
**INTERNATIONAL
CRIMES: DIGEST/INDEX**
OF INTERNATIONAL INSTRUMENTS 1815-1985

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OF INTERNATIONAL INSTRUMENTS 1815-1985

VOLUME 1

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OCEANA PUBLICATIONS, INC., NEW YORK • LONDON • ROME

Library of Congress Cataloging in Publication Data

Bassiouni, M. Cherif, 1937-
International crimes.

Includes indexes.

1. International offenses. 2. International
offenses—Indexes. I. Title.

JX5415.B36 1985 341.7'7 85-21684

ISBN 0-379-20138-0 (v. 1)

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Manufactured in the United States of America

To

John T. Richardson, C.M., S.T.D.

In Friendship

TABLE OF ABBREVIATIONS

| | |
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| AJIL | AMERICAN JOURNAL OF INTERNATIONAL LAW |
| Bevans | TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA, 1776-1949 (C.F. Bevans ed., 1970, 13 vols.) |
| Br. For. & St. Pap. | BRITISH FOREIGN AND STATE PAPERS |
| BTI | AN INDEX OF BRITISH TREATIES, 1101-1968 (C. Parry ed. 1970, 3 vols.) |
| CONFERENCE ON CENTRAL AMERICAN AFFAIRS | Organization of American States, CONFERENCE ON CENTRAL AMERICAN AFFAIRS (1923) |
| DEP'T ST. BULL. | DEPARTMENT OF STATE BULLETIN |
| DIG. U.S. PRAC. INT'L L | DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW |
| E.A.S. | EXECUTIVE AGREEMENT SERIES |
| ECOSOC | Economic and Social Council |
| E.T.S. | EUROPEAN TREATY SERIES |
| Ferencz, <u>Aggression</u> | B. FERENCZ, DEFINING INTERNATIONAL AGGRESSION - THE SEARCH FOR WORLD PEACE (1975, 2 vols.) |
| Ferencz, <u>Enforcing Int'l Law</u> | B. FERENCZ, ENFORCING INTERNATIONAL LAW - A WAY TO WORLD PEACE (1983, 2 vols.) |
| Ferencz, <u>Int'l Criminal Court</u> | B. FERENCZ, AN INTERNATIONAL CRIMINAL COURT - A STEP TOWARDS WORLD PEACE (1980, 2 vols.) |

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| For. Rel. | FOREIGN RELATIONS (United States Dep't of State publication) |
| Friedman | L. FRIEDMAN, THE LAW OF WAR, A DOCUMENTARY HISTORY (1972, 2 vols.) |
| G.A. | General Assembly |
| GAOR | General Assembly Official Records |
| Gr. Brit. T.S. | GREAT BRITAIN TREATY SERIES |
| Hudson | INTERNATIONAL LEGISLATION, 1909-1945 (M. Hudson ed., photo reprint 1972, 9 vols.) |
| ICJ | International Court of Justice |
| ILM | INTERNATIONAL LEGAL MATERIALS |
| League of Nations O.J. | LEAGUE OF NATIONS OFFICIAL JOURNAL |
| L.N.T.S. | LEAGUE OF NATIONS TREATY SERIES |
| Malloy | TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS, AND AGREEMENTS BETWEEN THE UNITED STATES OF AMERICA AND OTHER POWERS, 1776-1909 (W. Malloy ed, photo reprint 1965, 4 vols.) |
| Martens | NOUVEAU RECUEIL GENERAL DE TRAITES ET AUTRES ACTES RELATIFS AUX RAPPORTS DE DROIT INTERNATIONAL (three series) |
| Miller | TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA (H. Miller ed. 1942, 8 vols.) |
| OAS | Organization of American States |
| Parry's | THE CONSOLIDATED TREATY SERIES (C. Parry ed. 1969 & Supp., 231 vols.) |

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| PCIJ | Permanent Court of International Justice |
| Schindler & Toman | D. SCHINDLER & J. TOMAN, THE LAWS OF ARMED CONFLICT (2d ed. 1981, 2 vols.) |
| Stat. | UNITED STATES STATUTES AT LARGE |
| T.I.A.S. | TREATIES AND OTHER INTERNATIONAL ACTS SERIES |
| U.N. | United Nations |
| UNESCO | UNITED NATIONS EDUCATIONAL AND SCIENTIFIC COOPERATION ORGANIZATION |
| U.N.T.S. | UNITED NATIONS TREATY SERIES |
| U.S.T. | UNITED STATES TREATIES AND OTHER INTERNATIONAL AGREEMENTS |
| Wiktor | UNPERFECTED TREATIES OF THE UNITED STATES OF AMERICA, 1776-1976 (C. Wikter ed. 1976, 6 vols.) |
| WTI | WORLD TREATY INDEX (P. Rohn ed. 2d ed. 1983, 5 vols.) |
| Y.B. EUR. CONV. | YEARBOOK OF THE EUROPEAN CONVENTIONS ON HUMAN RIGHTS |
| Y.B. INT'L L. COMM'N | YEARBOOK OF THE INTERNATIONAL LAW COMMISSION |

PREFACE

In the last 20 years during which I have been working in the field of international criminal law, it was frequently cumbersome and always time consuming to find the needed documents on that subject.¹ My experience and that of my colleagues in a similar situation led me to undertake this difficult and tedious project.

In recent years, a number of publications contained compilations of instruments relating to specific international criminal law topics. Among those are the works of Benjamin Ferencz on the creation of an international criminal court² and on the control of aggression;³ Robert Friedlander on terrorism;⁴ and, the collection of documents on war victims by Howard Levie,⁵ all of which were published by Oceana. There have also been other similar publications such as the work of Schindler and Toman on the regulation of armed conflicts,⁶ and the earlier one by Friedman on the laws of war.⁷ The first comprehensive, but not all inclusive, compilation of international criminal law conventions was the late Stefan Glaser's two volume work.⁸ Nonetheless,

1. E.g., M.C. Bassiouni, *INTERNATIONAL CRIMINAL LAW: A DRAFT INTERNATIONAL CRIMINAL CODE* (1980); M.C. Bassiouni & V.P. Nanda, *A TREATISE ON INTERNATIONAL CRIMINAL LAW* (2 vols. 1973).

2. B. Ferencz, *AN INTERNATIONAL CRIMINAL COURT - A STEP TOWARDS WORLD PEACE: A DOCUMENTARY HISTORY AND ANALYSIS* (2 vols. 1980); *ENFORCING INTERNATIONAL LAW - A WAY TO WORLD PEACE: DOCUMENTARY HISTORY AND ANALYSIS* (2 vols. 1983).

3. B. Ferencz, *DEFINING INTERNATIONAL AGGRESSION - THE SEARCH FOR WORLD PEACE: A DOCUMENTARY HISTORY AND ANALYSIS* (2 vols. 1975). See also B. Ferencz, *ENFORCING INTERNATIONAL LAW - A WAY TO WORLD PEACE: DOCUMENTARY HISTORY AND ANALYSIS* (2 vols. 1983).

4. R. Friedlander, *TERRORISM - DOCUMENTS OF INTERNATIONAL AND LOCAL CONTROL* (3 vols. 1979).

5. H. Levie, *PROTECTION OF WAR VICTIMS* (4 vols. 1979).

6. D. Schindler & J. Toman, *THE LAWS OF ARMED CONFLICT* (2d ed. 1981).

7. L. Friedman, *THE LAW OF WAR - A DOCUMENTARY HISTORY* (2 vols. 1972).

8. S. Glaser, *LE DROIT PENAL INTERNATIONAL CONVENTIONEL* (2 vols. 1977-1978).

the need remained for a comprehensive DIGEST/INDEX containing appropriate references, alternative sources, and relevant data pertaining to these instruments. What was also particularly needed was data on the applicability of these instruments to different categories of crimes and their relevant penal characteristics. This data too cannot be found in any other compilation of texts. Its value and usefulness to the researcher was believed to warrant the effort in compiling it.

The METHODOLOGY which follows outlines the problems faced in collecting the materials and data, and describes the solutions arrived at to facilitate the work of the researcher.

The compilation started with some 400 international instruments from which 312 instruments were selected for inclusion in this DIGEST/INDEX. The problems throughout this process were numerous, and the task far more difficult than I had originally believed. After all, I had amassed over the years most of the documents needed, but further research brought to light many more documents than I had originally compiled. They ultimately filled 15 six-inch binders. After the analysis began it became apparent that so many of the documents collected lacked, in their original official source, or in their subsequent publication in semi-official and unofficial sources, most of the data that I was seeking. The missing data pertained to every category that is included in this work. Surprisingly, every compilation, official, semi-official, and unofficial, varies as to the relevant treaty-data it contains, and even at that there is no consistency as to what is included and excluded. Wherefore the need to consult multiple sources with respect to each document. This also meant that in re-checking my work-product, all these sources had to be re-examined for each of the 230 documents included herein with respect to every category of data listed. Among the most difficult categories of data to find was state parties, and other data on signatory states and contracting parties. For some reason, there is no single source that contains that information with respect to all instruments.

No compilation, official record or other source has all the information included herein, and most libraries do not have all the necessary sources from which to compile that information.

In addition, there are many inconsistencies in the various sources. Sources on state parties are conflicting, different sources have different titles to the same instru-

ments, conflicts usually exist between the official title in French and the English translated title given by different sources, information about instruments that supersede, supplement or abrogate prior ones are frequently not easily discoverable, and the litany of problems could go on. All of that required decisions as to uniformity, harmony, logical presentation and continuity. No sooner, however, was a criterion adopted than an exception was found. Fortunately my reliance on Editor's Notes helped preserve consistency while explaining exceptions thereto. The reader would probably never guess how difficult, cumbersome, tedious and time consuming it has been to collect the data contained in this book. There were indeed times when the project seemed so overwhelming that I was on the verge of throwing in the towel.

In short, after having what I believed to be the necessary raw data, it took me three years to complete the project as it now stands. During that period of time, I did other things as well, but diversion was needed to take new fresh looks at what was done and try to make it more useful and usable to the reader. Thus many details originally contemplated for inclusion were removed to make the book less cumbersome. The presentation and format were also changed many times until the present approach was found to be satisfactory. The object was how to make the data more readable, and the book more usable.

The bibliographic data will surely make the researcher's work easier, but the substantive data on the applicability of the relevant instruments to different categories of crimes and the relevant penal characteristics are the first time that such data has been compiled. It may have never been tackled by anyone before because of the time required to do so, or by reason of the fact that almost every such entry requires a judgment call that could be argued. Whether a provision in a convention implicitly establishes a duty to prohibit a certain type of conduct is surely a debatable question. Similarly, whether a given provision applies implicitly to other crimes is also arguable. And I am certain that some researchers will take issue with these judgmental decisions. My purpose however was not to make a definitive judgment on the applicability of these conventions to different categories of crimes, and on their penal characteristics. Instead it was to point out to what I believe to be relevant. Each researcher will then have to make his or her own judgment or rely on mine.

I cannot help but point out how revealing that substantive portion of the data has been; for example, the absence of ratification of significant documents included herein for their historic relevance. My personal conclusion is that when a convention is specific and contains detailed penal provisions it is simply unlikely to be signed or to be ratified by the required number of states in order to enter into effect. Ambiguity seems to be the key to the adoption of many of these conventions. The textual language with respect to penal provisions almost always lacks specificity, and there is no consistency even among related instruments. The reason may well be that such documents are drafted mostly by diplomats with little or no input by penalists. They surely reveal the absence of international criminal law expertise. Another personal conclusion is that whenever the subject of a document deals with political considerations and state-policy, it tends to be even more vague, and its penal characteristics either nonexistent, or terribly ambiguous. The documents listed under "Aggression" and "Unlawful Emplacement of Weapons" are prime examples. Consequently, judgments as to the implicit meaning of their provisions are debatable, presumably as the drafters had intended it to be. The INTRODUCTION appearing at the beginning of each category of crime is quite revealing as to these and other considerations about the penal characteristics of instruments generally believed to be part of international criminal law. Hopefully, all of that information will help the researcher, and may also help the future drafters of international criminal law instruments.

During these three years, 1981-84, I had four research assistants. In 1980-81 while I compiled the texts of the instruments which constituted the raw data, I worked alone and drew most of the material from research files developed over the years. Then from 1981-83 Susan Morehouse (J.D., DePaul, 1983) worked on the project; Karen Botterud (J.D., DePaul, 1984) participated in the research in 1983-84 with the collaboration of Kenneth Gertz (J.D. Cand., DePaul, 1985) who thereafter continued to work on the project during 1984, and lastly Paul Mollica who collaborated in the last few months of 1984. They all deserve recognition.

Patricia Prange, who typed the project and kept the various drafts straight, has my particular gratitude. She remembers when I first informed her of my intention to undertake this project that I had said "this one is going to be easier than the last project"--famous last words. Now

hopefully the work-product will prove of a usefulness commensurate with the effort put in to produce it.

My appreciation to DePaul University for giving me the time and support needed to complete the project; to Oceana for publishing this work, and to Edwin Newman for his publisher's belief in the importance of the undertaking.

M. Cherif Bassiouni

Chicago, 9 December 1984

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Professor of Law, DePaul University, since 1964; 1970 Fulbright-Hays Professor of International Criminal Law, The University of Freiburg, Germany; 1971 Visiting Professor of Law, N.Y.U.; 1972 Guest Scholar Woodrow Wilson International Center for Scholars, Washington, D.C. Since 1976 he is non-resident Dean of the International Institute of Higher Studies in Criminal Sciences (Siracusa, Italy).

J.D., Indiana U.; LL.M., John Marshall Law School; S.J.D., George Washington University. Also studied law at Dijon University, France; The University of Geneva, Switzerland; and The University of Cairo, Egypt. In 1981 he was awarded a Doctor of Law honoris causa from the University of Torino, Italy.

Author of fifteen major books on U.S. Criminal Law and International and Comparative Criminal Law and 82 law review articles.

Active in several scholarly and professional organizations, he serves since 1974 as the Secretary-General of the International Association of Penal Law; was Chairman of the International Law Section of the Illinois State Bar for several years; chaired several committees of the Chicago Bar and American Bar Association.

A frequent lecturer at distinguished universities in the U.S. and abroad, he was a consultant to the U.N. for the Fifth U.N. Congress on Crime Prevention (1975) where he was elected Honorary Vice-President of the Congress, and also a consultant to the Sixth U.N. Congress (1980) where he presented a Draft International Criminal Code. He was also a consultant to the Division of Human Rights of the U.N. in 80-81 and prepared for it a Draft Statute for the Creation of an International Criminal Court, and a consultant to the Seventh U.N. Congress (1985), and chaired two preparatory meetings of committees of experts in 1983-84. He also served in 1978 as co-chairman of the committee of experts which prepared the U.N. Draft Convention on the Prevention and Suppression of Torture, and as chairman of the committee of experts which prepared the U.N. Draft Convention on the Prevention of Unlawful Human Experimentation. He served as a consultant to the Departments of State and Justice on projects relating to international traffic in drugs (1973) and control of terrorism (1975 and 1978-79), and as a consultant on the defense of the U.S. hostages in Iran (1979-80).

Among the distinctions and awards he received are: 1967, Outstanding Citizen of the Year of Metropolitan Chicago; 1970, Outstanding Educator of America; 1973, Men of Achievement Award (Cambridge, England); 1973, Gold Medal of the Italian Press (Rome, Italy); 1956, Order of Merit, Egypt; 1976, Order of Merit, Italy (Rank of Commendatore); 1977, Order of Merit, Italy (Rank of Grand' Ufficiale); 1984, Order of Sciences, First Class, Egypt.

He is admitted to practice in Illinois and Washington, D.C., and before the United States Supreme Court, the Second, Fifth, and Seventh Circuits of the U.S. Court of Appeals, and the United States Court of Military Appeals.

METHODOLOGY

1. International Crimes

1.1 Criteria for Choice

The question of what constitutes an international crime is one that has long been debated and continues to be at issue. In an article entitled "Penal Characteristics of International Criminal Law,"¹ this author identified eight characteristics, any one of which in a given multilateral convention, would be sufficient to consider that instrument as falling within the ambit of international criminal law. The logical consequence of finding that a given convention is part of international criminal law is that the prohibited conduct in such an instrument constitutes an international crime even though it may not be so specifically stated in that instrument.

The penal characteristics which qualify an international instrument as part of international criminal law, and consequently make the prohibited conduct an international crime² have been more particularized and referred throughout this book as:

1. Explicit recognition of proscribed conduct as constituting an international crime, or a crime under international law, or a crime.
2. Implicit recognition of the penal nature of the act by establishing a duty to prohibit, prevent, prosecute, punish, or the like.
3. Criminalization of the proscribed conduct.
4. Duty or right to prosecute.
5. Duty or right to punish the proscribed conduct.
6. Duty or right to extradite.
7. Duty or right to cooperate in prosecution, punishment (including judicial assistance).
8. Establishment of a criminal jurisdictional basis.
9. Reference to the establishment of an international criminal court or international tribunal with penal characteristics.
10. No defense of superior orders.

1. 15 CASE W. RES. J. INT'L L. 27 (1983).

2. Id.

Thus, any multilateral convention containing any one of these penal characteristics which has been, or is in force since 1815, has been included in this book.

1.2 Choice of Crimes

There has never been a definitive listing of all international crimes, and in fact, there has never even been a conclusive theory or definition of international crimes. All works on that subject since the turn of the century, and certainly before, have been tentative in nature. Thus the approach followed by this author is novel.

The twenty-two categories of international crimes³ included in this book fall under nine headings of internationally protected interests. They are identified, grouped, and ranked by this writer as follows (an explanation for the Ranking and Grouping follows in 1.3):

A. Protection of Peace

I. Aggression

B. Humanitarian Protection During Armed Conflicts, the Regulation of Armed Conflicts, and the Control of Weapons

II. War Crimes

III. Unlawful Use of Weapons;

Unlawful Emplacement of Weapons

3. In M.C. BASSIOUNI, *INTERNATIONAL CRIMINAL LAW: A DRAFT INTERNATIONAL CRIMINAL CODE* (Sijthoff & Noordhoff, 1980), this author dealt only with twenty categories of international crimes. Crime Category No. XVIII, Theft of Nuclear Weapons, was subsumed under the control of weapons, and Crime Category No. XVII, Environmental Protection, was not included on the basis of a judgment since then reversed.

This Draft International Criminal Code was presented by the author at the sixth U.N. Congress on Crime Prevention and the Treatment of Offenders, Caracas, 1980. The Draft Code was translated in French, *PROJET DE CODE PENAL INTERNATIONAL* (Eres Pub., Toulouse, France, 1982), and in Spanish, *PROGETTO DE CODIGO PENAL INTERNACIONAL* (Tecnos Pub., Madrid, Spain, 1983).

C. Protection of Fundamental Human Rights

- IV. Crimes Against Humanity
- V. Genocide
- VI. Racial Discrimination and Apartheid
- VII. Slavery and Related Crimes
- VIII. Torture
- IX. Unlawful Human Experimentation

D. Protection Against Terror-Violence

- X. Piracy
- XI. Aircraft Hijacking
- XII. Threat and Use of Force Against Internationally Protected Persons
- XIII. Taking of Civilian Hostages

E. Protection of Social Interests

- XIV. Drug Offenses
- XV. International Traffic in Obscene Publications

F. Protection of Cultural Interests

- XVI. Destruction and/or Theft of National Treasures

G. Protection of the Environment

- XVII. Environmental Protection
- XVIII. Theft of Nuclear Materials

H. Protection of Communication Means

- XIX. Unlawful Use of the Mails
- XX. Interference with Submarine Cables

I. Protection of Economic Interests

- XXI. Falsification and Counterfeiting
- XXII. Bribery of Foreign Public Officials

Each one of these crimes reflects one or more of the factors deemed a necessary requirement to internationally criminalize a certain type of conduct. These factors are:

1. The prohibited conduct affects what the world