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**Panel on Apprehension, Prosecution and  
Punishment of International Terrorists**

**Panel on Apprehension, Prosecution and  
Punishment of International Terrorists**

The National Conference on Law  
in Relationship to Terrorism

June 6

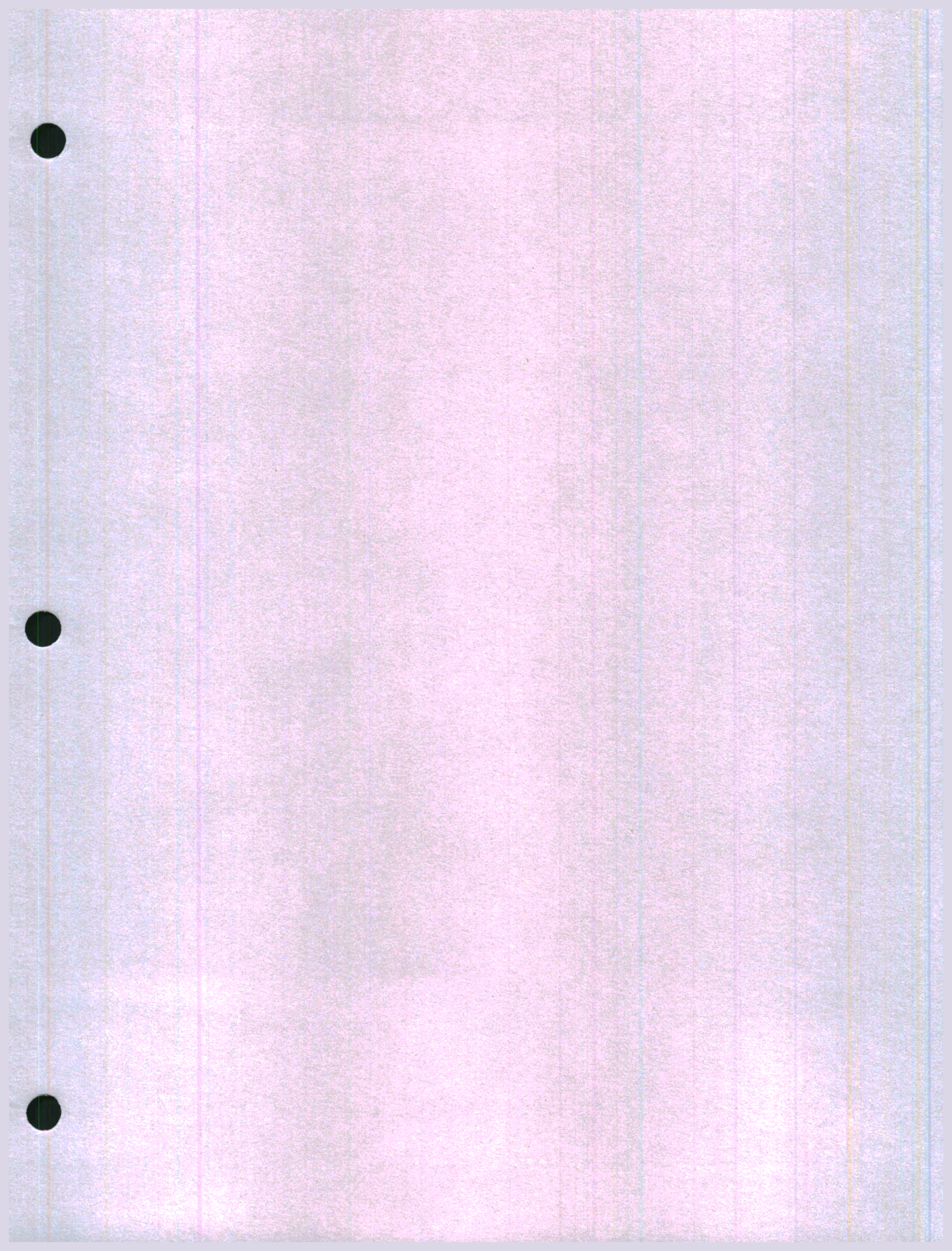
10:30 - 12:00 noon      Panel on Apprehension, Prosecution and  
Punishment of International Terrorists

Moderator:

Reverend Robert F. Drinan  
Professor of Law  
Georgetown University Law Center

Panelists:

1. Mary Mochary  
Deputy Assistant Secretary  
Legal Adviser's Office  
Department of State
2. Victoria Toensing  
Deputy Assistant Attorney General  
Criminal Division  
U.S. Department of Justice
3. John F. Murphy -  
Professor of Law  
Villanova Law School  
Reporter for the Conference



ROBERT F. DRINAN

Robert F. Drinan, S.J. is a Professor of Law at the Georgetown University Law Center in Washington, D.C.

Father Drinan received his B.A. in 1942 and his M.A. in 1947 from Boston College. In 1949, he received his LL.B. and in 1950, his LL.M. from the Georgetown University Law Center. He received his S.T.D in 1954 from the Gregorian University (Rome, Italy) and a Post-doctoral fellowship in theology in 1954-55 (Florence, Italy).

Father Drinan entered the Society of Jesus in 1942 and was ordained a Jesuit priest in 1953.

Father Drinan was Dean and Professor of Law at Boston College Law School from 1956 to 1970. He was a Visiting Professor at the University of Texas Law School from 1966 to 1967 and a Visiting Lecturer at Andover-Newton Theological Seminary from 1966 to 1968.

In 1971, Father Drinan was elected to the U.S. House of Representatives from the 4th Congressional District in Massachusetts. He was a Member of the House Committees on the Judiciary (1971 to 1981), Internal Security (1971 to 1974), Government Operations (1975 to 1981) and House Select Committee

ROBERT F. DRINAN

on Aging (1977 to 1981). He was also a Member of the executive committees of the New England Congressional Caucus (1977 to 1981), Environmental Study Conference (1977 to 1981), House Democratic Study Group (1977 and 1978) and the Steering Committee of Members of Congress for Peace Through Law (1975 and 1976). From 1979 to 1981, he was Chairman of the Subcommittee on Criminal Justice of the House Judiciary Committee.

In 1981, he assumed his present position at Georgetown Law Center. Father Drinan has also been a Visiting Professor at the University of Michigan Law School, (Summer 1984), Swarthmore College (Spring 1984) and New York University Law School (Summer 1983).

Father Drinan has been extensively involved with the bar associations. He was Chairman of the Section of Family Law of the American Bar Association from 1966 to 1967. He is a Council Member of the ABA Section on Individual Rights and Responsibilities (since 1981) and Chairman of the ABA Standing Committee on World Order Under Law (since 1982). He was Vice-President of the Massachusetts Bar Association from 1961 to 1964 and Chairman of its Committee on the Administration of Justice from 1962 to 1969. From 1960 to 1964, he chaired the Committee on Family Law of the Boston Bar Association.

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Father Drinan was a member of the National Executive Committee of the American Judicature Society (1962 to 1964), the Executive Committee of the Association of American Law Schools (1967 to 1969) and the Visiting Committee at Harvard University Divinity school (1975 to 1978). He was chairman of the Advisory Committee for Massachusetts of the U.S. Commission on Civil Rights from 1962 to 1970.

Father Drinan is a member of the Board of Directors of the Lawyers Committee for International Human Rights, the Council for a Liveable World Educational Fund, and the NAACP Legal Defense and Educational Fund Inc. He is the founder and a member of the Board of Directors of the Lawyers Alliance for Nuclear Arms Control. He is a member of the National Board of Trustees of the National Conference of Christians and Jews, a member of the Advisory Board of the Union of Councils for Soviet Jews, a member of the Human Rights Advisory Committee of the Unitarian-Universalist Service Committee and a member of the National Governing Board of Common Cause.

In addition, Father Drinan is the Chairman of the International Committee for the Release of Anatoly Scharansky and Vice-Chairman of the National Advisory Council for the American Civil Liberties Union. He is a member of the Helsinki Watch Committee, the founder of the National Interreligious Task



ROBERT F. DRINAN

Force on Soviet Jewry, an advisor on the U.S. Holocaust Memorial Commission and Honorary President of the World Federalists Association. He is a Board Member and Former President of Americans for Democratic Action.

From 1974 to 1982, he was a member of the Board of Directors of Bread for the World. From 1981 to 1984, he served as a member of the National Advisory Committee for the U.S. National Archives.

Honorary degrees have been conferred on Father Drinan by Long Island University, New York (1970); Worcester State College, Massachusetts (1970); Rhode Island College (1971); St. Joseph's College, Pennsylvania (1975); Villanova University, Pennsylvania (1977); Syracuse University, New York (1977); Framingham State College, Massachusetts (1978); University of Santa Clara (1980); Kenyon College, Ohio (1981); Loyola University, Illinois (1981); University of Lowell, Massachusetts (1981); University of Bridgeport, Connecticut (1981); Gonzaga University, Washington (1981); Curry College, Massachusetts (1982); University of San Diego (1984); DePaul University, Chicago (1984); Mount St. Mary College, New York (1985).

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Father Drinan has been a regular contributor to several law reviews and journals of policy and opinion. He is a member of the Editorial Council of "Journal of Church and State," (since 1980), a member of the Editorial Board of the "World View" magazine (since 1981) and a columnist for the "National Catholic Reporter" (since 1980). He was a Contributing Editor for "America" magazine (a national Catholic weekly) from 1958 to 1970 and the Editor-in-Chief of the American Bar Association's "Family Law Quarterly" from 1967 to 1970.

He has been the author of several books:

God and Caesar on the Potomac: A Pilgrimage of Conscience, Michael Glazier, 1985.

Beyond the Nuclear Freeze, Seabury, 1983.

Honor The Promise: America's Commitment to Israel, Doubleday, 1977.

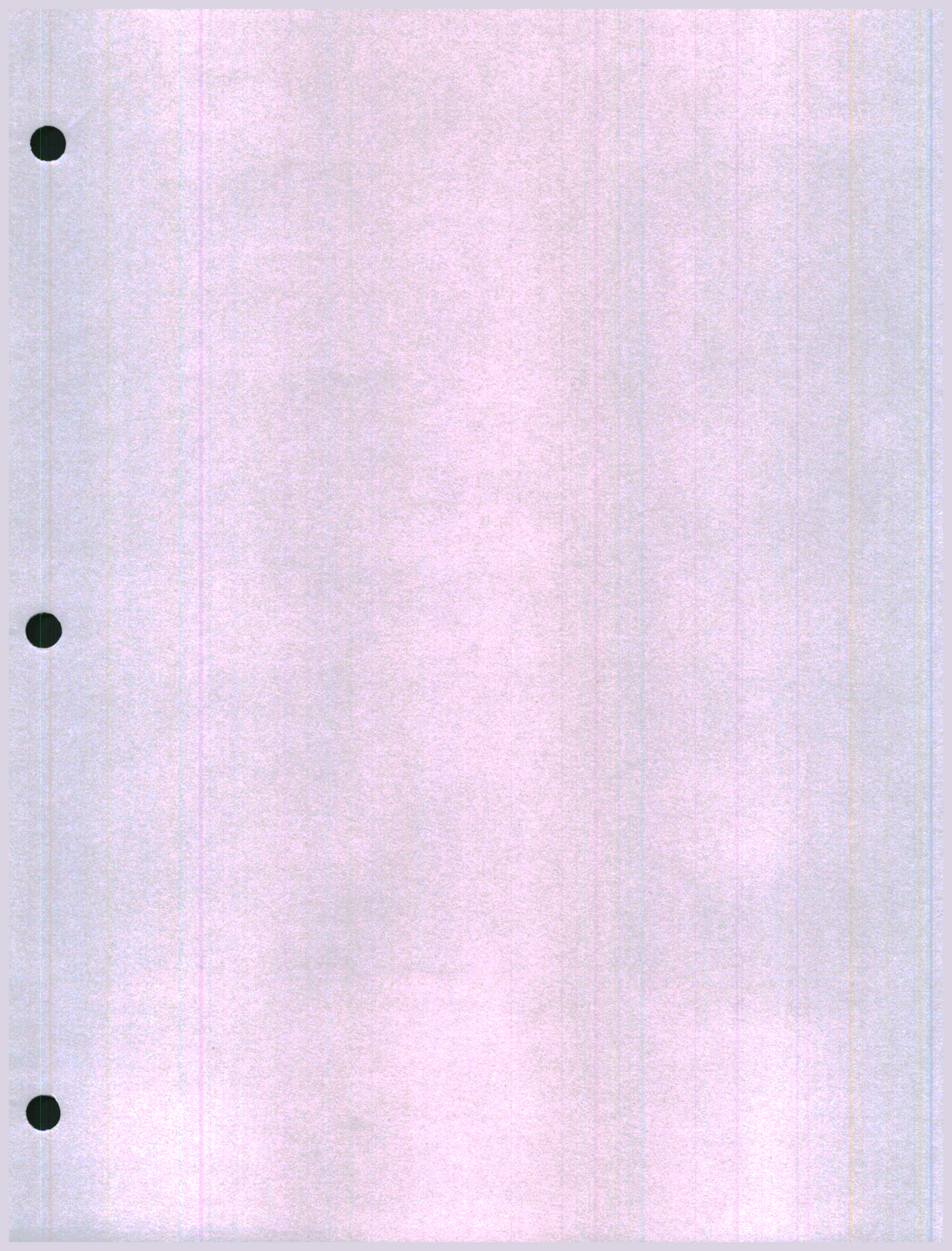
Vietnam and Armageddon, Sheed and Ward, 1970.

Democracy, Dissent and Disorder, Seabury, 1969.

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The Right to be Educated (editor), Corpus Books, 1968.

Religion, The Courts, and Public Policy, McGraw-Hill, 1963.



MARY MOCHARY

Mary Mochary is the Deputy Legal Adviser at the U.S. Department of State.

Ms. Mochary is a graduate of Wellesley College and the University of Chicago Law School. Prior to joining the State Department she was a partner in the law firm of Lane and Mittendorf.

Ms. Mochary served as Mayor of Montclair, New Jersey, and ran for the U.S. Senate in 1984.

In her role as Deputy Legal Adviser Ms. Mochary supervises the law enforcement and treaty functions of the State Department, as well as being the principal lawyer for the Bureaus of Consular Affairs, Human Rights and Refugee and International Organizations. As a result of her law enforcement responsibility she is deeply involved in counter-terrorism efforts.

Ms. Mochary has spoken and written extensively on legal approaches to controlling Terrorism.

## Mary Mochary

- o Frustration
- o Extradition - Political Offense Exception -
  - U.K. - Extradition Treaty
    - Will serve as a model for other treaties w/ west. dem.
  - Depends on will of state to prosecute crime -
  - Political will to adhere to extradition treaty -



VICTORIA TOENSING

Victoria Toensing is Deputy Assistant Attorney General for the Criminal Division, Department of Justice. She is assigned all Fraud, General Litigation and Appellate matters.

Ms. Toensing received her B.S. in Education in 1962 from Indiana University. She graduated cum laude from the University of Detroit School of Law in 1975.

From August 1976 until July 1981, Ms. Toensing was an Assistant U.S. Attorney in the Eastern District of Michigan. For three years prior to her appointment to the Justice Department, she served as Chief Counsel for the Senate Select Committee on Intelligence under Chairman Barry Goldwater. She taught trial techniques courses for two years at the Attorney General's Advocacy Institute.

Ms. Toensing has been extensively involved in various bar associations. She was a member of the Constitutional Law Committee of the State Bar of Michigan from 1978 to 1981 and is on the Complex Crimes Advisory Board of the Section of Litigation of the American Bar Association. She is a member of the ABA Working Group on Intelligence Requirements and Criminal Code Reform (since 1983), a member of the ABA Law and National



## Victoria Toensing

- o Justice views terrorism as criminal
  - "Have broken the rule of law"
  - Don't prosecute based on beliefs of terrorist (1st. Amend.)
  - look at violent act.
- o Plea for Home to act on legislation to make it a crime to kill Americans.
- o Extradition (u.k.)
  - Political Off. exception -
  - "Asked members to contact Senate and say we need treaty panel"

VICTORIA TOENSING

Security Standing Committee (since 1985) and Vice-Chair of the ABA White Collar Crime Committee of the Criminal Justice Section (since 1985).

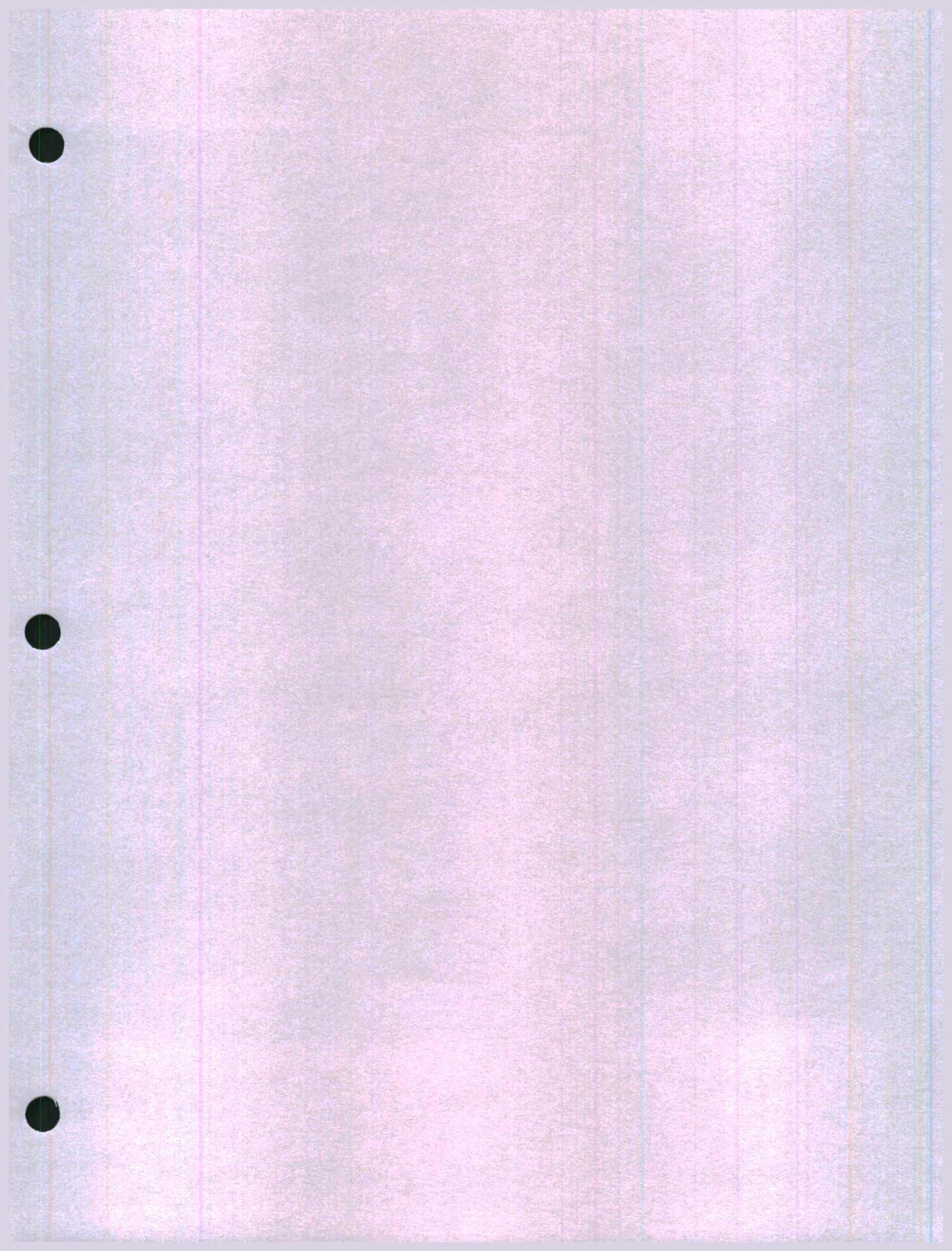
Ms. Toensing has written several articles:

"Mens Rea: Insanity by Another Name," The Compleat Lawyer, (April 1984)

"Bringing Sanity to the Insanity Defense," 69 A.B.A.J., (1983)

"Warrantless Searches Incident to 'Custodial Traffic Offenses' are Included Under Search Incident to Arrest Exception to Fourth Amendment Warrant Requirement." University of Detroit Journal of Urban Law, (August 1974)

She was also the contributing author of Fighting Back: Winning the War Against Terrorism, Lexington Books, 1985.



JOHN F. MURPHY

John F. Murphy is a Professor of Law at Villanova University and serves as reporter for the Conference. He specializes in International Law, International Business Transactions, International Trade Regulation, International Human Rights, Comparative Law, Torts, and Conflict of Laws.

Professor Murphy was born April 25, 1937. He received his B.A. from Cornell University in 1959. In 1962, he received his LL.B. with Specialization in International Affairs from Cornell.

Professor Murphy did administrative work with the Government of India as a Fellow in the Afro-Asia Public Service Fellowship Program, sponsored by the Maxwell School of Public Administration, Syracuse University, and by the Ford Foundation, 1962-63.

Professor Murphy was an attorney with the firm of Winthrop, Stimson, Putnam & Roberts, New York, from 1963 to 1964. From 1964 to 1967 he was an attorney at the Office of the Assistant Legal Adviser for United Nations Affairs at the U.S. Department of State. From 1967 to 1969, he was an attorney at Kirkland, Ellis, Hodson, Chaffetz & Masters, Washington, D.C.

John Murphy

Judge Basten - "Terrorism" has no operational legal effect -

US/UK Treaty - Should do away w/ polit. off. doctrine - Should be replaced w/ a theory that a humanitarian or a combatants privilege - should apply.

Rendition

Extradition / Deportation & Exclusion / Abolition

↳ Decreasing protection of human rights

Reforms - Extradition

- close gaps - narrow to protect innocents -

Deportation / Exclusion

- McMullen Case

Use as disguised extradition

JOHN F. MURPHY

From September 1969 to July 1984, Professor Murphy taught at the University of Kansas where he was an Associate Professor of Law, Professor of Law and Associate Dean.

In the Fall of 1979, he was a Visiting Professor of Law at Cornell University. From 1980 to 1981, he was the Charles H. Stockton Professor of International Law at the Naval War College. He was a Visiting Professor of Law at the Georgetown Law Center (Summer, 1982) and at Villanova University (1983-1984). He then assumed his present position as Professor of Law at Villanova.

Professor Murphy serves as Director (since 1980) of The American Society of International Law. He is Chairman of the Committee on International Terrorism of the International Law Association (since 1983). He is a member of the Committee on Foreign Exchange of Teachers and Students at the Association of American Law Schools.

He has been a consultant to the American Bar Association Section of International Law (since 1981), the Commission on the Organization of the Government for the Conduct of Foreign Policy, (1974) the Department of State, (1978, 1980, 1985 to present), Standing Committee on Law and National Security, since 1981 to the ABA, the United Nations Association of the

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United States of America (1985), and the International Task Force on Prevention of Nuclear Terrorism, a project of the Nuclear Control Institute, Washington, D.C. (1986).

Professor Murphy was a member of the American Bar Association delegation to the People's Republic of China May-June 1981. From 1985 to 1986, he was Chairman of the ABA Inter-Bar Study Group on International Terrorism. He is a member of the ABA Planning Committee for this Conference.

Professor Murphy has written extensively on legal aspects of international terrorism as well as on other international law and policy topics:

Punishing International Terrorists: The Legal Framework for Policy Initiatives, Totowa, New Jersey, Rowman & Allanheld, 1985, pp. 136.

The United Nations and the Control of International Violence: A Legal and Political Analysis. Totowa, New Jersey, Allenheld, Osmun & Co., 1983, pp. vii-xii, 212. Published in the United Kingdom by Manchester University Press, 1983

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Editor and contributor, "Legal Aspects of International Terrorism," Terrorism: An International Journal, vol. 7, pp. 119-239 (1984).



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"Human Rights in United States Foreign Policy," Houston Journal of International Law, vol. 4, pp. 133-37 (1981).

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"Self-Determination: United States Perspectives,"  
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"Control of Terrorism in International Life: Cooperation and Self-Help," Proceedings of the 71st Annual Meeting of the American Society of International Law, pp. 17-21 (1977).

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"Knowledge is Power: Foreign Policy and Information Interchange Among Congress, The Executive Branch, and The Public," Tulane Law Review, vol. 49, pp. 505-554 (1975) (Lead article).

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"Treaties and International Agreements Other Than Treaties: Constitutional Allocation of Power and Responsibility Among the President, the House of Representatives and the Senate," Kansas Law Review, vol. 23, pp. 221-48 (1975) (Lead article); reprinted in the Appendix L, Commission on the Organization of the Government for the Conduct of Foreign Policy, vol. 5, pp. 99-115 (1975).

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Review of "Human Rights and State Sovereignty," by Richard Falk, American Journal of International Law, vol. 76, pp. 897-99. (1982).

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"Customary International Law in U.S. Jurisprudence," International Practitioner's Notebook, pp. 17-18 (October, 1982).



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Review of "Insurgency in the Modern world," by Bard E. O'Neill, et al., Naval War College Review, vol. xxxiv, pp. 115-17 (1981).

Review of "International Law," by Malcolm Shaw, American Journal of International Law, vol. 75, pp. 715-16 (1981).

Letter to the Editors, "Professor Richard Falk's Comments on the Iran Hostage Crisis," American Journal of International Law, vol. 74, pp. 913-14 (1980).

Review of "Terrorism: Documents of International and Local Control," by Robert A. Friedlander and of "Terrorism: Theory and Practice," by Yonah Alexander et al., American Journal of International Law, vol. 74, pp. 711-16 (1980).

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"Introduction: State Responsibility, Self-Help, and International Law," Proceedings of the 73rd Annual Meeting of the American Society of International Law, pp. 242-44 (1979).

Review of "Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild 1977 Middle East Delegation," The Middle East Journal, vol. 33, pp. 523-24 (Autumn, 1979).

Review of "Crimes Against Internationally Protected Persons: Prevention and Punishment--An Analysis of the UN Convention," by Louis M. Bloomfield and Gerald F. Fitzgerald, American Journal of International Law, vol. 72, pp. 183-84 (1978).

Review of "A Treatise on International Criminal Law," edited by M. Cherif Bassiouni and Ved P. Nanda, Denver Journal of International Law and Policy, vol. 4, pp. 153-60 (1974).

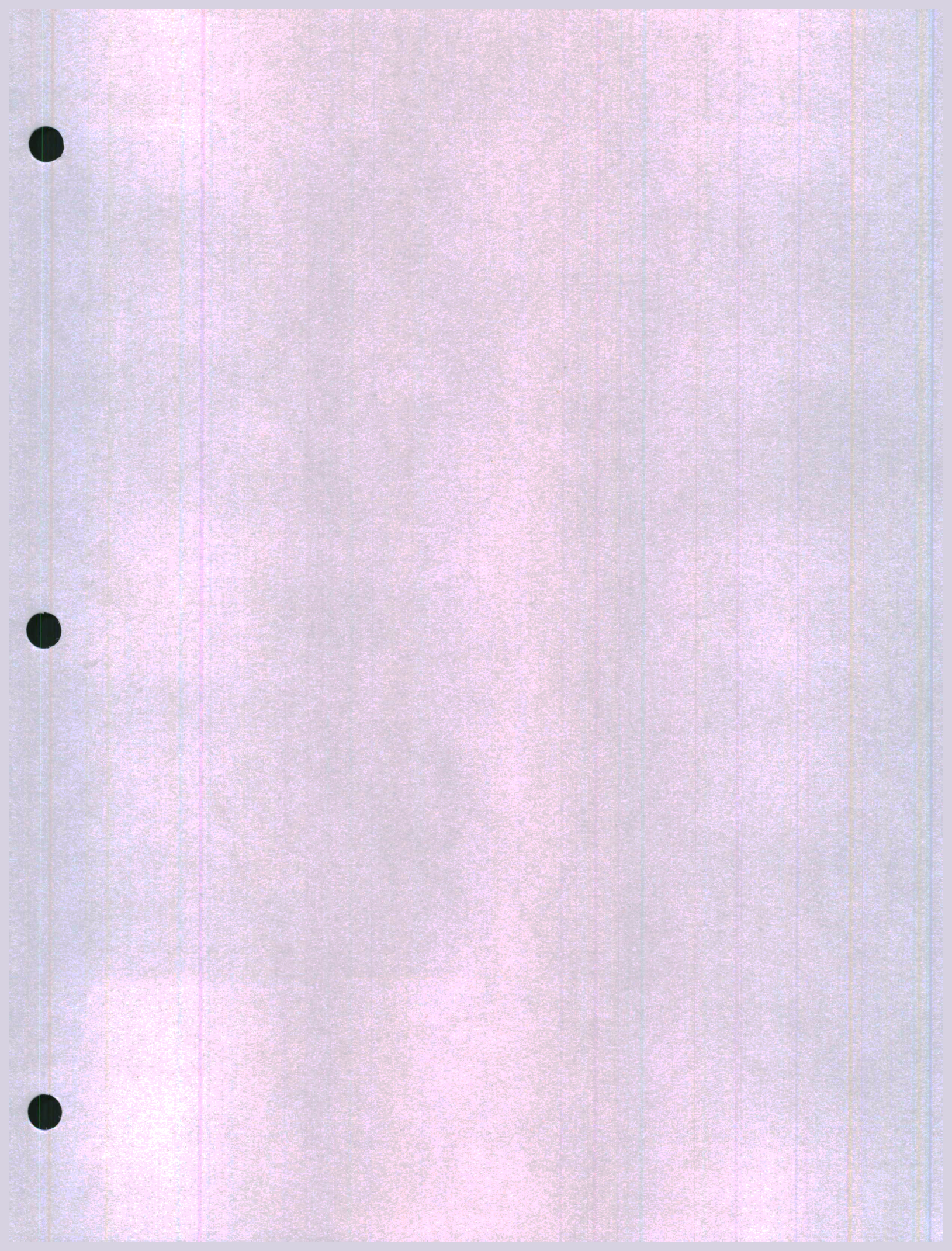
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# CHINESE YEARBOOK OF INTERNATIONAL LAW AND AFFAIRS

**VOLUME 4 (1984)**

*Reprint of John F. Murphy,*

*“Recent International Legal  
Developments in Controlling Terrorism,”*

*Comments by Jaw-ling Joanne Chang*

*Chinese Yearbook of International*

*Law and Affairs,*

*Vol. 4 (1984), pp. 97-128.*

# RECENT INTERNATIONAL LEGAL DEVELOPMENTS IN CONTROLLING TERRORISM

JOHN F. MURPHY\*

## INTRODUCTION

There has been a distinct lack of recent developments—legal or otherwise—in controlling terrorism. Most significant is the paucity of recent actions in the United Nations. But the absence of meaningful international initiatives to cope with international terrorism also pertains outside of the United Nations context.

That member states of the world community have been relatively inactive in responding to international terrorism does not mean the problem has been resolved. On the contrary, recent trends indicate that international terrorism has become a greater threat to world stability and may soon adopt new and frightening strategies.

Yonah Alexander has suggested the following reasons to support the proposition that terrorism is likely to increase both at home and abroad:

1. Terrorism has proved successful again and again in attracting publicity, disrupting government and business, and in causing significant death and destruction.
2. Arms, explosives, supplies and finances are readily available.
3. International connections among states, especially between the Soviet Union and the Third World, can and do greatly facilitate terrorist activities.
4. Terrorist groups are continually able to exploit conditions of social unrest, including east-west issues, such as deployment of Euromissiles.
5. International controls, coordination and cooperation geared towards combatting international terrorism remain weak.
6. Ninety percent of terrorist groups in the world are Marxist, and pro-Marxist sympathies (which the Soviet Union and its surrogates support) have increasingly grown the world over.<sup>1</sup>

Material facts buttress these conclusions.

The international community has witnessed a substantial increase in terrorist activities. According to Alexander,<sup>2</sup> from 1970 to June 1983, 18,727 domestic and international terrorist incidents occurred. These resulted in the death of 28,110 individuals and another 18,925 wounded with property damage of \$937,946,544. Alexander reports further that

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\* Professor of Law, Villanova University, U.S.A.

1. Yonah Alexander, "The Spiraling Price of Modern Terrorism," *The American Jewish Congress Monthly*, vol. 51 (1984), pp. 22, 23.

2. *Id.* at 22.

the number of terrorist incidents involving fatalities has increased about 20 percent a year since the early 1970s up to the point when in 1983, "the bloodiest year yet," the number rose to more than 2,000 casualties.

U.S. Department of State statistics regarding terrorist bombing reflect the increased willingness of terrorists to take human life. According to the Department of State,<sup>3</sup> from January 1, 1977 to May 31, 1983, there were 3,265 violent terrorist incidents throughout the world, of which 2,075 involved bombs of some sort. Explosive charges figured in 72.4 percent of these incidents, with 796 dead and 3,466 injured; incendiary devices in 490 (23.6 percent), with 67 dead and 37 injured; and letter bombs in 84 (4 percent), with 7 dead and 51 injured.

During the period under review, the Department of State recorded 75 explosive charged incidents which caused 10 or more casualties. The casualties resulting from these 75 incidents totalled 3,565, equal to 47.3 percent of all recorded casualties or 80.5 percent of those caused by bombs. In each of four incidents, the victims exceeded 200: (1) the bombing on August 2, 1980 of the Bologna Railroad Station (76 dead, 200 injured); (2) the bombing on August 13, 1983, of a Palestine Liberation Organization building in Beirut (161 dead, 75 injured); (3) the car bombing on May 20, 1983, in Pretoria (19 dead, 217 injured); and (4) the bombing on September 26, 1980, at Munich's Oktoberfest (12 dead, 215 injured). In five other incidents, the number of victims exceeded 100: (1) the car bombing on April 18, 1983, of the U.S. Embassy in Beirut (63 dead, 120 injured); (2) the car bombing on August 1, 1982, of the Iraqi Planning Ministry in Baghdad (20 dead, 30 injured); (3) the car bombing on December 15, 1981, of the Iraqi Embassy in Beirut (20 dead, 100 injured); (4) the bombing on July 14, 1981, of a Bangui movie theater (4 dead, 100 injured); and (5) the bomb explosion on December 31, 1980, in Nairobi hotel (15 dead, 87 injured). Eight explosions claimed between 50 and 97 victims each; 17 between 32 and 42 each; 16 between 20 and 29 each; and 25 between 10 and 19 each.

An especially disturbing trend is the dramatic increase in the direct use of terror, especially murders and assassinations, by certain states—e.g., Libya, Iran, North Korea and others. One need not accept the controversial proposition that there is a Soviet-directed conspiracy to use international terrorism as a worldwide method of "surrogate warfare" to recognize that there has been an increase in state-provided training, financing, and logistical support to terrorist organizations.

The costs of international terrorism include much more than the number of persons killed or injured. Since the primary goal of terrorists

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3. Department of State, *Terrorist Bombings* (Sept. 1983), p. 1.

the number of terrorist incidents involving fatalities has increased about 20 percent a year since the early 1970s up to the point when in 1983, "the bloodiest year yet," the number rose to more than 2,000 casualties.

U.S. Department of State statistics regarding terrorist bombing reflect the increased willingness of terrorists to take human life. According to the Department of State,<sup>3</sup> from January 1, 1977 to May 31, 1983, there were 3,265 violent terrorist incidents throughout the world, of which 2,075 involved bombs of some sort. Explosive charges figured in 72.4 percent of these incidents, with 796 dead and 3,466 injured; incendiary devices in 490 (23.6 percent), with 67 dead and 37 injured; and letter bombs in 84 (4 percent), with 7 dead and 51 injured.

During the period under review, the Department of State recorded 75 explosive charged incidents which caused 10 or more casualties. The casualties resulting from these 75 incidents totalled 3,565, equal to 47.3 percent of all recorded casualties or 80.5 percent of those caused by bombs. In each of four incidents, the victims exceeded 200: (1) the bombing on August 2, 1980 of the Bologna Railroad Station (76 dead, 200 injured); (2) the bombing on August 13, 1983, of a Palestine Liberation Organization building in Beirut (161 dead, 75 injured); (3) the car bombing on May 20, 1983, in Pretoria (19 dead, 217 injured); and (4) the bombing on September 26, 1980, at Munich's Oktoberfest (12 dead, 215 injured). In five other incidents, the number of victims exceeded 100: (1) the car bombing on April 18, 1983, of the U.S. Embassy in Beirut (63 dead, 120 injured); (2) the car bombing on August 1, 1982, of the Iraqi Planning Ministry in Baghdad (20 dead, 30 injured); (3) the car bombing on December 15, 1981, of the Iraqi Embassy in Beirut (20 dead, 100 injured); (4) the bombing on July 14, 1981, of a Bangui movie theater (4 dead, 100 injured); and (5) the bomb explosion on December 31, 1980, in Nairobi hotel (15 dead, 87 injured). Eight explosions claimed between 50 and 97 victims each; 17 between 32 and 42 each; 16 between 20 and 29 each; and 25 between 10 and 19 each.

An especially disturbing trend is the dramatic increase in the direct use of terror, especially murders and assassinations, by certain states—e.g., Libya, Iran, North Korea and others. One need not accept the controversial proposition that there is a Soviet-directed conspiracy to use international terrorism as a worldwide method of "surrogate warfare" to recognize that there has been an increase in state-provided training, financing, and logistical support to terrorist organizations.

The costs of international terrorism include much more than the number of persons killed or injured. Since the primary goal of terrorists

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3. Department of State, *Terrorist Bombings* (Sept. 1983), p. 1.



is publicity, and their actions are designed to reach this goal, the general public is much more conscious of terrorist activities than of other, less spectacular crimes. Local media reports major terrorist incidents throughout the world, and this serves to increase public anxiety, even in those countries which are free from terrorist attack.

The random nature of terrorist targetting and timing designed to avoid detection further increases public anxiety. No person or target is safe, and an attack may come at any time of the day or night. Most often terrorists challenge existing governments, and regularly attack the means of communication so indispensable to the world community, e.g., civil aviation, diplomats and other internationally protected (by law) persons, and international business personnel and property. Hostage-taking, designed to extort ransom payments and other concessions from governments and international businesses, and to portray security forces as weak and ineffective, may impose especially severe costs.

These costs include security measures that either increase the financial burden on the public or detract from other services. Many transnational business corporations have drastically increased their expenditures on security measures and ransom insurance. Air travelers are subjected to luggage screening and magnetometers, adding to the cost and time of traveling. Because of the threat of bombing, lockers have been removed from transportation terminals. Threats of bombing have also resulted in barricades at foreign ministries or legislative bodies. Embassies in some troubled areas of the world resemble fortresses, with the consequence that diplomacy is grievously impaired.

These costs could escalate considerably should terrorists continue to be willing to inflict great loss of life. Experts disagree on the ability of terrorists to use such methods of "technological terrorism" as nuclear material or chemical or biological weapons. But the technology is available, and the risk is therefore real.

This article will first examine, in a critical vein and with an emphasis on legal developments, the primary steps that the world community has taken in response to international terrorism. It then will explore and evaluate possible alternative responses. Finally, the article will offer conclusions and recommendations for future action.

### **RESPONSE OF THE WORLD COMMUNITY: LEGAL DEVELOPMENTS**

The world community has responded to international terrorism in a number of ways. The most legal of these responses is the conclusion of international agreements designed to combat various manifestations of international terrorism. These conventions have been concluded on a

global, regional and bilateral basis, and will be considered in that order. Less legal in form, although raising legal issues, is the application of sanctions against states that support international terrorism. Such sanctions have been applied in response to informal political consensus. Another response, the use of intelligence to combat international terrorism, takes place in a framework of national law, but international efforts towards intelligence gathering, analysis, and dissemination are conducted on an informal, nonbinding basis. All of these responses are briefly evaluated in a final subsection.

### *Global Conventions*

At this writing, the world community has adopted five global, multi-lateral, antiterrorist conventions: The Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo Convention),<sup>4</sup> The Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention),<sup>5</sup> The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention),<sup>6</sup> The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (New York Convention),<sup>7</sup> and The International Convention Against the Taking of Hostages.<sup>8</sup>

The basic purpose of these conventions is to establish a framework for international cooperation among states to prevent and suppress international terrorism. To accomplish this goal, the New York Convention, for example, requires states parties to cooperate in order to prevent, within their territories, preparations for attacks on diplomats within or outside their territories, to exchange information, and to coordinate administrative measures against such attacks.<sup>9</sup> If an attack against an internationally protected person takes place, and an alleged offender has fled the country where the attack occurred, states parties are to cooperate

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4. Convention on Offenses and Certain Other Acts Committed on Board Aircraft, *done at Tokyo*, Sept. 14, 1963, [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 219.

5. Convention for the Suppression of Unlawful Seizure of Aircraft, *done at The Hague*, Dec. 16, 1970, [1971] 22 U.S.T. 1641, T.I.A.S. No. 7192, 10 I.L.M. 133 (1971) [hereinafter cited as *The Hague Convention*].

6. The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, *done at Montreal*, Sept. 23, 1971, [1973] 24 U.S.T. 565, T.I.A.S. No. 7570, 10 I.L.M. 1151 (1971).

7. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, *done at New York*, Dec. 14, 1973, [1976-77] 28 U.S.T. 1975, T.I.A.S. No. 8532, G.A. Res. 3166, 28 U.N. GAOR, Supp. (No. 30) at 146, U.N. Doc. A/9030 (1974).

8. International Convention Against the Taking of Hostages, 34 U.N. GAOR Supp. (No. 39) at 23, U.N. Doc. A/34/39 (1979), *reprinted in* 18 I.L.M. 1456 (1979).

9. Convention on Protected Persons, *supra* note 7, Art. 4.

in the exchange of information concerning the circumstances of the crime and the alleged offender's identity and whereabouts.<sup>10</sup> The state party where the alleged offender is found is obliged to take measures to ensure his presence for purposes of extradition or prosecution and to inform interested states and international organizations of the measures taken.<sup>11</sup> Finally parties are to cooperate in assisting criminal proceedings brought for attacks on internationally protected persons, including supplying all relevant evidence at their disposal.<sup>12</sup>

A key feature of these conventions requires a state party that apprehends an alleged offender in its territory to either extradite him or submit his case to its authorities for purposes of prosecution.<sup>13</sup> Strictly speaking, none of these conventions alone creates an obligation to extradite. Rather, they contain an *inducement* to extradite by requiring the submission of alleged offenders for prosecution if extradition fails. Moreover, a legal *basis* for extradition is provided either in the convention, or through incorporation of the offenses mentioned in the convention into existing or future extradition treaties between the parties. To varying degrees, the conventions also obligate the parties to take the important practical step of attempting to apprehend the accused offender and hold him in custody.

The most important goal of these provisions is to ensure that the accused is prosecuted. To this end, the alternative obligation to submit for prosecution is stated quite strongly in these conventions. The obligation, however, is not to *try* the accused, much less to punish him, but to submit the case to be considered for prosecution by the appropriate national prosecuting authority. If the criminal justice system lacks integrity, the risk of political intervention in the prosecution or at trial exists. Such intervention may prevent the trial, or conviction, or the appropriate punishment of the accused.

Even if the criminal justice system functions with integrity, it may be very difficult to obtain the evidence necessary to convict when the alleged offense was committed in a foreign country. This very practical impediment to conviction can be removed between states of good will only by patient and sustained efforts to develop and expand "judicial assistance" and other forms of cooperation between the law enforcement and judicial systems of different countries. The conventions create an obligation to cooperate in this respect but, as will be demonstrated in

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10. *Id.*, Art. 5, Para. 2.

11. *Id.* Art. 6.

12. *Id.* Art. 10.

13. The following description in the text is taken from John F. Murphy, "Legal Controls and the Deterrence of Terrorism: Performance and Prospects," *Rutgers Law Journal*, Vol. 13 (1982), pp. 465, 471-73.

greater detail below, this obligation poses major problems for even good faith efforts among countries with different types of legal systems.

The U. N. Convention Against the Taking of Hostages adds a new dimension to presently existing international legal measures to combat terrorism. The convention seeks to ensure that international acts of hostage-taking will be covered either by the convention itself or by one of the applicable conventions on the law of armed conflict.<sup>14</sup> For example, hostage taking is a "grave breach" of the 1949 Geneva Convention Relative to The Protection of Civilian Persons in Times of War.<sup>15</sup> The Hostages Convention also represents a partial rejection of the thesis that acts of terrorism are permissible if committed as part of a war of national liberation.

Two other multilateral conventions, while not directed expressly against terrorism, are relevant for our purposes. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction<sup>16</sup> applies controls on weapons that are of potential use to terrorists. To the same end the recently concluded Convention on the Physical Protection of Nuclear Material (Convention on Nuclear Material)<sup>17</sup> prevents parties from exporting or importing or authorizing the export or import of nuclear materials used for peaceful purposes, unless they give assurances that such material will be protected at prescribed levels during international transport. The Convention on Nuclear Material also provides a framework for international cooperation in the recovery and protection

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14. Article 12 of the Hostages Convention provides:

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 on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations.

15. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *done at Geneva*, Aug. 12, 1948, Art. 147, [1956] 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

16. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, *done at Washington, London, and Moscow*, Apr. 10, 1972, [1975] 26 U.S.T. 583, T.I.A.S. No. 8062.

17. Convention on the Physical Protection of Nuclear Material, *done at Vienna*, Oct. 26, 1979, *opened for signature*, Mar. 3, 1980, *reprinted in International Legal Materials*, Vol. 18 (1979), pp. 1419, 1422-31 (1979).