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BOOK REVIEW

A TREATISE ON INTERNATIONAL CRIMINAL LAW

VOLUME I: CRIMES AND PUNISHMENT

VOLUME II: JURISDICTION AND COOPERATION

BY M. CHÉRIF BASSIOUNI AND VED P. NANDA

Springfield, Illinois: Charles C. Thomas, 1973. Volume I: Pp. xxv, 751; \$26.50 (cloth), \$19.75 (paper). Volume II: Pp. xix, 426; \$19.75 (cloth), \$15.95 (paper).

It is only once in a while that a legal treatise appears which is acknowledged as a truly masterful compilation in one area of the law. Such a book is *A Treatise on International Criminal Law*. The work is a daring and critical search to unravel the intricacies of international criminal law as it presently exists and to probe into its likely future development. In form, the book is a series of contributed articles by internationally renowned scholars, edited by the authors of the *Treatise* and followed by appended documents. Each chapter explores a given aspect of international criminal law from a historical and juridical perspective. In addition, each chapter includes relevant treaties and documents, and draft treaties, proposed statutes, and other recommendations for change.

Since in a short review it is impossible to do justice to the breadth of the topics and the richness of the material presented in these two volumes totaling 1221 pages, only a few general comments will be made here.

Perhaps the most noteworthy characteristic of the book is that it seeks to develop a wholly new discipline. While the current limitations of international law in dealing with international criminal conduct are duly recognized, the book breaks new ground in offering viable alternatives on national, regional, and international levels. Compared with most prior works on the subject which are often plagued by narrowly circumscribed parochial and nationalistic approaches and are consequently of little universal appeal, this treatise is truly international in scope—it contains contributions from 51 internationally renowned authors representing more than 20 countries and almost all the major legal systems and ideologies in the world.

Obviously, the question of controlling international criminality has been thrust into the forefront of political and legal thinking primarily because of the recently manifested worldwide concern with terrorism and international traffic in narcotics. The

acceptance that international crime consists of offenses committed against mankind has led to the recognition of the priority of preserving minimum world order and the necessity of controlling conduct contrary to the common interest of the world community. The authors make a significant contribution by discussing each area of international criminal activity separately, identifying major problem areas, and offering a viable control system for such activity. Additionally, they make useful suggestions to clarify several ambiguous concepts of international law, such as "aggression," "armed conflict," and "terrorism."

Although the idea of controlling international criminal conduct by the establishment of an international court is not a novel one, the authors have made this seem plausible by the delineation of specific offenses, such as air and sea piracy, unlawful use of certain weapons, international sale of narcotics, kidnapping diplomats, theft of art treasures, and certain common crimes presently grouped under the uneasy label of terrorism. The authors also offer other proposals which show promise of implementation. The possibility that a system for controlling international conduct could be devised and effectuated indicates the birth of a new era of international juridical cooperation. The *Treatise* seeks to usher in this new era, with sensitivity and regard for the ideas and values of all peoples who share the common goal of world public order.

The two volumes are organized on the basis of a continuum of responsibility from the state to the individual. *Volume I* seeks to ascertain and define for each crime who the participants are, what the potential scope of their culpability is, and how each crime is juxtaposed with defenses that may arise, depending upon the actual role of the participants. By taking this approach, the authors have taken another step in removing the barriers to the creation of a viable international criminal law. Hopefully the book and the ideas it contains will form the basis of seminars and courses in international criminal law, which at present are being offered at only a few law schools.

Volume II includes treatment of topics such as extradition and asylum, theories of jurisdiction, conflict of laws, and judicial cooperation in penal matters. Individual and state accountability for war crimes and crimes against humanity is examined. A comparative study of the conflict of laws in international and municipal criminal law is undertaken with reference to both Western and Socialist countries. Also, the subject of judicial assistance

and cooperation in penal matters is discussed with reference to conceptual differences between civil and common law countries.

The last part of *Volume II* deals with extradition and asylum. The authors point to major problems in these areas, for instance, the paucity of workable and binding extradition treaties regarding the surrender of international and national criminals, the rigid nature of the agreements that do exist, and the excessive procedural requirements contained in those agreements. These problems are treated in conjunction with the chronically insoluble issue of dealing with the ideologically motivated offender. Here, the interplay is recognized between and among the competing considerations of political justifications and expediency, the need to punish offenses and not persons, basic human rights in the treatment of ideologically motivated individuals, and the delicate balance between public order and the freedom of expression. While avoiding the luxury of lengthy philosophical rhetoric, the authors allow the reader to appreciate these competing values through logical and comprehensive factual analysis.

Regarding judicial assistance, the thesis of the authors is not a simplistic plea for cooperation, but rather a meticulous analysis of the cooperative system now extant in the international legal structure. Typical of the problems in this area is the Benelux Treaty, the product of the Benelux Commission, which took 14 years to be ratified by 3 states and 5 more years to bring into force an agreement among homogeneous and friendly nations. While the authors feel that this treaty may "open the road" to more enlightened international criminal law, the road is, as their own studies show, replete with problems. An equally fine treatment of the international recognition of penal judgments is undertaken, carefully analyzing the consequences of such recognition on the domestic laws of various member nations.

These two volumes encompass the objective structure of international criminal law with a precision and clarity not found elsewhere. The comprehensive documentation and a penchant for detail make this work an invaluable aid for practitioner and academician alike. The editors have succeeded in their efforts to present a logical and cogent analysis of international criminal law.

The traditionally abstract and esoteric approach usually associated with the writing in this field is pleasantly replaced in this book by a lucid examination of the rights and obligations of defined juridical personalities, such as the individual and the corporation. In particular, these rights are superimposed on a structure

of international conflict-of-laws issues, giving rise to a workable framework for discussing and analyzing the rights of an individual entity. Various arenas in which these rights may be exercised are identified. For instance, while activities in ocean space and outer space are discussed, several articles deal with activities taking place within a nation-state. Thus, there is a constant awareness of the interface between international regulation and intrastate regulation and the delicate balance existing between the two. It becomes clear that the protection of rights and the enforcement of obligations is not a matter of exclusive nation-state or international jurisdiction, but rather a blending of the two.

Professors Bassiouni and Nanda deserve credit for the production of this treatise which is not only a first of its kind, but also promises to be a highly influential work in this field of growing importance.

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