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International Protection of Victims

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BOOK REVIEWS

Association International De Droit Penal

Reviewed by Edward Kwakwa*

INTERNATIONAL PROTECTION OF VICTIMS (M.C. Bassiouni, ed.); Siracusa, Italy, 1988; pp. 470.

The concept of basic human dignity has gained increased contemporary significance in the conduct of inter- and intra-state relations. Despite this welcome trend, however, the international community has probably placed undue emphasis on penalizing the perpetrators of crime and abuse of power. In the process, there has been a corresponding de-emphasis on protecting or adequately compensating the victims of such crime and abuse of power. The publication of *International Protection of Victims*¹ is a timely event to help reverse this trend of ignoring or not adequately alleviating the severe physical, psychological and financial harm suffered by victims of crime and abuse of power.

International Protection of Victims is essentially a combination of studies, commentaries and documents pertaining to the United Nations Resolution of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.² Divided into four sections, the text initially

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1. INTERNATIONAL PROTECTION OF VICTIMS (C. Bassiouni ed. 1988) [hereinafter BASSIOUNI].

2. In December 1985, in a landmark pronouncement by the United Nations on the rights of victims of crime and abuse of power, the General Assembly of the United Nations adopted Resolution 40/34 which included an annex on the "Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power."

The Declaration fills the lacunae in the definition of "victims" by including not only persons harmed by ordinary or conventional crimes, but also those harmed or injured by abuse of power. Paragraphs 1-17 of the Declaration define "victims" of crime, provide standards for access to justice and fair treatment, restitution from the offender, as well as compensation from the state and assistance toward recovery. Paragraphs 18-21 define "victims" of abuse of power and call upon states to incorporate into their national law proscriptions on abuse of power provisions for remedies to victims of such abuses. For a text of the Declaration, see Resolution Adopted by the General Assembly: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, U.N. Doc. A/Res/40/34 (Dec. 11, 1985), reprinted in BASSIOUNI, at 201-05.

gives a brief historical conspectus of events leading to the establishment of the Declaration. Part II contains the core of the study. It includes studies and commentaries by distinguished experts, many of whose reports were presented at a World Society for Victimology meeting held in Dubrovnic, Yugoslavia. The third part of the book is a collection of all the relevant United Nations documents pertaining to the Declaration, and the redundant final part discusses some regional and national approaches taken in pursuit of the rights of victims of crime and abuse of power.

There is much to recommend to *International Protection of Victims*. It demonstrates an acute sensitivity to the plight of victims of crime and abuse of power. As succinctly put by Bassiouni, victims of crime and abuse of power are by the very fact of their victimization persons whose basic human rights have been violated. A growing realization of the pre-eminence of individual and collective human rights should therefore serve as an incentive for scholars and international legal practitioners to draw attention to the problems faced by victims of crime and abuse of power. The studies and commentaries in *International Protection of Victims* serve as a useful guide in this respect.

All of the essays, without exception, are scholarly, instructive and thought-provoking. Kerrigan provides a detailed paragraph-by-paragraph analysis of the United Nations Declaration.³ He rightly concludes that victims of abuse of power may need greater attention. This follows from the obvious defects in Part B of the Declaration dealing with victims of abuse of power, which suffers from serious ambiguity in terminology.

The second essay by Professor Lamborn⁴ suggests an "internally consistent and rational way"⁵ of reconciling these ambiguities. In his view, paragraph 19's reference to "norms proscribing abuses of power" should be construed to mean "internationally recognized norms relating to human rights."⁶ Paragraph 21's "acts that constitute serious abuses of political or economic power," *pace* Lamborn, is also a reference to "those [acts] in violation of internationally recognized norms relating to human rights."⁷ In this reviewer's opinion, such a teleological interpretation of the Declaration serves a useful purpose. To be sure, it is the only way in which the inconsistent paragraphs of the Declaration can be reconciled. It is also the most effective way of giving effect to the aims and purposes of the Declaration. A reference to "internationally recognized dimensions and effects of acts taking place within an otherwise domestic setting.

3. Kerrigan, *Historical Development of the United Nations Declaration*, in BASSIOUNI, *supra* note 2, at 91.

4. Lamborn, *The United Nations Declaration on Victims: The Scope of Coverage*, in BASSIOUNI, *supra* note 2, at 105.

5. *Id.* at 112.

6. *Id.* at 113.

7. *Id.*

Dr. Van Dijk's essay *Priorities for Policy Makers*⁸ will be of genuine interest to scholars of law and policy. More significantly, it should be of great value to government officials and policy makers who are genuinely concerned about improving the condition of crime victims. Dr. Van Dijk reminds us that the criminal justice system does not treat victims of crime with respect. He therefore makes an eloquent plea to police officers, prosecutors and judges for better treatment of crime victims.

Professor Waller addresses implementation of the Declaration.⁹ He provides the reader with a comparative study of implementation measures adopted in various legal systems. No less important are his additional recommendations on adoption, application, review and dissemination of the Declaration.

Marco Sassoli's thesis on the victim-oriented approach of International Humanitarian Law¹⁰ is probably the most detailed as well as the most important contribution. Armed conflicts undoubtedly produce the greatest number of victims. The point bears emphasis; as lucidly put by Sassoli, situations of armed conflict "represent the most intense form of victimization in the contemporary world."¹¹ Sassoli rightly points out that the United Nations Declaration covers only victims of violations of domestic criminal law and internationally recognized norms relating to human rights.¹² In effect, the Declaration treats violation of a norm as the *conditio sine qua non* for the existence of a "victim." This is in contradistinction to the position of the "victim" in international humanitarian law. The laws of armed conflict protect both combatants and non-combatants, and not only those affected as a result of a violation of the laws of war.

Sassoli clearly and cogently demonstrates that International Humanitarian Law is victim-oriented. Indeed, he succeeds in establishing that International Humanitarian Law is more victim-oriented than International Human Rights Law.¹³ "The writer observes that the best way to improve the situation of victims is to prevent their being victimized. This leads him to the self-evident statement that "the best way to prevent victimization by armed conflicts is to prevent armed conflicts."¹⁴ Unfortunately, however, this is the one area in which International Humanitarian Law is unable to play a direct role. Sassoli does not seem troubled by this; in his opinion, there exist "other branches of international law, with their own implementing procedures and bodies, intended to prevent armed

8. Van Dijk, *The United Nations Declaration on Crime Victims: Priorities for Policy Makers*, in BASSIOUNI *supra*, note 2, at 117.

9. Waller, *Rights of Victims of Crime and Abuse of Power: From Rhetoric to Realization*, in BASSIOUNI, *supra* note 2, at 127.

10. Sassoli, *The Victim-Oriented Approach of International Humanitarian Law and of the International Committee of the Red Cross*, in BASSIOUNI, *supra* note 2, at 147.

11. *Id.* at 148.

12. *Id.* at 150.

13. *Id.*

14. *Id.*

conflicts."¹⁵ He might have added that the conclusion to be drawn from this scenario is stark and plain — International Law in general, and International Human Rights Law in particular, are not as victim-oriented as International Humanitarian Law would have them be.

The final commentary by Bassiouni is on the protection of "collective victims" in international law.¹⁶ The "criminal conduct, goals, and outcome in the case of "collective victims" are predicated on the fact that the victim belongs to an identifiable group or collectivity."¹⁷ Bassiouni's essay provides the reader with a sophisticated overview of a complex subject. It gives a carefully reasoned distinction between individual and collective victims, discusses the sources of international law applicable to collective victims, and delineates an extensive list of international crimes as well as categories of collective victims protected under international human rights instruments. Bassiouni's discussion leads him to four troubling conclusions: first, there are several categories of collective victims who are victimized in spite of the protections granted them by national and international law; second, there are very limited or ineffective means to adequately prevent such victimization; third, the modalities for the protection or compensation of collective victims are inadequate; and finally, objective scientific study of the problems of collective victims are being hindered or stalled because of concerns about the politicization of the issues involved.¹⁸

International Protection of Victims is not without blemish. A close reader is likely to get bored and frustrated with the book — this is because a certain amount of material overlaps throughout the book. In fairness to the editor, this could be explained by the fact that the studies and commentaries are all based on the same United Nations Declaration. The fourth part of the book could however have benefited from a less Eurocentric concentration and a more representative coverage of regional and national approaches to the problems of victims of crime and abuse of power. Out of the nine essays, there are five on Europe, and one each on North America, South Australia, India and Nigeria. Above all, *International Protection of Victims* suffers from patently obvious typing errors in some crucial areas. For example, Part II of the table of contents refers to "The United Declaration of Victims" [sic], in an apparent reference to the United Nations Declaration. An even more fundamental objection could be made to page 148 of the book, which refers to "the four Geneva Conventions of 1943" (emphasis added).

Nevertheless, these errors do not detract from the essence of *International Protection of Victims*. It is a very timely publication which will

15. *Id.* at 183.

16. Bassiouni, *The Protection of "Collective Victims" in International Law*, in BASSIOUNI, *supra* note 2, at 181.

17. *Id.* at 191-92.

18. *Id.*

serve as a useful introduction to the intricate but often overlooked issues pertaining to victims of crime and abuse of power.

International Criminal Law: A Guide to U.S. Practice and Procedure

Reviewed by Edward Kwakwa

INTERNATIONAL CRIMINAL LAW: A GUIDE TO U.S. PRACTICE AND PROCEDURE (Ved Nanda and Cherif Bassiouni, eds.)
New York: Practising Law Institute, 1987. Pp xiv, 546.

What sources of law can a United States practitioner turn to when faced with a case that has international criminal ramifications? What are some of the procedural aspects of criminal law issues most likely to be encountered by the international business transactions practitioner? Which areas of international judicial assistance in criminal matters are of interest to a United States attorney? Where does he find the relevant laws on extradition, diplomatic and consular immunity? Above all, what judicial remedies are available in United States courts for breaches of internationally protected human rights? These ubiquitous and important questions are the focus of inquiry in Ved Nanda and Cherif Bassiouni's *International Criminal Law: A Guide to U.S. Practice and Procedure*.¹

The book is a combination of essays by several distinguished practitioners and academicians. It is appropriately divided into six subject areas: jurisdiction, mutual assistance and judicial cooperation, extradition, immunities, constitutional limitations and judicial remedies. It is not possible, within the confines of this review, to adequately summarize and appraise in sufficient detail the various and varied essays in *International Criminal Law*. The variation in attention or length of review given to a particular essay should therefore not be construed as a judgment on its quality.

The first part of *International Criminal Law* is a very useful introduction by the editors. The introduction is essentially a discussion of the reasons for, and scope of coverage of the book. Part II deals with the subject of jurisdiction. Professor George gives a comprehensive discussion of United States Federal anti-terrorist legislation, with particular emphasis on the Comprehensive Crime Control Act of 1984.² His discussion has been given greater relevance by the ongoing trial of several terrorists in United States federal courts.

Theodore Banks also addresses the issue of international activities and criminal considerations under United States antitrust laws. His principal concern is with the Sherman Act, a task for which he draws upon

1. INTERNATIONAL CRIMINAL LAW: A GUIDE TO U.S. PRACTICE AND PROCEDURE (V. Nanda & C. Bassiouni, eds. 1987) [hereinafter INTERNATIONAL CRIMINAL LAW].

2. See Pub. L. No. 98-473, 98 Stat. 1976 (1984).

his experience as corporate counsel. For the international business practitioner concerned with antitrust laws, the issue of which practices violate the antitrust laws is inextricably tied to the question of jurisdiction under the Sherman Act. Banks' discussion of such landmark cases as *American Banana*,³ *Timberlane*,⁴ and *Mannington*,⁵ as well as subsequent developments in the case law, will be of invaluable assistance to the interested practitioner. Following up on the theme of jurisdiction, Professor Herman addresses issues pertaining to the extraterritorial application of United States securities laws. He presents a summary of criminal provisions in United States securities laws, surveys some of the leading cases on extraterritorial application of the United States securities laws, and concludes that the test of "reasonableness," rather than the "conduct and effects" test, will more appropriately facilitate a determination of the extraterritorial reach of U.S. securities laws and any criminal prosecution brought under those laws.

In his chapter on tax crimes and extraterritorial discovery, David Pansius argues that if one accepts the need for broad powers possessed by the government in the domestic setting, then one must *a fortiori* give United States discovery powers the broadest construction in the international setting. Any contrary position, he insists, would permit foreign-based individuals or wealthy Americans to evade taxes through foreign transactions in jurisdictions that have secrecy laws. The chapter also discusses conflict of laws problems that arise in two different situations - those in which there is a tax treaty in force between the United States and the foreign jurisdiction, and those in which there is no such treaty. The section on jurisdiction ends with Reed Kathrein's essay on criminal enforcement of the Export Administration Act, Francis Higgins' chapter on procedural aspects of anti-boycott laws and regulations, and that of Robert Gareis and Paul McCarthy on the Foreign Corrupt Practices Act and related statutes.

The third major section of *International Criminal Law* is on the subject of mutual assistance and judicial cooperation. Prominent among the essays in this section is Cherif Bassiouni's examination of issues arising from bilateral treaties that allow for the transfer of convicted criminal offenders. Parts IV, V and VI of the book cover the areas of extradition, immunities and constitutional limitations, respectively. The final chapter of the book is on judicial remedies. Written by Professor Nanda, the chapter is, as is to be expected, penetrating and incisive. Professor Nanda's discussion provides a variation on the dominant theme by shifting attention from domestic law limitations to international law limitations. The focus of inquiry is on the remedies available to a plaintiff who invokes norms of international human rights law in United States court. Professor Nanda asserts that the international community has success-

3. 213 U.S. 347 (1909).

4. 549 F.2d 597 (9th Cir. 1976).

5. 595 F.2d 1287 (3d Cir. 1979).

fully established norms of international human right law in the post-1945 era. Unfortunately, however, the achievements in prescribing norms "have not been matched by availability of remedies to the victims of the violations of those norms."⁶ The chapter also discusses the interface between international criminal law and international human rights, and examines the treatment of treaties and customary norms of international human rights law United States courts. Professor Nanda ends the book on an optimistic note by predicting that conventional and customary international human rights law will eventually find their proper place in United States courts.

International Criminal Law is a major contribution to international scholarly literature. As far as this reviewer knows, it is the first of its kind that has brought together so many essays by such distinguished experts on international criminal law and how it impacts on United States practice and procedure. The book is extensive in scope — it covers some of the most important and crucial aspects encountered on an everyday basis by the international legal practitioner. The individual essays are all concisely written, lucid in style and very well documented. The book also provides the reader with an extensive table of authorities, as well as an index.

The editors state at the outset that the book is meant to provide an international law practitioner with a useful set of materials; it is their hope that the book proves to be useful for those practicing in the international criminal law area. Professors Nanda and Bassiouni skillfully succeed in performing the task they set out to do with the publication of *International Criminal Law*. But they do more than that — the book will be of invaluable assistance not only to international law practitioners, but also to teachers, students and even government officials involved in substantive and procedural aspects of international criminal law in United States practice. Professors Nanda and Bassiouni deserve congratulations for adding *International Criminal Law* to their already extensive list of publications.

