

*Spring 1974*

### M. Cerif Bassiouni and Ved P. Nanda, A Treatise on International Criminal Law

Luis Kutner

Follow this and additional works at: <https://scholar.valpo.edu/vulr>

 Part of the [Law Commons](#)

---

#### Recommended Citation

Luis Kutner, *M. Cerif Bassiouni and Ved P. Nanda, A Treatise on International Criminal Law*, 8 Val. U. L. Rev. 719 (1974).

Available at: <https://scholar.valpo.edu/vulr/vol8/iss3/9>

This Book Review is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at [scholar@valpo.edu](mailto:scholar@valpo.edu).



**A TREATISE ON INTERNATIONAL CRIMINAL LAW.** By M. Cherif Bassiouni and Ved P. Nanda. Springfield: Charles C. Thomas. 1973. Vol. I Pp. 751. Cloth \$26.50, Paper \$19.75; Vol. II Pp. 426. Cloth \$19.75, Paper \$15.95.

These two impressive volumes are the first comprehensive compilation of materials on the subject ever to be published. Judge Dautricourt, a noted European scholar who reviewed these books stated that for at least ten years to come this work will remain a most valuable contribution.<sup>1</sup> In the United States only one other book carries a similar title and was published in 1965.<sup>2</sup> It is a compilation of previously published materials and some original writings put together by Professor Gerhard Mueller of N.Y.U. and Ed Wise of Wayne State. (Mueller and Bassiouni are probably the most renowned experts on international criminal law in the country and they are also internationally recognized in this field).<sup>3</sup>

The subject of international criminal law is by no means novel, even though some publicists still debate its existence.<sup>4</sup> Depending upon one's definition of the subject,<sup>5</sup> it can be retraced to Aristotle, Cicero, St. Augustine and Grotius. Surely since it encompasses the legitimacy of force, it has its foundation in the writings of early Greek philosophers. Its inclusion of the justness of war, for example, can be traced to the writings of St. Augustine. Limitations on the use of force, its instrumentalities and its conduct can be found in many earlier writings.<sup>6</sup> Certain international crimes such as piracy have also been the subject of writings by Hugo Grotius in the seventh century (who also extensively dealt with issues of war and peace)<sup>7</sup> and others since that time.

---

1. 1 REVUE DE DROIT PENAL ET DE CRIMINOLOGIE 54 (1973).

2. INTERNATIONAL CRIMINAL LAW (G. Mueller & E. Wise eds. 1965).

3. Professor Mueller is Vice President of the International Penal Law Association, and Professor Bassiouni is Deputy Secretary General. Both are frequently invited to attend international conferences and have taught at foreign universities.

4. Schwartzberger, *The Problems of an International Criminal Law*, in 3 CURRENT LEGAL PROBLEMS 263 (1950). See, however, as an illustration of the wealth of material on the subject, B. DESCHUTTER, BIBLIOGRAPHY ON INTERNATIONAL CRIMINAL LAW (1972); see also, D. OEHLER, INTERNATIONALES STRAFRECHT (1973).

5. See, e.g., S. GLASER, INFRACTIONS INTERNATIONALES (1957); S. PLAWSKI, ETUDE DES PRINCIPES FONDAMENTAUX DU DROIT INTERNATIONAL PENAL (1972); O. TRIFFTERER, DOGMATISCHE UNTERSUCHUNGEN ZUR ENTWICKLUNG DES MATERIELLEN VOLKERSTRAFRECHTS SEIT NURNBERG (1966).

6. I J. VERSIJL, INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE 226 (1968).

In reviewing the history of international criminal law one can identify four basic frameworks: the regulation of international coercion; humanitarian concern for individuals in time of war; international repression of common criminality; and, protection of human rights. The long and arduous course of international criminal law has been made more difficult because its subject matter sought to regulate different participants, in diverse arenas, employing various strategies, using different structures, for the attainment of divergent value-oriented goals.<sup>8</sup> As an illustration one can see that controls over aggressive war differ from the regulation of armed conflicts and that neither of these functions should be confused with the protection of human rights (e.g., the prevention of genocide, slavery or racial discrimination) or other international crimes such as piracy, hijacking, terrorism and illicit international traffic in drugs. The complexity of these diverse topics may explain why no one prior to Bassiouni and Nanda endeavored to put all these matters under the same umbrella. The common thread, however, appears obvious as a more concerned world community seeks to protect itself from aberrant and abhorrent forms of behavior which threaten its existence and civility.

Heretofore writers stopped at a barrier dividing state and individual responsibility instead of pursuing the continuum which goes from the individual to state responsibility or vice versa. Bassiouni and Nanda broke down that artificial barrier by framing a regulatory scheme which focuses on the objects of control instead of the subjects to be controlled. Twentieth century writers such as Donnedieu de Vabres and Pella,<sup>9</sup> who are recognized as the most authoritative European scholars on the subject, accepted certain limitations on the scope of international criminal law. They displayed hesitance and ambivalence about treating international criminal law as a comprehensive subject involving international regulation of deviant conduct requiring international penal sanction. This was manifested in a semantical debate over whether the subject matter is properly considered the criminal part of international law or the

---

7. Grotius, *Laws of War and Peace*, in CLASSICS OF INTERNATIONAL LAW (F. Kelsey transl. 1925).

8. M. McDUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* (1961).

9. H. DONNEDIEU DE VABRES, *INTRODUCTION A L'ETUDE DU DROIT PENAL INTERNATIONALE* (1928); V. PELLA, *LA GUERRE-CRIME ET LES CRIMINELS DE GUERRE* (1964).

international part of municipal criminal law—namely whether it is Droit Penal international or Droit international Penal.<sup>10</sup> Bassiouni and Nanda simply bring the two together and blend them within the framework of a new discipline whose sources are international law *and* criminal law.<sup>11</sup> The approach is therefore unique in that respect, as it is in many ways.

Those volumes have writings by 47 contributing authors who represent the views of all continents and major ideologies which in itself exemplifies international cooperation among scholars regardless of ideological or political differences.<sup>12</sup> As to methodology, the two volumes are divided in such a manner as to cover in Volume I the substantive aspects of international criminal law while Volume II deals with its adjective or procedural aspects. The content coverage cuts across traditional disciplines as we see penalists and publicists join in the development of this new discipline. The organization of Volume I reveals five major divisions: (1) the foundation of the discipline of international criminal law (Part I); (2) the protection of peace (Part II); (3) the regulation of institutional violence (Part III); (4) the identification of common crimes against mankind (Part IV); and (5) the prosecution of international criminal law violations and its future (Part V). Volume II discusses theories of jurisdiction and international cooperation, mutual assistance, and judicial cooperation and assistance in penal matters. This volume will be quite useful to the judge and practitioner because of its practical aspects such as extradition and recognition of foreign judgments.

The treatment of most subjects covered in both volumes is rather exhaustive. Volume I contains 751 pages and Volume II, 426 pages. A careful reviewer of these two volumes will not fail to find, however, that some topics deserved more ample treatment (*e.g.*, genocide)<sup>13</sup>, but limitations due to size may explain this shortcoming. These two volumes are excellent research tools because of the various relevant documents, treaties and appendices and a well organized index. The references and copious citation of source mate-

---

10. See A. QUINTANO-RIPOLLES, *TRATADO DE DERECHO PENAL INTERNACIONAL E INTERNACIONAL PENAL* (1957).

11. See authors' preface, volume one.

12. *Id.*

13. Genocide is accorded a scant seven pages: see Volume I, pp. 522-29.

rial in English, French, German, Spanish, Italian, Russian, Hungarian, Polish and other foreign language materials make it particularly helpful to the student and scholar of foreign sources. The usefulness of such an undertaking however must go beyond this and its test will be whether it is used as teaching material. Since both volumes were published in 1973 it is too soon to survey its acceptability by teachers and students even though it has already stirred much interest. One likely drawback to their use in the classroom may well be the size of Volume I (751 pages) and the cost of both volumes, even though a less expensive paper back edition is available (Vol. I at \$19.75 and Vol. II at \$15.95). Furthermore it must be noted that a "Part" on international protection of human rights should have been included, particularly since Bassiouni and Nanda are quite involved in this area.<sup>14</sup> The exclusion may, however, be explained by the length of the existing text and the reluctance of publishers to produce expensive volumes. Nonetheless a treatment of certain human rights remedies such as World Habeas Corpus should have been included.<sup>15</sup>

The two author-editors worked several years on this project and as this reviewer came to know it, Bassiouni pioneered the effort in 1968 and was joined by Nanda in 1971. An interesting insight into this work is the manner in which it was structured. Bassiouni prepared the outline of the two volumes and then solicited the contributing authors for its various parts. Each author thus provided a part which was prepared to fit in a whole which gives these two volumes the continuity and consistency of a text or treatise instead of a mere compilation of articles. Bassiouni and Nanda then edited the manuscripts, added the documents and appendices and wrote connecting parts as well as some specific sections. The process took almost four years. The appearance of these two volumes and their production by the publisher is of the highest quality.

A word about the authors may be appropriate even though they are well known. Professor Bassiouni, who is at DePaul University in Chicago, was a Fulbright-Hays visiting Professor of International Criminal Law at the University of Freiburg in Germany (1970), a

---

14. See, e.g., *Symposium—International Human Rights*, 21 DE PAUL L. REV. 271 (1971) and numerous other writings by both authors.

15. See L. KUTNER, *WORLD HABEAS CORPUS* (1962); *THE INDIVIDUAL RIGHT TO HUMAN FREEDOM* (1970).

Visiting Professor of law at N.Y.U. (1971) and a Guest Scholar in the Woodrow Wilson International Center for Scholars (1972). Professor Bassiouni is the author of *Criminal Law and Its Processes* (1969) and *The Law of Dissent and Riots* (1970) as well as several articles in scholarly journals. Professor Nanda, also a well-known writer on international law topics, is at the University of Denver and is its Director of International Studies.

Bassiouni and Nanda saw fit to dedicate Volume I to retired Chief Justice Earl Warren and Professor Myres McDougal (Yale) and Volume II to Professors Gerhard Mueller (N.Y.U.) and Hans-Heinrich Jescheck (Freiburg) for their contributions to the respective subjects encompassed in each volume. This is a touching and deserving tribute to all concerned. The credit deserved by Bassiouni and Nanda for this monumental accomplishment may or may not be sufficiently manifested in this or other reviews of their work, but they must surely be rewarded by their intimate knowledge that they have made a contribution to the advancement of the science of law and to some extent to the preservation of world order.<sup>16</sup>

LOUIS KUTNER\*

---

16. See Alper, Book Review, 15 HARV. INT'L L. J. 198 (1974).

\* Member of the Illinois and Indiana Bar; 1972 Congressional nominee for the Nobel Peace Prize; former visiting Associate Professor, Yale Law School; Chairman, World Habeas Corpus Committee, World Peace Through Law Center; Chairman, Commission for International Due Process of Law; former Consul, Ecuador; former Consul General, Guatemala; former Special Counsel to the Attorney General of Illinois; and author of numerous law journal articles and several books, including *World Habeas Corpus* and *I. the Lawyer*.