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Book Reviews

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Book Reviews

A Treatise on International Criminal Law

M. Cherif Bassiouni and Ved P. Nanda

Reviewed by O. JOHN ROGGE*

Volume I: Crimes and Punishment. pp. xxv, 751.

Name and Subject Indexes. \$26.50 cloth, \$19.75 paper.

Volume II: *Jurisdiction and Cooperation*. pp. xix, 426.

Name and Subject Indexes. \$19.75 cloth, \$15.95 paper.

Springfield, Illinois: Charles C. Thomas, 1973.

This two-volume treatise compiled and edited by Professors Bassiouni and Nanda consists of a collection of essays by 48 authors on fundamental aspects of international criminal law. The broad sweep of the treatment ranges through topics dealing with "The Scope and Significance of International Criminal Law" (a fine contribution by Messrs. Mueller and Besharov); Individual and Collective Criminal Responsibility; Crimes against Peace (with a concise and stimulating study by Professor Bassiouni of attempts to define aggression, of indirect aggression and aggressive propaganda) the regulation of armed conflicts, unlawful weapons and the currently popular subject of Humanitarian Law of Armed Conflict; Piracy and Terrorism (searchingly discussed in an excellent paper by Professor Sundberg); slavery and genocide (in a somewhat cursory exposition by the two editors); The International Narcotics Control System (a survey by Professor Bassiouni with some recommendations for a new approach); the prosecution of war crimes from the pre-World War I period to developments in the United Nations; and a number of papers dealing with procedural and substantive aspects of jurisdiction and inter-state cooperation, among which that of Professor Schultz on the framework of extradition and asylum must be noted.

As might be expected in a work cast so broadly, the level of the coverage varies with the difficulty of the area treated along with considerable differences in quality among the many presentations. And, while completeness of coverage is surely a commendable objective, it is nevertheless bewildering that an

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extensive amount of space should be given over to the substantive rules of law contained in the four Geneva Conventions of 1949, the status of prisoners of war and humanitarian law problems in noninternational and guerilla conflicts. Such matters have only a flirting, peripheral relevance to the main body of international criminal law.

How shifting the soil of discussion can become in so swiftly evolving a scene is evidenced by Professor Bassiouni's comments on the elusive dilemma of aggression:

The history of the concept of aggression from the time of the League of Nations down to the present day in the Vietnam and Arab-Israeli conflicts has been marked with few successes. The future does not look to be much more promising if the goal remains that of molding rules to fit our own purpose. The United Nations has been rendered ineffective for this very reason.¹

One would have welcomed the author's appraisal in this context of the definition of aggression approved at the United Nations General Assembly after the above remarks were written. On the other hand, a better work on aggression cannot be written until humankind as a whole recognizes that nations as well as individuals must solve their problems on the basis of a common ethic and self-restraint. The time has come for all to cooperate in the quest of world peace through law within the framework of the United Nations and the International Court of Justice. There are those, including most of the authors of this two-volume treatise, who are optimistic enough to think it can be done.

Along with a number of other internationalists, Professor Sundberg argues persuasively for the creation of an international criminal court to which disputes relating to extradition, particularly in piracy, terrorism and hijacking, should "be referred compulsorily, or at least optionally."² Ideally, an attempt should be made to expand the jurisdiction of the International Court of Justice to handle at least four types of cases: extradition, asylum, emigration and international hijacking. But if a modification of the Court's statute in this direction is not a realizable goal, some other international tribunal should be given cognizance of these cases. The present treatise has the merit of inclining one's thinking in that direction.

Despite the unevenness of the many studies in the survey, the editors have produced a valuable and convenient work which should serve as a useful guide to most of the problems arising in an area of constantly growing importance.

¹Vol. 1, ch. III at p. 178.

²Vol. 1, at p. 489.

International Organization: Law in Movement

Reviewed by JAMES C. TUTTLE

Essays in Honor of John McMahon. Edited by J. E. S. Fawcett and Rosalyn Higgins. Published for The Royal Institute of International Affairs by Oxford University Press (London: 1974), 182 pages.

This little commemorative book consists of seven independent essays on topics which, although falling within the periphery of world organization, are otherwise unrelated. The papers, and the present reviewer's description of their contents, are as follows:

(1) "*The Court of the European Communities: Judicial Interpretation and International Organization*," by John F. McMahon reviews the nature, interpretational doctrine, and interpretational practice of the Court of Justice of the European Communities (as it replaced the Court of the European Coal and Steel Community in October 1958), and its jurisprudential attempt to harmonize international law and the municipal law of the Communities' Member States. Mr. McMahon points up the court's similarity or resemblance to the French Conseil d'Etat, making use of numerous French quotations and citations (but without offering English translations).

(2) "*The United Nations as a Form of Government*," by Ian Brownlie reprints a paper earlier published by the *Harvard International Law Journal*¹ 3 (1972), in which he takes the thesis that "as a matter of description it is much less accurate to say that the United Nations is not a form of government than to say that it is," or put another way that "it is more realistic to accept that the United Nations is a form of government than not." Citing the *Expenses Opinion* (ICJ Reports 1962, p. 151), Mr. Brownlie likens the United Nations' budgetary and appropriation system to one "not unlike a federal taxing system." But his assessment of the United Nations as a form of government for the world in a theoretical system is haphazard and superficial, even with such considerations as the principle of universality, inherent limitations in the United Nations system, major Charter policies, constitutional structure: changes of form and

¹Vol. 13 (1972), p.3.

changes of content, areas of consensus and empirical advances, and role of the Great Powers.

(3) "*The Desirability of Third-Party Adjudication; Conventional Wisdom or Continuing Truth?*," by Rosalyn Higgins is an interesting, but hasty summary of the International Court of Justice and some of its inadequacies. Mrs. Higgins points out the advantages of ad hoc arbitration and concludes that "the structure and functioning of international society over the last few years have revealed that bargaining is often a more promising conflict resolution device than clear adjudication in favor of one party." She emphasizes the United Nations' predilection to address directives to both parties to a dispute, "rather than to attempt the quasi-adjudicative function of indicating who has acted illegally. Clearly, the trend away from the originally intended enforcement towards peace-keeping by consent is evidence of this tendency." To this the author adds that "only in those cases where the international community has long since given up real hope of compliance—such as apartheid in South Africa—is the quasi-adjudicative method of identifying the law breaker used"; but one wonders whether Mrs. Higgins perhaps overstates this point. Her essay ends with the suggestion that different types of decision making and dispute settlement methods should be studied more adequately and fitted to different types of conflict between states.

(4) "*Some Reflections on International Officialdom*," by Oscar Schachter is an excellent, short-hand review and analysis of various types of bureaucrats and personnel management characteristics employed by international organizations. Mr. Schachter frames his succinct study within the characterizations of "Circumspection and Inhibition" and "Ideas and Action."

(5) "*Exceeding Small*," by S.A. de Smith provides a good overview of anti-colonialism, pertinent United Nations General Assembly Resolutions on the subject, and the status of Micronesia, the Trust Territory remaining under American administration. Mr. de Smith asserts that:

the case of Micronesia epitomizes some of the problems besetting small and poor dependent territories and their rulers in the era of decolonization. The end of empire is not yet; colonialism may take an unconscionable time dying. Constructive initiatives emanating from the United Nations have been almost negligible.

(6) "*A View From Within: The Role of the Small States and the Cyprus Experience*," by Andreas J. Jacovides is among the best of the papers contributed. Mr. Jacovides provides a quite readable, authoritative review of United Nations peace-keeping operations including observations on attitudes, structures, and legal frameworks of peace-keeping operations with a realistic emphasis upon the "art of the politically possible." The item was written before

the September 1974 bloodbath between Greek and Turkish Cypriotes, an incident which should impel the writing of another chapter by Mr. Jacovides.

(7) "*International Control of Marine Pollution*," by Michael Hardy is a relatively lengthy (40 percent of the length of this book of collected essays) summary of international marine pollution plans, proposals and action. Mr. Hardy postulates that:

there is general agreement that some degree of international action is now required with respect to marine pollution: the matter has to be assessed, on an international basis, and a decision, or decisions, reached on what is to be done. Thus the difficulty is to devise a series of measures of prevention and control which will be both adequate to the task and acceptable to the community of states.

He concludes that a marginal or sectional approach to regulation of ocean pollution, as opposed to overall regulation, is the more likely pattern to develop over the coming years within the development of the "law of the sea." Emphasizing the need for an international monitoring and "surveillance system," Hardy projects three central points of the marine pollution issue:

(1) the need for scientific study, on a regular basis, of the state of the oceans, as part of the environment and of the exact effects of pollution, (2) the establishment of various technical and regulatory means for the prevention and control of different forms of pollution having their origin in separate human activities, and, lastly, (3) the problem of liability if the pollution due to specific activities causes damage to others.

Although characterized by some abstruse, even loose, rhetoric, the paper is a useful compendium of developments in this important area.

