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(reviewing Charif M. Bassiouni, Introduction to International Criminal Law (2003))

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cracks of the sidewalk. Peacekeeping is not the only practice that has found legitimation in customary practice rather than literal Charter text. An excursion through the Charter, article by article, as undertaken by the Cot-Pellet and Simma volumes, is only one method of entry into the social practice of the United Nations. For beginning law students, Volger's bestiary organized A through Z may be much the clearer way to approach this central institution of international law and politics.

RUTH WEDGWOOD
Of the Board of Editors

Introduction to International Criminal Law. By M. Cherif Bassiouni. Ardsley, NY: Transnational Publishers, 2003. Pp. xxxvi, 823. Index. $85.

This comprehensive publication is ably authored by M. Cherif Bassiouni, a pioneer in the field of international criminal law and a catalyst in the creation of many of its institutions, including the International Criminal Court (ICC). Bassiouni is president of the International Human Rights Law Institute at DePaul University, where he is also a professor of law. He holds a number of additional appointments, including the presidency of the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy. In April 2004, he was appointed by UN Secretary-General Kofi Annan to serve as the independent expert on the situation of human rights in Afghanistan, pursuant to the mandate established by Resolution 2003/77 of the Commission on Human Rights. His work in this area has commanded much respect and attention.

Bassiouni identifies *Introduction to International Criminal Law* as "probably [his] last major contribution to this discipline" (p. xxxvi). Should this actually prove to be the case (Bassiouni's enthusiasm and energy appear to be boundless), this work will have lasting impact in a field fast becoming busy with books. Future generations of scholars, teachers, policymakers, activists, and, most importantly, individuals afflicted by systemic human rights violations for whom application of the law may yield some justice will find this volume to be a valuable resource. The American Society of International Law awarded this work with a certificate of merit in 2004 for its superior technical craftsmanship and high utility for practicing lawyers and scholars, and the International Association of Penal Law (U.S. national section) honored the book with its 2004 book of the year award.

In this book, Bassiouni sets out the foundational principles and narrates the history of international criminal law with great precision and in careful order. He opens with an introductory chapter about the sources and policies of international criminal law, then examines the subjects (*ratione personae*) of the law, including a review of the defense of immunities and a discussion of the status of victims.

Chapter III turns to a meaty exposition of the *ratione materiae* of international criminal law, namely the substantive international crimes. Bassiouni goes well beyond the staple core crimes (genocide, war crimes, aggression, and crimes against humanity) to empirically explore the criminalization at the transnational level of terrorism, narcotics-related offenses (including trafficking), and organized crime. In this regard, Bassiouni considers—and somewhat blurs—the distinction between international criminal law and transnational criminal law. On the one hand, international criminal law *stricto sensu* is "the law applicable in an international criminal court having general jurisdiction to try those who commit acts which international law proscribes and which it provides should be punished."[1] Transnational crimes, on the other hand, are set out in treaties (and other sources of international law) as crimes for which suspects are to be prosecuted only through domestic penal mechanisms in the courts of the state where they are captured or are to be extradited to the courts of a state that will in fact prosecute.

In principle, transnational criminal law does not establish individual penal responsibility under international law. In fact, as Bassiouni notes, it operates as an indirect system enforcing treaty obligations through national criminal institutions and processes. Assuredly, these two categories are not watertight: particular transnational crimes may, over time and through the will of actors (with international legal personality or without such personality but acting as stakeholders in global civil society), become international crimes. For example, following the 9/11 attacks, an effort began to subject terrorism to such a move although, at present, its proscription still operates largely at the transnational level. Bassiouni's deep interest in the evolution of transnational

[1] Edward M. Wise, *Codification: Perspectives and Approaches*, *in* 1 INTERNATIONAL CRIMINAL LAW: CRIMES 283, 285 (M. Cherif Bassiouni ed., 2d. ed. 1999).

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norms into core international crimes is evidenced not only by his scholarly work, but also by his activism. For example, in his capacity as president of the International Association of Penal Law, Bassiouni focused the association's attention on transboundary trafficking of women and children—often into conditions of sexual slavery—and the role international legal instruments can play in combating this scourge.

In Chapter IV, the author sets out certain principles of criminal responsibility, including command responsibility and sentencing, both of which remain subject to rigorous interpretation and reinterpretation by international criminal tribunals. In this vein, a number of judicial decisions issued by the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the Former Yugoslavia (ICTY)—both postdating and predating publication of this book—should be considered in addition to Bassiouni's doctrinal summary. These are relevant not only to the extant jurisprudence, but also as persuasive authority for the ICC in the future. In particular, the discussion on civilian command responsibility could have been supplemented by reference to the 2001 *Musema* decision of the Appeals Chamber of the ICTR.[2] Knowledge requirements for military command responsibility also remain somewhat in flux, although these developments largely postdate the book.[3] In a similar vein, other liability theories, such as complicity, joint criminal enterprise, and aiding and abetting also could benefit from closer and contemporaneous exposition. Bassiouni's discussion of sentencing does not foreshadow the role of the guilty plea and charge bargain in case management. These plea agreements have gained considerable currency with the ICTY.[4] That said, they remain profoundly understudied with only limited inquiry regarding their effect on sentence, the goals of punishment, and reconciliation generally. Teachers making use of *Introduction to International Criminal Law* as a treatise or course book for their classes might consider supplementing this chapter with these specific cases. Obviously, space constraints do not allow Bassiouni to consider in depth every single facet of a field that is rapidly expanding; notwithstanding the ambitiousness of the project, his effort at systematization has yielded a truly comprehensive product.

Two other areas where supplemental materials might be instructive include deliberate environmental damage, where the work of the United Nations Compensation Commission (and restitutionary or remediative approaches generally, along with criminal responsibility under article 8(2)(b)(iv) of the Rome Statute) could be referenced, and also the position of the United States vis-à-vis the ICC, which Bassiouni conjecturally predicts will become more welcoming over time. Given the recent opposition of the United States toward a Security Council resolution referring the Darfur violence to the ICC,[5] it is unclear whether there is much cause for this conjecture at this juncture.

Chapters V and VI explore the enforcement of international law. Here, the author distinguishes between the "indirect enforcement system" (national courts) and the "direct enforcement system" (international tribunals, whether ad hoc, permanent, hybrid, or military). This rich discussion permits Bassiouni to revisit both core international crimes and transnational criminal law while respecting the disciplinary boundaries between the two. It also reminds readers that international tribunals tasked with direct enforcement largely depend on the cooperation of national judicial and constabulary systems to obtain custody over individuals.

Chapter VII reviews with great sophistication the jewel in the crown of the direct enforcement system—namely the ICC—and Chapter VIII adds a thoughtful, albeit largely descriptive, discussion of the new hybrid modalities of cooperation between national and international judicial authorities in places such as Kosovo, East Timor, and Sierra Leone. The chapter that follows considers

[2] Prosecutor v. Musema, Case No. ICTR-96-13-A, Judgment (Nov. 16, 2001) (convicting director of a tea factory of genocide).

[3] Prosecutor v. Blaškić, Case No. IT-95-14-A, Judgment (July 29, 2004) (carefully underscoring that the knowledge of any kind of risk does not suffice for the imposition of culpability under a command responsibility theory and emphasizing the need for the prosecutor to prove subjective awareness or, at a minimum, recklessness on the part of the accused).

[4] Prosecutor v. Plavšić, Case No. IT-00-39&40/1-S, Sentencing Judgment (Feb 27, 2003); Prosecutor v. Deronjić, Case No. IT-02-61-S, Sentencing Judgment (Mar. 30, 2004); Prosecutor v. Mrdja, Case No. IT-02-59-S, Sentencing Judgment (Mar. 31, 2004); Prosecutor v. Nikolić, Case No. IT-02-60/1-S, Sentencing Judgment (Dec. 2, 2003).

[5] Frederic L. Kirgis, *UN Commission's Report on Violations of International Humanitarian Law in Darfur*, ASIL INSIGHTS, Feb. 2005, *available at* <http://www.asil.org> (also noting that the United States would prefer that the Darfur violence be adjudicated by a new ad hoc tribunal jointly operated by the United Nations and the African Union).

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the procedural and evidentiary norms applicable to international criminal proceedings and traces their provenance. The doctrinal discussion concludes with a complex analysis of the underdeveloped theoretical content of international criminal law in which the author also compares trial initiatives to other modalities of justice, such as truth commissions and restorative mechanisms.

Bassiouni's work robustly fills what other international criminal law scholars like Bruce Broomhall identify as a need in the literature, namely the clarification of complex doctrinal issues such as scope of responsibility and matters of practical application.[6] *Introduction to International Criminal Law* addresses that call and makes a valuable contribution to the English-language survey literature in the field of international criminal justice generally.[7] Although the primary methodology of the author is expository and doctrinal, this approach does not preclude forays into deeper theoretical and normative inquiry. Bassiouni's work catalyzes the creation of international criminal law, but it also recognizes the limits of the field and, as such, does not succumb to the pitfalls of partisanship. To be sure, the book could have provided more in the way of critique and renewal; that said, it provokes inquiry that seems deliberately to stop short of simple solutions—perhaps with the intent of inspiring deeper discussion among upcoming generations of international criminal justice scholars.

One example stands out. Bassiouni recognizes that international criminal law has not developed its own independent theoretical foundations and notes that although the discipline certainly is functional, it is not yet cohesive or coherent. The discipline in fact depends on other areas of legal theory and doctrine, especially municipal criminal law and human rights law, notwithstanding the difficulties that inhere in transferring experiences at the national level to that of the international. Bassiouni is correct in ascribing this dependence to the essentially reactive nature of international criminal law, which results in its having evolved in a manner that is not "linear, cohesive, consistent, or logical" (p. 23). Looking ahead, though, Bassiouni still predicts that "events"—as opposed to legal doctrine—will continue to drive international criminal law (p. xxxvi).

However, this does not have to be the case. With Bassiouni's prompting in mind, younger scholars can confidently pick up the baton and actively push the field toward greater doctrinal independence. Such an endeavor could enhance the effectiveness of international criminal justice institutions within communities roiled by systemic violence. Part of the hard work occasioned by this challenge includes building bridges with other scholars, such as criminologists and anthropologists, who may be more circumspect about the role of adversarial criminal trials in redressing massive political conflict, deterring future violence, reconciling afflicted societies, rehabilitating offenders, and restoring victims. It also welcomes engagement with sociologists, who may wonder about the ability of individualized and selective criminal justice to account for group behavior and to impede conflict entrepreneurs from normalizing hate. In cases like Rwanda, where hundreds of thousands of ordinary citizens, habitually disconnected from the political process, rapidly become mobilized to slay hundreds of thousands of their neighbors, the work of social psychologists—who may be skeptical about the effectiveness of treating such perpetrators in the same way as the law treats deviant criminals—might also be engaged.

Whereas Bassiouni's immediate concern is for international criminal law to develop its own voice given its currently blended doctrinal nature, different concerns attach to defendants in mass atrocity prosecutions—the enemies of all humankind—leading to the difficult question of whether these individuals should be compared to ordinary common criminals. What is more, international criminal law assumes that criminal responsibility should attach to a select group of individuals for crimes perpetrated by and against collectivities, without inquiring whether this is a suitable explanatory framework for mass violence in places as diverse as Rwanda, Sierra Leone, Bosnia, or Cambodia. Although Bassiouni supports this assumption, there is cause to question this orthodoxy. Those involved with international criminal law ought to simultaneously engage more affirmatively with broader forms of

[6] Bruce Broomhall, *The Values, Policies and Goals of ICL in the Age of Globalization: Report*, 19 NOUVELLES ETUDES PÉNALES 162, 164 (2004).

[7] Companion works include ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW (2003); BRUCE BROOMHALL, INTERNATIONAL JUSTICE AND THE INTERNATIONAL CRIMINAL COURT: BETWEEN SOVEREIGNTY AND RULE OF LAW (2004); LEILA NADYA SADAT, THE INTERNATIONAL CRIMINAL COURT AND THE TRANSFORMATION OF INTERNATIONAL LAW: JUSTICE FOR THE NEW MILLENNIUM (2002); WILLIAM A. SCHABAS, GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES (2000); and ELIES VAN SLIEDREGT, THE CRIMINAL RESPONSIBILITY OF INDIVIDUALS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW (2003).

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liability that encompass restorative, reparative, and collective justice along with a necessary review of the actions and omissions of international organizations and state governments. Such a process of critique and renewal might move international criminal law beyond what is at present a fairly narrow, individualized, and retributive ideology.

It is understandable that international criminal law is not yet fully its own discipline. After all, much of what we may consider settled and robust municipal law itself originated through a messy process of incremental evolution. International criminal law is still relatively young and in a nascent stage. It responds urgently to cataclysmic events. This increases the pressure for it to mimic law in preexisting contexts, especially given the general propensity, as Bassiouni notes, that "very little in law is invented, and nearly everything is borrowed" (p. 585). This, however, is not an immutable condition. By drawing from an eclectic variety of sources that reflect the complexity of mass atrocity, international criminal law can move beyond the piecemeal toward the rigorous. Failure to do so runs the risk that international criminal law over time will amount to little more than what Bassiouni fears, namely superficial "Potemkin justice" (p. 703). International institutions should not exist as ends in themselves but, rather, as means to improve the lives of victims, dissuade gruesome conflict, and affirm shared norms. The march against impunity championed by Bassiouni's work gives us much to celebrate. Honoring that work means continuing the march in a manner that is both inventive and inclusive.

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Defending Interests: Public-Private Partnerships in WTO Litigation. By Gregory C. Shaffer. Washington, D.C.: Brookings Institution Press, 2003. Pp. 227. Index. $19.95.

Wisconsin law professor Gregory C. Shaffer's recent book, *Defending Interests: Public-Private Partnerships in WTO Litigation*, details how the United States and the European Community (EC) have utilized the World Trade Organization's (WTO) dispute settlement system to advance their trade interests. It is a fascinating exploration of how governments, in the exercise of their public functions, work with and are influenced by private sector actors. The focus of the book is litigation in the WTO's dispute settlement system, a topic that has received much attention and generated considerable controversy in its first decade of existence.

Although based on the General Agreement on Tariffs and Trade (GATT) dispute settlement system that had successfully operated for nearly fifty years, the WTO system embodies several fundamental changes to the GATT procedures. First and foremost, in the WTO dispute settlement system, panel and Appellate Body reports are automatically adopted unless there is an unlikely consensus of the WTO membership not to adopt a report. This is in contrast to the GATT system, which allowed a GATT contracting party that had lost in an arbitral panel proceeding to block the formal adoption by the GATT parties of the panel report, thus consigning it to permanent legal limbo. The change to automatic adoption was accompanied by similar alterations providing for the virtual automatic establishment of a panel on request of a complainant and authorization of the imposition of sanctions at the request of the prevailing party in the event of noncompliance by the losing party. Given the breadth of WTO membership and the extensive subject-matter coverage of its agreements, this compulsory jurisdiction makes the WTO system unique in the world of interstate dispute settlement. Moreover, its success to date in terms of compliance with rulings and promotion of settlements makes the system a ripe topic of study that is worthy of consideration for the implications it may have in making other international systems of dispute settlement more effective.

Private parties have a particular interest in the subject matter of WTO agreements; not surprisingly those parties play an important role in deciding how their governments use the WTO system. That is the essence of Shaffer's book. In the first years of the WTO system, the United States and the European Community were the dominant users of the WTO dispute settlement system. From 1995 to 1999, the first five years of the system's operation, they initiated roughly two-thirds of all consultation requests—the first step in the dispute settlement process. It is therefore of great interest to understand how they use the WTO system: Why do they bring cases? Who determines which cases are actively pursued? How do private parties influence government decisions? What is the significance of public-private partnerships?

In *Defending Interests*, Shaffer first outlines the "blurring of the public and the private in international trade law" (p. 1). He then explores various

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