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Extradition and Transnational Terrorism: A Comment on the Recent Extradition of Klaus Croissant from France to West Germany

On September 30, 1977, the Paris police arrested Klaus Croissant, a West German national and a former attorney for members of the Baader-Meinhof gang.¹ In West Germany, Croissant had long been suspected of acting as an information link between his imprisoned clients and their compatriots at liberty.² Before Croissant entered France, West German authorities had charged him with aiding a criminal group. Pending trial, he was released on bail; but on July 10 he left Germany and sought refuge in France.³ On July 11, Croissant, acting through his lawyers, requested political asylum in France, alleging that it was impossible for him to continue to exercise his profession in West Germany.⁴

During the negotiations that ensued between Croissant's lawyers and the French Ministry of Justice (*i.e.*, from July 11 to September 29), the French police were unable to locate his whereabouts.⁵ However, leading French journalists did manage to interview him. These interviews culminated in a news conference on August 27 in which the former attorney denounced the West German treatment of "political" prisoners.⁶

On July 15, the Stuttgart court issued an international warrant for Croissant's arrest, charging, *inter alia*, that he had aided a criminal group and propagandized on its behalf.⁷ The warrant referred to events that occurred between 1975 and 1976.⁸ On July 19, the West German Government, pursuant to

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¹Le Monde, Oct. 2-3, 1977, at 7, col. 1.

²*Id.*

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸*Id.* Oct. 5, 1977, at 16, col. 5.

the provisions of its extradition convention with France, requested Croissant's extradition on the basis of the charges contained in the Stuttgart warrant.⁹ On September 30, the Federal Tribunal in Karlsruhe issued a second international warrant for Croissant's arrest which implicated him more directly in more recent terrorist incidents: according to the warrant, Croissant had been in direct contact with persons who participated in the assassination of Jurgen Ponto, President of Dresdner Bank, and the kidnapping of Hans Martin Schleyer, a prominent West German businessman.¹⁰ On October 1, the West German Government made a second request for Croissant's extradition on the basis of the Karlsruhe warrant.¹¹

On October 3, the *chambre d'accusation* of the *Cour d'appel* of Paris convened to consider the West German requests.¹² These proceedings, however, were characterized by extensive procedural formalities and were inconclusive.¹³ Since the second extradition request had been received only a few days before the court convened, Croissant's lawyers requested a postponement in order to study the new documents.¹⁴ The court granted the motion and set October 10th as the date for a proceeding on the merits.¹⁵

Judicial action on the merits was delayed several times thereafter owing to the difficulty of translating the numerous West German documents.¹⁶ Finally, on November 16, the court rendered a "partially favorable" decision, granting the extradition request for only one of the charges contained in the Stuttgart arrest warrant.¹⁷ Croissant's extradition could be granted, ruled the court, "for [his] having, as a lawyer, contributed to organizing and operating an information system between imprisoned terrorists and others in liberty by transmitting correspondence, instructions and documents favoring, as a consequence, their activities."¹⁸

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⁹*Id.* Nov. 26, 1977, at 1, col. 3.

¹⁰*Id.* Oct. 5, 1977, at 16, col. 5.

¹¹*Id.* Nov. 26, 1977, at 1, col. 3.

¹²*Id.* Oct. 5, 1977, at 16, col. 5.

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.* Oct. 12, 1977, at 21, col. 1; *id.* Oct. 14, 1977, at 13, col. 1; *id.* Nov. 9, 1977, at 15, col. 6.

¹⁷Le Figaro, Nov. 17, 1977, at 17, col. 3.

¹⁸*Id.* The official text of the decision has not been reported as yet in any of the French law journals. A report of the decision, however, should be forthcoming in the fall in 105 J. DR. INT'L-CLUNET (1978). For the present analysis, the writer has relied upon the quoted excerpts of the decision that appeared in French newspapers, most notably Le Monde and Le Figaro. The accuracy of these excerpts were verified by comparing the substance of various accounts against one another.

For an account of the precipitous action of the French Government after the decision was rendered, see Le Figaro, Nov. 21, 1977, at 10, col. 1; Le Monde, Nov. 26, 1977, at 1, col. 3.

*Extradition*¹⁹ has been defined as “the act by which one nation delivers up an individual, accused or convicted of an offense outside of its own territory, to another nation which demands him and which is competent to try and punish him.”²⁰ In contemporary international practice, the decision as to whether an alleged offender will be extradited to the requesting State is within the complete discretion of the requested State. Absent bilateral or multilateral treaty obligations, there is no legal duty to extradite. Where treaty provisions govern, the requested State usually will grant an extradition request only for crimes enumerated in the treaty. Moreover, most treaties provide an exception for acts deemed to be “political offenses.” In any event, extradition is ultimately a political decision to be made by the government of the requested State.²¹

In the context of transnational terrorism, the process of extradition takes on special significance precisely because of the “political offense” exception and the almost unlimited discretion of governments in matters of extradition. Most terrorists will seek asylum in countries which are sympathetic to the political beliefs which allegedly motivated their crimes. Such countries are likely to refuse requests for the extradition of terrorists: either they are not parties to extradition agreements and hence are not under a legal duty to extradite; or they will invoke the “political offense” exception of existing treaties.²²

To recall a familiar example, on December 18, 1973, Arab terrorists attacked a Pan American jet airliner at the Rome airport. Thirty-two persons were killed during the attack. In order to escape, the terrorists hijacked a Lufthansa plane and flew to Athens, where they demanded the release of two Palestinians imprisoned there.²³ Then they flew to Kuwait.²⁴ Italy, Morocco, West Germany, and the United States made requests for the extradition of the terrorists, but Kuwait had no extradition treaty with any of these States. Moreover, the Kuwaiti Government deemed the acts of the terrorists to be of a “political” character. Ultimately, the terrorists were handed over to the “Arab Liberation movement” for having committed “crimes against the movement.”²⁵

¹⁹For this summary of contemporary international practice relating to extradition, the writer has relied heavily upon a previous study. See Note, *The Provisional Arrest and Subsequent Release of Abu Daoud by French Authorities*, 17 VA. J. INT'L L. 495, 495-96, 497-98 (1977).

²⁰I. J. B. MOORE, A TREATISE ON EXTRADITION AND INTERSTATE RENDITION 3 (1891). See also A. BILLOT, *TRAITE DE L'EXTRADITION* 1 (1874); BLACK'S LAW DICTIONARY 698 (4th rev. ed. 1968). See generally F. PIGGOTT, *EXTRADITION* 5-16 (1910).

²¹See Lillich & Paxman, *State Responsibility For Injuries to Aliens Occasioned by Terrorist Activities*, 26 AM. U. L. REV 300 (1977).

²²See *id.* at 303.

²³N.Y. Times, Dec. 18, 1973, at 1, col. 8.

²⁴*Ibid.*, Dec. 20, 1973, at 1, col. 1.

²⁵*Ibid.*, Dec. 23, 1973, at 3, col. 1. For an analysis of this incident, see Lillich & Paxman, *supra* note 21, at 277, 302.

Given the alleged purposes and motives of their acts, terrorists apprehended in less politically sympathetic countries also may invoke the "political offense" exception. Recently, however, the courts in several countries have held that terrorist crimes are outside the purview of the "political offense" exception.²⁶ They have done so by adopting a restrictive and narrow construction of political crimes. *In Re State of Wisconsin and Armstrong*,²⁷ the United States requested the extradition of Armstrong from Canada on charges relating to the bombing of four buildings at the University of Wisconsin in 1972. In contesting the request for his extradition, Armstrong alleged that his acts were of a "political character," since they were directed against U.S. involvement in the Vietnam War. The extradition magistrate, however, ruled that the "political offense" exception was inapplicable since no classified research had been done on the campus and the accused was not part of an organized political protest movement. The magistrate also noted that the acts of the accused were directed at the property of the university, not at the U.S. Government. This decision was affirmed by the court of appeals, which characterized Armstrong as "not a political fugitive but simply a fugitive from justice. . . ."²⁸

*Cheng v. Governor of Pentonville Prison*²⁹ involved a Formosan who fled to Sweden after having been convicted of the attempted murder of Chiang Kai-shek's son in New York City. The Swedish Government, after some hesitation, acceded to the U.S. request for his extradition, but, while Cheng was being flown back to the United States, he became ill and was taken to London for medical treatment. The United States then had to request his extradition from Great Britain. In the proceedings before the British court, Cheng contended that the request should be denied because his acts fell within the "political offense" provision of the extradition treaty between the United States and Great Britain. The House of Lords, however, concluded that the exception applied only to acts of political opposition to the State requesting extradition. Since Cheng's act was not directed against the U.S. Government, the request for Cheng's extradition was granted.

The most recent application of the "political offense" exception to incidents of transnational terrorism is the case of Rolf Pohle, decided by the Supreme Court of Greece in October 1976.³⁰ Pohle, a member of the Baader-Meinhof terrorist gang, was sentenced by a West German court in 1974 to six years' im-

²⁶*Ibid.*, at 300-03.

²⁷28 D.L.R.3d 513 (York, Ontario County Ct. 1972).

²⁸32 D.L.R.3d 265 (Fed. Ct. App. 1973). See Note, *Asylum or Accessory: The Non-Surrender of Political Offenders by Canada*, 31 U. TORONTO FACULTY L. REV. 93 (1973).

²⁹[1973] A.C. 931 (H.L.).

³⁰See Judgment of Oct. 1, 1976, Washington Post, Oct. 4, 1976, § A, at 24, col. 1 (S. Ct. Greece).

prisonment. He was freed the following year in exchange for a West Berlin politician who had been kidnapped by other members of the gang. After his arrest in Athens in 1976, the West German government sought his extradition from Greece on the ground that his prison term in West Germany had not been satisfied.³¹ The court of appeals in Athens, apparently taking note, at least indirectly, of leftist political pressures,³² denied the request, holding that "his acts were those of a genuine revolutionary, and that they were not a criminal but a political offense."³³ This decision was reversed by the Supreme Court of Greece which adopted "a very narrow definition of a political crime, taking it to cover only actions aiming directly at overthrowing the existing system, not all those prompted by political ideas or motives."³⁴

* * *

Under French law,³⁵ extradition is an act of mutual international assistance in the repression of crimes and the punishment of criminal offenders.³⁶ A request for extradition is a diplomatic act, involving the legal duties of the national government as they arise under public international law.³⁷ The final decision on extradition rests with the executive branch. Although the executive is under a legal obligation to consult with the judiciary, the role of the courts is narrowly defined and subordinate to that of the executive.³⁸

In the absence of an applicable treaty provision,³⁹ the Law of March 10, 1927 is controlling in matters of extradition. In all cases, the *Chambre d'accusation* of the *Cour d'appel* decides whether the extradition request is in conformity with procedural requirements; the court's denial of the request on substantive grounds is binding upon the executive.⁴⁰ Otherwise, the executive is free to grant or to deny the request on the basis of its own determination.⁴¹

In the instant case, the West German extradition requests had been made in full procedural conformity⁴² with the provisions of the French-German Ex-

³¹*Loc. cit.*

³²*Le Figaro*, Nov. 18, 1977, at 12, col. 3.

³³*See* Judgment of Oct. 1, 1976, note 30 *supra*.

³⁴THE TIMES (London), Oct. 2, 1976, at 4, col. 1. *See also* THE ECONOMIST, Oct. 9, 1976, at 65, col. 2.

³⁵For this summary of the relevant French law, the writer has relied extensively upon a previous study. *See* Note, *supra* note 19, at 503-04.

³⁶*See* AYMOND, EXTRADITION, [II-Droit Penal] ENCYCLOPEDIE DALLOZ ch. 1, § 1, ¶ 6 (1968).

³⁷*See ibid.*, ch. 1, § 1, ¶ 4 & 2, ¶ 34.

³⁸Law of March 10, 1927, arts. 14-17, [1927] J.O. 2877-79; [1927] 1 GAZ. PAL. 1020. *See also* AYMOND, *supra* note 36, at ch. 1, § 2, ¶¶ 36, 38, 40.

³⁹Law of March 10, 1927, art. 1 [1927] J.O. 2874, [1927] 1 GAZ. PAL. 1018. *See also* AYMOND, *supra* note 36, at ch. 1, § 2, ¶¶ 37, 38.

⁴⁰Law of March 27, 1927, arts. 16-17, [1927] J.O. 2879, [1927] 1 GAZ. PAL. 1020. *See also* AYMOND, *supra* note 36, at ch. 1, § 2, ¶ 38.

⁴¹Law of March 10, 1927, art. 18, [1927] J.O. 2880, [1927] 1 GAZ. PAL. 1020. *See also* AYMOND, *supra* note 36, at ch. 1, § 2, ¶ 38.

⁴²Convention on Extradition, Nov. 29, 1951, France-West Germany, [1959] J.O. 11524.

tradition Convention.⁴³ The question before the *Cour d'appel* was whether the charges contained in the arrest warrants constituted extraditable crimes under French law.⁴⁴

Although its outcome is rather unique by comparison, the *Croissant* decision fits into a line of recent French cases involving the extradition of alleged transnational terrorists.⁴⁵ For example, in the earlier case of *In re Holder & Kerhow*,⁴⁶ the U.S. Government requested the extradition from France of two fugitive U.S. nationals who had hijacked a plane in 1972 on a flight from Los Angeles to Seattle. The record showed that, during the incident, one of the fugitives demanded that the aircraft be flown to Hanoi but later changed his mind. He also made vague references to Angela Davis and Eldridge Cleaver during the hijacking.⁴⁷

On the basis of this evidence, despite U.S. contentions that hijacking was a common crime especially when it resulted in the extortion of \$500,000, the *Cour d'appel* of Paris denied the extradition request, ruling that the crime was a political offense.⁴⁸ Reading between the lines of the opinion, one suspects that the *Cour d'appel* tacitly incorporated the French Government's criticism of U.S. policy in Vietnam into its assessment of the evidence.

In the *Abu Daoud* case,⁴⁹ the influence of the executive branch upon a theoretically independent judiciary was deemed, by many commentators, to be manifest.⁵⁰ Abu Daoud, an alleged organizer of the July 1972 Munich Olympics massacre, entered France in January 1977 as part of an official Palestine Liberation Organization (PLO) delegation.⁵¹ A few days later,

⁴³Le Monde, Nov. 26, 1977, at 1, col. 3.

⁴⁴Le Figaro, Nov. 17, 1977, at 17, col. 3.

⁴⁵For this summary of recent French cases, the writer has relied upon two previous studies. See Note, *supra* note 19, at 495-513, 498; *The Political Offense Exception to Extradition and Transnational Terrorists: Old Doctrine Reformulated and New Norms Created*, 1 ASILS. INT'L L.J. 1, 22, 43 (1977).

⁴⁶Ct. of Appeals, Paris, Fr., E. McDOWELL, DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 1975, at 168 (1975).

⁴⁷Loc. cit.

⁴⁸Loc. cit.

⁴⁹104 J. DR. INT'L-CLUNET 843 (1977). See also Note, *supra*, note 19, at 495-513.

⁵⁰See, e.g., Rubin, *Abu Daoud Case: Floating World Law*, Christian Science Monitor, Jan. 27, 1977, at 31, col. 1; Note, *The Abu Daoud Affair*, 2 J. INT'L L. & ECON. 539 (1977); Recent Development *International Terrorism: Extradition*, 18 HARV. INT'L L.J. 467 (1977).

⁵¹The facts of the case were reported in the Agence France-Presse Interview with Raymond Barre, Prime Minister of France, in Paris (Jan. 13, 1977) (transcript obtained from the Information Service of the French Embassy, Washington, D.C.) and the Communiqué of the French Ministry of Justice Concerning the Release of Abu Daoud (Jan. 11, 1977) (obtained from the Information Service of the French Embassy, Washington, D.C.). The Barre Interview was reported in N.Y. Times, Jan. 14, 1977 § A, at 1, col. 4.

Other information was reported in news accounts. See *The Economist*, Jan. 15, 1977, at 43; *TIME*, Jan. 24, 1977, at 29; *The Guardian* (London), Jan. 13, 1977, at 3, col. 1; *Le Monde*, Jan. 10, 1977, at 6, col. 1, Jan. 11, 1977, at 1, col. 3, Jan. 12, 1977, § A, at 6, col. 1, Jan. 13, 1977, § A, at 2, col. 2; N.Y. Times, Jan. 12, 1977, § A, at 6, col. 1; *THE TIMES* (London), Jan. 11, 1977, at 6,

French police detained and then arrested him upon the request of the West German and Israeli Governments. Officials of both governments announced forthcoming requests for his extradition on charges relating to the Munich incident and other terrorist activities.⁵² On January 11, the *Cour d'appel* of Paris convened in exceptional circumstances to rule upon the validity of Abu Daoud's continued provisional detention pending the forthcoming West German and Israeli extradition requests.⁵³ In a highly controversial opinion, the court ruled that there were no legal grounds to justify Abu Daoud's continued provisional detention in France.⁵⁴ The extremely technical and legally dubious character of the court's procedural holding and the circumstances in which the case was considered led foreign officials and leading French newspapers to decry the decision as having been politically motivated—a judicial confirmation of a foregone legal conclusion.⁵⁵

In the *Croissant* case, accusations of judicial subservience to executive branch opinions and assessments of political exigencies cannot properly be levied at the *Cour d'appel*. By all accounts, the court gave extensive consideration to all the relevant documents and allowed ample time to both sides to prepare their case.⁵⁶ Unlike Abu Daoud, Croissant did make a statement in court denying the charges upon which the requests for his extradition were based.⁵⁷ Although the court refused to release him on bail, it provided convincing reasons for doing so.⁵⁸

The court's consideration of the merits of the case also reflected a high and unimpeachable standard of judicial conduct. On the one hand, it held that the charges contained in the Karlsruhe warrant constituted inadequate grounds for extradition. According to the warrant, Croissant was suspected of having aided the activities of members or sympathizers of the Haag-Meir gang or of providing them with lodging in his law offices.⁵⁹ The court declared that the charge lacked a sufficient evidentiary base, stating that it had not been

col. 4, Jan. 12, 1977, at 1, col. 1, Mar. 19, 1977, at 5, col. 2.

For a very brief summary of the facts, see Roubache, *A propos de Droit*, [1977] 51-53 *GAZ. PAL.* See also 104 *J. DR. INT'L-CLUNET* 843 (1977).

⁵²See Note, *supra* note 19, at 498-99; text at and accompanying note 51 *supra*.

⁵³See Note, *supra* note 19, at 500; text at and accompanying note 51 *supra*.

⁵⁴104 *J. DR. INT'L-CLUNET* 844 (1977).

⁵⁵See Note, *supra* note 19, at 501, 502-10.

⁵⁶See, e.g., *Le Monde*, Oct. 5, 1977, at 16, col. 5; *id.* Oct. 12, 1977, at 21, col. 1.

⁵⁷See *Le Monde*, Oct. 5, 1977, at 16, col. 5. In his statement, Croissant described the charges that were made against him as "defamation." He contended that he was not himself a political militant, but rather their defender. He alluded to a number of his actions which showed his complete cooperation with French judicial authorities prior to his arrest. He further claimed that, after the Schleyer kidnapping, the West German Government pressured its French counterpart to have him arrested. For an account of the statement, see *loc. cit.*

⁵⁸The court reasoned that Croissant's fleeing West Germany while he was free on bail set a bad precedent. For an account of the opinion, see *ibid.*, Oct. 14, 1977, at 13, col. 1.

⁵⁹*Le Figaro*, Nov. 17, 1977, at 17, col. 3.

established that the persons to whom Croissant had rendered assistance belonged to the terrorist group at the time of the terrorist incidents.⁶⁰ Under French law, the accused could not be suspected of aiding a terrorist group on that evidentiary basis alone.⁶¹

The charges contained in the Stuttgart warrant also came under close scrutiny. The court refused to allow extradition based on the charge that Croissant had aided a criminal group, the "Red Army" faction, by propagandizing, organizing press conferences and hunger strikes on their behalf. The court ruled that, in French law, such crimes cannot be a ground for extradition.⁶² Indeed, the court rendered only a "partially favorable" decision,⁶³ granting the extradition request exclusively on the charge of "having, as a lawyer, contributed to organizing and operating an information system between imprisoned terrorists and others in liberty by transmitting correspondence, instructions and documents favoring, as a consequence, their activities."⁶⁴

The court's opinion represents a masterful piece of legal reasoning. By resorting to an evidentiary justification and apparently to requirements laid down by the French Extradition Statute,⁶⁵ the court avoided drawing an explicit substantive distinction between alleged activities which have a political character and those which are solely criminal from a legal point of view.⁶⁶ For example, the charge that Croissant had aided the "Red Army" faction, characterized in the warrant as a "criminal group"—by propagandizing, organizing press conferences and hunger strikes on their behalf—borders, by any definition of the term, upon the political. To have considered the charge as a serious ground for extradition, the court would have had to engage in the difficult, if not impossible, task of distinguishing criminal complicity with a terrorist group from genuine political acts.⁶⁷ One of the possible implications of such a holding might have been that, although they are associated with a terrorist group, non-violent acts taken solely as a result and in the furtherance of political beliefs, are not crimes, in an *a priori* sense, but can, under certain circumstances, fall within the scope of the political offense exception to extradition. Such a holding would have gone far to refine current law dealing with the

⁶⁰*Loc. cit.*

⁶¹*Loc. cit.*

⁶²*Loc. cit.*

⁶³*Loc. cit.*

⁶⁴*Loc. cit.* See also text at note 18 *supra*.

⁶⁵Law of March 10, 1927, arts. 4 & 5, [1927] J.O. 2877, [1927] 1 GAZ. PALAIS 1020.

⁶⁶For an extensive discussion of the political offense exception in the context of transnational terrorism, see *The Political Offense Exception To Extradition And Transnational Terrorists: Old Doctrine Reformulated And New Norms Created*, cited in note 45 *supra*.

⁶⁷See generally *loc. cit.*

applicability of the political offense exception to cases involving transnational terrorists.⁶⁸

Be that as it may, the court, nonetheless, granted the extradition request for a charge which was distinctly more criminal in character and which was related more closely to the perpetration of criminal acts. In so holding, the court took the extradition request completely without consideration of the political character of the act and relied, at least tacitly, upon the principle of specialty in extradition law⁶⁹ to limit Croissant's forthcoming trial in West Germany to purely criminal charges. Under the principle of specialty, the West German authorities would be allowed to try Croissant only for the charge for which the extradition request was granted, failing which a breach of international law would have occurred.⁷⁰

Once the decision had been rendered and Croissant extradited, West German authorities demonstrated a willingness to comply with the court's ruling and with their international obligations. Upon reaching West Germany, Croissant was afforded the right to choose his own attorneys; the President of the Stuttgart court personally prescribed the conditions in which Croissant was to be detained, thereby dispelling allegations of possible mistreatment and apprehension for his safety and security.⁷¹ Moreover, officials of the West German Ministry of Justice made public statements indicating that Croissant would be tried only for the extraditable charge. He therefore faces a maximum five, as opposed to ten, year prison sentence.⁷²

* * *

West German officials and newspapers, of course, greeted the French court decision with considerable enthusiasm, hailing it as a positive contribution to the struggle of the international community against transnational terrorism.⁷³ Indeed, the West German Government had a number of reasons to be pleased with the action of the French court. It ended Croissant's French-based public relations campaign against West German domestic policies concerning "political" prisoners.⁷⁴ The importance of the *Croissant* decision, however, lies not in bringing legal sanctions to bear upon an isolated individual, but rather in its value as a legal precedent.⁷⁵ The West German and other govern-

⁶⁸*Loc. cit.*

⁶⁹For a discussion of the principle of specialty, see I. SHEARER, EXTRADITION IN INTERNATIONAL LAW (1971).

⁷⁰See, e.g., *ibid.*; *Le Figaro*, Nov. 17, 1977, at 17, col. 3.

⁷¹See *Le Figaro*, Nov. 18, 1977, at 12, col. 1. For an account of the appeals taken, see *id.* Nov. 17, 1977, at 17, col. 3; *Le Monde*, Nov. 26, 1977, at 1, col. 3.

⁷²See *Le Figaro*, Nov. 18, 1977, at 12, col. 1.

⁷³*Loc. cit.*

⁷⁴*Loc. cit.*

⁷⁵*Loc. cit.*

ments now could point to a decision offsetting the opinion of the Greek court of appeals in the *Pohle* case⁷⁶ and lending support to Helmut Schmidt's contention that "terrorists should be judged according to their acts, not their intentions."⁷⁷ Specifically, the *Croissant* decision would be invaluable in West Germany's attempt to extradite one Wackernagel, allegedly one of the Schleyer kidnapers, who had been arrested on November 10 in Holland.⁷⁸

Unquestionably, the French court's decision was exemplary from a doctrinal and procedural point of view—being not only lucidly reasoned but rendered in full impartiality. It affords a welcome contrast to previous French decisions⁷⁹ in this area and buttresses French support for efforts aimed at thwarting the activities of terrorist groups. There is, however, one aspect of the case which should be noted, but which was outside the scrutiny of the court, and gave rise to numerous commentaries and an extensive debate.

On September 22, the West German Parliament passed a law which became effective on October 2 permitting West German judicial authorities to prohibit contacts between imprisoned terrorists and their legal counsel for a period of thirty days.⁸⁰ Obviously, its purpose is to prevent the passing of information between imprisoned terrorists and their compatriots in liberty during and after terrorist incidents. Many French lawyers, however, deemed the law to be singular repressive—a flagrant violation of fundamental individual rights.⁸¹ In fact, during the *Croissant* proceeding, a representative of the French bar made a statement before the *Cour d'appel* declaring that, in the opinion of the bar, *le droit de la defense* (the right to legal representation) itself was on trial as the result of the recent West German law.⁸²

The serious misgivings of the French bar should serve as a warning to all democratic States seeking to devise effective measures to thwart the activities of terrorist groups, that their legislative inventiveness and the need to respond to urgent problems should not lead them to undermine their political legitimacy. As the holding in *Croissant* makes plain, lawyers who engage in criminal activities should be dealt with according to the traditional precepts of

⁷⁶See text at notes 30-34 *supra*.

⁷⁷*Loc. cit.*

⁷⁸*Loc. cit.* The action on the extradition of Wackernagel from Holland was delayed somewhat because the alleged kidnapper was seriously wounded in a gun battle with police. *Ibid.*, Nov. 25, 1977, at 13, col. 5.

⁷⁹See text at notes 45-55 *supra*.

⁸⁰See *Le Monde*, Oct. 2-3, 1977, at 7, col. 1.

⁸¹See, e.g., *id.* Oct. 14, 1977, at 13, col. 1; *id.* Oct. 15, 1977, at 16, col. 4; *id.* Nov. 15, 1977, at 15, col. 1.

⁸²See *ibid.*, Oct. 12, 1977, at 21, col. 1 (statement by Mr. Mario Stasi).

the penal law. The drastic legislation adopted by the West German Parliament represents an unnecessary and democratically impermissible flouting of basic individual rights. No matter how inhumane and repugnant terrorist activities may be, they should not push States to respond to illegal and criminal acts in kind, thereby perverting their own political integrity. The French court decision in *Croissant* is an eloquent statement that such extraordinary action is unnecessary.

