

J. Craig Barker: *The protection of diplomatic personnel*, London, Ashgate, 2006, Hardcover, 218 pp, ISBN: 978-0-7546-2352-6, 55 £.

That diplomatic personnel is one of the favorite targets of terrorists groups is something widely known in the public sphere. How international law protects these diplomatic personnel against terrorist attacks is on the contrary a subject to which less attention has been paid. This is even clearer after September 11, when a vast number of articles and books have been published on the new developments in the fight against terrorism – especially its financing-, but not on the “old” question of how to protect diplomatic and consular personnel from these attacks. Prof. Barker’s book tries to fill in this gap in a 150 pages book that pertinently addresses all the legal questions derived from this issue in a comprehensive and profound manner.

Divided in six chapters, the work has two main axes that compose the object of the work: the first one concerns prevention (the special obligation to protect diplomatic personnel), and the second one repression (prosecution of terrorist violations against internationally protected persons). Both aspects are equally analyzed in the book. As a starting point, the author tries to persuade the reader of the relevance of the subject. The historical and factual data provided is in this sense almost overwhelming. Departing from the kidnappings in Latin America in the sixties and arriving to the East African bombings in 1998, an introductory chapter shows how diplomats and diplomatic premises have been a main target for terrorists since at least the internationalization of this phenomenon in the middle years of the last century, and how the international community has reacted to this question through Courts and official reports (in this sense we recommend the reader to have a look at annex 2, where he will find a list of all the attacks against US Diplomatic installations between 1987-1997). The idea behind is always the same: that diplomats, because of their symbolic nature and essential role in securing the interests of their nationals in foreign states, are and will remain a main target for those who do not find any other way to achieve their political aims, no matter the immunities that they enjoy.

Chapter two delimits the personal scope of the work. Amongst the increasing amount of functionaries that work for Foreign Ministers, the author chooses to restrict the book to Diplomatic personnel, other diplomatic representatives of States (when they are granted diplomatic immunities by the State) and consular representatives. Other groups, such as high ranking officials or officials from IO’s, despite their apparent resemblance to these categories, are excluded from the analysis because of the special protection they enjoy, greater than that accorded to traditional diplomats.

A fascinating chapter three gives a brief but complete historical account of the origin and development of the special duty to protect foreign representatives of governments, even since the Ancient times. The history of this duty is partly the history of the privileges and immunities enjoyed by those sent in the name of the sovereign, and so the author goes from the Greeks to the Renaissance to illustrate the underlying rationale that can be summarized in three theories: the representative character of diplomats, the extraterritoriality principle and the functional necessity theory, the second one –the idea that embassies are the territory of the States they represent- being rejected today. The notion of immunity is basically European, but it was later imposed on non-Western states during the 19th century by means of bilateral agreements. On the contrary, the

positive formulation of a special duty to protect diplomats by the receiving sovereign is owed to Vattel (1758).

Chapter four constitutes a central part of the study. It examines the main legal landmarks in the protection of diplomatic personnel *latu sensu*, that is, the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963) and the findings of the ICJ in the Hostages case. The analysis is exhaustive, covering the *travaux préparatoires* of the first two texts and all the facts behind the latest, in order to concretize who is entitled to personal inviolability, to what extent and how States must “take all appropriate steps to protect” (arts. 29 and 31(3) of both respective Conventions). The author regrets the fact that the content of this obligation has not been clearly determined, even though he recognizes that “the ICJ has highlighted the way in which the failure to act [by Iranian authorities] contrasted with previous reactions”. He later goes through some more recent developments, such as the Inman Report, the Omnibus Diplomatic and Anti-Terrorism act of 1986 and the Crowe Report in the US, and gives a very brief account of the implementation of the special duty of protection by member states. The conclusion after this review is by itself self-explanatory: that the so-called duty of protection “is at its best an illusion of protection”.

Chapter five deals with the second axe of the work, the punishment of crimes committed against diplomatic personnel *latu sensu*. Always in a very exhaustive way, the reader will be able to appreciate how the 1973 UN Convention on the Prevention and Punishment Against Internationally Protected Persons, including Diplomatic Agents, has been more a “symbolic”¹ document than an effective tool to repress terrorist attacks. States have been –until recently- very reluctant to ratify the Convention and some of the major promoters of the text, such as the US, have not implemented it properly in their domestic law. The results from this policy can be seen in the prosecution of the horrendous terrorist bombings in Kenya and Nairobi, which resulted in the withholding of many of the charges against the four suspects detained because US Law did not focus on offences committed against embassy premises but only on the character of the victim as an internationally protected person.

The work ends with a thought-provoking overview of the most recent developments in the “fight against terrorism” and how they affect the protection of diplomatic personnel. One finds particularly interesting the proposal to move the weak UN Reporting Mechanism on measures to enhance the security and safety of diplomatic personnel (established in 1985) to the Counter-Terrorism Committee of the Security Council. In the end, without a comprehensive international convention on terrorism, it will be difficult that the legal holes underlined by Prof. Barker will be totally filled in. This prospect, as well as that of criminalizing certain terrorist acts in the ICC Statute, seems to be of difficult realization today. But let’s hope that something changes in the future. Maybe the ICJ, who has already pronounced on some aspects of the 1973 Convention in the *Djibouti c. France* case of 4 June 2008, will have something to say.

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¹ See the comment of the Convention by MICHAEL WOOD for the UN Audiovisual Library of International Law, <http://untreaty.un.org/cod/avl/ha/cppcipp/cppcipp.html>, visited on 6 April 2009.