University of Nevada, Las Vegas -- William S. Boyd School of Law
Scholarly Commons @ UNLV Law

Scholarly Works | Faculty Scholarship

1-1-1996

Terrorism and Hostages in International Law: A Commentary on the Hostages Convention 1979

Christopher L. Blakesley
University of Nevada, Las Vegas -- William S. Boyd School of Law

Follow this and additional works at: http://scholars.law.unlv.edu/facpub

Part of the Criminal Law Commons, Dispute Resolution and Arbitration Commons, Human Rights Law Commons, International Law Commons, and the Legislation Commons

Recommended Citation
Blakesley, Christopher L., "Terrorism and Hostages in International Law: A Commentary on the Hostages Convention 1979" (1996). *Scholarly Works.* Paper 314.
http://scholars.law.unlv.edu/facpub/314

This Book Review is brought to you for free and open access by the Faculty Scholarship at Scholarly Commons @ UNLV Law. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Scholarly Commons @ UNLV Law. For more information, please contact david.mcclure@unlv.edu.

berg also explores events in the Caribbean, Central America, Indochina and the former USSR (pp. 125–37).

The next three chapters (4–6) are by Sergio Diaz-Briquets, Kathleen Newland and Charles B. Keely, respectively. All are well written, further examine the role of foreign policy in the migration context and touch also on the domestic politics that drive U.S. foreign policy and migration policy. Keely makes a persuasive call for prioritizing the stabilization of states by discouraging secession movements. Carl Kaysen (chapter 7) emphasizes one particular strategy for stabilizing states: using international institutions to resolve internal conflicts.

Tom Farer (chapter 8) caps the discussion with a succinct historical sketch of international refugee law and of efforts by the Europeans to harmonize their asylum laws.

Threatened Peoples, Threatened Borders is thoughtful, stimulating and well crafted. It serves as a primer for the general reader and provides new insights for the specialist.

STEPHEN H. LEGOMSKY
Washington University School of Law

Terrorism and Hostages in International Law: A Commentary on the Hostages Convention 1979. By Joseph J. Lambert. Cambridge: Grotius Publications Ltd., 1990. Pp. vii, 418. Index. $110; £58.

While hostage taking is not new, it is certainly current. Following Saddam Hussein's lead, Bosnian Serbs abducted UN peacekeepers, placing them as human shields around military targets. (The Croatians and the Bosnians did some of the same.) The Chechens have taken hostages several times in their struggle with Russia. *Terrorism and Hostages in International Law,* the product of Lambert's work as a research scholar of the Research Centre for International Law at the University of Cambridge, discusses the international community's lead response to such hostage taking and terrorism and is an excellent, compact and practical guide to understanding the Hostages Convention and other "antiterrorism" conventions. But it lacks the daring to take the discussion of terrorism and hostage taking to a new level.

The book considers the following conventions: the Hague, Montreal, New York and Rome Conventions with their Protocols; the European Convention on the Suppression of Terrorism; and the Organization of American States (OAS) Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance. Lambert, who is now international counsel for Deloitte & Touche, refers to all of these as antiterrorism conventions, although he never provides much insight into what makes them so. His book does provide insight into a number of other aspects of international criminal law related to terrorism and hostage taking, such as the law of armed conflict; state sovereignty; extraterritorial jurisdiction; human rights law; extradition and other measures of international cooperation in criminal matters; enactment of domestic penal legislation; the extradition, granting of asylum and prosecution of offenders; mutual assistance in criminal matters; establishment of cooperative preventive measures; dispute resolution; and the protection of human rights.

Lambert takes what he calls an "enumerative" or "segmented" approach, which "allows treatment of terrorism in more manageable units" (p. 49). He argues that a comprehensive, universal approach to the elimination of terrorism "will, at least in the near future, remain elusive" and that "the only way to go forward in the search for international co-operation in the suppression of terrorism is in the piecemeal fashion already begun" (p. 9). Despite his disclaimer, Lambert does help to develop a general theory of terrorism.

Part I of the book provides a background and framework for part II's article-by-article analysis of the Hostages Convention by giving a practical analysis of the international reactions to hostage taking and related activities and addressing terrorism in general. But, while Lambert discusses various definitions of terrorism, he—like many others—never analyzes either the concept of terrorism or reactions to it in real depth.[1] Instead, Lambert deliberately limits himself to black-letter reporting of specific crimes and reactions to them. In view of the excellence of the book, I was disappointed that he did not take the additional step of discussing why he considers hostage

[1] See, e.g., my review of DEMOCRATIC RESPONSES TO INTERNATIONAL TERRORISM (David A. Charters ed., 1991), in 89 AJIL 858 (1995), and of JOHN MURPHY, STATE SUPPORT OF INTERNATIONAL TERRORISM: LEGAL, POLITICAL AND ECONOMIC DIMENSIONS (1989), in 86 AJIL 428 (1992). See also Richard Baxter, *A Skeptical Look at the Concept of Terrorism,* 7 AKRON L. REV. 380 (1974), and my critique of it in CHRISTOPHER BLAKESLEY, TERRORISM, DRUGS, INTERNATIONAL LAW AND THE PROTECTION OF HUMAN LIBERTY 34–59 (1991).

HeinOnline -- 90 Am. J. Int'l L. 346 1996

taking and related conduct to be terrorism and developing broader analytic principles.

One way of protecting humanity against terrorism is to penalize terroristic conduct. If the criminal sanction is to be used, we need to provide a satisfactory legal definition providing the elements of the crimes condemned as terrorism.[2] This requires distinguishing "justifiable" violence (self-defense or that perpetrated against an enemy combatant in war) and excusable violence (accident or duress) from war crimes and terrorism. And it may require determining the general ambit of the crimes deemed to constitute it, including defenses. This might be done by combining elements of the laws of war with general principles of substantive criminal law. Terrorism during peacetime might be considered analogous to war crimes during war.[3] Thus, one of the weaknesses of most of the conventions studied is that they fail to satisfy sufficiently essential requirements of criminal law; indeed, where a definition and elements have developed, it has been primarily through domestic enabling legislation and prosecution. It would have been most useful if Lambert had provided deeper analysis of the domestic-law influences.

Part II of the book focuses on the 1979 Hostages Convention, providing an in-depth analysis of each of the Convention's articles and underlying concepts. This Convention, which Lambert considers to be the most important of the antiterrorism conventions, was a major development in international criminal law and is still one of the most comprehensive. This careful analysis is both the book's strength and its weakness. On the one hand, Lambert's thorough exegesis of the treaty is both clear and useful. On the other, Lambert's discussion provides little new insight into the nature of international law or terrorism. Why is hostage taking different from "private" kidnapping for ransom or from a bank robber's taking a hostage as a shield? More discussion of the impact on hostage taking and terrorism of the Hostages Convention's requirement that all perpetrators be brought to justice—*aut dedere aut judicare*—would also have been valuable,[4] as would a deeper discussion of distinctions and similarities between convention and nonconvention conduct. Clearly, definition and special elucidation of what does or does not constitute treaty-proscribed conduct (as well as why this is) are necessary for prosecution and defense. Moreover, legal, even philosophical, definitions are important to allow understanding of the elements of and policies behind an offense. Finally, a more detailed comparison of the Hostages Convention with other conventions dealing with similar subjects and with domestic enabling legislation could help to establish the necessary definitions.

It seems evident that, notwithstanding its deficiencies, the Convention's role in and impact on international law, including that relating to terrorism, may be important. Even limited conventions proscribing specific, "*terroristic*" conduct can lead to the development of custom and general principles on terrorism. But Lambert's view on the limited need for a definition of terrorism is particularly interesting. He says both that the promulgation and ratification of treaties dealing with terrorism on a piecemeal basis "is preferable from a lawyer's point of view" and will marginalize the "formulation of a definition of terrorism—strictly [to] an academic exercise, largely irrelevant to the fight against terrorism" (p. 347), and that "definitions of terrorism seem irrelevant to lawyers and legislators, who are concerned with making and enforcing rules to limit all political (or any other) violence, whether the victim is a primary target or merely a means of attacking a different protected interest" (p. 35, n. 173). However, while he may be correct that a piecemeal approach is likely to continue to be the *mode du jour* and is even an efficient way to approach real crime problems in day-to-day international practice, that does not mean that

[2] *See* Draft Code of Crimes against the Peace and Security of Mankind, [1991] 2 Y.B. Int'l L. Comm'n 198, UN Doc. A/CN.4/SER.A/1991/Add.1 (the text that emerged on the ILC's first reading of articles still under consideration). *See also* Baxter, *supra* note 1, at 380. *But see* M. Cherif Bassiouni, *A Policy-Oriented Inquiry into Different Forms and Manifestations of International Terrorism, in* LEGAL RESPONSES TO INTERNATIONAL TERRORISM: UNITED STATES PROCEDURAL ASPECTS at xv, xvi, xxiii (1988) (noting the impossibility of a pure definition, but promoting the notion that a "working definition" is greatly needed and possible). Bassiouni's working definition of terrorism is:

> an ideologically motivated strategy of internationally proscribed violence designed to inspire terror within a particular segment of a given society in order to achieve a power-outcome or to propagandize a claim or grievance irrespective of whether its perpetrators are acting for and on behalf of themselves or on behalf of a state.

[3] *See generally* BLAKESLEY, *supra* note 1, chs. 1, 2.

[4] *E.g.*, M. CHERIF BASSIOUNI & EDWARD WISE, AUT DEDERE, AUT JUDICARE (1995). *See* Christopher Blakesley, *Obstacles to the Creation of a Permanent War Crimes Tribunal*, 18 FLETCHER F. WORLD AFF. 77 (1994).

a broader understanding of the basis and meaning of terrorism is not just as important. In my opinion, development of a general understanding and definition of terrorism is not just an irrelevant academic exercise. Effective application of these treaties, as well as prosecution and prevention, may turn on our success in these endeavors.

As indicated, Lambert not only fails to give us the benefit of his own definition of terrorism but suggests that such a definition is not possible, providing little explanation why this is so. Reiterating other scholars' definitions, he notes only that their disagreement renders any chance at reconciliation or acceptance of a common definition unlikely. But, as I have argued here and elsewhere, such a definition of the broad principles of terrorism is necessary.[5] It would avoid abuse and obfuscation; it would allow for elaboration of specific elements of various offenses, each with proper elements to be applied neutrally to any perpetrator. It may be added that a convention creating an international tribunal (and concomitant international criminal code) could help systematize the relevant law and practice and erode the opportunity for propagandists to appropriate it. The ad hoc Tribunals for former Yugoslavia and Rwanda might help in this development if they succeed, as might current attempts to determine the viability of a permanent war crimes tribunal.

Lambert's book is the only book in the Library of Congress catalog *dedicated* to the Hostages Convention. And while it is excellent at what it sets out to do, it falls short of fully meeting the urgent need for a better definition and theory of terrorism. It remains for other scholars to continue the task of seeking to establish principle and coherence in this field.

CHRISTOPHER L. BLAKESLEY
Louisiana State University
Paul M. Hebert Law Center

Multinational Enterprises and the Law. By Peter T. Muchlinski. Oxford, Cambridge MA: Blackwell Publishers, 1995. Pp. xlii, 648. Index. $89.95; £75.00.

In *Multinational Enterprises and the Law* Peter Muchlinski, of the London School of Economics, undertakes to survey the law on a great many—one is tempted to say virtually all—the important subjects on which multinational enterprises (MNEs) today challenge policy makers around the globe: everything from antitrust to taxation, from principles of regulatory jurisdiction to the scope of enterprise liability, from the structure of corporate governance to the formulation of intellectual property rights, and much more. It is an ambitious and on the whole successful enterprise, a useful survey of the issues posed by the modern MNE. The discussion is erudite. On the whole the exposition of even the most abstruse matters is refreshingly clear. For the student, the book should prove a helpful secondary source in any international transactions course, especially any standard survey of transnational business. For the specialist, the book can be a valuable general reference on related topics outside one's immediate area of expertise. But these uses aside, the book has a more far-reaching potential drawn from one of its defining characteristics.

Understandably in a project of this scope, Muchlinski exercises great caution before offering his own theoretical analysis of the questions raised. Theories there are—other scholars' theories—that Muchlinski faithfully and competently describes. But he ventures very little by way of his own thoughts. The book is overwhelmingly descriptive and, if Muchlinski is to be criticized for anything, it is for the doggedness with which he holds to the descriptive mode. Yet, scattered throughout the work one encounters descriptions so artfully contrived—facts, circumstances, and contending viewpoints suggestively juxtaposed—as to virtually compel the reader to push his own theoretical speculations into the very regions Muchlinski seems determined to avoid. In these moments the book reaches a new and higher plane, assuming an unexpected liveliness that can profit even the most learned expert.

The book's success owes much to part I in which Muchlinski offers what he calls a "conceptual framework." It might better be seen as a number of separate frameworks, each categorizing some common aspect of the history, behavior or organization of MNEs or of the social context in which they subsist. Each framework provides a special lens through which to view the MNE. It all works remarkably well. Muchlinski has woven a rich tapestry—history, ideology, economics, politics and law—that the reader can use to enliven—organize, connect and judge normatively—the far more technical ma-

[5] *E.g.*, BLAKESLEY, *supra* note 1, at 38 (terrorism distinguished from war), 39, 41 (terrorism distinguished from domestic crime).

HeinOnline -- 90 Am. J. Int'l L. 348 1996