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Book Review: Crimes Against Internationally Protected Persons: Prevention and Punishment, by Louis M. Bloomfield and Gerald F. FitzGerald

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Crimes Against Internationally Protected Persons: Prevention and Punishment. By LOUIS M. BLOOMFIELD and GERALD F. FITZGERALD. New York: Praeger Publishers. 1975. Pp. xviii, 272. (\$18.50)

In recent years terrorists seem to have favoured the kidnapping of diplomatic agents and other persons entitled to special protection under international law as a very effective method to achieve their political objectives. It is necessary to view such actions in the overall context of violence on the part of terrorists against "aircraft . . . aviation facilities and foreigners [not subject to special protection] in countries where guerilla groups [are] active",¹ and to identify the legal norms which have been adopted to maintain international peace.

The United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted without objection by the General Assembly at New York on December 14th, 1973,² "marks an important step forward in the battle against worldwide terrorist activities".³ This is so because the kidnapping of a diplomat immediately and most dramatically involves international law principles. International customary law as codified by the Vienna Convention on Diplomatic Relations 1961⁴ recognizes the special

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¹ P. xiv.

² (1974), 13 Int. Leg. Mat. 41.

³ P. v.

⁴ (1964), 500 U.N.T.S. 95, art. 29, 1966 Can. T.S. No. 29.

status of diplomatic agents and their inviolability.⁵ This universally accepted norm forms the legal basis for the 1973 New York Convention. Although it was argued by a few States opposed to the adoption of a new Convention that the Vienna Convention gave sufficient protection to diplomats, fortunately this view did not prevail. Kidnapping as a method for gaining publicity for a political cause as well as the ensuing embarrassment to the receiving state, had certainly not been envisaged or provided for by the drafters of the Vienna Convention. Thus, a new Convention was needed to face the problem specifically.

Although Mr. Bloomfield and Dr. FitzGerald stress that it is too soon to critically assess the Convention, they have endeavoured to discuss "the ill to be cured—namely, terrorism" and the "legal tool—namely, the New York Convention".⁶ This they have done admirably by assembling in compact form significant background materials on the New York Convention which indeed facilitate research for those interested in this important subject.

In Chapter I, the authors provide a historical survey of attacks against internationally protected persons which serves the useful purpose of outlining some of the sundry terrorist activities that have occurred in the past and emphasizes the important point that "terrorist attacks against internationally protected persons and property have not been confined to any one area, but are global in scope and character".⁷ They suggest that while the 1973 Convention "is not a perfect solution, even in the legal sense, [it nevertheless] should help to set a precedent for the adoption of even broader measures to combat terrorism through international cooperation".⁸

Chapter II summarizes the present law applicable to the inviolability and protection of heads of state and heads of government, diplomatic agents, consular officials, members of special missions, representatives to intergovernmental organizations, and international officials.⁹

⁵ L. Green, *The Nature and Control of International Terrorism* (1974), 4 *Israeli Yearbook on Human Rights* 134, at p. 160.

⁶ P. v.

⁷ P. 26.

⁸ P. 27.

⁹ Art. 1(1)(a) of the New York Convention provides that an "internationally protected person" means 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

Chapters III and IV deal respectively with the need for a Convention on prevention and punishment and the work on the preparation of the New York Convention itself. Chapter V contains a compilation of the legislative background to the Convention and gives an article by article analysis which is extremely useful and thought provoking.

It is interesting to note when one studies the Convention that the drafters have, to a great extent, used the Hague and Montreal "anti-hijacking" Conventions¹⁰ as models. This is strikingly apparent in the embodiment of the principle *aut dedere aut punire*, which is basic to the whole Convention.¹¹ The theory upon which this principle rests is that the alleged offender must face justice and thus he must be extradited or be prosecuted locally. The problem that remains to be solved involves the determination of the minimum international standard for the treatment of such offenders. If the terrorist is present in a State sympathetic to his cause that is a party to the Convention there is the possibility that excessive leniency will prove an obstacle to the proper working of the Convention.¹²

The Convention will enter into force following the deposit of twenty-two ratifications or accessions with the Secretary-General of the United Nations.¹³ Canada, signed the Convention and intends to ratify it. Before this is done, amendments to the Criminal Code contained in bill C-71¹⁴ have to be enacted. The adoption of the principle *aut dedere aut punire* in Canada will mean a further exception to the territorial principle which forms the basis of Canadian criminal jurisdiction¹⁵ since bill C-71 would

Minister of Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him. Art. 1(1)(b) specifies the requirements in order that certain other persons may fall within the category of "internationally protected persons". A general formulation was decided upon in order to give the broadest possible coverage. See p. 65.

¹⁰ Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970), 1972 Can. T.S. No. 23; Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971), 1973 Can. T.S. No. 6; Can. Crim. Code, R.S.C., 1970, c. C-34, as am, ss 6(1) (1.1), 76.1, 2 and 3.

¹¹ Art. 7. See p. 96. Also Hague Convention, *ibid.*, art. 7 and Montreal Convention, *ibid.*, art. 7.

¹² Green, *op. cit.*, footnote 5, at p. 166.

¹³ Art. 17.

¹⁴ Criminal Law Amendment Act, Crim. Code, ss 2, 6, 381.1, 387.1, 1st reading, July 17th, 1975.

¹⁵ Crim. Code, *supra*, footnote 10, s. 5(2).

give Canadian courts jurisdiction to try persons in respect of offences committed outside Canada against internationally protected persons.

Of great significance is the resolution of adoption of the New York Convention¹⁶ by the General Assembly. It is unique because the General Assembly decided that the resolution shall be published together with the Convention. This is an entirely new procedure which resulted from a compromise concerning the inclusion of a provision on self-determination in the resolution rather than in the Convention itself.¹⁷

As the authors have emphasized the Convention is not perfect. It is, however, impossible to achieve perfection when a text is produced on such a controversial subject by so many States. One reason they suggest why the Convention is acceptable is that it covers a "restrictive range of acts against specified persons, namely, internationally protected persons".¹⁸ States will only be willing to bind themselves where conventions have "clearly defined parameters".¹⁹

Whatever the criticisms that can be levied at the New York Convention, it is apparent that the Tokyo, Hague and Montreal Conventions which were aimed at terrorism in the civil aviation field, have demonstrated "the wisdom of the piecemeal approach to problem-solving".²⁰ The present Convention is yet another piece to fit in the "jigsaw" of the combat against international terrorism. Although it is premature to state that the Convention will be an unqualified success, it can most certainly be said to be a remarkable achievement, which albeit not entirely ensuring the elimination of attacks against internationally protected persons, will most certainly contribute to the development of a body of international law to thwart terrorism.

The Appendix presents to the reader a complete picture of the present state of international law relevant to the scope of the Convention and generally to the subject of international terrorism. This is followed by a useful up to date selected bibliography.

Mr. Bloomfield and Dr. FitzGerald claim that they have merely presented their work in a convenient form for ease of

¹⁶ U.N. Doc.A/Res/3166 (XXVIII).

¹⁷ Para. 4.

¹⁸ P. 145.

¹⁹ *Ibid.*

²⁰ P. 146.

reference. This and more they have done. They have analyzed and annotated the materials and have presented in a single volume a helpful guide to the Convention that is indispensable not only to those with a particular interest in internationally protected persons, but also to international lawyers in general as well as students of world affairs.

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