan baik dengan negara-negara lain di luar negara musuhnya, karena negara-negara di luar musuhnya tersebut akan memandang bahwa negara yang menjadi markas teroris itu merupakan suatu negara yang tidak mematuhi resolusi PBB dan merupakan negara yang melakukan tindakan kriminal internasional. Akibat dari terorisme ini antara lain dapat merugikan perekonomian negara serta ketentraman suatu negara. Hal tersebut juga dapat menjadi penyebab kekacauan/ stabilitas Internasional terganggu. Akibat dari hal

tersebut maka dunia internasional akan berhati-hati kalau mau menjalin hubungan baik dengan negara yang menjadi markas terorisme Internasional itu. Untuk menanggulangi terorisme Internasional ini dapat dilakukan upaya kerja sama Internasional dengan melakukan suatu kesepakatan Internasional, yaitu dengan cara membuat perjanjian-perjanjian internasional yang bersifat preventif dan upaya yang bersifat represif. Upaya penanggulangan ini memerlukan partisipasi dari berbagai pihak yaitu dari pemerintah negara dan partisipasi dunia internasional. Dalam penyusunan skripsi ini metode penelitian yang dilaksanakan adalah dengan riset perpustakaan dan riset lapangan. Wawancara juga penulis lakukan dengan instansi yang terkait yang menangani hal tersebut, yaitu pihak dari POLRI, yaitu pihak NCB (National Central Berau) POLRI. Atau Pihak INTERPOL Indonesia, serta instansi yang terkait lainnya. Hasil yang diperoleh adalah bahwa ada kerja sama internasional untuk penanggulangan tindakan terorisme di suatu negara yang berdaulat serta mengikat terhadap semua negara yang meratifisir konvensi tentang terorisme.

F. Daftar Acuan : 10 (1969 - 1987)

G. Dosen Pembimbing :

Pembimbing I,	Pembimbing II,
(Brigjen (Pol) Drs. Susetyo P)	(Yurod Saleh, SH.)

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UNIVERSITAS KRISTEN INDONESIA

FAKULTAS HUKUM

Sekretariat : Jalan Diponegoro 82-86 Telp. 331494
JAKARTA 10430

Nomor : 493/KFH/UKI/6.92

Jakarta, 4 Juni 19 92

Lampiran : -

Perihal : Permohonan Riset.

Telah datang Mahasiswa UKI bernama ZAINUL ARIFIN HARAHAP untuk keperluan riset.

Jakarta, 9 Juni 1992

An. KEPALA SEKRETARIAT NCB/INTERPOL

MARKAS BESAR KEPOLISIAN NEGARA RI
KEPALA
SEKRETARIAT NCB/INTERPOL

KOLONEL POLISI NRP 40100003

Kepada Yth.
Bapak Pimpinan NCB Polri
.....
di -
Jakarta

Dengan Hormat,

Bersama ini kami mohon kepada Bapak/Ibu, agar sudi kiranya dapat memberi bantuan dalam rangka mencari data mengenai Hukum Tererisme Internasional menurut Hukum Pidana Internasional.

.....

Nama : Zainul Arifin Harahap

No. Pokok : H - 487347

Atas perhatian dan bantuan Bapak/Ibu, kami ucapkan terima kasih.

N.C.B. Indonesia
(Interpol)
No. Agenda : B/628/VI/92/Set NCB
diterima tgl : 8-6-92.
Kirim tgl

Fakultas Hukum U.K.I.

FAKULTAS HUKUM

R. Sahulata, SH
K.a Tata Usaha

Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, September 14, 1963*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Convention on Offences and Certain Other Acts Committed on Board Aircraft was signed at Tokyo on September 14, 1963;

WHEREAS the text of the Convention, in the English, French and Spanish languages as certified by the Legal Bureau of the International Civil Aviation Organization, is word for word as follows:

CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT

CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT

THE STATES Parties to this Convention have agreed as follows:

Chapter I—Scope of the Convention

Article 1

1. This Convention shall apply in respect of:

a) offences against penal law;

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* Source: 20 UST 2941; TIAS 6768; Ratification advised by the Senate May 13, 1969, Ratified by the President June 30, 1969; Ratification deposited September 5, 1969; Proclaimed by President October 1, 1969; Entered into force December 4, 1969.

2. Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.

3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.

4. This Convention shall not apply to aircraft used in military, customs or police services.

Article 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

Chapter II—Jurisdiction

Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.

2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4

A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

a) the offence has effect on the territory of such State;

b) the offence has been committed by or against a national or permanent resident of such State;

c) the offence is against the security of such State;

d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;

Chapter III—Powers of the aircraft commander

Article 5

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.

2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall, for the purposes of this Chapter, be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

a) to protect the safety of the aircraft or of persons or property therein; or

b) to maintain good order and discipline on board; or

c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

Article 7

1. Measures of restraint imposed upon a person in accordance with Article 6 shall not be continued beyond any point at which the aircraft lands unless:

safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.

2. Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.

3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.

4. This Convention shall not apply to aircraft used in military, customs or police services.

Article 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

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a) the offence has effect on the territory of such State;

b) the offence has been committed by or against a national or permanent resident of such State;

c) the offence is against the security of such State;

d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;

any obligation of such State under a multilateral international agreement.

Chapter III—Powers of the aircraft commander

Article 5

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.

2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall for the purposes of this Chapter, be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

a) to protect the safety of the aircraft or of persons or property therein; or

b) to maintain good order and discipline on board; or

c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

Article 7

1. Measures of restraint imposed upon a person in accordance with Article 6 shall not be continued beyond any point at which the aircraft lands unless:

authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with Article 6, paragraph 1 c) in order to enable his delivery to competent authorities;

b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or

c) that person agrees to onward carriage under restraint.

2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Article 8

1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph a) or b) of paragraph 1 of Article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1 b).

2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this Article, the fact of, and the reasons for, such disembarkation.

Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.

2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.

3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

Chapter IV—Unlawful Seizure of Aircraft

Article 11

1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

2. In the cases contemplated in the preceding paragraph, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the other persons lawfully entitled to possession.

Chapter V—Powers and Duties of States

Article 12

Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 8, paragraph 1.

Article 13

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to Article 9, paragraph 1.

2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in Article 11, paragraph 1 and of any person of whom it has taken delivery. The custody and other measures shall be as provided in the law of the State but may only be continued for such time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted.

3. Any person in custody pursuant to the previous paragraph shall be assisted in communication immediately with the nearest appropriate representative of the State of which he is a national.

4. Any Contracting State, to which a person is delivered pursuant to Article 9, paragraph 1, or in whose territory an aircraft lands following the commission of an act contemplated in Article 11, paragraph 1, shall immediately make a preliminary enquiry into the facts.

5. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft and the State of

nationality of the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 4 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 14

1. When any person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the State of which he is a national or permanent resident or to the territory of the State in which he began his journey by air.

2. Neither disembarkation, nor delivery, nor the taking of custody or other measures contemplated in Article 13, paragraph 2, nor return of the person concerned, shall be considered as admission to the territory of the Contracting State concerned for the purpose of its law relating to entry or admission of persons and nothing in this Convention shall affect the law of a Contracting State relating to the expulsion of persons from its territory.

Article 15

1. Without prejudice to Article 14, any person who has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and who desires to continue his journey shall be at liberty as soon as practicable to proceed to any destination of his choice unless his presence is required by the law of the State of landing for the purpose of extradition or criminal proceedings.

2. Without prejudice to its law as to entry and admission to, and extradition and expulsion from its territory, a Contracting State in whose territory a person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked and is suspected of having committed an act contemplated in Article 11, paragraph 1, shall accord to such person treatment which is no less favourable for his protection and security than that accorded to nationals of such Contracting State in like circumstances.

Chapter VI—Other Provisions

Article 16

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.

2. Without prejudice to the provisions of the preceding paragraph, nothing in this Convention shall be deemed to create an obligation to grant extradition.

Article 17

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

Article 18

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State those States shall, according to the circumstances of the case, designate the State among them which, for the purposes of this Convention, shall be considered as the State of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Chapter VII—Final Clauses

Article 19

Until the date on which this Convention comes into force in accordance with the provisions of Article 21, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article 20

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.

2. The instruments of ratification shall be deposited with the International Civil Avjation Organization.

Article 21

1. As soon as twelve of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the twelfth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Convention comes into force, it shall be registered with the

Secretary-General of the United Nations by the International Civil Aviation Organization.

Article 22

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.

2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the date of such deposit.

Article 23

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.

2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article 24

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.[1]

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the International Civil Aviation Organization.

Article 25

Except as provided in Article 24 no reservation may be made to this Convention.

Article 26

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

a) of any signature of this Convention and the date thereof;

b) of the deposit of any instrument of ratification or accession and the date thereof;

c) of the date on which this Convention comes into force in accordance with Article 21, paragraph 1;

d) of the receipt of any notification of denunciation and the date thereof; and

e) of the receipt of any declaration or notification made under Article 24 and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Tokyo on the fourteenth day of September One Thousand Nine Hundred and Sixty-three in three authentic texts drawn up in the English, French and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with Article 19, it shall remain open for signature and the said Organization shall send certified copies thereof to all States Members of the United Nations or of any Specialized Agency.

WHEREAS the Senate of the United States of America by its resolution of May 13, 1969, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the Convention;

WHEREAS the Convention was duly ratified by the President of the United States of America on June 30, 1969, in pursuance of the advice and consent of the Senate;

WHEREAS it is provided in Article 21, paragraph 1, of the Convention that it shall come into force on the ninetieth day after the deposit of the twelfth instrument of ratification;

WHEREAS instruments of ratification were deposited with the International Civil Aviation Organization as follows: Portugal on November 25, 1964; the Philippines on November 26, 1965; the Republic of China on February 28, 1966; Denmark, Norway, and Sweden on January 17, 1967; Italy on October 18, 1968; the United Kingdom of Great Britain and Northern Ireland on November 29, 1968; Mexico on March 18, 1969; Upper Volta on June 6, 1969; Niger on June 27, 1969; and the United States of America on September 5, 1969;

AND WHEREAS, pursuant to the provisions of Article 21, paragraph 1, the Convention will come into force between the aforementioned States on December 4, 1969;

NOW, THEREFORE, be it known that I, Richard Nixon, President of the United States of America, do hereby proclaim and make public the Convention on Offences and Certain Other Acts Committed on Board Aircraft to the end that the same and every article and clause thereof shall be observed and fulfilled with good faith, on and after December 4, 1969, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

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[1] TS 993; 59 Stat. 1055.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this first day of October in the year of our Lord one thousand nine hundred sixty-nine and of the Independence of the United States of America the one hundred ninety-fourth.

[SEAL]

RICHARD NIXON

By the President:
ELLIOT L. RICHARDSON
Acting Secretary of State

Convention on the Suppression of Unlawful Seizure of Aircraft (Hijacking), The Hague, December 16, 1970*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention for the Suppression of Unlawful Seizure of Aircraft was signed at The Hague on December 16, 1970 in behalf of the United States of America and in behalf of a number of other States, the text of which Convention is annexed hereto;

The Senate of the United States of America, by its resolution of September 8, 1971, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention and the Convention was ratified by the President of the United States of America on September 14, 1971;

It is provided in Article 13 of the Convention that the Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to the Convention which participated in The Hague Conference;

The Convention entered into force on October 14, 1971, instruments of ratification having been deposited by Japan on April 19, 1971, Bulgaria on May 19, 1971, Sweden on July 7, 1971, Costa Rica on July 9, 1971, Gabon on July 14, 1971, Hungary on August 13, 1971, Israel on August 16, 1971, Norway on August 23,

* Source: 22 UST 7192; TIAS 7192. Ratification advised by the Senate September 8, 1971; Ratified by the President September 14, 1971; Ratification deposited September 14, 1971; Proclaimed by the President October 18, 1971. Entered into force October 14, 1971.

1971, Switzerland and the United States of America on September 14, 1971;

NOW, THEREFORE, I, Richard Nixon, President of the United States of America, proclaim and make public the Convention to the end that it shall be observed and fulfilled with good faith on and after October 14, 1971 by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this eighteenth day of October in the year of our [SEAL] Lord one thousand nine hundred seventy-one and of the Independence of the United States of America the one hundred ninety-sixth.

RICHARD NIXON

By the President:
WILLIAM P. ROGERS
Secretary of State

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that unlawful acts of seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

HAVE AGREED AS FOLLOWS:

Article 1

Any person who on board an aircraft in flight:

(a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or

(b) is an accomplice of a person who performs or attempts to perform any such act

commits an offence (hereinafter referred to as "the offence").

Article 2

Each Contracting State undertakes to make the offence punishable by severe penalties.

Article 3

1. For the purposes of this Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

2. This Convention shall not apply to aircraft used in military, customs or police services.

3. This Convention shall apply only if the place of take-off or the place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the State of registration of that aircraft; it shall be immaterial whether the aircraft is engaged in an international or domestic flight.

4. In the cases mentioned in Article 5, this Convention shall not apply if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State where that State is one of those referred to in that Article.

5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 8 and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft.

Article 4

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:

(a) when the offence is committed on board an aircraft registered in that State;

(b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 5

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to Paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft, the State mentioned in Article 4, paragraph 1 *(c)*, the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested State.

4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4, paragraph 1.

Article 9

1. When any of the acts mentioned in Article 1*(a)* has occurred or is about to occur, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

2. In the cases contemplated by the preceding paragraph, any Contracting State in which the aircraft or its passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 10

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in Article 4. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

(a) the circumstances of the offence;

(b) the action taken pursuant to Article 9;

(c) the measures taken in relation to the offender or the alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 12

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.[1]

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

Article 13

1. This Convention shall be open for signature at The Hague on 16 December 1970, by States participating in the International Conference on Air Law held at The Hague from 1 to 16 December 1970 (hereinafter referred to as The Hague Conference). After 31 December 1970, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in The Hague Conference.

[1] TS 993; 59 Stat. 1052.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations[1] and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).[2]

Article 14

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their Governments, have signed this Convention.

DONE at The Hague, this sixteenth day of December, one thousand nine hundred and seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

[1] TIAS 1591; 61 Stat. 1203.

Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), Montreal, September 23, 1971*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation was signed at Montreal on September 23, 1971, a certified copy of which Convention in the English, French, Russian and Spanish languages, is hereto annexed;

The Senate of the United States of America by its resolution of October 3, 1972, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention, and the Convention was ratified by the President of the United States of America on November 1, 1972;

It is provided in Article 15 of the Convention that the Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to the Convention which participated in the Montreal Conference;

The date of entry into force of the Convention is January 26, 1973, instruments of ratification having been deposited by Trinidad and Tobago on February 9, 1972.

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* Source: 24 UST 564; TIAS 7570.
Ratification advised by the Senate October 3, 1972; Ratified by the President November 1, 1972. Ratification deposited November 1, 1972. Proclaimed by the President February 28, 1973. Entered into force January 26, 1973.

South Africa on May 30, 1972, Canada on June 19, 1972, Israel on June 30, 1972, Chad on July 12, 1972, Brazil on July 24, 1972, Yugoslavia on October 2, 1972, Spain on October 30, 1972, the United States of America on November 1, 1972, Hungary on December 27, 1972;

NOW, THEREFORE, I, Richard Nixon, President of the United States of America, proclaim and make public the Convention to the end that it shall be observed and fulfilled with good faith on and after January 26, 1973 by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-eighth day of February in the year of our Lord one thousand nine hundred seventy-three and of the Independence of the United States of America the one hundred ninety-seventh.

[SEAL]

RICHARD NIXON

By the President:
KENNETH RUSH
Acting Secretary of State

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION

The States Parties to this convention

CONSIDERING that unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

HAVE AGREED as follows:

Article 1

1. Any person commits an offence if he unlawfully and intentionally:

(a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

2. Any person also commits an offence if he:

(a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or

(b) is an accomplice of a person who commits or attempts to commit any such offence.

Article 2

For the purposes of this Convention:

(a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article.

Article 3

Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

Article 4

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph

engaged in an international or domestic flight, only if:

(a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft; or

(b) the offence is committed in the territory of a State other than the State of registration of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registration of the aircraft.

4. With respect to the States mentioned in Article 9 and in the cases mentioned in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 9, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (b) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 2 of Article 1.

Article 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

(a) when the offence is committed in the territory of that State;

(b) when the offence is committed against or on board an aircraft registered in that State;

(c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(d) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 (a), (b) and (c), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the States mentioned in Article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between

Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1 (b), (c) and (d).

Article 9

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Article 10

1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.

2. When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any Contracting State in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 11

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 12

Any Contracting State having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 5, paragraph 1.

Article 13

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

(a) the circumstances of the offence;

(b) the action taken pursuant to Article 10, paragraph 2;

(c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 14

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

Article 15

1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in the Montreal Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, December 14, 1973*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, was adopted by the United Nations General Assembly on December 14, 1973, and was signed on behalf of the United States of America on December 28, 1973, a certified copy of which Convention, in the English, French, Chinese, Russian and Spanish languages, is hereto annexed;

The Senate of the United States of America by its resolution of October 28, 1975, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention;

On October 8, 1976, the President of the United States of America ratified the Convention, in pursuance of the advice and consent of the Senate;

The United States of America deposited its instrument of ratification on October 26, 1976, in accordance with the provisions of Article 15 of the Convention;

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*Source: TIAS 8532.
Adopted by the United Nations General Assembly December 14, 1973; Signed by the United States December 28, 1973; Ratification advised by the Senate October 28, 1975; Ratified by the President October 8, 1976; Ratification deposited October 26, 1976; Proclaimed by the President March 18, 1977; Entered into force February 20, 1977.

Pursuant to the provisions of Article 17 of the Convention, the Convention entered into force for the United States of America on February 20, 1977;

NOW, THEREFORE, I, Jimmy Carter, President of the United States of America, proclaim and make public the Convention, to the end that it shall be observed and fulfilled with good faith on and after February 20, 1977, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this eighteenth day of March in the year of our [SEAL] Lord one thousand nine hundred seventy-seven and of the Independence of the United States of America the two hundred first.

JIMMY CARTER

By the President:
CYRUS VANCE
Secretary of State

CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations [1] concerning the maintenance of international peace and the promotion of friendly relations and co-operation among States,

Considering that crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for co-operation among States,

Believing that the commission of such crimes is a matter of grave concern to the international community,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "internationally protected person" means:

(a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;

(b) any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;

2. "alleged offender" means a person as to whom there is sufficient evidence to determine *prima facie* that he has committed or participated in one or more of the crimes set forth in article 2.

Article 2

1. The intentional commission of:

(a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(c) a threat to commit any such attack;

(d) an attempt to commit any such attack; and

(e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

Article 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

(a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State;

(c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

[1] TS 993; 59 Stat. 1031.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 4

States Parties shall co-operate in the prevention of the crimes set forth in article 2, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 5

1. The State Party in which any of the crimes set forth in article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set forth in article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

Article 6

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

(a) the State where the crime was committed;

(b) the State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;

(c) the State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;

(d) all other States concerned; and

(e) the international organization of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and

(b) to be visited by a representative of that State.

Article 7

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 8

1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

Article 9

Any person regarding whom proceedings are being carried out in connexion with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the crimes set forth in article 2, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 11

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 12

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

Article 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court. [1]

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 14

This Convention shall be open for signature by all States, until 31 December 1974 at United Nations Headquarters in New York.

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[1] TS 993; 59 Stat. 1055.

Article 15

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 16

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 18

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect six months following the date on which notification is received by the Secretary-General of the United Nations.

Article 19

The Secretary-General of the United Nations shall inform all States, *inter alia*:

(a) of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with articles 14, 15 and 16 and of notifications made under article 18.

(b) of the date on which this Convention will enter into force in accordance with article 17.

Article 20

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 December 1973.

RESOLUTION 3166 (XXVIII) ADOPTED BY THE GENERAL ASSEMBLY ON 14 DECEMBER 1973*

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

The General Assembly,

Considering that the codification and progressive development of international law contributes to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Recalling that in response to the request made in General Assembly resolution 2780 (XXVI) of 3 December 1971, the International Law Commission, at its twenty-fourth session, studied the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law and prepared draft articles on the prevention and punishment of crimes against such persons,

Having considered the draft articles and also the comments and observations thereon submitted by States and by specialized agencies and intergovernmental organizations in response to the invitation made in General Assembly resolution 2926 (XXVII) of 28 November 1972,

Convinced of the importance of securing international agreement on appropriate and effective measures for the prevention and punishment of crimes against diplomatic agents and other internationally protected persons in view of the serious threat to the maintenance and promotion of friendly relations and co-operation among States created by the commission of such crimes,

Having elaborated for that purpose the provisions contained in the Convention annexed hereto,

1. *Adopts* the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, annexed to the present resolution;

2. *Re-emphasizes* the great importance of the rules of international law concerning the inviolability of and special protection to be afforded to internationally protected persons and the obligations of States in relation thereto;

3. *Considers* that the annexed Convention will enable States to carry out their obligations more effectively;

4. *Recognizes also* that the provisions of the annexed Convention could not in any way prejudice the exercise of the legitimate right to self-determination and independence in accordance with the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and *apartheid;*

5. *Invites* States to become parties to the annexed Convention;

6. *Decides* that the present resolution, whose provisions are related to the annexed Convention, shall always be published together with it.

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* Text of the resolution as reproduced in the *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 30*, p. 146 (see paragraph 6 of the resolution). [Footnote in the original.]

ANNEX

International Convention against the Taking of Hostages

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

Recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage-taking shall be either prosecuted or extradited,

Being convinced that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(a) attempts to commit an act of hostage-taking, or

(b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking

likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) to be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 7

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organizations concerned.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

(a) that the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person of account of his race, religion, nationality, ethnic origin or political opinion; or

(b) that the person's position may be prejudiced:

(i) for any of the reasons mentioned in subparagraph (a) of this paragraph, or

(ii) for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

(b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

(a) in its territory or on board a ship or aircraft registered in that State;

(b) by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(c) in order to compel that State to do or abstain from doing any act; or

(d) with respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

(a) the State where the offence was committed;

(b) the State against which compulsion has been directed or attempted;

(c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;

(d) the State of which the hostage is a national or in the territory of which he has his habitual residence;

(e) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;

(f) the international intergovernmental organization against which compulsion has been directed or attempted;

(g) all other States concerned.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they shall had been committed not only in the place in which they occurred but also in the territories on the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those Conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

Article 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 20

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 18 December 1979.

European Convention on the Suppression of Terrorism, January 27, 1977*

EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members;

Aware of the growing concern caused by the increase in acts of terrorism;

Wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment;

Convinced that extradition is a particularly effective measure for achieving this result,

Have agreed as follows:

Article 1

For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:

(a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 [1];

(b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 [2];

(c) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

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* Signed at Strasbourg and entered into force August 4, 1978, after ratification by Austria, the Federal Republic of Germany, and Sweden.

Source: Great Britain. Papers by Command. London, Her Majesty's Stationery Office, 1977. (Cmnd. 7031).

[1] Treaty Series No. 39 (1972), Cmnd. 4956.

[2] Treaty Series No. 10 (1974), Cmnd. 5524.

(d) an offence involving kidnapping, the taking of a hostage or serious unlawful detention;

(e) an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;

(f) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 2

1. For the purposes of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.

2. The same shall apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created a collective danger for persons.

3. The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 3

The provisions of all extradition treaties and arrangements applicable between Contracting States, including the European Convention on Extradition, are modified as between Contracting States to the extent that they are incompatible with this Convention.

Article 4

For the purposes of this Convention and to the extent that any offence mentioned in Article 1 or 2 is not listed as an extraditable offence in any extradition convention or treaty existing between Contracting States, it shall be deemed to be included as such therein.

Article 5

Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

Article 6

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over an offence mentioned in Article 1 in the case where the suspected offender is present in its territory and it does not extradite him after receiving a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State.

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

A Contracting State in whose territory a person suspected to have committed an offence mentioned in Article 1 is found and which has received a request for extradition under the conditions mentioned in Article 6, paragraph 1, shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

Article 8

1. Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connection with proceedings brought in respect of the offences mentioned in Article 1 or 2. The law of the requested State concerning mutual assistance in criminal matters shall apply in all cases. Nevertheless this assistance may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

2. Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual assistance if the requested State has substantial grounds for believing that the request for mutual assistance in respect of an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

3. The provisions of all treaties and arrangements concerning mutual assistance in criminal matters applicable between Contracting States, including the European Convention on Mutual Assistance in Criminal Matters, are modified as between Contracting States to the extent that they are incompatible with this Convention.

Article 9

1. The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention.

Article 10

1. Any dispute between Contracting States concerning the interpretation or application of this Convention, which has not been settled in the framework of Article 9, paragraph 2, shall, at the request of any Party to the dispute, be referred to arbitration. Each Party shall nominate an arbitrator and the two arbitrators shall nominate a referee. If any Party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other Party by the President of the European Court of Human Rights. If the latter should be a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court or, if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court not being a national of one of the Parties to the dispute. The same procedure shall be observed if the arbitrators cannot agree on the choice of referee.

2. The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

Article 11

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of Europe.

2. The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 12

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2. Any State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary-General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary-General of the Council of Europe. Such withdrawal shall take effect immediately or at such later date as may be specified in the notification.

Article 13

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:

(a) that it created a collective danger to the life, physical integrity or liberty of persons; or

(b) that it affected persons foreign to the motives behind it; or

(c) that cruel or vicious means have been used in the commission of the offence.

2. Any State may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary-General of the Council of Europe which shall become effective from the date of its receipt.

3. A State which has made a reservation in accordance with paragraph 1 of this article may not claim the application of Article 1 by any other State; it may, however, if its reservation is partial or conditional, claim the application of that article in so far as it has itself accepted it.

Article 14

Any Contracting State may denounce this Convention by means of a written notification addressed to the Secretary-General of the Council of Europe. Any such denunciation shall take effect immediately or at such later date as may be specified in the notification.

Article 15

This Convention ceases to have effect in respect of any Contracting State which withdraws from or ceases to be a Member of the Council of Europe.

Article 16

The Secretary-General of the Council of Europe shall notify the member States of the Council of:

(a) any signature;

(b) any deposit of an instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Convention in accordance with Article 11 thereof;

(d) any declaration or notification received in pursuance of the provisions of Article 12;

(e) any reservation made in pursuance of the provisions of Article 13, paragraph 1;

(f) the withdrawal of any reservation effected in pursuance of the provisions of Article 13, paragraph 2;

(g) any notification received in pursuance of Article 14 and the date on which denunciation takes effect;

(h) any cessation of the effects of the Convention pursuant to Article 15.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, this 27th day of January 1977, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each of the signatory States.

SIGNATURES

Austria	...
Belgium	...
Cyprus	...
Denmark	...
France*	...
Germany, Federal Republic of	...
Greece	...
Iceland	...
Italy*	...
Luxembourg	...
Netherlands	...
Norway*	...
Portugal*	...
Sweden	...
Switzerland	...
Turkey	...
United Kingdom	...

Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, Submitted by the United States to the United Nations General Assembly, September 26, 1972

TEXT OF DRAFT CONVENTION

Press release 238A dated September 26

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF CERTAIN ACTS OF INTERNATIONAL TERRORISM

THE STATES PARTIES TO THIS CONVENTION—

RECALLING United Nations General Assembly Resolution 2625 (XXV) proclaiming principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations;

CONSIDERING that this Resolution provides that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts;

CONSIDERING the common danger posed by the spread of terrorist acts across national boundaries;

CONSIDERING that civilians must be protected from terrorist acts;

AFFIRMING that effective measures to control international terrorism are urgently needed and require international as well as national action;

HAVE AGREED AS FOLLOWS:

Article 1

1. Any person who unlawfully kills, causes serious bodily harm or kidnaps

Source: Department of State Bulletin, October 16, 1972: 431-434.

another person, attempts to commit any such act, or participates as an accomplice of a person who commits or attempts to commit any such act, commits an offense of international significance if the act:

(a) is committed or takes effect outside the territory of a State of which the alleged offender is a national; and

(b) is committed or takes effect:

(i) outside the territory of the State against which the act is directed, or

(ii) within the territory of the State against which the act is directed and the alleged offender knows or has reason to know that a person against whom the act is directed is not a national of that State; and

(c) is committed neither by nor against a member of the Armed Forces of a State in the course of military hostilities; and

(d) is intended to damage the interests of or obtain concessions from a State or an international organization.

2. For the purposes of this Convention:

(a) An "international organization" means an international intergovernmental organization.

(b) An "alleged offender" means a person as to whom there are grounds to believe that he has committed one or more of the offenses of international significance set forth in this Article.

(c) The "territory" of a State includes all territory under the jurisdiction or administration of the State.

Article 2

Each State Party undertakes to make the offenses set forth in Article 1 punishable by severe penalties.

Article 3

A State Party in whose territory an alleged offender is found shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offenses set forth in Article 1:

(a) when the offense is committed in its territory, or

(b) when the offense is committed by its national.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offenses set forth in Article 1 in the case where an alleged offender is present in its territory and the State does not extradite him to any of the States mentioned in Paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 5

A State Party in which one or more of the offenses set forth in Article 1 have been committed shall, if it has reason to believe an alleged offender has fled from its territory, communicate to all other States Parties all the pertinent facts regarding the offense committed and all available information regarding the identity of the alleged offender.

Article 6

1. The State Party in whose territory an alleged offender is found shall take appropriate measures under its internal law so as to ensure his presence for prosecution or extradition. Such measures shall be immediately notified to the States mentioned in Article 4, Paragraph 1, and all other interested States.

2. Any person regarding whom the measures referred to in Paragraph 1 of this Article are being taken shall be entitled to communicate immediately with the nearest appropriate representative of the State of which he is a national and to be visited by a representative of that State.

Article 7

1. To the extent that the offenses set forth in Article 1 are not listed as extraditable offenses in any extradition treaty existing between States Parties they shall be deemed to have been included as such therein. States Parties undertake to include those offenses as extraditable offenses in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider the present articles as the legal basis for extradition in respect of the offenses. Extradition shall be subject to the provisions of the law of the requested State.

3. States Parties which do not make extradition conditional upon the existence of a treaty shall recognize the offenses as extraditable offenses between themselves subject to the provisions of the law of the requested State.

4. Each of the offenses shall be treated, for the purpose of extradition between States Parties as if it has been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4, Paragraph 1(b).

5. An extradition request from the State in which the offenses were committed

shall have priority over other such requests if received by the State Party in whose territory the alleged offender has been found within thirty days after the communication required in Paragraph 1 of Article 6 has been made.

Article 8

Any person regarding whom proceedings are being carried out in connection with any of the offenses set forth in Article 1 shall be guaranteed fair treatment at all stages of the proceedings.

Article 9

The statutory limitation as to the time within which prosecution may be instituted for the offenses set forth in Article 1 shall be, in each State Party, that fixed for the most serious crimes under its internal law.

Article 10

1. States Parties shall, in accordance with international and national law, endeavor to take all practicable measures for the purpose of preventing the offenses set forth in Article 1.

2. Any State Party having reason to believe that one of the offenses set forth in Article 1 may be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 4, Paragraph 1, if any such offense were committed.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offenses set forth in Article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of Paragraph 1 of this Article shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 12

States Parties shall consult together for the purpose of considering and implementing such other cooperative measures as may seem useful for carrying out the purposes of this Convention.

Article 13

In any case in which one or more of the Geneva Conventions of August 12, 1949, or any other convention concerning the law of armed conflicts is applicable, such conventions shall, if in conflict with any provision of this Convention, take precedence. In particular:

(a) nothing in this Convention shall make an offense of any act which is permissible under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War or any other international law applicable in armed conflicts; and

(b) nothing in this Convention shall deprive any person of prisoner of war status if entitled to such status under the Geneva Convention Relative to the Treatment of Prisoners of War or any other applicable convention concerning respect for human rights in armed conflicts.

Article 14

In any case in which the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that Are of International Significance, or any other convention which has or may be concluded concerning the protection of civil aviation, diplomatic agents and other internationally protected persons, is applicable, such convention shall, if in conflict with any provision of this Convention, take precedence.

Article 15

Nothing in this Convention shall derogate from any obligations of the Parties under the United Nations Charter.

Article 16

1. Any dispute between the Parties arising out of the application or interpretation of the present articles that is not settled through negotiation may be brought by any State party to the dispute before a Conciliation Commission to be constituted in accordance with the provisions of this Article by the giving of written notice to the other State or States party to the dispute and to the Secretary-General of the United Nations.

2. A Conciliation Commission will be composed of three members. One member shall be appointed by each party to the dispute. If there is more than one party on either side of the dispute they shall jointly appoint a member of the Conciliation Commission. These two appointments shall be made within two months of the written notice referred to in Paragraph 1. The third member, the Chairman, shall be chosen by the other two members.

3. If either side has failed to appoint its members within the time limit referred to in Paragraph 2, the Secretary-General of the United Nations shall appoint such member within a further period of two months. If no agreement is reached on the choice of the Chairman within five months of the written notice referred to in

Paragraph 1, the Secretary-General shall within the further period of one month appoint as the Chairman a qualified jurist who is not a national of any State party to the dispute.

4. Any vacancy shall be filled in the same manner as the original appointment was made.

5. The Commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. It shall be competent to ask any organ that is authorized by or in accordance with the Charter of the United Nations to request an advisory opinion from the International Court of Justice to make such a request regarding the interpretation or application of the present articles.

6. If the Commission is unable to obtain an agreement among the parties on a settlement of the dispute within six months of its initial meeting, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties and to the depositary. The report shall include the Commission's conclusions upon the facts and questions of law and the recommendations it has submitted to the parties in order to facilitate a settlement of the dispute. The six months time limit may be extended by decision of the Commission.

7. This Article is without prejudice to provisions concerning the settlement of disputes contained in international agreements in force between States.

C. Draft Treaty Texts

terrorism.

It is self-evident that efficiency in this struggle must be reconciled with respect for the fundamental principles of our criminal law and of our Constitution, which states in its Preamble that "Anyone persecuted on account of his action for the cause of liberty has the right to asylum on the territory of the Republic".

It is also clear that such a high degree of solidarity as is provided for in the Council of Europe Convention can only apply between States sharing the same ideals of freedom and democracy.

France will therefore subject the application of the Convention to certain conditions. On ratification it will make the reservations necessary to ensure that the considerations I have just mentioned will be taken into account and that human rights will at no time be endangered.

There is a further point of very special importance to the government: this is the success of the work of the Nine in the same field following the decisions of the European Council on 13 July 1976. We wish to avoid risks of conflict between the two texts and the government therefore does not intend to ratify the Strasbourg Convention before the instrument which will be prepared by the Nine.

Furthermore, taking action against terrorism does not absolve us from tackling the political problem of the causes of terrorism. For in many respects the real struggle against terrorism is a struggle for a just peace which guarantees everyone's legitimate rights.

ITALY

On signing the Convention the Government of the Italian Republic made the following reservation:

"L'Italie déclare qu'elle se réserve le droit de refuser l'extradition, ainsi que l'entraide judiciaire, en ce qui concerne toute infraction énumérée dans l'article 1er qu'elle considère comme une infraction politique, comme une infraction connexe à une infraction politique ou comme une infraction inspirée par des mobiles politiques; dans ces cas, l'Italie s'engage à prendre dûment en considération, lors de l'évaluation du caractère de l'infraction, son caractère de particulière gravité, y compris:

(a) qu'elle a créé un danger collectif pou la vie, l'intégrité corporelle ou la liberté des personnes; ou bien

(b) qu'elle a atteint des personnes étrangères aux mobiles qui l'ont inspirée; ou bien

(c) que des moyens cruels ou perfides ont été utilisés pour sa réalisation."

Translation

Italy declares that it reserves the right to refuse extradition and mutual assistance in criminal matters in respect to any offence mentioned in Article 1 which it considers to be a political offence or connected with a political offence or an offence inspired by political motives; in this case Italy undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:

(a) that it created a collective danger to the life, physical integrity or liberty of persons;

or,

(b) that it affected persons foreign to the motives behind it; or,

(c) that cruel or vicious means have been used in the commission of the offence.

NORWAY

On signing the Convention the Government of the Kingdom of Norway made the following reservations;

The Kingdom of Norway declares that it reserves the right to refuse, in conformity with the provisions laid down in Article 13, paragraph 1, of the Convention, extradition in respect of any offences mentioned in Article 1 if it considers it to be a political offence or connected with a political offence or inspired by political motives.

The Kingdom of Norway does not consider itself bound by the provisions of Article 8 and reserves the right to refuse requests for assistance in criminal matters in which the offence is regarded by Norwegian authorities to be a political offence or connected with a political offence or inspired by political motives.

PORTUGAL

On signing the Convention the Government of the Portuguese Republic made the following declaration:

Le Portugal n'acceptera pas l'extradition comme Etat requis quand les infractions soient punies avec peine de mort dans l'Etat requérant, de qui est d'ailleurs en conformité avec l'article 11 de la Convention Européenne sur l'Extradition de laquelle le Portugal n'est pas partie contractante.

Le Portugal signe la Convention sous réserve de sauvegarde des dispositions constitutionnelles relatives à la non extradition pour des motifs politiques.

Translation

As requested State, Portugal will not grant extradition for offences punishable by death in the requesting State; this is in accordance with Article 11 of the European Convention on Extradition to which Portugal is not a Contracting Party.

Portugal is signing the Convention subject to the safeguard of the provisions of its constitution relating to non-extradition on political grounds.

SWEDEN

On depositing their instrument of ratification the Government of Sweden made the following declaration:

"That the Swedish Government, in accordance with the provisions of Article 13 of this Convention and subject to the undertaking contained in that article, reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence."

EXPLANATORY REPORT

1. During its 25th Session in May 1973, the Consultative Assembly of the Council of Europe adopted Recommendation 703 (1973) on international terrorism "condemning international terrorist acts which, regardless of their cause, should be punished as serious criminal offences involving the killing or endangering of the lives of innocent people" and accordingly calling on the Committee of Ministers of the Council to invite the governments of member States *inter alia* "to establish a common definition for the notion of 'political offence' in order to be able to refute any 'political' justification whenever an act of terrorism endangers the life of innocent persons".

2. Having examined this recommendation, the Committee of Ministers of the Council of Europe adopted at its 53rd meeting on 24 January 1974, Resolution (74) 3 on international terrorism(3) which recommends the governments of member States to take into account certain principles when dealing with requests for extradition of persons accused or convicted of terrorist acts.

The idea underlying this resolution is that certain crimes are so odious in their methods or results in relation to their motives, that it is no longer justifiable to classify them as "political offences" for which extradition is not possible. States receiving extradition requests related to terrorist acts are therefore recommended to take into account the particular gravity of these acts. If extradition is not granted, States should submit the case to their competent authorities for the purpose of prosecution. As many States have only limited jurisdiction over crimes committed abroad it is furthermore recommended that they envisage the possibility of establishing it in these cases to ensure that terrorists do not escape both extradition and prosecution.

3. At a meeting in Obernai (France) on 22 May 1975, the Ministers of Justice of the member States of the Council of Europe stressed the need for co-ordinated and forceful action in this field. They drew attention to the fact that acts of terrorism were today indigenous, i.e. committed for specific "political" objectives within the member States of the Council of Europe, which may threaten the very existence of the State by paralysing its democratic institutions and striking at the rule of law. Accordingly, they called for specifically European action.

4. Following this initiative, the 24th Plenary Session of the European Committee on Crime Problems (ECCP) held in May 1975, decided to propose to the Committee of Ministers of the Council of Europe the setting up of a committee of governmental experts to study the problems raised by certain new forms of concerted acts of violence.

5. At the 246th meeting of their Deputies in June 1975, the Committee of Ministers authorised the convocation of a committee of governmental experts.

6. Mrs. S. Oschinsky (Belgium) was elected Chairman of the committee. The Secretariat was provided by the Directorate of Legal Affairs of the Council of Europe.

7. During its first two meetings, held from 6 to 8 October 1975 and from 2 to 6 February 1976, the committee prepared a European Convention on the Suppression of Terrorism.

8. The draft convention was submitted to the 25th Plenary Session of the ECCP in May 1976 which decided to forward the result of the committee's work to the Committee of Ministers for approval.

9. At their 10th Conference, held on 3 and 4 June 1976 in Brussels, the European Ministers of Justice took note of the draft convention and expressed the hope that its examination by the Committee of Ministers be completed as quickly as possible.

10. At the 262nd meeting of their Deputies in November 1976, the Committee of Ministers approved the text which is the subject of this report and decided to open the Convention to the signature of member States.

11. The purpose of the Convention is to assist in the suppression of terrorism by complementing and, where necessery, modifying existing extradition and mutual assistance arrangements concluded between member States of the Council of Europe, including the European Convention on Extradition of 13 December 1957(4) and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959,(5) in that it seeks to overcome the difficulties which may arise in the case of extradition or mutual assistance concerning persons accused or convicted of acts of terrorism.

12. It was felt that the climate of mutual confidence among the like-minded member States of the Council of Europe, their democratic nature and their respect for human rights safeguarded by the institutions set up under the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,(6) justify opening the possibility and, in certain cases, imposing an obliga-

(3) See text of Resolution (74) 3, in the Appendix.

(4) United Nations Treaty Series No. 5146 (Volume 359, page 273).
(5) United Nations Treaty Series No. 6841 (Volume 472, page 185).
(6) Treaty Series No. 71 (1953), Cmd. 8969.

tion to disregard, for the purposes of extradition, the political nature of the particularly odious crimes mentioned in Articles 1 and 2 of the Convention. The human rights to which regard has to be had are not only the rights of those accused or convicted of acts of terrorism but also of the victims or potential victims of those acts (cf. Article 17 of the European Convention on Human Rights).

13. One of the characteristics of these crimes is their increasing internationalisation; their perpetrators are frequently found in a State other than that in which the act was committed. For that reason extradition is a particularly effective measure for combating terrorism.

14. If the act is an offence which falls within the scope of application of existing extradition treaties the requested State will have no difficulty, subject to the provisions of its extradition law, in complying with a request for extradition from the State which has jurisdiction to prosecute. However, terrorist acts might be considered "political offences", and it is a principle—laid down in most existing extradition treaties as well as in the European Convention on Extradition (cf. Article 3 paragraph 1)—that extradition shall not be granted in respect of a political offence.

Moreover, there is no generally accepted definition of the term "political offence". It is for the requested State to interpret it.

15. It follows that there is a serious lacuna in existing international agreements with regard to the possibility of extraditing persons accused or convicted of acts of terrorism.

16. The European Convention on the Suppression of Terrorism aims at filling this lacuna by eliminating or restricting the possibility for the requested State of invoking the political nature of an offence in order to oppose an extradition request. This aim is achieved by providing that, for extradition purposes, certain specified offences *shall never* be regarded as "political" (Article 1) and other specified offences *may not* be (article 2), notwithstanding their political content or motivation.

17. The system established by Articles 1 and 2 of the Convention reflects the consensus which reconciles the arguments put forward in favour of an obligation, on the one hand, and an option, on the other hand, not to consider, for the purposes of the application of the Convention, certain offences as political.

18. In favour of an obligation, it was pointed out that it alone would give States new and really effective possibilities for extradition, by eliminating explicitly the plea of "political offence", a solution that was perfectly feasible in the climate of mutual confidence that reigned amongst the member States of the Council of Europe having similar democratic institutions. It would ensure that terrorists were extradited for trial to the State which had jurisdiction to prosecute. A mere option could never provide a guarantee that extradition would take place and, moreover, the criteria concerning the seriousness of the offence would not be precise.

19. In favour of an option, reference was made to the difficulty in accepting a rigid solution which would amount to obligatory extradition for political offences. Each case should be examined on its merits.

20. The solution adopted consists of an obligation for some offences (Article 1), and an option for others (Article 2).

21. The Convention applies only to particularly odious and serious acts often affecting persons foreign to the motives behind them. The seriousness of these acts and their consequences are such that their criminal element outweighs their possible political aspects.

22. This method, which was already applied to genocide, war crimes and other comparable crimes in the Additional Protocol to the European Convention on Extradition of 15 October 1975 as well as to the taking or attempted taking of the life of a head of State or a member of his family in Article 3.3 of the European Convention on Extradition, (4) accordingly overcomes for acts of terrorism not only the obstacles to extradition due to the plea of the political nature of the offence but also the difficulties inherent in the absence of a uniform interpretation of the term "political offence".

23. Although the Convention is clearly aimed at not taking into consideration the political character of the offence for the purposes of extradition, it does recognise that a Contracting State might be impeded, *e.g.* for legal or constitutional reasons, from fully accepting the obligations arising from Article 1. For this reason Article 13 expressly allows Contracting States to make certain reservations.

24. It should be noted that there is no obligation to extradite if the requested State has substantial grounds for believing that the request for extradition has been inspired by the considerations mentioned in Article 5, or that the position of the person whose extradition is requested may be prejudiced by these considerations.

25. In the case of an offence mentioned in Article 1, a State refusing extradition would have to submit the case to its competent authorities for the purpose of prosecution, after having taken the measures necessary to establish its jurisdiction in these circumstances (Articles 6 and 7).

26. These provisions reflect the maxim *aut dedere aut iudicare*. It is to be noted, however, that the Convention does not grant Contracting States a general choice either to extradite or to prosecute. The obligation to submit the case to the competent authorities for the purpose of prosecution is subsidiary in that it is conditional on the preceding refusal of extradition in a given case, which is possible only under the conditions laid down by the Convention or by other relevant treaty or legal provisions.

27. In fact, the Convention is not an extradition treaty as such. Whilst the

character of an offence may be modified by virtue of Articles 1 and 2, the legal basis for extradition remains the extradition treaty or other law concerned. It follows that a State which has been asked to extradite a terrorist may, notwithstanding the provisions of the Convention, still not do so if the other conditions for extradition are not fulfilled; for example, the offender may be a national of the requested State, or there may be time limitation.

28. On the other hand, the Convention is not exhaustive in the sense that it does not prevent States, if their law so allows, extraditing in cases other than those provided for by the Convention, or to take other measures such as expelling the offender or sending him back, if in a specific case the State concerned is not in possession of an extradition request made in accordance with the Convention, or if it considers that a measure other than extradition is warranted under another international agreement or particular arrangement.

29. The obligation which Contracting States undertake by adhering to the Convention are closely linked with the special climate of mutual confidence among the Members of the Council of Europe which is based on their collective recognition of the rule of law and the protection of human rights manifested by Article 3 of the Council's Statute and by the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950([6]) which all member States have signed.

For that reason it was thought necessary to restrict the circle of Contracting Parties to the member States of the Council, in spite of the fact that terrorism is a global problem.

30. It goes without saying that the Convention does not affect the traditional rights of political refugees and of persons enjoying political asylum in accordance with other international undertakings to which the member States are party.

Article 1

31. Article 1 lists the offences each of which, for the purposes of extradition, shall not be regarded as a political offence, or as an offence connected with a political offence, or as an offence inspired by political motives.

It thus modifies the consequences of existing extradition agreements and arrangements as concerns the evaluation of the nature of these offences. It eliminates the possibility for the requested State of invoking the political nature of the offence in order to oppose an extradition request. It does not, however, create for itself an obligation to extradite, as the Convention is not an extradition treaty as such. The legal basis for extradition remains the extradition treaty, arrangement or law concerned.

32. The phrases "political offence" and "offence connected with a political offence" were taken from Article 3.1 of the European Convention on Extradition which is modified to the effect that Contracting Parties to the European Convention on the Suppression of Terrorism may no longer consider as "political" any of the offences enumerated in Article 1.

33. The phrase "offence inspired by political motives" is meant to complement the list of cases in which the political nature of an offence cannot be invoked; reference to the political motives of an act of terrorism is made in Resolution (74) 3 on international terrorism, adopted by the Committee of Ministers of the Council of Europe on 24 January 1974.([3])

34. Article 1 reflects a tendency not to allow the requested State to invoke the political nature of the offence in order to oppose requests for extradition in respect of certain particularly odious crimes. This tendency has already been implemented in international treaties, for instance in Article 3.3 of the European Convention on Extradition for the taking or attempted taking of the life of a head of State or of a member of his family, in Article 1 of the Additional Protocol to the European Convention on Extradition for certain crimes against humanity and for violations of the laws and customs of war, as well as in Article VII of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

35. Article 1 lists two categories of crimes: the first, contained in paragraphs (*a*), (*b*) and (*c*), comprises offences which are already included in international treaties, the second, contained in paragraphs (*d*) and (*e*), concerns offences which were considered as serious so that it was deemed necessary to assimilate them to the offences of the first category. Paragraph (*f*) concerns attempt to commit any of the offences listed in Article 1 and the participation therein.

36. While in paragraphs (*a*) and (*b*) the offences in question are described by simple reference to the titles of The Hague Convention of 16 December 1970([1]) and the Montreal Convention of 23 September 1971, ([2]) paragraph (*c*) enumerates some of the offences which are contained in the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973([7]) instead of referring to the Convention by name. This was done because the New York Convention had not entered into force when the European Convention was drafted, and several Council of Europe member States have not ratified it. Another reason for enumerating the acts to which paragraph (*c*) is to apply rather than merely referring to the title of the New York Convention is the wider scope of application of that Convention: it covers attacks on premises, accommodation and means of transport of internationally protected persons which Article 1 (*c*) does not. The phrase "serious offence" is meant to limit the application of the provision to particularly odious forms of violence. This idea is furthermore emphasised by the use of the term "attack" taken from the New York Convention.

37. Paragraph (*d*) uses the phrase "an offence involving . . ." to cover the

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([1]) Miscellaneous Series No. 19 (1975), Cmnd. 6176.

case of a State whose laws do not include the specific offences of kidnapping or taking of a hostage. In the English text the phrase "unlawful detention" has been qualified by adding the word "serious" so as to ensure conformity with the French expression *sequestration arbitraire* which always implies a serious offence.

38. Paragraph (*e*) covers offences involving the use of bombs and other instruments capable of killing indiscriminately. It applies only if the use endangered persons, *i.e.* created a risk for persons, even without actually injuring them.

39. The attempt to commit any of the offences listed in paragraphs (*a*) to (*e*), as well as the participation as an accomplice in their commission or attempt, are covered by virtue of paragraph (*f*). Provisions of a similar nature are to be found in the Hague Convention on Seizure of Aircraft, the Montreal Convention on Safety of Civil Aircraft and the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons.

"Attempt" means only a punishable attempt; under some laws not all attempts to commit an offence constitute punishable offences.

The English expression "accomplice" covers both *co-auteur* and *complice* in the French text.

Article 2

40. Paragraph 1 of Article 2 opens the possibility for Contracting Parties not to consider "political" certain serious offences which, without falling within the scope of the obligatory rule in Article 1, involve an act of violence against the life, physical integrity or liberty of a person. This possibility derogates from the traditional principle according to which the refusal to extradite is obligatory in political matters.

The term "act of violence" used to describe the offences which may be regarded as "non-political" was drafted along the lines of Article 4 of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft.(8)

41. By virtue of paragraph 2, inspired by Resolution (74)3 of the Committee of Ministers,(3) an act against property is covered only if it created a "collective" danger for persons, *e.g.* as the result of an explosion of a nuclear installation or of a dam.

42. The flexible wording of Article 2 allows three possibilities for acting on a request for extradition:

—the requested State may not regard the offence as "political" within the meaning of Article 2 and extradite the person concerned;
—it may not regard the offence as "political" within the meaning of Article 2, but nevertheless refuse extradition for a reason other than political;
—it may regard the offence as "political", but refuse extradition.

43. It is obvious that a State may always decide on the extradition request independently of Article 2, *i.e.* without expressing an opinion on whether the conditions of this Article are fulfilled.

Article 3

44. Article 3 concerns the Convention's effects on existing extradition treaties and arrangements.

45. The word "arrangements" is intended to include extradition procedures which are not enshrined in a formal treaty, such as those in force between Ireland and the United Kingdom. For that reason, the term *accords* in the French text is not to be understood as meaning a formal international instrument.

46. One of the consequences of Article 3 is the modification of Article 3.1 of the European Convention on Extradition(4) between States which are Parties to both the European Convention on the Suppression of Terrorism and the European Convention on Extradition. Article 3.1 of the latter Convention is modified insofar as it is incompatible with the obligations arising from the former. The same applies to similar provisions contained in bilateral treaties and arrangements which are applicable between States Parties to this Convention.

Article 4

47. Article 4 provides for the automatic inclusion, as an extraditable offence of any of the offences referred to in Articles 1 and 2 in any existing extradition treaty concluded between Contracting States which does not contain such an offence as an extraditable offence.

Article 5

48. Article 5 is intended to emphasise the aim of the Convention which is to assist in the suppression of acts of terrorism where they constitute an attack on the fundamental rights to life and liberty of persons. The Convention is to be interpreted as a means of strengthening the protection of human rights. In conformity with this basic idea, Article 5 ensures that the Convention complies with the requirements of the protection of human rights and fundamental freedoms as they are enshrined in the European Convention of 4 November 1950.(5)

49. One of the purposes of Article 5 is to safeguard the traditional right of asylum. Although in the member States of the Council of Europe of which all but one have ratified the European Convention on Human Rights, the prosecution, punishment or discrimination of a person on account of his race, religion, nationality or political opinion is unlikely to occur, it was deemed appropriate to insert this traditional clause also in this Convention; it is already contained in Article 3.2 of the European Convention on Extradition.

50. If, in a given case, the requested State has substantial grounds for believing that the real purpose of an extradition request, made for one of the offences

mentioned in Article 1 or 2, is to enable the requesting State to prosecute or punish the person concerned for the political opinions he holds, the requested State may refuse extradition.

The same applies where the requested State has substantial grounds for believing that the person's position may be prejudiced for political or any of the other reasons mentioned in Article 5. This would be the case, for instance, if the person to be extradited would, in the requesting State, be deprived of the rights of defence as they are guaranteed by the European Convention on Human Rights.

51. It is obvious that a State applying this Article should provide the requesting State with reasons for its having refused to comply with the extradition request. It is by virtue of the same principle that Article 18.2 of the European Convention on Extradition provides that "reasons shall be given for any complete or partial rejection" and that Article 19 of the European Convention on Mutual Assistance in Criminal Matters states that "reasons shall be given for any refusal of mutual assistance".

52. If extradition is refused, Article 7 applies: the requested State must submit the case to its competent authorities for the purpose of prosecution.

Article 6

53. Paragraph 1 of Article 6 concerns the obligation on Contracting States to establish jurisdiction in respect of the offences mentioned in Article 1.

54. This jurisdiction is exercised only where:

—the suspected offender is present in the territory of the requested State, and

—that State does not extradite him after receiving a request for extradition from a Contracting State "whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State".

55. In order to comply with the second requirement there must be a correspondence between the rules of jurisdiction applied by the requesting State and by the requested State.

The principal effect of this limitation appears in relation to the differences in the principles of jurisdiction between those States whose domestic courts have, under their criminal law, jurisdiction over offences committed by nationals wherever committed and those where the competence of the domestic courts is based generally on the principle of territoriality (*i.e.* where the offence is committed within its own territory, including offences committed on ships, aircraft and offshore installations, treated as part of the territory). Thus, in the case where there has been a refusal of a request for extradition received from a State wishing to exercise its jurisdiction to try a national for an offence committed outside its territory, the obligation under Article 6 arises only if the law of the requested State also provides as a domestic rule of jurisdiction for the trial by its courts of its own nationals for offences committed outside its territory.

56. This provision is not to be interpreted as requiring complete correspondence of the rules of jurisdiction of the States concerned. Article 6 requires this correspondence only insofar as it relates to the circumstances and nature of the offence for which extradition was requested. Where, for example, the requested State has jurisdiction over some offences committed abroad by its own nationals, the obligation under Article 6 would arise if it refused extradition to a State wishing to exercise a similar jurisdiction in respect of any of those offences.

For example, the United Kingdom extradition arrangements are generally based on the territorial principle. Similarly the jurisdiction of the domestic courts is generally based on the territorial principle. In general there is no jurisdiction over offences committed by nationals abroad but there are certain exceptions, notably murder. Because of this jurisdictional limitation the United Kingdom in most cases cannot claim extradition of a national for an offence committed abroad. In the reverse situation there would be no obligation for the United Kingdom under Article 6 arising from a request for extradition from a State able to exercise such a jurisdiction. If, however, the request was for extradition of a national for a murder falling under Article 1 and committed abroad, the obligation under Article 6 would apply because the United Kingdom has a similar jurisdiction in respect of this offence.

57. Paragraph 2 makes clear that any criminal jurisdiction exercised in accordance with national law is not excluded by the Convention.

58. In the case of a refusal to extradite in respect of an offence referred to in Article 2, the Convention contains neither obligation nor impediment for the requested State to take, in the light of the rules laid down in Articles 6 and 7, the measures necessary for the prosecution of the offender.

Article 7

59. Article 7 establishes an obligation for the requested State to submit the case to its competent authorities for the purpose of prosecution if it refuses extradition.

60. This obligation is subject to conditions similar to those laid down in paragraph 1 of Article 6: the suspected offender must have been found in the territory of the requested State which must have received a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in its own law.

61. The case must be submitted to the prosecuting authority without undue delay, and no exception may be invoked. Prosecution itself follows the rules of law and procedure in force in the requested State for offences of comparable seriousness.

Article 8

62. Article 8 deals with mutual assistance, within the meaning of the European Convention on Mutual Assistance in Criminal Matters, in connection with

criminal proceedings concerning the offences mentioned in Articles 1 and 2. The Article lays down an obligation to grant assistance whether it concerns an offence under Article 1 or an offence under Article 2.

63. Under paragraph 1, Contracting States undertake to afford each other the widest measure of mutual assistance (first sentence); the wording of this provision was taken from Article 1.1 of the European Convention on Mutual Assistance in Criminal Matters(³). Mutual assistance granted in compliance with Article 8 is governed by the relevant law of the requested State (second sentence), but may not be refused on the sole ground that the request concerns an offence of a political character (third sentence), the description of the political character of the offence being the same as in Article 1 (cf. paragraphs 32 and 33 of this report).

64. Paragraph 2 repeats for mutual assistance the rule of Article 5. The scope and meaning of this provision being the same, the comments on Article 5 apply *mutatis mutandis* (cf. paragraphs 48 to 51 of this report).

65. Paragraph 3 concerns the Convention's effects on existing treaties and arrangements in the field of mutual assistance. It repeats the rules laid down in Article 3 for extradition treaties and arrangements (cf. paragraphs 45 and 46 of this report).

66. The principal consequence of paragraph 3 is the modification of Article 2(*a*) of the European Convention on Mutual Assistance in Criminal matters insofar as it permits refusal of assistance "if the request concerns an offence which the requested Party considers a political offence" or "an offence connected with a political offence". Consequently this provision and similar provisions in bilateral treaties on mutual assistance between Contracting Parties to this Convention can no longer be invoked in order to refuse assistance with regard to an offence mentioned in Articles 1 and 2.

Article 9

67. This Article which makes the European Committee on Crime Problems of the Council of Europe the guardian over the application of the Convention follows the precedents established in other European Conventions in the penal field as, for instance, in Article 28 of the European Convention on the Punishment of Road Traffic Offences(⁸), in Article 65 of the European Convention on the International Validity of Criminal Judgments(⁹), in Article 44 of the European Convention on the Transfer of Proceedings in Criminal Matters, and in Article 7 of the Additional Protocol to the European Convention on Extradition.

68. The reporting requirement which Article 9 lays down is intended to keep the European Committee on Crime Problems informed about possible difficulties in interpreting and applying the Convention so that it may contribute to [illegible] friendly settlements and proposing amendments to the Convention which might prove necessary.

Article 10

69. Article 10 concerns the settlement, by means of arbitration, of those disputes over the interpretation or application of the Convention which have not been already settled through intervention of the European Committee on Crime Problems according to Article 9.2.

70. The provisions of Article 10 which are self-explanatory provide for the setting up of an arbitration tribunal on the lines of Article 47.2 of the European Convention for the Protection of Animals during International Transport of 13 December 1968(¹⁰) where this system of arbitration was for the first time introduced.

Articles 11 to 16

71. These Articles are, for the most part, based on the model final clauses of agreements and conventions which were approved by the Committee of Ministers of the Council of Europe at the 113th meeting of Deputies. Most of these Articles do not call for specific comments, but the following points require some explanation.

72. *Article 13*, paragraph 1, allows Contracting States to make reservations in respect of the application of Article 1. The Convention thus recognises that a Contracting State might be impeded, *e.g.* for legal or constitutional reasons, from fully accepting the obligations arising from Article 1 whereby certain offences cannot be regarded as political for the purposes of extradition.

73. The offence or offences in respect of which the reservation is to apply should be stated in the declaration.

74. If a State avails itself of this possibility of making a reservation it can, in respect of the offences mentioned in Article 1, refuse extradition. Before deciding on the request for extradition it must, however, when evaluating the nature of the offence, take into due consideration a number of elements relative to the character and effects of the offence in question which are enumerated by way of example in Article 13.1 paragraphs (*a*) to (*c*). Having taken these elements into account the requested State remains free to grant or to refuse extradition.

75. These elements which describe some of the particularly serious aspects of the offence were drafted along the lines of paragraph 1 of the recommendation contained in Resolution (74) 3 of the Committee of Ministers. As regards the phrase "collective danger to the life, physical integrity or liberty of persons" used in Article 13.1 (*a*), examples have been given in paragraph 41 of this report.

(⁸) United Nations Treaty Series No. 12418.
(⁹) United Nations Treaty Series No. 14098.
(¹⁰) Treaty Series No. 31 (1974), Cmnd. 5613.

76. If extradition is refused on the grounds of a reservation made in accordance with Article 13, Articles 6 and 7 apply.

77. Paragraph 3 of Article 13 which lays down the rule of reciprocity in respect of the application of Article 1 by a State having availed itself of a reservation, repeats the provisions contained in Article 26.3 of the European Convention on Extradition.

The rule of reciprocity applies equally to reservations not provided for in Article 13.

78. *Article 14* which is unusual among the final clauses of conventions elaborated within the Council of Europe aims at allowing any Contracting State to denounce this Convention in exceptional cases, in particular if in another Contracting State the effective democratic regime within the meaning of the European Convention on Human Rights is overthrown. This denunciation may, at the choice of the State declaring it, take effect immediately, *i.e.* as from the reception of the notification by the Secretary General of the Council of Europe, or at a later date.

79. *Article 15* which ensures that only Members of the Council of Europe can be Parties to the Convention is the consequence of the closed character of the Convention (cf. paragraph 29 of this report).

80. *Article 16* concerns notifications to member States. It goes without saying that the Secretary General must inform States also of any other acts, notifications and communications within the meaning of Article 77 of the Vienna Convention on the Law of Treaties(1) relating to the Convention and not expressly provided for by Article 16.

APPENDIX

Resolution (74) 3
on international terrorism

(Adopted by the Committee of Ministers on 24 January 1974 at its 53rd Session)

The Committee of Ministers,

Considering the recommendations of the Consultative Assembly on international terrorism and in particular Recommendation 703 (1973);

Aware of the growing concern caused by the multiplication of acts of international terrorism which jeopardise the safety of persons;

Desirous that effective measures be taken in order that the authors of such acts do not escape punishment;

Convinced that extradition is a particularly effective measure for achieving this result and that the political motive alleged by the authors of certain acts of terrorism should not have as a result that they are neither extradited nor punished,

Recommends that governments of member States be guided by the following principles:

1. When they receive a request for extradition concerning offences covered by the Conventions of The Hague for the suppression of unlawful seizure of aircraft and of Montreal for the suppression of unlawful acts against the safety of civil aviation, offences against diplomatic agents and other internationally protected persons, the taking of hostages or any terrorist act, they should, when applying international agreements or conventions on the subject, and especially the European Convention on Extradition, or when applying their domestic law, take into consideration the particularly serious nature of these acts, *inter alia:*

—when they create a collective danger to human life, liberty or safety;

—when they affect innocent persons foreign to the motives behind them;

—when cruel or vicious means are used in the commission of those acts.

2. If it refuses extradition in a case of the kind mentioned above and if its jurisdiction rules permit, the government of the requested State should submit the case to its competent authorities for the purpose of prosecution. Those authorities should take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

3. The governments of member States in which such jurisdiction is lacking should envisage the possibility of establishing it.

(1) The Vienna Convention of 23 May 1969 has not yet entered into force. For text see Miscellaneous No. 19 (1971). Cmnd. 4818.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 16

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance, Washington, D.C., February 2, 1971*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance was signed in behalf of the United States of America on February 2, 1971, a certified copy of which Convention, in the English, French, Portuguese, and Spanish languages, is hereto annexed;

The Senate of the United States of America by its resolution of June 12, 1972, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention;

On October 8, 1976, the President of the United States of America ratified the Convention, in pursuance of the advice and consent of the Senate;

The United States of America deposited its instrument of ratification on October 20, 1976, in accordance with the provisions of Article 11 of the Convention;

Pursuant to the provisions of Article 12 of the Convention, the Convention

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*Source: TIAS 8413.
Adopted by the General Assembly of the Organization of American States; Ratification advised by the Senate June 12, 1972; Ratified by the President October 8, 1976; Ratification deposited October 20, 1976; Proclaimed by the President November 16, 1976; Entered into force for the United States October 20, 1976.

entered into force for the United States of America on October 20, 1976;

NOW, THEREFORE, I, Gerald R. Ford, President of the United States of America, proclaim and make public the Convention, to the end that it shall be observed and fulfilled with good faith on and after October 20, 1976, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this sixteenth day of November in the year of our [SEAL] Lord one thousand nine hundred seventy-six and of the Independence of the United States of America the two hundred first.

GERALD R. FORD

By the President:
HENRY A. KISSINGER
Secretary of State

CONVENTION TO PREVENT AND PUNISH THE ACTS OF TERRORISM TAKING THE FORM OF CRIMES AGAINST PERSONS AND RELATED EXTORTION THAT ARE OF INTERNATIONAL SIGNIFICANCE

WHEREAS:

The defense of freedom and justice and respect for the fundamental rights of the individual that are recognized by the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights are primary duties of states;

The General Assembly of the Organization, in Resolution 4, of June 30, 1970, strongly condemned acts of terrorism, especially the kidnapping of persons and extortion in connection with that crime, which it declared to be serious common crimes;

Criminal acts against persons entitled to special protection under international law are occurring frequently, and those acts are of international significance because of the consequences that may flow from them for relations among states;

It is advisable to adopt general standards that will progressively develop international law as regards cooperation in the prevention and punishment of such acts; and

In the application of those standards the institution of asylum should be maintained and, likewise the principle of nonintervention should not be impaired,

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES HAVE AGREED UPON THE FOLLOWING ARTICLES:

Article 1

The contracting states undertake to cooperate among themselves by taking all the measures that they may consider effective, under their own laws, and especially those established in this convention, to prevent and punish acts of terrorism, especially kidnapping, murder, and other assaults against the life or physical integrity of those persons to whom the state has the duty according to international law to give special protection, as well as extortion in connection with those crimes.

Article 2

For the purposes of this convention, kidnapping, murder, and other assaults against the life or personal integrity of those persons to whom the state has the duty to give special protection according to international law, as well as extortion in connection with those crimes, shall be considered common crimes of international significance, regardless of motive.

Article 3

Persons who have been charged or convicted for any of the crimes referred to in Article 2 of this convention shall be subject to extradition under the provisions of the extradition treaties in force between the parties or, in the case of states that do not make extradition dependent on the existence of a treaty, in accordance with their own laws.

In any case, it is the exclusive responsibility of the state under whose jurisdiction or protection such persons are located to determine the nature of the acts and decide whether the standards of this convention are applicable.

Article 4

Any person deprived of his freedom through the application of this convention shall enjoy the legal guarantees of due process.

Article 5

When extradition requested for one of the crimes specified in Article 2 is not in order because the person sought is a national of the requested state, or because of some other legal or constitutional impediment, that state is obliged to submit the case to its competent authorities for prosecution, as if the act had been committed in its territory. The decision of these authorities shall be communicated to the state that requested extradition. In such proceedings, the obligation established in Article 4 shall be respected.

Article 6

None of the provisions of this convention shall be interpreted so as to impair the right of asylum.

Article 7

The contracting states undertake to include the crimes referred to in Article 2 of this convention among the punishable acts giving rise to extradition in any treaty on the subject to which they agree among themselves in the future. The contracting states that do not subject extradition to the existence of a treaty with the requesting state shall consider the crimes referred to in Article 2 of this convention as crimes giving rise to extradition, according to the conditions established by the laws of the requested state.

Article 8

To cooperate in preventing and punishing the crimes contemplated in Article 2 of this convention, the contracting states accept the following obligations:

a. To take all measures within their power, and in conformity with their own laws, to prevent and impede the preparation in their respective territories of the crimes mentioned in Article 2 that are to be carried out in the territory of another contracting state.

b. To exchange information and consider effective administrative measures for the purpose of protecting the persons to whom Article 2 of this convention refers.

c. To guarantee to every person deprived of his freedom through the application of this convention every right to defend himself.

d. To endeavor to have the criminal acts contemplated in this convention included in their penal laws, if not already so included.

e. To comply most expeditiously with the requests for extradition concerning the criminal acts contemplated in this convention.[1]

Article 9

This convention shall remain open for signature by the member states of the Organization of American States, as well as by any other state that is a member of the United Nations or any of its specialized agencies, or any state that is a party to the Statute of the International Court of Justice, [1] or any other state that may be invited by the General Assembly of the Organization of American States to sign it.

Article 10

This convention shall be ratified by the signatory states in accordance with their respective constitutional procedures.

[1] TS 993; 59 Stat. 1055.

Article 11

The original instrument of this convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited in the General Secretariat of the Organization of American States, which shall send certified copies to the signatory governments for purposes of ratification. The instruments of ratification shall be deposited in the General Secretariat of the Organization of American States, which shall notify the signatory governments of such deposit.

Article 12

This convention shall enter into force among the states that ratify it when they deposit their respective instruments of ratification.

Article 13

This convention shall remain in force indefinitely, but any of the contracting states may denounce it. The denunciation shall be transmitted to the General Secretariat of the Organization of American States, which shall notify the other contracting states thereof. One year following the denunciation, the convention shall cease to be in force for the denouncing state, but shall continue to be in force for the other contracting states.

Statement of Panama

The Delegation of Panama states for the record that nothing in this convention shall be interpreted to the effect that the right of asylum implies the right to request asylum from the United States authorities in the Panama Canal Zone, or that there is recognition of the right of the United States to grant asylum or political refuge in that part of the territory of the Republic of Panama that constitutes the Canal Zone.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, having presented their full powers, which have been found to be in due and proper form, sign this convention on behalf of their respective governments, at the city of Washington this second day of February of the year one thousand nine hundred seventy-one.

LEMBARAN-NEGARA
REPUBLIK INDONESIA

No. 26, 1976 PERUBAHAN. TINDAK PIDANA. KUHP. Udara. (Penjelasan dalam Tambahan Lembaran Negara Republik Indonesia Nomor 3080).

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 4 TAHUN 1976
TENTANG

PERUBAHAN DAN PENAMBAHAN BEBERAPA PASAL DALAM KITAB UNDANG-UNDANG HUKUM PIDANA BERTALIAN DENGAN PERLUASA. 'RLAKUNYA KETENTUAN PERUNDANG – UNDANGAN PIDANA, KEJA.ATAN PENERBANGAN, DAN KEJAHATAN TERHADAP SARANA/PRASARANA PENERBANGAN

DENGAN RAHMAT TUHAN YANG MAHAESA

Presiden Republik Indonesia,

Menimbang :

a. bahwa hingga kini ketentuan-ketentuan perundang-undangan pidana belum berlaku dalam pesawat udara Indonesia ;

b. bahwa penguasaan pesawat udara secara melawan hukum serta semua perbuatan-perbuatan yang menggangu keamanan penerbangan dan sarana/prasarana penerbangan sangat merugikan kehidupan penerbangan nasional pada khususnya, perekonomian negara serta pembangunan nasional pada umumnya, sehingga perlu diadakan peraturan-peraturan untuk mencegah perbuatan-perbuatan tersebut, guna menjamin keselamatan dan keamanan baik penumpang, awak pesawat udara, barang-barang yang berada dalam penerbangan, maupun perlindungan sarana/prasarana penerbangan ;

c. bahwa dalam perundang-undangan Indonesia belum diatur mengenai ketentuan pidana tentang kejahatan penerbangan dan kejahatan terhadap sarana/prasarana penerbangan;

d. bahwa karena itu perlu diadakan perubahan dan penambahan beberapa pasal dalam Kitab Undang-Undang Hukum Pidana ;

Mengingat :

1. Pasal 5 ayat (1) dan Pasal 20 ayat (1) Undang-Undang Dasar 1945;
2. Undang-undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana jo Undang-undang Nomor 73 Tahun 1958 tentang Menyatakan berlakunya undang-undang Nomor 1 Tahun 1946 Republik Indonesia tentang Peraturan Hukum Pidana untuk seluruh wilayah Republik Indonesia dan mengubah Kitab Undang-undang Hukum Pidana (Lembaran Negara Tahun 1958 Nomor 127, Tambahan Lembaran Negara Nomor 1660);
3. Undang-Undang Nomor 83 Tahun 1958 tentang Penerbangan (Lembaran Negara Tahun 1958 Nomor 159, Tambahan Lembaran Negara Nomor 1687) ;
4. Undang-undang Nomor 2 Tahun 1976 tentang Pengesahan Konvensi Tokyo 1963, Konvensi The Hague 1970 dan Konvensi Montreal 1971 (Lembaran Negara Tahun 1976 Nomor 18, Tambahan Lembaran Negara Nomor 3076);

Dengan persetujuan Dewan Perwakilan Rakyat Republik Indonesia,

M E M U T U S K A N :

Menetapkan . :

UNDANG-UNDANG TENTANG PERUBAHAN DAN PENAMBAHAN BEBERAPA PASAL DALAM KITAB UNDANG-UNDANG HUKUM PIDANA BERTALIAN DENGAN PERLUASAN BERLAKUNYA KETENTUAN PERUNDANG-UNDANGAN PIDANA, KEJAHATAN PENERBANGAN, DAN KEJAHATAN TERHADAP SARANA/PRASARANA PENERBANGAN.

Pasal I

Mengubah dan menambah Pasal 3 dan Pasal 4 angka 4 yang tercantum dalam Bab I Kitab Undang-undang Hukum Pidana sehingga berbunyi sebagai berikut :

1. Pasal 3

Ketentuan pidana dalam perundang-undangan Indonesia berlaku bagi setiap orang yang di luar Wilayah Indonesia melakukan tindak pidana di dalam kendaraan air atau pesawat udara Indonesia.

2. Pasal 4 angka 4.

Salah satu kejahatan yang tersebut dalam Pasal-pasal 438, 444 sampai dengan Pasal 446 tentang pembajakan laut dan Pasal 447 tentang penyerahan kendaraan air kepada kekuasaan bajak laut dan Pasal 479 huruf j tentang pembajakan pesawat udara secara melawan hukum, Pasal 479 huruf l, m, n, dan o tentang kejahatan yang mengancam keselamatan penerbangan sipil.

Pasal II

Menambah 3 (tiga) pasal baru dalam Bab IX Kitab Undang-Undang Hukum Pidana setelah Pasal 95 yang berbunyi sebagai berikut :

1. Pasal 95 a.

(1) Yang dimaksud dengan "pesawat udara Indonesia" adalah pesawat udara yang didaftarkan di Indonesia ;

(2) Termasuk pula pesawat udara Indonesia adalah pesawat udara asing yang disewa tanpa awak pesawat dan dioperasikan oleh perusahaan penerbangan Indonesia.

2. Pasal 95 b.a

Yang dimaksud dengan "dalam penerbangan" adalah sejak saat semua pintu luar pesawat udara ditutup setelah naiknya penumpang (embarkasi) sampai saat pintu dibuka untuk penurunan penumpang (disembarkasi).

Dalam hal terjadi pendaratan darurat penerbangan dianggap terus berlangsung sampai saat penguasa yang berwenang mengambil alih tanggung-jawab atas pesawat udara dan barang yang ada di dalamnya.

3. Pasal 95 c.

Yang dimaksud dengan "dalam dinas" adalah jangka waktu sejak pesawat udara disiapkan oleh awak darat atau oleh awak pesawat untuk penerbangan tertentu, hingga setelah 24 jam lewat sesudah setiap pendaratan

Pasal III

Menambah sebuah Bab baru setelah Bab XXIX Kitab Undang-Undang Hukum Pidana dengan Bab XXIX A tentang Kejahatan Penerbangan dan Kejahatan terhadap sarana/prasarana Penerbangan yang terdiri dari Pasal 479 huruf a sampai dengan Pasal 479 huruf r yang berbunyi sebagai berikut :

1. Pasal 479 a.

(1) Barang siapa dengan sengaja dan melawan hukum menghancurkan, membuat tidak dapat dipakai atau merusak bangunan untuk pengamanan lalu lintas udara atau menggagalkan usaha untuk pengamanan bangunan tersebut, dipidana dengan pidana penjara selama-lamanya enam tahun;

(2) Dengan pidana penjara selama-lamanya sembilan tahun jika karena perbuatan itu timbul bahaya bagi keamanan lalu lintas udara;

(3) Dengan pidana penjara selama-lamanya lima belas tahun jika karena perbuatan itu mengakibatkan matinya orang.

2. Pasal 479 b.

(1) Barang siapa karena kealpaannya menyebabkan hancurnya, tidak dapat dipakainya atau rusaknya bangunan untuk pengamanan lalu lintas udara, atau gagalnya usaha untuk pengamanan bangunan tersebut, dipidana dengan pidana penjara selama-lamanya tiga tahun ;

(2) Dengan pidana penjara selama-lamanya lima tahun, jika karena perbuatan itu timbul bahaya bagi keamanan lalu lintas udara;

(3) Dengan pidana penjara selama-lamanya tujuh tahun, jika karena perbuatan itu mengakibatkan matinya orang.

3. Pasal 479 c.

(1) Barang siapa dengan sengaja dan melawan hukum menghancurkan, merusak, mengambil atau memindahkan tanda atau alat untuk pengamanan penerbangan, atau menggagalkan bekerjanya tanda atau alat tersebut, atau memasang tanda atau alat yang keliru, dipidana dengan pidana penjara selama-lamanya enam tahun;

(2) Dengan pidana penjara selama-lamanya sembilan tahun, jika karena perbuatan itu timbul bahaya bagi keamanan penerbangan ;

(3) Dengan pidana penjara selama-lamanya dua belas tahun, jika karena perbuatan itu timbul bahaya bagi keamanan penerbangan dan mengakibatkan celakanya pesawat udara ;

(4) Dengan pidana penjara selama-lamanya lima belas tahun, jika karena perbuatan itu timbul bahaya bagi keamanan penerbangan dan mengakibatkan matinya orang.

4. Pasal 479 d.

Barang siapa karena kealpaan menyebabkan tanda atau alat untuk pengamanan penerbangan hancur, rusak, terambil atau pindah atau menyebabkan tidak dapat bekerja atau menyebabkan terpasangnya tanda atau alat untuk pengamanan penerbangan yang keliru, dipidana :

a. dengan pidana penjara selama-lamanya lima tahun, jika karena perbuatan itu menyebabkan penerbangan tidak aman;

b. dengan pidana penjara selama-lamanya lima tahun, jika karena perbuatan itu mengakibatkan celakanya pesawat udara ;

c. dengan pidana penjara selama-lamanya tujuh tahun, jika karena perbuatan itu mengakibatkan matinya orang.

5. Pasal 479 e.

Barang siapa dengan sengaja dan melawan hukum, menghancurkan atau membuat tidak dapat dipakainya pesawat udara yang seluruhnya atau sebagian kepunyaan orang lain, dipidana dengan pidana penjara selama-lamanya sembilan tahun.

6. Pasal 479 f.

Barang siapa dengan sengaja dan melawan hukum mencelakakan, menghancurkan, membuat tidak dapat dipakai atau merusak pesawat udara, dipidana :

a. dengan pidana penjara selama-lamanya lima belas tahun, jika karena perbuatan itu timbul bahaya bagi nyawa orang lain ;

b. dengan pidana penjara selama-lamanya tujuh tahun, jika karena perbuatan itu mengakibatkan matinya orang.

7. Pasal 479 g.

Barang siapa karena kealpaannya menyebabkan pesawat udara celaka, hancur, tidak dapat dipakai atau rusak dipidana:

a. dengan pidana penjara selama-lamanya lima tahun, jika karena perbuatan itu timbul bahaya bagi nyawa orang lain;

b. dengan pidana penjara selama-lamanya tujuh tahun, jika karena perbuatan itu mengakibatkan matinya orang.

8. Pasal 479 h.

(1) Barang siapa dengan maksud untuk menguntungkan diri sendiri atau orang lain dengan melawan hukum, atas kerugian penanggung asuransi menimbulkan kebakaran atau ledakan, kecelakaan, kehancuran, kerusakan atau membuat tidak dapat dipakainya pesawat udara, yang dipertanggungkan terhadap bahaya tersebut diatas atau yang dipertanggungkan muatannya maupun upah yang akan diterima untuk pengangkutan muatannya, ataupun untuk kepentingan muatan tersebut telah diterima uang tanggungan, dipidana dengan pidana penjara selama-lamanya sembilan tahun ;

(2) Apabila yang dimaksud pada ayat (1) pasal ini adalah pesawat udara dalam penerbangan, dipidana dengan pidana penjara selama-lamanya lima belas tahun;

(3) Barang siapa dengan maksud untuk menguntungkan diri sendiri atau orang lain dengan melawan hukum atas kerugian penanggung asuransi, menyebabkan penumpang pesawat udara yang dipertanggungkan terhadap bahaya, mendapat kecelakaan, dipidana :

a. dengan pidana penjara selama-lamanya sepuluh tahun, jika karena perbuatan itu menyebabkan luka berat ;

b. dengan pidana penjara selama-lamanya lima belas tahun, jika karena perbuatan itu mengakibatkan matinya orang.

9. Pasal 479 i.

Barang siapa dalam pesawat udara dengan perbuatan yang melawan hukum merampas atau mempertahankan perampasan atau menguasai pesawat udara dalam penerbangan, dipidana dengan pidana penjara selama-lamanya dua belas tahun.

10. Pasal 479 j.

Barang siapa dalam pesawat udara dengan kekerasan atau ancaman kekerasan atau ancaman dalam bentuk lainnya, merampas atau mempertahankan perampasan atau menguasai pengendalian pesawat udara

dalam penerbangan, dipindana dengan pidana penjara selama-lamanya lima belas tahun.

11. Pasal 479 k.

(1) Dipidana dengan pidana penjara seumur hidup atau pidana penjara selama-lamanya dua puluh tahun, apabila perbuatan dimaksud Pasal 479 huruf i dan Pasal 479 j itu :

a. dilakukan oleh dua orang atau lebih bersama-sama ;
b. sebagai kelanjutan permufakatan jahat ;
c. dilakukan dengan direncanakan lebih dahulu ;
d. mengakibatkan luka berat seseorang ;
e. mengakibatkan kerusakan pada pesawat udara tersebut, sehingga dapat membahayakan penerbangannya ;
f. dilakukan dengan maksud untuk merampas kemerdekaan atau meneruskan merampas kemerdekaan seseorang.

(2) Jika perbuatan itu mengakibatkan matinya seseorang atau hancurnya pesawat udara itu, dipidana dengan pidana mati atau pidana penjara seumur hidup atau pidana penjara selama-lamanya dua puluh tahun.

12. Pasal 479 l.

Barang siapa dengan sengaja dan melawan hukum melakukan perbuatan kekerasan terhadap seseorang di dalam pesawat udara dalam penerbangan, jika perbuatan itu dapat membahayakan keselamatan pesawat udara tersebut, dipidana dengan pidana penjara selama-lamanya lima belas tahun.

13. Pasal 479 m.

Barang siapa dengan sengaja dan melawan hukum merusak pesawat udara dalam dinas atau menyebabkan kerusakan atas pesawat udara tersebut yang menyebabkan tidak dapat terbang atau membahayakan keamanan penerbangan, dipidana dengan pidana penjara selama-lamanya lima belas tahun.

14. Pasal 479 n.

Barang siapa dengan sengaja dan melawan hukum menempatkan atau menyebabkan ditempatkannya di dalam pesawat udara dalam dinas

dengan cara apapun, alat atau bahan yang dapat menghancurkan pesawat udara atau menyebabkan kerusakan pesawat udara tersebut yang membuatnya tidak dapat terbang atau menyababkan kerusakan pesawat udara tersebut yang dapat membahayakan keamanan dalam penerbangan, pidana dengan pidana penjara selama-lamanya lima belas tahun.

15. Pasal 479 o.

(1) Dipidana dengan pidana penjara seumur hidup atau pidana penjara selama-lamanya dua puluh tahun apabila perbuatan dimaksud Pasal 479 huruf l, Pasal 479 huruf m, dan Pasal 479 huruf n itu:

a. dilakukan oleh dua orang atau lebih bers[illegible] sama ;
b. sebagai kelanjutan dari permufakatan jah[illegible] ;
c. dilakukan dengan direncanakan lebih dahulu ;
d. mengakibatkan luka berat bagi seseorang.

(2) Jika perbuatan itu mengakibatkan matinya seseorang atau hancurnya pesawat udara itu, dipidana dengan pidana mati atau pidana penjara seumur hidup atau pidana penjara selama-lamanya dua puluh tahun.

16. Pasal 479 p.

Barang siapa memberikan keterangan yang diketahuinya adalah palsu dan karena perbuatan itu membahayakan keamanan pesawat udara dalam penerbangan, dipidana dengan pidana penjara selama-lamanya lima belas tahun.

17. Pasal 479 q.

Barang siapa di dalam pesawat udara, melakukan perbuatan yang dapat membahayakan keamanan dalam pesawat udara dalam penerbangan, dipidana dengan pidana penjara selama-lamanya lima tahun.

18. Pasal 479 r.

Barang siapa di dalam pesawat udara melakukan perbuatan-perbuatan yang dapat mengganggu ketertiban dan tatatertib di dalam pesawat udara dalam penerbangan, dipidana dengan pidana penjara selama-lamanya satu tahun.

Pasal IV

Undang-undang ini mulai berlaku pada tanggal diundangkan.
Agar supaya setiap orang dapat mengetahuinya, memerintahkan pengundangan Undang-undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Disahkan di Jakarta
pada tanggal 27 April 1976
PRESIDEN REPUBLIK INDONESIA,

SOEHARTO
JENDERAL TNI.

Diundangkan di Jakarta
pada tanggal 27 April 1976
MENTERI/SEKRETARIS NEGARA
REPUBLIK INDONESIA,

SUDHARMONO, SH.

DAFTAR RIWAYAT HIDUP

N a m a	:	ZAINUL ARIFIN HARAHAP
Tempat/tgl. Lahir	:	Jakarta, 12 Januari 1968
Jenis Kelamin	:	Laki-laki
A g a m a	:	I s l a m
S t a t u s	:	Belum Kawin
Nama Orang Tua	:	
Ayah	:	Kol.Purn.Drs.H.Baharoedin Harahap
Ibu	:	Ny. (Alm.) Siti Ayunah
Tante/Ibu	:	Ny. Yetty D.
A l a m a t	:	Jl. Matraman Dalam II No.17 Rt.009/08 Kel. Menteng, Jakarta Pusat. Telp. 3904180 & (0335) 21880
Pendidikan	:	1. SD Taman Siswa, Matraman Jakarta Pusat, Lulus Tahun 1982, Berijazah.
		2. SMP. M. Paiton Jawa Timur, Lulus Tahun 1984, Berijazah.
		3. SMA. 8. 45, Kelapa Gading Jakarta Utara, Lulus Tahun 1987, Berijazah.
		4. Penulis terdaftar sebagai Mahasiswa Fakultas Hukum Universitas Kristen Indonesia Jakarta Tahun 1987.

Demikianlah Daftar Riwayat Hidup ini dibuat untuk dipergunakan seperlunya.

Jakarta, Mei 1993

Penulis,

(Zainul Arifin Harahap)